[NL] Access to cable networks update

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The Dutch Media Authority (Commissariaat voor de Media) has made two new rulings with respect to its supervisory power over access to cable networks (see IRIS 1996-6:11 and IRIS 1996-8: 14). Regarding the complaint of New Dance, the Authority on 8 October ruled in favour of the complainant. New Dance, a commercial radio station which specialises in contemporary dance music, was refused access to the cable network of the municipality of The Hague. The cable network of The Hague is operated by Casema , who have the power to suggest a change in programming to the city council of The Hague. New Dance was one of four applicants for a cable channel. Only New Dance's application was rejected because its programming was deemed to be similar to that of another applicant, Veronica, and therefore it would not contribute to the diversity of the offered package of programmes. Against the background of a shortage of available channels, Casema and the municipality of The Hague chose to admit the popular Veronica and to exclude New Dance. New Dance complained about this ruling, because it is willing to share a channel with another (accepted) applicant, Kikker Radio .

This children's radio channel broadcasts from 07.00 until 19.00 hours. New Dance had expressed interest in `sharing' Kikker Radio 's channel, and broadcast from 19.00 until 07.00 hours. Casema and the municipality of The Hague rejected that suggestion on the grounds that the Media Act (Mediawet) would not allow the `sharing' of a channel. The Media Authority ruled that that was an incorrect assumption; since 4 April 1996, the Media Act allows cable operators to broadcast programmes in an abridged form, therefore allowing them to broadcast on one channel the subsequent programmes of different programme suppliers. Consequently, the Media Authority ruled that Casema and the municipality of The Hague have to take a new decision concerning New Dance's application, taking into account the Authority's observations.

On 22 October 1996, the Media Authority rejected the complaint of Arcade (The Music Factory) against the same cable network (in the USA: cable system) of The Hague. Casema and the municipality of The Hague had continued MTV's distribution on the cable, thereby terminating TMF, because, after a programming revision last February, only one channel was reserved for a music channel. The cable operators based their choice on a survey on the target group's preference. Although the Media Authority agreed with the complainant that the survey had its

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flaws, it saw unsufficient reason to intervene. An important factor in that decision was the fact that the programming of the The Hague cable network will be revised again next February.

On 28 October 1996, the Media Authority has, in view of its price-fixing authority, determined a model for the calculation of prices and rates for access to cable networks. The model departs from the calculation of the integral cost price of a channel, which cost price may be increased with a reasonable profit margin (which is set at a maximum of 2% return over the invested capital). Other keynotes of the model are, inter alia, that the fees paid by the cable subscribers are made part of the cost price calculation, and that the cost of the channels that are not used are for the cable operator's own expense. The calculation model will be used in the Media Authority's decisions regarding complaints on fees for access to cable, and it can also be used as an instrument in price negotiations between programme-suppliers and cable operators.

Meanwhile, the President of the District Court of Den Bosch made a provisonal ruling against the decision of the Media Authority of 30 July 1996, by which Stichting CombiVisie Regio was forced to submit specific data (see IRIS 1996-8: 14 (September issue)). In his ruling of 2 October 1996, the President decided that the supervisory power of the Media Authority is in fact arbitration, which by nature should only result in a decision on the main issue, i.e. whether (and how) a complainant should be admitted to a certain cable network, and not in other rulings. The Media Authority has made similar rulings in three other cases (see IRIS 1996-8: 14 (September issue)).

Beschikkingen Commissariaat voor de Media inzake New Dance BV v. Casema NV/Gemeente Den Haag (8 October 1996) and Arcade Media Groep v. Casema NV/Gemeente Den Haag (22 October 1996), Kostprijs- en TariefmodelToegang tot de Kabel, Pres. Rb. Den Bosch 2 October 1996, Stichting CombiVisie Regio v. Commissariaat voor de Media

Commissariaat voor de Media (Dutch Media Authority): new rulings with respect to its supervisory power over access to cable networks.

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