[NL] The Media Authority's first rulings on access to cable

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On 23 July and 30 July 1996, the Dutch Media Authority (Commissariaat voor de Media) has issued its first rulings in disputes over access to cable networks (in the U.S. called cable systems). By a law of 4 April 1996, the Media Authority has been given this supervisory power to ensure that programme-suppliers are only refused access to cable networks on clear, reasonable and fair grounds (Article 69 of the Media Act, Mediawet). The regulatory power is set to expire on 1 January 1997 (see IRIS 1996-5: 12 and IRIS 1996-6: 11).

In the case of the complaint of NetHold Benelux against Kabeltelevisie Amsterdam (KTA) , the Media Authority ruled that KTA - contrary to the legislator's intention - failed to show that the distribution fee which it demanded from NetHold, is based on clear, reasonable and fair grounds. The fee KTA demanded for continuing distributing NetHold's subscription channels was four times higher than the amount which NetHold had to pay in the past. The Media Authority allowed KTA another six weeks to submit information which would enable the Authority to evaluate KTA's price setting. Failure to submit this information will result in a penalty of 50,000 guilders per day. In the meantime, KTA must continue the distribution of NetHold's two subscription channels. KTA threatened to stop the distribution on 1 August 1996. KTA and NetHold are also instructed to resume their negotiations over the distribution fee on the basis of the prime cost of distribution - a principle to which both parties said to adhere. The time for these renegotiations is limited to six weeks, so as to limit the period of uncertainty for NetHold. If the negotiations fail, NetHold can ask the Media Authority to determine a reasonable distribution fee. Visie Marketing & Media 's (VMM) complaint concerned the price and conditions which are set for distributing its cable TV information service on the cable network in the city of Tilburg, which is operated by the PNEM - the local electricity company - backed by the municipality of Tilburg. The Media Authority ruled in this case that the distribution fee which VMM was asked to pay was not `in accordance with market prices'. Such a pricesetting is contrary to the decision of the Minister of Economic Affairs, who decided this April that VMM must be granted access for a fee that is `in accordance with the local market prices for cable distribution' (see IRIS 1996-6: 11). As long as the PNEM fails to produce information convincing the Media Authority that the fee it demands from VMM is based on clear, reasonable and fair foundations, VMM's information service must be distributed for a fee provisionally set by the Media

Authority. The provisional fee, which would be well below the fee asked, is an average of the fees that the other suppliers of cable TV information services in the Netherlands pay. Furthermore, the Media Authority found that VMM was also being discriminated against because the municipality of Tilburg set several resolutive conditions in the contract offered to VMM, while no such conditions were made in comparable distribution contracts. The Authority ruled that no such discriminating conditions may be set in VMM's contract. The Media Authority allowed the PNEM another six weeks to submit data that will enable the Media Authority to check PNEM's price policy. Failure to submit this information will result in a penalty of 50,000 guilders per day.

A similar ruling, i.e. that the cable distributor has to submit information to the Media Authority in order to enable the assessment of its access policy, was issued as a result of a complaint filed by MTV Europe . MTV stated that it was being discriminated against by the refusal of access to the cable network in the city of Helmond, which is operated by a private foundation, Stichting CombiVisie Regio . MTV refuses to pay for cable distribution, which resulted in early 1996 in the discontinuation of the distribution of its signal on the Helmond cable TV network. The music channel considers that to be unreasonale and discriminatory, because other programmes are being distributed for free or even against payment by the cable operator. Before making a final ruling, the Commissariaat voor de Media decided that it needs more information on the cable distributor's motivations for its attitude towards MTV, to see whether its policy regarding MTV is based on clear, reasonable and fair foundations. In view of MTV's interests in a quick final ruling, CombiVisie was to submit the data within five weeks.

Finally, Arcade Music Group protested against the price that it was forced to pay for the distribution of its two channels (TV10 and The Music Factory) on - again - the cable TV network of Kabeltelevisie Amsterdam (KTA). The Media Authority pointed out that, on the face of it, Arcade seems to be discriminated against, because comparable (private commercial) programme-suppliers have to pay lower and different distribution fees. For example, while Arcade is asked to pay 750,000 guilders in cash (only) per channel, Veronica pays only 350,000 guilders in cash and an additional amount through different modalities (like barters), of which the real economic value is debatable. As a provisional ruling, the Media Authority decided that KTA must distribute Arcade under the same (financial) conditions as Veronica; 350,000 guilders in cash per channel, with the additional `payment' in other modalities to be further negotiated by the parties. In the meantime, KTA was to produce within six weeks the same information as was deemed necessary in the other cases, so as to enable the Media Authority will have to make a final ruling, based on this information, in the case where the negotiations would fail.

IRIS will keep you informed on the developments in these and possible new cases.