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# Sport as Reflected in European Media Law

## Part I

The European Football Championship and the Olympic Games are just around the corner and the audiovisual media will once again give substantial coverage to both of these major sporting events. There is considerable public interest in the reporting of these events, which is why the related broadcasting rights are worth huge sums of money.

At least for the viewers, however, the legal framework for sports broadcasting is relatively unknown. How will the final of the men's 100m in Athens or the opening match of the European Football Championship end up on our television screens, computers (via the Internet) or mobile phones?

Questions concerning the basic principles, origins, ownership, sale and acquisition of rights to sports events are uppermost in a whole range of related legal issues, which are tackled in this edition of *IRIS plus*. However, legislative provisions on broadcasting, dissemination and content are also extremely important.

We will discuss these issues in the next edition of *IRIS plus* (2004-6).

I hope therefore that this first ever two-part *IRIS plus* will guide you through the legal aspects surrounding the forthcoming sporting events.

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# Sport as Reflected in European Media Law

## Part I

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### Introduction

The following article aims to explain the main legal principles behind the coverage of sports events in the electronic (audio-visual) media. It tries to identify the impact of the relevant provisions of European law on sports rights in particular.

### I. Origins and Ownership of Rights to Sports Events

The first question we must consider is how sports and broadcasting rights come into being and who owns them. Are there any Community law provisions that are binding on, or can at least influence, the legal systems of Member States?

#### 1. EC Regulations

Article 295 of the EC Treaty stipulates that the Treaty does not prejudice the rules in Member States governing the system of property ownership. Therefore the protection of industrial and commercial property rights established in the national legislation of the Member States is guaranteed. The Treaty does not lay down practical rules on the form that existing legal provisions in this field should take. Neither are such rules derived from the rights to freedom to choose an occupation and to engage in work, freedom to conduct a business and to protection of property, guaranteed by Articles 15, 16 and 17 of the Charter of Fundamental Rights,<sup>1</sup> nor from the inviolability of the home or business activities (Art. 7 of the Charter). Copyright, the various performance protection rights and "home rights", which might all be connected to the aforementioned rights, may in turn be the basis for rights to sports events.

Although Community law does not directly regulate the form and ownership of intellectual property, it does impose important limits on it, particularly through its provisions on the internal market and competition.

As far as the internal market is concerned, conflict between Community and national law may be caused by two factors. Firstly, differences between national provisions can distort the internal market, particularly if they concern the free movement of goods or freedom of establishment. This is why standards in the Member States have been harmonised by means of Directives and the definition of minimum standards. Secondly, there can be a conflict of aims between national copyright law and Community law. Under copyright law, the creator of a work is entitled to determine whether and under what conditions he will agree to his work being exploited (e.g. published or reproduced for public consumption). Since the rightholder can choose to give such permission to just one or several specified Member State(s), there may be a conflict with basic freedoms. This is the case, for example, when the owner of a copyright-protected product who is resident in one country wishes to sell that product in another Member State, where the author has not (yet) given permission for his work to be exploited. This leads to import restrictions and the foreclosure of national markets. These restrictions could, in principle, be justified with reference to intellectual and commercial property rights. In order to combat this foreclosure of national markets, the ECJ has

developed the so-called exhaustion doctrine for the free movement of goods, *i.e.* trade in products. If a product has been marketed in a Member State legitimately, *i.e.* with the rightholder's permission, the latter can no longer oppose its free circulation because he has lost his right of exclusivity.<sup>2</sup>

The ECJ has had to deal with the same conflict of aims - the compatibility of copyright with the freedoms guaranteed by the EC Treaty - in its *Coditel-I* ruling. Referring to the freedom to provide services in relation to television broadcasting, enshrined in Arts. 49 and 50 EC Treaty, it considered the protection of intellectual property to be a compelling reason in the general public interest to justify a restriction of the provision of services. The Court cited the reason expressly set out in Art. 30 of the EC Treaty for an admissible restriction, through national law, of the freedom to provide services.<sup>3</sup> However, it did not at the same time apply the exhaustion doctrine to "industrial and commercial" uses of services.

Competition law, particularly the ban on abuses of a dominant market position, enshrined in Art. 82 of the EC Treaty, sets out certain rules on the exercise of intellectual and industrial property rights. New criteria have been developed in recent case-law, under which it is crucial to determine whether a restrictive measure is necessary for the protection of the rights derived from copyright and performance protection rights (e.g. exploitation rights). In the ECJ's view, copyright includes all personality rights related to a work, as well as permission to exploit it by marketing it commercially. However, it is up to the Member States to define intellectual or industrial property rights, *i.e.* to determine their precise form and effects.<sup>4</sup>

Nor are Community law guidelines found in any relevant harmonised provisions on the protection of authors in the broader sense.<sup>5</sup> Article 2 para. 2 of Directive 92/100/EEC proposes a standardised definition of authorship insofar as it states that the principal director of a cinematographic or audiovisual work shall be considered as its author or one of its authors. However, the origins and scope of rights to (sports) events are not dealt with in this Directive.<sup>6</sup>

#### 2. National Regulations

As we have mentioned, the Member States are therefore responsible for defining the content, scope and ownership of rights to sports events, as well as related exploitation rights (broadcasting rights, public distribution rights, public accessibility rights). The main regulations on this subject differ - sometimes quite substantially - from country to country. For that reason, we can only give a cursory description here of the different legal provisions and the protection provided by laws, which can be restricted in particular by constitutional provisions. We shall include examples from selected Member States, *i.e.* Germany, France, Italy and the Netherlands.

##### a) Basis of Rights to Sports Events

###### aa) Own Rights of Organisers<sup>7</sup>

Private organisers may be entitled to certain rights. The extent to which sports events are directly protected by copyright is much debated. Do they constitute works in the sense of copyright law?

Under Italian law, for example, the event (e.g. a football match) constitutes a game, the rules of which are not protected by copyright, but which when played on a specific occasion is considered as a work if it is recorded on a fixed medium.<sup>8</sup>

However, this approach is frequently criticised on the grounds that a sports event is not in any degree created by a natural person.<sup>9</sup> As a consequence of its competitive nature, a sporting performance can never be exactly reproduced, but is always unique and new.<sup>10</sup> A work in the sense of copyright law cannot therefore be created by playing sports.

Copyright protection of a recording of an event - as opposed to protection of the event itself - is therefore not ruled out in principle if the organiser himself produces an audiovisual recording of the event. The recording would then be protected if it represented a created intellectual work.<sup>11</sup> In principle, however, even if it is created at great technical expense, a recording is only a documentation, and therefore a reproduction of reality, which does not have the necessary character of a created work. As a rule, therefore, even a recording is not protected.<sup>12</sup>

Another topic of debate is the unwritten general rule that the organiser of a sports event owns the exclusive economic exploitation rights over that event.<sup>13</sup> However, this is not an absolute right (i.e. one which can be defended against everybody) to the organised event, but merely a kind of legally regulated transfer of exploitation rights. The organiser can decide the extent to which forms of exploitation of the event, such as television broadcasting, should be allowed. An exploitation right attached to the effort involved in organising a sports event is provided for under French law in the Sports Act of 16 July 1984, for example.<sup>14</sup>

Furthermore, organisers enjoy certain rights of protection vis-à-vis third parties as part of their "home rights", which are usually based on ownership or possession of the venue of the event. The protection or exclusion rights of the owner vis-à-vis third parties include the right to control access to the event venue in accordance with private law. Certain terms and conditions for access can therefore be laid down. This also includes the right to allow TV broadcasters to record or broadcast the event.<sup>15</sup>

Event organisers may also enjoy protection rights under the terms of competition law. This is conceivable if, under domestic law, there is considered to be a competitive relationship between sports organisers and broadcasters, based on the fact that, by broadcasting the event live, the latter reduced the number of potential spectators at the event, to the disadvantage of the organiser. Claims derived from competition law are often granted, since TV broadcasters that broadcast a sports event benefit directly from the organisational and financial investment of the organiser. An example of an unfair act which would justify a claim under competition law would be unauthorised reporting of an event for the purpose of economic gain if the organiser was deprived by a third party acting in a kind of "parasitic"<sup>16</sup> manner of the "legitimate benefits derived from the result of his effort and expense".<sup>17</sup>

#### bb) Protection of Sports Organisers by Virtue of Derived or Acquired Rights

Can the organiser of a sports event derive protectable rights by acquiring and exploiting the rights of the participating athletes?

As mentioned above, sports performances generally do not constitute works as defined by copyright law and, for the most part, are not covered by performance rights. Consequently, athletes are considered performing artists only in exceptional

cases<sup>18</sup> and therefore cannot transfer such rights to event organisers. However, organisers can acquire from athletes the rights to their personal image. Own image rights, which are mainly derived from personality rights, cover pictures that are created by filming or TV recording. Own image rights are usually transferable, which means that the person pictured can give permission for pictures to be taken and distributed. If an athlete is pictured by a third party without permission, the organiser can take legal action if it has acquired the relevant rights.<sup>19</sup>

#### b) Ownership and Object of "Sports Rights"

Now that we have considered in principle the origins of rights to sports events, the crucial question is to determine what constitutes an organiser and who therefore may own these rights.

Community law does not define the notion of organiser or rightsholder. Only the Cable and Satellite Directive,<sup>20</sup> with its provisions on broadcasting rights, has some relevance. It stipulates that the Member States shall provide in their domestic legislation the exclusive right for the author to authorise the communication to the public by satellite of copyright works; the notions of organiser or rightsholder are not defined. Reference must therefore be made to the Member States' own laws.

Occasionally, the notion of organiser is clearly defined in law. For example, Art. 18-1 of French Act no. 84-610 states that the exploitation rights for sports events belong to either the sports federations (*fédérations*) pursuant to Art. 17 of the Act or to the organisers (*organisateur*) pursuant to Art. 18 of the Act. Only the relevant national federation is allowed to organise sports events or qualification rounds for events at which international, national or regional titles are awarded. According to Art. 18, organisers may be private individuals.<sup>21</sup>

In other countries, however, the definition of organisers and therefore ownership of rights are disputed. In principle, the organiser should be defined as the person who is responsible for most of the organisational work and who bears the most risk.<sup>22</sup> For purely commercial sports events organised by private bodies (firms, natural persons), for example, this criterion is all-important. For professional football leagues, other sports leagues and series of regular sports events involving participants who are all members of a particular federation or organisation, the home club is often considered to be the organiser. This is based on the fact that the home club bears responsibility for the event from both the organisational and financial points of view.<sup>23</sup>

For regular national or international one-off events organised under the auspices of a federation, but not as a series, the clubs or associations whose teams participate are considered, by some at least, to be co-organisers of such events held on their own grounds - even if the umbrella federations are heavily involved in organising the event. For even though the national and international federations have created an organisational framework for competitive sport, the club that organises an event (or the relevant national association with regard to individual matches forming part of international competitions) remains the one who makes substantial economic investments in the marketing of TV broadcasting rights. In particular, the clubs provide the players who actually create the product and carry out the necessary organisational work at the venue. The clubs are therefore considered at least to be original co-holders of the marketing rights.<sup>24</sup> According to this view, not only does the whole competition constitute an event, but also every individual match (home game) can be marketed even though it forms part of the overall competition. Others question whether federations might have a joint claim to marketing rights at all.<sup>25</sup>

As far as content is concerned, the organiser is granted exploitation rights. Since, as mentioned above, these rights are based on provisions in the different Member States, they vary in terms of form. Each set of national regulations concerning organisers' rights therefore determines how these rights may be transferred - usually under civil law agreements - whether organisers own broadcasting rights for copyright works and/or the right to broadcast sports events (for the case where sports events are not considered to be works, see above).

## II. Conditions for the Sale and Acquisition of Rights

Further down the exploitation chain, the sports rights arising from national provisions may be transferred by the rightholder and acquired by interested parties or brokers. There are Community law provisions for the acquisition and transfer of these rights, mainly enshrined in competition law. Basic rights must also be taken into account.

### 1. Limits to the Right of Transferral

It is often debated within what limits a sports rightholder, e.g. the organiser of a sports event or a rights agency, is authorised to transfer the exploitation rights to the event.

In practice, there are two main circumstances that limit the right of transferral: firstly, possible conditions for the conclusion of exclusivity agreements with (pay-TV) broadcasters which exclude other TV broadcasters from showing an event,<sup>26</sup> and secondly the right to short reporting.

#### a) Regulations Linked to the Sale of Rights

There are no European regulations governing the sale of exclusive broadcasting rights (licences) to (pay-)TV broadcasters in general, as opposed to those that restrict such rights in individual cases.

However, in some situations, basic rights may be relevant to the sale and acquisition of sports rights. Art. 11 para. 2 of the Charter of Fundamental Rights of the European Union<sup>27</sup> states that the freedom and pluralism of the media should be respected. A pluralistic media system is therefore vitally important for ensuring freedom of the media.<sup>28</sup> In order to achieve the objective of "plurality", opposing basic economic principles (freedom of contract) and fundamental rights (property rights, freedom to choose an occupation and to engage in work) may be restricted, at least inasmuch as the organiser's right to sell (exclusive) rights may be based on them.

Looking from the opposite perspective, can the Member States be obliged to amend national broadcasting laws in order to promote plurality or citizens' rights to information, e.g. by restricting the sale of exclusive broadcasting rights? The answer is "no". Rather, the wording of Art. 11 stresses the freedom of the Member States to determine their own media system.<sup>29</sup> Nor does Art. 51 para. 1 of the Charter of Fundamental Rights give the Community legislative or monitoring powers, since it states that the institutions and bodies of the Union promote the application of these rights in accordance with their respective powers under Community law - this is confirmed by the wording of Art. 51 para. 2.

Another aspect to consider is *competition law*, which represents a general barrier to the sale of rights. In relation to copyright, performance and industrial property rights, the ECJ ruled in the *Coditel II* case<sup>30</sup> that the granting of exclusive exploitation rights in itself did not breach Art. 81 of the EC Treaty. The individual cir-

cumstances of a sale of rights, however, occasionally trigger reservations regarding compatibility with European cartel law. In the *Magill* case, the ECJ, referring to Art. 82 of the EC Treaty, queried the exercise of protection rights by a company in a dominant market position. Such behaviour can breach Art. 82 of the EC Treaty if it is used to breach a dominant market position.<sup>31</sup> In this context, access to "*essential facilities*" becomes significant - in other words, the extent to which companies must make it possible for competitors to participate in competition, such as through the non-discriminatory opening of essential facilities or - as here - of access to (sports) events or broadcasting rights.<sup>32</sup> However, other than in relation to these special situations, competition law does not impose any specific limitation on the sale of exclusive rights.

The resolution of the conflict between freedom of information and broadcasting freedom on the one hand and the right to sell exclusive broadcasting rights on the other is discussed in various rules of European law relating to specific cases. The right to short reporting (see below) and the conditions and procedures set forth in competition law (see point II 2. b, below) are relevant to the position of the organiser. There are also specific provisions on broadcasting, such as the rules on the transmission of events of major interest to society contained in Art. 3a of the "Television without Frontiers" Directive and Art. 9a of the European Convention on Transfrontier Television (see the continuation of this article in *IRIS plus* 2004-6 under point III. 1. b). These take on board the tension between the two and try to produce a careful, reasonable balance. It is largely the responsibility of the Member States to balance these interests.<sup>33</sup>

#### b) Regulations Linked to Exclusivity

The right to short reporting is a particular form of restriction, imposing a kind of legal limitation on the sale and *exercise of exclusive TV rights*. It takes away the event organiser's right to grant exclusive access to picture and sound material to the broadcasters of his choice, to the exclusion of other broadcasters.

At Council of Europe level, Art. 9 of the European Convention on Transfrontier Television deals with the issue of short reporting. This instrument contains provisions on public access to information and, in the version of the 1998 Protocol, advises the contracting states to include rules restricting exclusive rights for broadcasters in domestic legislation.<sup>34</sup>

Even before Art. 9 of the Convention was amended, Recommendation No. R (91) 5 of the Committee of Ministers on the right to short reporting on major events was adopted.<sup>35</sup> According to the first principle set out in the Recommendation, limitations should, if necessary, be placed on the property rights of the holder of the exclusive primary broadcasting rights. This should happen in such a way that the public in a particular country is enabled to exercise its right to information. The purchaser of the exclusive rights, known as the primary broadcaster, is obliged to allow any broadcaster who wishes to acquire information about the event concerned ("secondary broadcaster") to provide information about the event in the form of a short report. Two alternatives are suggested for the fulfilment of this obligation: (1) filming at the site of the event or (2) recording the signal produced by the primary broadcaster in order to make a short report. According to para. 8 of the Explanatory Memorandum,<sup>36</sup> the Recommendation is designed to provide the Member States with guidelines for national legislation. It does not aim to create a direct legal tie, e.g. between broadcasters. According to a more recent draft Recommendation, however, the right to short reporting can be limited.<sup>37</sup> For example, the duration of a short report should be limited to the time needed to communicate the information content of the event. The report



should not be broadcast before the programme of the primary provider has been shown and the source of the material shown should be clearly indicated. The draft states that the primary broadcaster may not charge for the short report, although the event organiser is allowed to charge for any additional expenses incurred.

It is also a matter of debate whether Art. 10 of the ECHR might, justify a claim to access to information sources that are subject to an exclusive right, more than just the right to details of generally accessible sources and information.<sup>38</sup> Although the scope of Art. 10 ECHR covers freedom of the press and broadcasting as well as freedom of information, this idea is generally disputed.<sup>39</sup>

Examination of the Charter of Fundamental Rights produces similar conclusions. The wording and origins of Art. 11, even taking into consideration Art. 52 para. 3, suggest that it does not create a right that extends beyond Art. 10 ECHR and therefore there is no obligation to introduce the right to short reporting. The "Television without Frontiers" Directive of the European Community does not contain any regulation comparable with Art. 9 of the Convention, since the Directive is essentially concerned with the creation of the internal market and free competition and trade in television services in the Community.<sup>40</sup> Nevertheless, in the Work Programme annexed to its Fourth Application Report on the "Television without Frontiers" Directive, the European Commission, referring to Art. 11 of the Charter of Fundamental Rights,<sup>41</sup> raised the question of whether provisions regarding the right to short reporting should be included. In its Discussion Paper on the Review of the "Television without Frontiers" Directive,<sup>42</sup> the Commission explains that there are differences between the legal provisions in the Member States with regard to the recognition and form of such a right. It therefore raises the question of whether the lack of consistency is such that the free movement of services is restricted. If it was thought necessary to include the right to short reporting in the "Television without Frontiers" Directive, the precise form and conditions of the exercise of that right would have to be clarified.

## 2. Competition Law

### a) General Meaning

Community law also covers the area of sports, at least professional sport and the sports federations. This was particularly illustrated in the Bosman case.<sup>43</sup> Community competition law must therefore be respected by sports, which is often organised into federations.

With the deregulation of television markets and technical advances in broadcasting, broadcasting services are constantly developing very rapidly, affecting the type (pay-TV, pay-per-view) and number of TV channels and the saturation of transmission networks. In this highly competitive market of broadcasting services and new media, respect for competition rules in the sale and acquisition of sports broadcasting rights is particularly important for the development of the media landscape.<sup>44</sup> This is also illustrated by the fact that the European Commission has recently had to deal more regularly with issues connected with the application of competition law in the area of sports broadcasting rights.<sup>45</sup>

### b) Distinction Between Markets

The definition of markets is crucial for the decision-making process of the EU bodies, since it has a decisive impact on the assessment under competition law of a particular action or agreement. The narrower the relevant market is, the easier it is to identify a dominant market position and therefore an abuse or an anti-competitive merger. These principles also apply to the application

of competition law to the media sector.<sup>46</sup> Since the importance of the definition of relevant markets can be seen throughout the provisions of EC competition law,<sup>47</sup> its importance to sports broadcasting rights should first be explained. We will then consider the specific problems relating to the sale and acquisition of rights that have been dealt with by the Community bodies.

Sports broadcasting rights in general can be distinguished from other programme markets on account of their huge economic importance. In this respect, it is irrelevant whether they relate to pay-TV or free TV. Sports broadcasting rights can be subdivided further into separate product markets.<sup>48</sup>

The market for exclusive broadcasting rights to football matches held regularly all year round has been defined as a separate market. This particularly includes national league and cup competitions, the Champions League and the UEFA Cup. In general, broadcasters can use football rights to create a specific brand image for their TV channels. According to the Commission, football is the most effective way of attracting pay-TV subscribers. For free to air TV, football broadcasts attract categories of viewer and therefore advertisers that cannot be reached using other types of programme.<sup>49</sup>

In the *Newscorp/Telepiú* decision, the Commission narrowed down the relevant market even further. The market only included exclusive rights to broadcast named football matches involving domestic (in this case Italian) teams. According to the Commission, the market investigation had clearly confirmed that these rights were a *stand-alone "driver"* (considered on its own, a decisive factor of success for a business model) for pay-TV. In view of the characteristics of this type of content and the prices (which were clearly higher than for other regular sports events involving national teams), this could be considered to be a separate product market, clearly distinguishable from other contents acquisition markets.<sup>50</sup>

The market for rights to broadcast football matches that are not held every year (e.g. World Cup and European Championships) and in which national teams take part is also a separate market.<sup>51</sup>

It has not yet been established whether there is a separate market for the acquisition of football broadcasting rights in the new media (UMTS and Internet) because these markets are still in their infancy. However, from what is already known, the Commission has concluded that rights to content are as necessary for the development of these new services as for the TV industry. Since it will be possible with new media to identify and provide services to much smaller categories of users, it is likely that relatively narrow content markets will be defined. As in the TV sector, football would be used to entice customers, so it is likely to constitute a separate market. In general, it is anticipated that new media markets will develop in parallel to pay-TV markets.<sup>52</sup> In order to investigate the current status of access to this type of content, the Commission has launched an inquiry into the sale of audiovisual sports rights to Internet companies, other new media and UMTS networks.<sup>53</sup>

Broadcasting rights for other special, usually international sports events, e.g. tennis tournaments, boxing matches, golf tournaments and motor sport events, constitute another separate market, distinct from other content markets. Although these are less significant than football as *key drivers* for pay-TV subscriptions, they are nevertheless important for pay-TV providers insofar as they are events that could generate interest among numerous end-users. In the Commission's view, the characteristics of the content and price structures suggest that this is a separate market. It remains questionable whether it can be broken down further with a separate market for each sport. In the Eurovision ruling, the Commission had found that viewing behaviour (at least in relation

to the Olympic Summer and Winter Games, the Wimbledon final and the football World Cup) did not appear to be influenced by other major sports events being broadcast simultaneously or nearly simultaneously. That was why TV broadcasters were willing to pay much higher prices for these events.<sup>54</sup>

### c) Central Marketing (Rights Infrastructure)

Sports rights markets are therefore essentially defined through decisions, particularly those of the Commission. What specific problems are inherent in the assessment under competition law of the sale of rights?

Rights to a sports event are often marketed centrally, e.g. by rights agencies or federations. In the UEFA and German *Bundesliga* decisions in particular, the Commission set out a number of conditions under which central marketing of media rights can comply with EC competition law.

Firstly, the rights must be sold in several packages in a transparent, non-discriminatory procedure. Before the rights are awarded, an "invitation to tender" must be issued, giving all qualified broadcasters an equal opportunity to bid for the rights.<sup>55</sup> The division of the TV broadcasting rights into different packages, which must also be acquired separately, is vitally important. Independently of the central marketing process, the federations can leave certain rights for the clubs to exploit themselves. New media rights (Internet, mobile communications) can also be covered by individual packages. The sale of exploitation rights for new media is expressly mentioned in the contract.<sup>56</sup>

The Commission confirmed these conditions in its negotiations with the English FAPL concerning rights to broadcast the Premier League. Balanced rights packages for live coverage of the whole English top division were to be created and no one broadcaster would be allowed to buy all of the packages. Other packages would cover the transmission of recorded matches and real-time delivery of pictures to mobile phones.<sup>57</sup>

Further conditions under which central marketing is acceptable are that broadcasting rights should not be granted for too long a duration and should not be automatically renewable.<sup>58</sup>

Exploitation rights that are not included in any packages or not sold should revert back to the participating clubs, which can then sell them individually.<sup>59</sup>

### d) Procurement / Central Purchase

Another competition law issue, alongside central marketing, is that of central procurement of rights, which prevents competitors from gaining access to acquired rights.<sup>60</sup>

As far back as 1989, the Commission had already ruled on whether the exclusive agreement of a *single buyer* was compatible with cartel law. On the basis of the *Coditel-II* decision of the ECJ, which examined the specific circumstances of an agreement to sell exclusive rights from a cartel law point of view,<sup>61</sup> the Commission explained the principles for exclusive agreements in the programme procurement market. It explained that the admissibility of such an exclusive agreement depended on the number of rights involved and the duration and scope of the right of first negotiation.<sup>62</sup>

Access for competitors to broadcasting rights was and remains a key aspect of a possible exemption under Art. 81 para. 3 EC Treaty for the so-called Eurovision system, by which the EBU coordinates sales negotiations for broadcasting rights to sports events, etc and

organises an institutionalised exchange for acquired broadcasting rights. A key point of the discussion concerned the extent to which the EBU members should allow commercial non-members access to the Eurovision system. The Commission considered a closed system to be a fundamental restriction of competition in the sense of Art. 81 EC Treaty. Following amendments made by the EBU, guaranteeing contractual access for third parties to broadcasting rights, the Commission approved the system. It considered the various advantages of the Eurovision system to be crucial. By approving it, the Commission said that viewers could be provided with an optimal service and smaller EBU members would also profit from the coordinated approach. Since its members were fulfilling a particular public mission, the EBU system would contribute to the development of a single European television market, which was in the public interest.<sup>63</sup>

However, the Court of First Instance annulled the Commission's decision, arguing that the public interest was only relevant as part of an overall evaluation of all the circumstances. However, it said that the Commission, which had taken into account the fulfilment of a public mission in the sense of Art. 85 para. 3 EC Treaty, had neglected to explain its existence in a suitable way.<sup>64</sup>

In 1999 the EBU re-submitted for Commission approval its regulations on the granting of sub-licences for the exploitation of Eurovision rights, together with a rule on pay-TV. The Commission authorised the system subject to certain conditions. It stated that contractual access for third parties to TV broadcasting rights for sports events acquired through Eurovision should be guaranteed in the contracts with the rightsholders. The same applied to the possibility to grant sub-licences to EBU non-members.<sup>65</sup>

The Court of First Instance again declared the approval incompatible with European competition law.<sup>66</sup> The Court described the Commission's assumption that the Eurovision system guaranteed sufficient access for third parties to broadcasting rights and recordings under appropriate conditions as a "manifest error of assessment". For under the EBU rules, an EBU member could reserve the rights to broadcast live the majority of the competitions of a sporting event (live broadcasts being particularly profitable). Third parties competing in the same market would therefore be excluded from acquiring sub-licences for the direct transmission of the whole event and even the competitions that the EBU member was not broadcasting live. The Court concluded that through the joint acquisition and exchange of TV rights via the EBU, competition between its members as well as that with third parties was unfairly restricted, since the broadcasting licences were normally awarded on an exclusive basis within the EBU.

The degree of exclusivity of broadcasting rights in terms of duration and scope also determines how much access competitors have to content. These and other criteria were dealt with in a new Commission decision on the merger of the Italian pay-TV platforms (acquisition of *Telepiù* by *Stream*), which also looked at the companies' holdings of sports rights, which would have been strengthened by the merger.<sup>67</sup>

Access to sports rights for third parties was already restricted prior to the merger, since each company owned exclusive rights which, on account of their duration, prevented competitors from gaining access. Also, in terms of content, the exclusivity of the rights was not limited to a single means of transmission, but covered several technical platforms. The rights strengthened the broadcasters' position as dominant buyers from the content providers.<sup>68</sup> The promises made by the Italian pay-TV platforms concerned in order to gain the Commission's approval therefore also related to access to sports broadcasting rights. Newscorp, for exam-



ple, waived exclusive rights to content that was not transmitted via satellite. According to the Commission, this would enable terrestrial or cable TV broadcasters and Internet service providers to acquire content directly from football clubs or owners of sports broadcasting rights. In addition, competitors who did not broadcast via satellite would be able to acquire premium content from Newscorp through a "wholesale offer". According to the promises made by the companies involved, the whole offer would be made on an unbundled and non-exclusive basis. The Commission also thought that access to content would be easier for potential competitors involved in satellite broadcasting because the rightsholders would be able unilaterally to terminate ongoing contracts with the Newscorp platform (Sky Italia) without penalty. The duration of future contracts between Newscorp and football clubs was set at two years.

The approval of the merger between the pay-TV providers Sogecable and Vía Digital by the Spanish competition authorities imposed certain conditions concerning the parties' use of football broadcasting rights.<sup>69</sup> These include the requirement that Audiovisual Sport (AS) give up its option to extend the football rights agreement,<sup>70</sup> guaranteed access for other companies to these rights on a fair, sensible, non-discriminatory basis, and the relinquishment by the merged company of exclusive football rights in the new media. An arbitration procedure was also to be established to deal with access issues.

#### e) Vertical Aspects

Alongside these horizontal aspects of central marketing and exclusive acquisition of sports rights, there are also vertical aspects. These relate to cases in which exclusive rights are transferred from a central rightsholder to a provider of TV services with the result that a dominant market position is either created or strengthened even further. Moreover, a combination of horizontal and vertical effects can occur if companies own exclusive rights and exercise those rights themselves as broadcasters with a dominant position. This can particularly be the case with live broadcasting rights for sports events.<sup>71</sup>

In the Groupe Jean-Claude Darmon case, the Commission had to decide whether it could approve the acquisition of joint control of this sports rights agency by the French pay-TV broadcaster Canal+ S.A. and the RTL Group. Canal+ and RTL were planning to merge

their own sports rights agencies into the joint venture. In the Commission's opinion, the venture would result only in insignificant and limited overlaps in the market for TV sports broadcasting rights. Canal+'s position in the downstream pay-TV market would not be strengthened any more than RTL's position (in the free-TV market) in Europe. KirchMedia and the EBU remained strong competitors in the broadcasting rights market.<sup>72</sup>

From the vertical point of view, new media and other markets closely related to broadcasting are also relevant. In these cases, it is important to apply very rigorously the conditions described in c) and d) above<sup>73</sup>.

## Overview and Future Prospects

Part 1 of this two-part report has concentrated on two complex issues: firstly, it has shown that the Member States' own regulations determine the legal framework for the *origins, content and ownership* of sports rights. It was then explained how (European) competition law has a significant influence on the *sale, acquisition and exercise* of sports broadcasting rights, mainly for television. Due to its exclusive nature, coverage of sports events that attract large audiences is very important, not only for pay-TV broadcasters.

European media policy aims to protect citizens' right of access to information and to maintain a varied broadcasting landscape in Europe. On several occasions, the view has been expressed that, in light of these objectives, it is inappropriate for the owners or brokers of rights to premium content to be based outside the territory in which European media and competition law applies. The provisions of competition law concerning the sale of (exclusive) broadcasting licences do not apply to rightsholders domiciled outside the EU/EEA (at least as a rule). Therefore, additional regulations on the broadcasting of sports programmes are of particular interest. These include the rule that events of major interest to society should be broadcast on *free to air TV*. The (European) provisions that apply to *advertising and sponsorship* of sports broadcasts and which therefore concern consumer protection are also relevant. These legal questions relating to the broadcasting of sports events in the audiovisual media will be discussed in the second part of the report, which will appear in the next edition of *IRIS plus* in June.

1) OJ C 364, 18 December 2000, p. 1.  
 2) For exceptions to this principle for certain exploitation rights, see Lenz/Borchardt-Lux, *EU- und EG-Vertrag*, Art. 30 Rn 16 et seq. (p.22).  
 3) ECJ, Case 62/79, Coditel I, Rec. 1980, p.881, para. 28.  
 4) ECJ, C-10/89, S.A. CNL-SUCAL NV/Hag, Rec. 1990, p. I-3711, para. 12; C-61/97, FDV, Rec. 1998, p. I-5171, para. 13.  
 5) For more detail, see Müßig/Scheuer, *European Copyright Law and the Audiovisual Media: Are we moving towards cross-sectoral regulation?* in: *IRIS plus*, supplement to *IRIS* 2003-4. The relevance of industrial property rights (especially trade mark and patent rights) is not discussed in the present article.  
 6) Council Directive 92/100/EEC of 19 November 1992 on rental rights and lending rights and on certain rights related to copyright in the field of intellectual property, OJ L 346, 27 November 1992, p. 61. In its report on the application of the Directive, the Commission states that the provisions of the Directive do not really provide for an overall harmonisation of the notion of authorship, since the definition is restricted to the "purposes of this Directive", Point III.1.; report available at: [http://europa.eu.int/comm/internal\\_market/en/intprop/docs/report-authorship\\_de.pdf](http://europa.eu.int/comm/internal_market/en/intprop/docs/report-authorship_de.pdf)  
 7) The notion of organiser is understood as the natural or legal person who organises the sports event.  
 8) See Pedriali/Peifer, *Der Schutz des Veranstalter von Sportereignissen nach italienischem Recht*, ZUM 1994, pp. 461, 462.  
 9) Eckstein, *Exklusivverträge und Pay-TV*, München 2000, p. 28.  
 10) Henning-Bodewig, *Die Kurzberichterstattung über Sportveranstaltungen im französischen Recht*, ZUM 1994, pp. 454, 455.  
 11) Pedriali/Peifer, *op.cit.* footnote 8, p. 463.  
 12) *Ibid.*  
 13) Regarding the origins of the relevant Italian law, see Pedriali/Peifer, *op.cit.* footnote 8, pp. 464, 465.

14) Art. 18-1 Act no. 84-610 relative à l'organisation et à la promotion des activités physiques et sportives et portant diverses dispositions relatives à ces activités, introduced by Art. 13 of Act no. 92-652 of 12 July 1992, OJ of 16.7.92 and amended by Art. 4 of Act no. 2003-708 of 2 August 2003: "Les fédérations visées aux articles 16 et 17, ainsi que les organisateurs tels que définis à l'article 18, sont propriétaires du droit d'exploitation des manifestations ou compétitions sportives qu'ils organisent." Henning-Bodewig, *op. cit.*, footnote 10, considers - in contrast to other legal systems which do not recognise such a right - that this gives the organiser an original performance protection right, which establishes the right of exploitation (p. 456) and exists alongside other protection rights such as that of broadcasting companies. Such protection rights for broadcasters are granted for the programme itself. The rights are therefore owned by the broadcasting companies, which provide the broadcasting service, rather than the organiser himself. Examples include para. 87 of the German Act on Copyright and Related Rights and Art. 79 of the Italian Copyright Act.  
 15) Decision of the German *Bundesgerichtshof* (Federal Supreme Court) of 11 December 1997, case no. KVR 07/96, point B I 5 b) aa). Regarding Dutch law, see *Hoge Raad der Nederlanden*, ruling of 23 May 2003, *Koninklijke Nederlandse Voetbalbond (KNVB)/Stichting Feyenoord*, LJN No. AF4607, see *IRIS* 2003-10:9.  
 16) Regarding Italian law, see Pedriali/Peifer, *op. cit.*, footnote 8, p. 468, which mentions, as examples of anti-competitive behaviour, the circumvention of precautions taken by the organiser and the broadcasting of a whole event despite access being granted only for short reporting.  
 17) Regarding German law, see the judgment of the *Bundesgerichtshof*, BGHZ 51, 41, 46.  
 18) Exceptions include riding performances which constitute a form of dance if they involve certain choreographed moves performed to a certain piece of music, eg the Spanish Riding School in Vienna, or performances by the Harlem Globetrotters; see Fromm/Nordemann-Hertin, *Urheberrecht: Kommentar zum Urheberrechtsgesetz und zum Urheberrechtswahrnehmungsgesetz*, Stuttgart u. a. 1998, § 73, para. 17.

- 19) Pedriali/Peifer, *op.cit.*, footnote 8, p. 469. The relevant image rights may also be transferred to the respective clubs; see ruling of the *Oberlandesgericht Hamburg* (Hamburg Court of Appeal), 16 December 2003, case no. 7 U 41/03, which concerned the protection rights held by athletes against unauthorised use of their image in computer games. Some people question whether (under German law) these image protection rights apply to athletes; see Winter, *Fußball im Radio: Live aus dem Stadion?*, ZUM 2003, pp. 531, 536.
- 20) Articles 2 and 4 para. 1 of Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission, OJ L 248 of 6 October 1993, p. 15, protect, in accordance with Articles 6, 7 and 8 of Directive 92/100/EEC, recording and reproduction rights and regulate public broadcasting and reproduction with reference to broadcasting organisations.
- 21) Art. 18 I: "Toute personne physique ou morale de droit privé, autre que celles visées à l'article 16, qui organise une manifestation ouverte ...".
- 22) See, for example, the German *Bundesgerichtshof*, BGHZ 27, 264, 266.
- 23) Lehr/Brosius-Gersdorf, *Kurzberichterstattung über Fußballbundesligaspiele*, AfP 2001, pp. 449, 451.
- 24) According to the judgment of the German *Bundesgerichtshof* of 11 December 1997, case no. KVR 7/96. In this case (concerning cartel law), the court did not decide whether with regard to the marketing of rights to home matches in the European Cup Winners' Cup and UEFA Cup the participating clubs provided the marketable service on their own and were therefore the sole owners of the marketing rights. However, the court referred to the contributions of the national federation (coordination of marketing) and UEFA (creation of the competitions and prestige for the audience, management and organisation of individual measures) in this field, which in general could support the idea that they were co-organisers. Pichler, MMR 1998, pp. 309, 310, also says that this distribution of organisational responsibility also applies to national leagues. Regarding Dutch law, see *Hoge Raad der Nederlanden*, *op.cit.*, footnote 15: the fact that the national federation organises the league and provides referees does not affect the "home rights" of the clubs and therefore their rights to the sports event.
- 25) Heermann, *Kann der Ligasport die Fesseln des Kartellrechts sprengen?* SpuRt 1999, pp. 11, 12. Agreements between several parties concerning relevant rights and their exercise can be significant in terms of cartel law in pursuance of Art. 81 of the EC Treaty see II 2, below).
- 26) Regarding the particular economic significance of exclusivity agreements for TV broadcasters, see Commission, Case No. IV/36.539, BIB/Open, OJ L 312, 6 December 1999, p. 1, para. 28.
- 27) Art. 11 of the Charter of Fundamental Rights, *op.cit.* footnote 1, was developed from Art. 10 ECHR and the constitutional traditions of the Member States. See ECJ, case no. 352/85, *Bond van Adverteerders et al. v. The Netherlands* – „Kabelregeling“, Rec. 1988, 2085.
- 28) Bröhmer, *Die innerstaatliche und europarechtliche Bedeutung von Art. 10 EMRK für die Medienordnung, Europäisches Medienrecht – Fernsehen und seine gemeinschaftsrechtliche Regelung, Schriftenreihe* of the Institute of European Media Law (EMR), vol. 18, Munich/Berlin 1998, pp. 79, 89 et seq.; Schwarze, *Die Medien in der europäischen Verfassungsreform*, AfP 2003, pp. 209, 211; Stock, *EU-Medienfreiheit – Kommunikationsgrundrecht oder Unternehmerfreiheit?* K&R 2001, p. 289, 300.
- 29) Hesse, *Der Funktionsauftrag des öffentlich-rechtlichen Rundfunks – Neue Aspekte oder alte Diskussion im neuen Gewand?* in: Nice, the Charter of Fundamental Rights and its Importance for the Media in Europe, *Schriftenreihe* of the Institute of European Media Law (EMR), vol. 23, Baden-Baden 2001, p. 39; Schwarze, *op.cit.*, footnote 28, pp. 210, 211.
- 30) ECJ, case no. 262/82, *Coditel II*, Rec. 1982, p. 3381, para. 15.
- 31) ECJ, joined cases C-241 and 242/91, *Magill*, Rec. 1995, p. I-743, para. 25. The fundamental conflict between industrial property rights and the ban on abuse of a dominant market position as enshrined in cartel law is also at the heart of the case of *IMS Health*, C-418/01, in which Advocate General Tizzano takes up the idea of limiting industrial property rights linked to the patenting of drugs. Article 82 of the EC Treaty is to be interpreted as meaning that the refusal of a licence to exploit a copyright-protected immaterial good represents an abuse of a dominant position in the sense of the Article concerned if (1) the refusal has no objective justification and (2) the exploitation of the immaterial good is essential for activity in a derived market, so that the rightsholder, by refusing the licence, ultimately eliminates any competition in this market.
- 32) For general information on the access issue, see European Audiovisual Observatory (ed.), *Regulating Access to Digital Television, IRIS Special 2004*; Helberger/Scheuer/Strothmann, *Non-Discriminatory Access to Digital Access Control Services, IRIS plus 2001-2*.
- 33) For discussion of the sale to pay-TV broadcasters of exclusive rights to broadcast sporting and major events, see Diesbach, *Pay-TV oder Free-TV*, Baden-Baden 1998.
- 34) Art. 9 of the Agreement: "Each Party shall examine and, where necessary, take legal measures such as introducing the right to short reporting on events of considerable interest for the public..." Regarding the legal position in the European states, see *Beck'scher Kommentar zum Rundfunkrecht-Michel/Brinkmann*, München 2003, § 5, para. 68 et seq.
- 35) Recommendation No. R (91) 5 of the Committee of Ministers of 11 April 1991 on the right to short reporting on major events where exclusive rights for their television broadcast have been acquired in a transfrontier context.
- 36) Explanatory Memorandum to Recommendation No. R (91) 5 of 11 April 1991; available at: [http://cm.coe.int/ta/rec/1991/ExpRec\(91\)5.htm](http://cm.coe.int/ta/rec/1991/ExpRec(91)5.htm)
- 37) Group of Specialists on the Democratic and Social Implications of Digital Broadcasting (MM-S-DB), *Draft Recommendation on the right to short reporting*, 16 April 2003, MM-Public (2003) 3, available at: [http://www.coe.int/T/E/human\\_rights/media/1\\_Intergovernmental\\_Co-operation/02\\_Draft\\_texts/MM-PUBLIC\(2003\)003%20E%20Right%20to%20short%20reporting.asp#TopOfPage](http://www.coe.int/T/E/human_rights/media/1_Intergovernmental_Co-operation/02_Draft_texts/MM-PUBLIC(2003)003%20E%20Right%20to%20short%20reporting.asp#TopOfPage)
- 38) EGMR, EuGRZ 90, 255, *Groppera*; EGMR, EuGRZ 90, 261, *Autronic*; EGMR, EuGRZ 94, 549, *Lentia*.
- 39) *Beck'scher Kommentar-Michel/Brinkmann*, *op.cit.*, footnote 34, § 5 para. 64, 65; Hartstein/Ring/Kreile/Dörr/Stettner, *Medienrecht, Kommentar zu § 5 Rundfunkstaatsvertrag (Stand April 1997)*, para. 5; Sidler, *Exklusivberichterstattung über Sportveranstaltungen im Rundfunk*, Bern 1995, p. 119.
- 40) However, the European Parliament covered this topic in Resolution of 22 May 1996 on the broadcasting of sports events. As well as the rule on unrestricted access for the general public to certain sports events, the Resolution establishes a right to short reporting in the form of free access to TV signals as a way of resolving the conflict between exclusive rights and freedom of information, OJ C 166 of 1 June 1996, p. 109, nos. 5 and 11.
- 41) Fourth Application Report on Directive 89/552/EEC "Television without Frontiers", COM(2002) 778 final.
- 42) Discussion Paper: Review of the "Television without Frontiers" Directive, Theme 6, available at: [http://europa.eu.int/comm/avpolicy/regul/review-twf2003/twf2003-theme6\\_de.pdf](http://europa.eu.int/comm/avpolicy/regul/review-twf2003/twf2003-theme6_de.pdf)
- 43) ECJ, C-415/93, *Bosman*, Rec. 1995, p. I-4921.
- 44) *Wachtmeister, Broadcasting of Sports Events and Competition Law, Competition Policy Newsletter No. 2/1998*, available at: [http://europa.eu.int/comm/competition/speeches/text/sp1998\\_037\\_en.html](http://europa.eu.int/comm/competition/speeches/text/sp1998_037_en.html)
- 45) Commission, COMP/C.2/37.398, Joint selling of the commercial rights of the UEFA Champions League, OJ L 291 of 8 November 2003, p. 25; COMP/C.2/37.214, Joint selling of the media rights to the German Bundesliga, OJ C 261 of 30 October 2003, p. 13; Case IV/32.150, *Eurovision*, OJ L 151 of 24 June 2000, p. 18; COMP/M.2876, *NewsCorp/Telepiù*, Decision of 2 April 2003, available at [http://europa.eu.int/comm/competition/mergers/cases/index/by\\_nr\\_m\\_57.html](http://europa.eu.int/comm/competition/mergers/cases/index/by_nr_m_57.html) ; press release of 8 May 2003 on the investigation regarding the acquisition of broadcasting rights to Spanish football by Audiovisual Sport, available at: [http://europa.eu.int/rapid/start/cgi/guesten.ksh?p\\_action.getfile=gf&doc=IP/03/655|0|AGED&lg=DE&type=PDF](http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.getfile=gf&doc=IP/03/655|0|AGED&lg=DE&type=PDF)
- 46) In German law, Art. 31 of the *Gesetz über Wettbewerbsbeschränkungen* (Act on Competition Restrictions) – introduced not least because of the *Bundesgerichtshof* decision mentioned in footnote 22 – makes an exception for the central marketing of sports rights.
- 47) Regarding the growing importance of market definition against the background of European cartel law reforms and markets in the media sector, see Institute of European Media Law (EMR), *Market Definition in the Media Sector – Comparative Legal Analysis*, Chapter 1, Point B, available at [http://europa.eu.int/comm/competition/publications/studies/media/chapter\\_1\\_ec.pdf](http://europa.eu.int/comm/competition/publications/studies/media/chapter_1_ec.pdf); Palzer, *Marktdefinition im Bereich der audiovisuellen Medien nach dem Wettbewerbsrecht der Europäischen Gemeinschaft*, ZUM 2004, No. 4 (soon to be published).
- 48) Commission, UEFA Champions League, *op.cit.* footnote 45, para. 60 et seq.
- 49) Commission, UEFA Champions League, *op.cit.* footnote 45, para. 57, 71 et seq.; *NewsCorp/Telepiù*, *op.cit.* footnote 45, para. 64 et c.
- 50) Commission, *NewsCorp/Telepiù*, *op.cit.* footnote 45, para. 66.
- 51) Commission, UEFA Champions League, *op.cit.* footnote 45, para. 62; *NewsCorp/Telepiù*, *op.cit.* footnote 45, para. 65, 52.
- 52) Commission, UEFA Champions League, *op.cit.* footnote 45, para. 81 et seq.; in the decision on the German Bundesliga, *op.cit.* footnote 45, para. 7, the Commission also assumes the existence of such a separate market; for more information, see Ungerer, *Commercialising Sport: Understanding the TV Rights debate*, available at: [http://europa.eu.int/comm/competition/speeches/text/sp2003\\_024\\_en.pdf](http://europa.eu.int/comm/competition/speeches/text/sp2003_024_en.pdf) , especially footnote 1.
- 53) Commission press release of 30 January 2004, available at: [http://europa.eu.int/rapid/start/cgi/guesten.ksh?p\\_action.getfile=gf&doc=IP/04/134|0|RAPID&lg=DE&type=PDF](http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.getfile=gf&doc=IP/04/134|0|RAPID&lg=DE&type=PDF)
- 54) *NewsCorp/Telepiù*, *op.cit.* footnote 45, para. 52, 70; supported but in the end left open in the *Eurovision* decision, *op.cit.* footnote 45, para. 44. This decision was annulled by the Court of First Instance, although the market definition it gave was not criticised: joined cases T-185/00, T-216/00, T-299/00 and T-300/00, *Eurovision system*, not yet published in the official journal, para. 57.
- 55) Commission, UEFA Champions League, *op.cit.* footnote 45, para. 27 et seq.; German *Bundesliga*, *op.cit.* footnote 45, para. BL 10.
- 56) Commission, UEFA Champions League, *op.cit.* footnote 45, para. 27 et seq.; German *Bundesliga*, *op.cit.* footnote 45, para. BL 10, 11; Ungerer, *Commercialising Sports*, *op.cit.* footnote 52, p. 11.
- 57) The Commission was initially critical of the marketing rules of the English Premier League, COMP/38.173 P0/The Football Association Premier League Limited, although an agreement has now been reached, see Commission press release of 16 December 2003, available at: [http://europa.eu.int/rapid/start/cgi/guesten.ksh?p\\_action.getfile=gf&doc=IP/03/1748|0|RAPID&lg=DE&type=PDF](http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.getfile=gf&doc=IP/03/1748|0|RAPID&lg=DE&type=PDF)
- 58) Ungerer, *Commercialising Sports*, *op.cit.* footnote 52, p. 10.
- 59) German *Bundesliga*, *op.cit.* footnote 45, para. 22.
- 60) Regarding this issue, see Mendes Pereira, *Scope and duration of media rights agreements: balancing contractual rights and competition law concerns*, speech at the 8th IBC annual conference "Communications and EC Competition Law", Brussels, 10 October 2003, available at: [http://europa.eu.int/comm/competition/speeches/text/sp2003\\_027\\_en.pdf](http://europa.eu.int/comm/competition/speeches/text/sp2003_027_en.pdf)
- 61) ECJ, *Coditel II*, *op.cit.* footnote 30, para. 15. See also *Magill* and *IMS Health* cases, *op.cit.* footnote 30.
- 62) Commission, IV/31.734, *Film purchases by German television stations*, OJ L 284 of 3 October 1989, p. 36, para. 43.
- 63) Commission, IV/32.150, *EBU/Eurovision System*, OJ L 179 of 22 July 1993, p. 23, para. 60, 62, 63, 74.
- 64) Court of First Instance, joined cases T-528, 542, 543 and 546/93, Rec. 1996, p. II-649, para. 118, 123.
- 65) Commission, *Eurovision*, *op.cit.* footnote 45, para. 35, p. 115.
- 66) Court of First Instance, *Eurovision*, *op.cit.* footnote 54.
- 67) Mendes Pereira, *op.cit.* footnote 60, p. 7, which, with reference to the Commission's UEFA decision considering 3 years to be an acceptable limit; Commission, *NewsCorp/Telepiù*, *op.cit.* footnote 45.
- 68) Regarding this question, see Mendes Pereira, *op.cit.* footnote 60, p. 6.
- 69) At national level, the French *Conseil de la concurrence* (Fair Competition Board) temporarily suspended the rights of Canal+ to broadcast French first division football matches. The competitor TPS had lodged a complaint against the French professional football league and Canal+, claiming that the granting of exclusive broadcasting rights represented an abuse of a dominant market position, see *IRIS* 2003-2: 9.
- 70) See Strothmann, MMR 2003, No. 7 VIII.
- 71) Ungerer, *Impact of Competition Law on Media – some comments on current developments, 4th ECTA Regulatory Conference*, Brussels, 10 December 2003, available at: [http://europa.eu.int/comm/competition/speeches/text/sp2003\\_062\\_en.pdf](http://europa.eu.int/comm/competition/speeches/text/sp2003_062_en.pdf) , p. 4.
- 72) Commission press release of 13 November 2001, available at: [http://europa.eu.int/rapid/start/cgi/guesten.ksh?p\\_action.getfile=gf&doc=IP/01/1579|0|AGED&lg=DE&type=PDF](http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.getfile=gf&doc=IP/01/1579|0|AGED&lg=DE&type=PDF)
- 73) Ungerer, *Impact of Competition Law on Media*, *op.cit.* footnote 71, pp. 6, 7.