

Country Reports for EPRA

The Netherlands

Commissariaat voor de Media (CvdM)

Bern meeting

EPRA Country Report October 2014 – May 2015

New general director for the CvdM

Per 1 March 2015 a new general director has been appointed within the Dutch media authority, the CvdM: Remco Dolstra. During the last six years he was Director of Communications at the Ministry of Finance. Remco who holds a master in Public Administration will combine the function of general director with being head of external relations and policy affairs. As a consequence he will be in charge of the daily management of the CvdM, a task which was previously performed by the management team.

A fine of € 150.000 for public service broadcaster NTR for a violation of the Dutch Media Act

The NTR, one of the national Dutch public service broadcasters, created and broadcasted a children television programme about Sinterklaas (called: Het Sinterklaasjournaal). This Sinterklaas tradition is comparable with Santa Claus at Christmastime; Sinterklaas is celebrated annually with the giving of presents to children around the 5th of December of each year. Het Sinterklaasjournaal is a programme that is especially created for children up to twelve years. Preventing children from commercial influence at public television is one of the priorities of the CvdM. Public television must be a safe haven for children. Parents must be certain that their children are not unduly exposed to advertisements during television programmes and on websites of public service broadcasters.

In 2013, during the television broadcasts and on the website of Het Sinterklaasjournaal, the programme referred frequently to products that were available on the market. Herewith NTR has seriously violated the principle of non-commercialism. It led to commercial influence of the public by frequently and explicitly showing aforementioned products in all television broadcasts and on the website of Het Sinterklaasjournaal. In March 2015, the CvdM decided to impose a fine to NTR. Firstly due to the severeness of the offense, secondly because of the repetitious character of the violations, thirdly because the CvdM warned the broadcaster before but it was ignored and last but not least because the commercial expressions occurred in programmes aimed at a very vulnerable group: children younger than 12 years.

The CvdM imposes an order subject to a penalty to public service broadcaster NOS

In December 2014, the CvdM imposed an order subject to a penalty for a violation committed by the public service broadcaster NOS. The NOS was found being servant to the commercial interests of a third party, something which is explicitly forbidden by the Dutch Media Act. The NOS purchased the broadcasting rights from Eredivisie Media en Marketing (EMM). These rights entitle the NOS to broadcast summaries (short reports) of the football matches of the Dutch premier league. The live registrations of the top football matches are broadcasted by the Dutch pay channel of Fox Sports. Fox has a majority stake of 51 percent in EMM, which commercially exploits the broadcasting rights of the top football league in the Netherlands on behalf of the first league football clubs. The public service broadcaster NOS and EMM agreed that NOS would promote the pay channel Fox Sports in its programmes. By doing so the NOS made itself completely servant to the interests of a commercial broadcaster. By imposing an order subject to a penalty, the CvdM forced the NOS to adjust the agreements with EMM and to comply with the Dutch Media Act.

Law on Fixed Book Prices to be continued in the Netherlands

In the previous country report we wrote about the evaluation of the Law on Fixed Book Prices in the Netherlands. Based on this evaluation the Dutch government has decided to keep the Act for at least four more years. After that period the Law on Fixed Book Prices will be re-evaluated again. In the meantime, the book industry needs to demonstrate that the law allows for stimulation of a diverse offer of book titles, including less popular titles.

By doing so the government is following the advices of the Council for Culture. In the current climate characterized by digitalization and declining revenues for the book industry the discussion how to protect vulnerable titles is very topical. The minister considers the law as one of the tools for encouraging a critical reading culture. Especially now the book market is shrinking, it is important to keep available for a reasonable price also vulnerable titles such as poetry, essays, and books of novice and lesser known writers.

This means that for at least four more years, the CvdM can continue with its legal task to supervise and enforce the fixed book prizes in the Netherlands. The Dutch system of fixed book prices only counts for books in the Dutch and Frisian language published in the Netherlands. According to the Law on Fixed Book Prices books should be sold to the consumer at the price set by the publisher or importer. As a principle the price is fixed for one year. After half a year the publisher is free to amend once the fixed price, after one year he can adapt once again the fixed price or abolish it. The system of fixed book prices has the aim to guarantee a broad and diverse offer of books in our country. The assumption is that a fixed price for books enables little bookshops to survive and to sell also less popular book titles. In a total free book market it is to be expected that there will be a shakeout and big general retailers offering popular books and bestsellers will dominate the market.

The current evaluation and the opinion of the Council for Culture has not fully revealed how the Act contributes now to a broad and diverse offer of books in our country. In addition, parties must innovate in the book industry and join forces. The Royal Association of Book Publishers will need to act as an innovation center. The minister is willing to financially support the innovation, provided the book publishers are also willing to invest. In two years there will be an interim report on innovation, digitization and cross-subsidization in the book sector.

The Netherlands

Commissariaat voor de Media (CvdM)

Tbilisi meeting

EPRA Country Report May 2014 – October 2014

Council of State upholds CvdM fines for infringement of different violations of the Media Act 2008 based on the same fact complex

Last year we informed you about an important ruling of the Amsterdam district court on a decision of the CvdM in the case “Het Sprookjesboomfeest”. In this case the CvdM imposed two different fines for violations by the public service broadcaster TROS of both the prohibition of being servant to the commercial interests of a third party and the regulations on television advertising. The TROS had been servant to the commercial interests of and promoted goods of the famous Dutch amusement park “De Efteling”. Recently, on 7 July 2014 this ruling was upheld by the Council of State, the highest general administrative court in the Netherlands. The principle importance of this ruling is that the Council of State confirmed that a certain conduct can result in different violations of the Media Act and that in such case the CvdM may impose different fines based on the same body of facts. Because of the cohesion of both violations, one of the fines was mitigated by the Council of State.

CvdM gives positive advice about new licences for public broadcasting associations

The Dutch national public service media system is unique by its composition of different organizations. Many programs on the national radio and TV channels are provided by so called ‘broadcasting associations’. Although they have a public service remit they are in fact private associations who have members; private person who are required to pay a yearly minimum fee (contribution).

On 31 January of this year they applied to obtain the right to broadcast during the period 2016-2020 within the public service media system. This right, the legal term is ‘recognition’, will be granted for 5 years if all legal requirements are met. The Dutch media authority (CvdM) is one of the 3 parties - the others are the Council for Culture and the Board of Governors of Netherlands Public Broadcasting (NPO) - who advise the State Secretary of Education, Culture and Science about the applications. The minister decides in the end but in practice the advises are more or less followed by the minister.

This was the first time the new merged associations had to apply for a license: TROS/AVRO, KRO/NCRV, VARA/BNN and the autonomous broadcasters EO, Omroep MAX and VPRO. Two broadcasters: Powned and WNL applied for the aspirant-status (provisional recognition), in which

case not 150,000 but only 50,000 members are needed. Both broadcasters already operated under this status for the last 5 years and asked for extension of this provisional recognition. A third broadcaster applying for this status was HUMAN.

The CvdM has checked the membership administration and informed the State Secretary all broadcasters have proven they have enough members: the merged broadcasters have all more than the minimum of 150,000 and the aspirant- broadcasters demonstrated to have more than the minimum threshold of 50,000 members. In its advice of 31 July 2014 the CvdM also concluded that all other requirements were met and informed the State Secretary all applicants are eligible to obtain a new licence for the next 5 years. Despite its positive advice the CvdM also made some critical observations. Several broadcasters lack an efficient system of internal checks and balances. The CvdM considers good governance as extremely important for public funded organizations and recommended them to improve their system of internal supervision.

CvdM publishes new report regarding meta supervision of NICAM

The CvdM yearly informs the minister about the outcomes of the 'meta supervision' of the NICAM (Netherlands Institute for the Classification of Audiovisual Media). In this evaluation the CvdM focuses on how NICAM checks the classifications by the broadcasters and other members of NICAM and whether the classifications can be considered to be valid, consistent and reliable. The NICAM is based on co-regulation: the industry itself is responsible for the classification of audiovisual media products according to the rules of Kijkwijzer, which consists of content and age descriptors. Just like the years before the CvdM has informed the minister that NICAM and Kijkwijzer function well and prove to be an adequate instrument to protect minors from harmful audiovisual content. The Kijkwijzer age descriptors are used in a reliable way and the NICAM supervises carefully the system. The number of parents using Kijkwijzer has increased. Nevertheless surveys demonstrate as well that a slightly less percentage of parents trust and use Kijkwijzer. The CvdM suggested this is something that NICAM should focus more on in the near future.

The CvdM also suggested NICAM to further explore possibilities to extend the current system of co-regulation to VOD media services. The recent agreement concluded between NICAM and between NICAM and the association of VOD service providers in the Netherlands, VodNed is praised by the CvdM as a good example. VodNed has reached an agreement with NICAM to apply the classification tool Kijkwijzer. As a consequence the VOD service providers reunited in VodNed: RTL XL, MovieMax, Pathé Home, Videoland, WappZapp, Maxx-XS and meJane.com inform now in their video catalogues consumers by using the age and content descriptors.

Unlike is the case for the VOD services of public service media the commercial media service providers are not legally obliged to use the Kijkwijzer for their on-demand offer. So now the private operators have opted on a voluntary basis to apply the classification system to their VOD services.

Evaluation Law on Fixed Book Prices

Since 1 January 2005 the CvdM is entrusted with the legal task to supervise and enforce the fixed book prices in the Netherlands. The Dutch system of fixed book prices only counts for books in the Dutch and Frisian language published in the Netherlands. According to the Law on Fixed Book Prices books should be sold to the consumer at the price set by the publisher or importer. As a principle the price is fixed for one year. After half a year the publisher is free to amend once the fixed price, after one year he can adapt once again the fixed price or abolish it. The system of fixed book prices has the aim to guarantee a broad and diverse offer of books in our country. The assumption is that a fixed price for books enables little bookshops to survive and to sell also less popular book titles. In a total free book market it is to be expected that there will be a shakeout and big general retailers offering popular books and bestsellers will dominate the market.

In 2014 the Law on Fixed Book Prices is being evaluated. As a first step the CvdM decided to carry out a self-evaluation and commissioned an external bureau to evaluate the role and function of the CvdM. From the interviews with stakeholders conducted by the external bureau can be concluded that most parties are positive about the role of the CvdM. Only sometimes the administrative procedures are considered to be too time-consuming. Furthermore it was suggested to introduce also less formal procedures to handle cases. The Council for Culture sent also its advice to the Minister and proposed

to prolong the current law and system of fixed book prices for 4 more years. The Minister sent the advices to parliament and will come with an opinion later this year.

Although not an official advisor during the evaluation process, the ACM (Authority for Consumers and Markets) published a negative opinion on the Law on the Fixed Book Prices: This authority dealing with fair competition and consumer protection held the opinion it leads to market distortions and even more important does not contribute to its purpose; the protection of less popular book titles.

The CvdM uses its more extensive powers to impose an order subject to a penalty

In our previous country report we informed you about a new Broadcasting Distribution Bill being adopted by Parliament. This Act has come into force on 1 January 2014 and has led to some major changes in the legislative framework regarding the access of broadcasting services to cable and other networks in the Netherlands. Also the enforcement instruments of the CvdM have become more comprehensive by the expansion of the legal possibilities to impose an order subject to a penalty. Commencing 1 January 2014 the CvdM inter alia has the power to impose an order subject to a penalty for non-compliance with the must-carry rules. Violations of that provision are detected either by examination by the CvdM of its own motion or in response to a complaint, or following a request for temporary exemptions by network-operators. Recently, in July 2014 the CvdM imposed an order subject to a penalty for non-compliance with the must-carry rules for the first time. In the near future it might be necessary to impose more orders of that kind to network-operators seeing that as of August 2014 the CvdM will have a comprehensive view of the network-operators complying or non-complying to the must-carry rules concerning the Dutch public channels.

The Netherlands

Commissariaat voor de Media (CvdM)

Budva meeting

EPRA Country Report October 2013-May 2014

The CvdM celebrates 25 years of independent media monitoring

On the 7th of April the CvdM celebrated its 25th anniversary by organizing a conference. Discussed were the social importance of media and independent monitoring. Several speakers, including Constantijn van Oranje Nassau, in his role as chief of staff of EU Commissioner Neelie Kroes, spoke about the effects of EU legislation and policies on Dutch media regulation. Furthermore, State Secretary Sander Dekker made a strong case for maintaining the Dutch liberal way of light touch regulation and monitoring and talked about recent changes in the Dutch media landscape and its significance for regulation. The importance of compliance and governance in media supervision was also discussed. The director of Netflix Benelux gave his opinion on the necessity of regulation and monitoring and stressed the importance of developing strong ties with local content producers and have good relationship with EU regulators. Wim Bekkers, director of the Netherlands Institute of Classification of Audiovisual Media (NICAM), spoke about the initiative of NICAM and other European partners to design a tool for classification of audiovisual content on user generated networks. This initiative called "You Rate it" was launched following a request of the EC Coalition working group on content classification. In this respect many speakers during the event acknowledged that self-regulation as well as co-regulation can and should play an important role in delivering a high level of consumer protection and encouraging the audience's trust in media.

Restructuring of the system of public broadcasting

As mentioned already in our previous country reports, due to cuts to the media budget the government proposed a restructuring of the system of public broadcasting. Per 2013 the media budget (2013: € 871 million) will gradually be reduced. In 2015 the budget is being reduced by €128 million. Furthermore, the Rutte-Asscher government will make additional cuts of €50 million in 2016 and €100 million in 2017 to the media budget. To make the national public broadcasting less fragmented and therefore more cost efficient, in 2011 the government instructed the national PSB's to merge. In case the organizations would not merge on voluntary basis, they would get obliged to do so. However, forced mergers turned out to be unnecessary as the following broadcasters are currently already in the process of merging: KRO and NCRV; VARA and BNN; and TROS and AVRO. Broadcasters EO, MAX and VPRO remain independent, as well as the Dutch Programme Foundations, NOS (news and

sports) and NTR (minorities, art, culture and education). On 31 January 2014 both the newly merged as well as the subsisting national PSB's concluded a media agreement, in which they made agreements on further cooperation: Despite the fact the broadcasters have to cope with big budget cuts, they want to maintain their independent and autonomous character. However, the PSB's did agree to deepen cooperation. They strive to better alignment of their programs by specializing in genres and themes in which they are traditionally strong. Also on 31 January 2014, the newly merged and subsisting national PSB's submitted at the CvdM their respective applications to obtain a concession for national broadcasting in the period 2016 – 2020. The CvdM is currently evaluating their policy plans, in order to give advice to the government. Also, the CvdM will ascertain whether the broadcasting associations met the requirement of having a minimum of 150.000 members paying a yearly contribution. In that respect, at the end of last year, the CvdM adopted a new policy guideline regarding recruitment activities and benefits for existing members. This policy guideline should ensure - among other things - that the broadcasting associations recruit new members legitimately.

New regulation regarding access to cable and other networks

In our previous country report we informed you about a new Broadcasting Distribution Bill being adopted by Parliament. This Act has come into force on 1 January 2014 and has led to some major changes in the legislative framework regarding the access of broadcasting services to cable and other networks in the Netherlands. Most importantly, the scope of the new regulation is basically technique neutral and platform independent. This means that the new regulation applies in general to all network-operators. Before, only the cable operators were subject to must-carry and other access related rules. Cable operators were also obliged to follow the advice of program councils regarding the composition of the packages offered to the public. From 1 January 2014 these program councils have been abolished and in general all operators with at least 100.000 subscribers are obliged to transmit a minimum of 15 analogue and at least thirty digital TV channels. There are some exceptions though: satellite and DTTV operators are not obliged to offer the local and regional PSB channels and for DTTV only a minimum of 25 channels applies. Within the minimum number of channels the must-carry channels (the Dutch national, regional and local public RTV channels and Flemish public TV and radio stations) should be included. In the new system, the transmission of at least 30 channels is considered to provide sufficient diversity. Under certain conditions temporary exemptions can be granted by the CvdM. Furthermore, the CvdM monitors the diversity of the packages and the degree of consumer-satisfaction.

Dutch court declares resell obligation for cable operators in violation of EU rules

The administrative court in The Hague has overturned Dutch legislation requiring cable operators to resell their analogue TV services to other providers. The two largest cable operators in the Netherlands, Ziggo and UPC, had appealed the changes to the Media and Telecommunications Acts which introduced this wholesale obligation (also mentioned in previous country report). The court found that the requirement was in violation of relevant EU telecom rules; the new regulatory framework on electronic communications. This framework consisting of 5 specific directives only allow ex ante requirements on access like a wholesale obligation when a market analysis conducted by an independent authority demonstrates such measures are necessary and proportional. The Dutch government, supported by operator Tele2, was of the opinion that the EU telecom framework was not applicable because it was not about the signal distribution but about content of packages and therefore allowed as measure of audiovisual policy. The Hague court rejected these arguments because the wholesale obligation affected the distribution of signals of the programs in the package and therefore the EU framework could not be neglected.

Furthermore, the court was of the opinion that the legally wholesale obligation will not significantly improve competition on the Dutch market. After all, consumers would not have a wider choice of content, as the channels offered would remain exactly the same, regardless of the provider. The cable operators filed the appeal already a year ago, but the case was held up pending a ruling by the European Court of Justice in a separate dispute between UPC and the city of Hilversum over the terms of a basic cable package. The European Court of Justice pointed out in the Hilversum case that cable packages fall under the EU definition of electronic communications services, and these can only be subject to ex ante regulation by an independent regulator, based on a market analysis. As a result of the Dutch court ruling, article 6.14a in the Media Act, which permits the cable resale, and article 6a.21a Telecommunications Act, which allows the regulator Consumers and Markets Authority (ACM)

to impose the wholesale services on dominant operators, were declared invalid and most likely will be repealed soon.

As a consequence the CvdM will not have to deal anymore with enforcement requests of market parties who want to obtain access to broadcasting networks to resell packages. Before this was expected to be a very time-consuming new task of the CvdM.

No must-carry for HbbTV in the Netherlands

The State Secretary for Media Affairs has written a letter to Dutch Parliament in which he addresses the issue of the uninterrupted carriage of TV signals. Several broadcasters complained about the country's two largest cable operators, UPC and Ziggo, who are filtering the HbbTV signals from all broadcasters, both Dutch and foreign. At the moment, Dutch public channels have a number of HbbTV applications running and private broadcaster SBS is launching the first apps. A number of foreign broadcasters that are distributed on the cable nets also carry HbbTV, including the German broadcasters RTL, ProSieben, ARD and ZDF and Spanish TVE.

According to some complainants the policy of cable operators prevents their customers from using over-the-top services such as the on-demand functions in the HbbTV platform. Therefore the cable network subscribers cannot use the so called red button to pull extra program related information when watching a TV program. The remote control of the UPC Horizon set-top box has no red button at all, and Ziggo uses the red button for its cloud-based interactive services without a set-top box.

Following these complaints Dutch parliament asked half a year ago the State Secretary to talk with all relevant distribution platforms and come up with a solution and if necessary implement must-carry legislation for HbbTV services on cable networks.

The national research institute TNO was commissioned by the State Secretary to carry out a study on the economic and technical effects of enforced HbbTV carriage. Furthermore he asked judicial advice on European regulation regarding must-carry requirements before making a final decision.

In his recent letter the State Secretary informed about the study and legal analyses and its main findings and outcomes.

Regarding the current situation in practice:

- Parties have agreed on transmission of services for people with disabilities but there is no agreement on which technique of transmission to be used.
- As far as other services are concerned there is no agreement on transmission and which technique to be used.
- Technically there are many opportunities and no fundamental impossibilities to transmit the HbbTV. But this does not mean the HbbTV signal will work since the current devices used by subscribers to the network and/or those devices provided and maintained by the operators of networks cannot be used for HbbTV techniques. This means there will a technical and economic impact on operators and subscribers to the network when the HbbTV would be obliged.

Regarding the legal analyses:

- Following article 31 Universal Services Directive a must-carry obligation may be introduced for services of both public service and commercial broadcasters enabling access to people with disabilities.
- In the case of public media services which already have must-carry status there is room to grant must-carry status to additional services of general interest.
- The principle of signal integrity does not apply to interactive services.
- HbbTV is a technology and not a service.
- It is not possible to legally prescribe a specific transmission technology like HbbTV.
- Following general must-carry rules the operator who offers a package must transmit all services subject to must-carry obligations, unless the broadcaster does not offer it.
- The Consumers and Markets Authority can impose specific measures within the framework of general competition law, ie when there is abuse of dominant market position.

The Netherlands
Commissariaat voor de Media (CvdM)
Vilnius meeting
EPRA Country Report May 2013 – October 2013

New organisation of CvdM

As addressed in a few previous country reports the CvdM decided to change its organization structure radically. This in order to cope with the big budget cuts we are confronted with (711,000 euro yearly on structural basis from 2018) and in order to perform our legal tasks more efficiently. Per 1 September the total number of fte's is decreased by almost 20 to 35. From that date there will be two main departments:

The department of *Investigation and Access* which will be dealing with licensing of linear media services, registration of on-demand media services and all kinds of investigation and monitoring activities. Mr. Wim Groen is the head of this new department.

The second department: *Enforcement Policy and Application* will be responsible for the development and application in practice of enforcement policies. This department will be dealing with legal affairs and procedures and is headed by Mrs. Suzanne Poelmann.

Furthermore there are two separate units: *External Affairs and Advisory* dealing with external relations, communications and general advices to the ministry and the unit of *Facility Affairs* responsible for internal business like archive and secretary.

New commissioner CvdM

Per 1 September 2013 a new commissioner has been appointed. Jan Buné will join the board of commissioners, which from that date will consist again of 3 persons. Jan Buné worked as a Senior Partner until 1 June for the firm Deloitte Accountants. Being an expert in accountancy Mr. Buné will be responsible for financial supervision within the CvdM. Other positions and sideline activities of Mr. Buné are: Arbitrator at the Netherlands Arbitration Institute (NAI) and Member of the Supervisory Board of Artis Natura Magistra; the Royal Amsterdam Zoo.

New Muslim broadcaster

The CvdM allocates once in five years national broadcasting time to organisations which represent the main religious and spiritual movements in our society (article 2.42 Media Act). The CvdM can allocate broadcasting time to only one representative organisation of each main religion or spiritual movement in the Netherlands. The allocation of broadcasting time to a representative Muslim organization led to a lot of procedures. Since the licensee did not longer represent in a sufficient manner the Muslim community in our country the CvdM had to withdraw the license. After many consultations and hearings the CvdM granted a license until 31 December 2015 to a new applicant, called SZW. The current system of autonomous religious and spiritual broadcasters will come to end and they all have to join existing public service broadcasters. NPO (National Public Broadcasting) has the legal mission to offer a programme that caters for the needs of the main religions and spiritual movements in Dutch society. Within the NPO, the NTR, the Dutch Programme Foundation, will be responsible for that. The financial and administrative matters of the new Muslim broadcaster are already taken care of by NTR.

Advertising rules better respected by broadcasters

In its annual report over 2012 the CvdM draws the conclusion that broadcasters comply more to the advertising rules and especially the hourly advertising maximum. In 2012 the CvdM observed no more large overruns of the 12 minutes limit per hour. And already from 2010 there are no more serious infringements compared to the previous years. The CvdM concludes this is a result of its strict supervision and monitoring methods in order to safeguard level playing field for all broadcasters targeting Dutch market and audience.

Parliament adopts new bill on cable access

As a result of the Broadcasting Distribution Bill the current system that regulates access to the cable will be changed radically. In the future situation cable operators and other parties operating distribution platforms will be obliged to transmit on their networks at least thirty digital TV channels. Those that are not (yet) transmitting digital programs or have an offer of less than thirty TV channels have a transitional period of five to meet new requirements. Within these 30 channels, at least the public must-carry channels (the Dutch and Flemish public TV and radio stations) should be included. When it comes to radio the operator is free to decide how many digital radio channels he is going to offer as long as at least the public must-carry radio channels are part of the package. In the new system, the transmission of at least 30 channels is considered to be sufficient diverse. So there will be no longer a legal advisory role for the programme council. Another important change is the new system will not only apply to cable operators but also to other digital distribution platforms. The new Bill will now be submitted to the Senate and the new system is expected to come into effect from 2014.

New budget cuts announced for CvdM

On Tuesday 17th of September the CvdM has been confronted with new budget cuts for the near future. Traditionally on the third Tuesday of September the reigning monarch of the Netherlands (currently King Willem-Alexander) addresses a joint session of the Dutch Senate and House of Representatives in the Ridderzaal or Hall of Knights in The Hague. The Speech from the Throne (Dutch: Troonrede) sets out the main features of government policy for the coming parliamentary session. On this day also the budget plan for the upcoming year is presented by the government. In the media chapter of the budget plan for 2014 it is announced that on all autonomous administrative bodies including the CvdM new budget cuts will be imposed. In 2016, there will be a reduction of € 202.000, increasing to the amount of € 458.000 in 2017 and € 559.000 in 2018. Note that these budget cuts come in addition to the general budget cut of 711,000 euro yearly on structural basis from 2018. So in total the CvdM will be losing more than 1/3 of its budget, this meanwhile it has been assigned with many new tasks and activities in the recent past.

EPRA Country Report November 2012 - May 2013

New chairperson CvdM

Prof. Mr. Dr. Madeleine de Cock Buning, commissioner at the Commissariaat voor de Media (CvdM) since July 2009, has been appointed chairperson at the CvdM per 1 April 2013 by the State Secretary of Media Affairs. Besides her work for the CvdM, is also professor of Copyright and Media Law at the University of Utrecht and chairing the Centre for Intellectual Property Law (CIER) and the Centre for Access to and Acceptance of Autonomous Intelligence (CAAAI) hosted by the same university. Other positions hold by Madeleine de Cock Buning are Honorary Judge of the Court of Appeal The Hague, panellist of the World Intellectual Property Organization (WIPO), member to the Advisory Committee on Copyright to the Ministry of Justice and editor of the professional magazine "Intellectual Property and Advertisement Law" (IER). Madeleine started her career as a lawyer for a big law firm (specialized in Intellectual Property & Information and Communication Technology).

CvdM fines for infringement principle of non-commerciality upheld by district court and Council of State

In one of our previous country reports we informed you about a high fine imposed to public service broadcaster TROS due to a violation of a basic principle of non-commerciality for public service media in the case Bibaboerderij. As a consequence of this principle public service media should not be servant to the profits of commercial third parties. In November 2012 the Amsterdam district court ruled an important decision in a comparable case of the same broadcaster. During the years 2009 and 2010 the TROS broadcasted the children's TV series "Het Sprookjesboomfeest". In June 2011 we imposed a fine of €120,000 for violations of both the principle of non-commerciality and sponsoring regulations. According to the CvdM, TROS had being servant to the commercial interests of and promoted goods of the famous Dutch amusement park "De Efteling", since the park had developed an attraction and musical, both called "Sprookjesboom". After TROS appealed the decision before the District Court Amsterdam, the court ruled confirmed most assumptions of the CvdM. The broadcaster should have

imposed contractual limitations on the amusement park to prevent it from exploiting the brand "Sprookjesboom" by referring to the television series. Also by using the name "Sprookjesboom" or "Sprookjesboomfeest" in the television series, TROS encouraged consumers to purchase products and services related to the amusement park's brand "Sprookjesboom" and to visit the amusement park itself. The only part of the CvdM-decision which was not confirmed by court was related to the musicals. According to the court the TV series could not be considered to promote these performances since they too place long time, either before or after the series were aired. Therefore the decision of the CvdM was affirmed, only the fine was reduced to €108,000.

Very recently, on 3 April 2013, in another case regarding the same broadcaster the highest general administrative court in the Netherlands ruled that the CvdM was in the right when imposing another fine. The fine of € 35.000 has been imposed for the violation of the principle of non-commerciality in a music TV show. The Administrative Law Division of the Council of State agreed with the CvdM that by broadcasting the TV show *All fans on deck* the TROS generated more than normal profits for the artists performing and the travelling agency who organised the cruise trip during which the artists gave their performances. The programme *All fans on deck* consisted of recordings of performances by Dutch artists during a boat trip organized by a commercial travelling agency *Van der Valk Holidays*. The performances were an integral part of the trip and the artists performed for free because of the exposure they got in return. The Administrative Law Division shared the view of the CvdM that the TROS has made the broadcast of the TV show entirely dependent on the participation of a commercial third party. The travelling agency also carried out control over which artists could be invited for performing during the programme. This affected as well the principle of editorial independence. According to the court the CvdM was in the right to impose a fine of € 35.000 on the public service broadcaster.

New regulation for the calculation of license fees

From 1 January 2013 a new ministerial regulation for the calculation of license fees has entered into force. As a result of this new regulation, major national stations and foreign-oriented services will be charged with higher fees to compensate the supervision costs of the CvdM. The general rule is that broadcasters which have obtained a licence for commercial broadcasting have the legal obligation to pay a yearly fee to compensate our authority, the Commissariaat voor de Media (CvdM), for the costs of supervision. Public service media – public financed – do not have to pay such a fee.

The specific amount that should be yearly paid by an individual broadcaster varies and depends on the following circumstances:

- 1) The potential (technical) reach of a programme service: this means the number households that can receive the programme service of a private broadcaster;
- 2) The actual reach of a programme service: expressed in market share;
- 3) The average duration of the programme service during a day;
- 4) The nature of the programme service: TV programme, radio programme or a cable text programme service.

Taking into account these criteria, the sum to be paid can vary a lot, depending on circumstances of the specific case. The minimum amount which has to be paid by a broadcaster is under all circumstances €200. Also providers of commercial on-demand media-services have to pay €200 per service registered with the CvdM. Main reason for this relatively low flat fee is that we do not want to hinder new media initiatives with too many financial burdens. Furthermore the calculation criterion of 'average broadcasting time' cannot be applied to on-demand media services. Also we cannot base the calculation on the number of households as we do for broadcasting via cable or other platforms since on-demand media services are mainly on the internet. The potential number of households that can be reached with an internet based service is of course potentially unlimited. Therefore linear services offered exclusively via the internet also pay only €200 per year. New is also, that channels, exclusively or mainly aimed on foreign countries, will pay more than under the old regime. Before, they fell in the lowest category because usually they were not distributed in the Netherlands and had no technical or actual reach in our country. But since they can reach high audience rates abroad and we need to supervise these channels as well this approach was considered out of date and unfair to domestic channels who paid much higher amounts. Now for foreign channels the actual reach (defined in market share) abroad is taken into account as well which means they will pay higher fees than before.

For the future we will investigate and consider other criteria which can serve as indicators for the calculating of license fees.

Registration of commercial on-demand media services

Meanwhile around 30 commercial on-demand services are registered with the CvdM. Right now we are in the process of investigating which on-demand media services should still notify with the CvdM. The CvdM has drawn up a so called *long list* of media services providers which will be requested to notify their on-demand media services when not have done so already. The nature of the media service providers included in the long list differs a lot: sports clubs with own TV services, film rental services, stand alone video services of newspaper and magazines and erotic service providers as well. The place of establishment and the possible seriously harmful content of the media service providers are important elements addressed in the investigation of the CvdM. For the assessment of seriously harmful content we can ask advice of a special Advisory Committee.

European monitoring system for the diversity of news media exposure

As mentioned already in our previous country report, the CvdM is currently working on a research options for a European monitoring system for measuring the diversity of exposure to news media. Our chairperson Madeleine de Cock Buning, plead for this idea in her speech at the Pan-European forum on media pluralism and new media in the European Parliament last June (www.mediapluralism.eu).

Despite the wide range of initiatives and activities in the field of media pluralism, an European monitoring system that continuously provides insight in the current state of affairs does currently not exist. The complexity of the concept of pluralism is, from our point of view, one of the bottlenecks. The CvdM therefore suggests to develop a rather straightforward system in order to guarantee a long term success.

The system would have a dual focus: news media (1) and the use of it (2). The focus on news media is legitimate because of its particular role in democratic societies with regard to citizen's opinion formation (i.e. the news function). The second focus is based on the user approach which is considered increasingly important. We believe that users are expected to carefully consume a diverse diet of information sources in a seemingly ever expanding amount of suppliers.

Three main research questions are formulated which could be the basis of the monitoring system.

1. What is the diversity of exposure to media of citizens (via written press, television, radio and internet) in the European Member States and how does it develop within and vary between platforms?
2. What is the diversity of exposure to news media of citizens (via written press, television, radio and internet) in the European Member States when gathering information specifically about news and current affairs?
3. How does supplier concentration develop in the European news market?

The methodology we suggest is a cross-national survey, preferably integrated into an already existing survey such as the European Commission's Eurobarometer. Input will be needed from the European Member States in order to collect the required information to apply the survey design to each Member State and to verify ownership relations.

So far, we have support from the Dutch national government (the Ministry of Education, Culture and Science) and Prof. Dr. Peggy Valcke, who carried out the Media Indicators study on behalf of the European Commission in 2009. As we are aiming to present our ideas to the European Commission, we are seeking to find more supporting parties.

Are you interested in more information about our research ideas about an European monitoring system? Or do you have suggestions or ideas to further develop these ideas?

EPRA Country Report May 2012-November 2012

CvdM involved in cable wholesale access issues from 1 January 2013

As a consequence of a new article 6.14a Media Act 2008 (entering into force on 1 January 2013) the CvdM can be confronted with enforcement requests of market parties who want to obtain access to broadcasting networks. The article states that network operators (usually cable operators) should offer their analogue program package to other parties who want to resell it to those connected to the network. A comparable article has been laid down in the Telecommunications Act as a result of amendments submitted by a member of parliament with the aim to increase competition on the cable networks. Such a "wholesale line rental cable" (WLR-C) obligation is an issue already on the political agenda and subject of heated debates for many years. In 2009 the Dutch Independent Post and Telecommunications Authority (*Onafhankelijke Post en Telecommunicatie Autoriteit* - OPTA) also decided in its Open Cable ruling that the biggest cable operators in the Netherlands had their open their networks for parties interested in resale. But the decision was overruled in 2010 by the Dutch Trade and Industry Appeals Tribunal (*College van Beroep voor het bedrijfsleven* - CBb). After that verdict the Telecommunications Authority performed a new market analyse and concluded a year (end of 2011) later that the situation has changed dramatically due to digitalisation. According to OPTA there was meanwhile enough competition: the market shares of competitive digital networks like DVB-T, IPTV and satellite had grown and a WLR-C obligation was not necessary anymore. This opinion was endorsed by the European Commission. On 5th of November the new decision of OPTA was confirmed by the CBb. The highest court ruled that OPTA was in the right to decide to not interfere because of the changed digital market situation.

Meanwhile it has become clear the European Commission has serious concerns about the new wholesale obligations in both Media Act and Telecommunications Act and considers these legal obligations in contravention of the EU's Common Regulatory Framework (CRF). According to the European Commission such ex ante obligations may only be imposed when a market analyses carried out by an independent National Regulatory Authority (NRA) demonstrates there is a dominant position. According to the European Commission these revised articles in the Media Act 2008 and Telecommunications Act do not meet these European conditions. The Dutch government is due to give its reaction to the European Commission.

New guidelines sponsoring and advertising commercial broadcasters

On 10th of July 2012 the CvdM adopted two new policy guidelines which entered into force in September of this year. One policy guideline addresses sponsoring of private media services and the other one is dealing with advertising in commercial media services. The policy guidelines which are consulted earlier this year do not only have relevance for linear commercial media services but apply as well to commercial media services on demand. The policy guidelines aim to further elaborate the sponsoring and advertising rules which were laid down in the Media Act 2008 as a consequence of the implementation of the AVMS Directive. It is important to note that only advertising in the video content will be regulated; so advertising in text information within on demand media services (like banners on an internet page of a video catalogue) falls out from the scope of regulation. Some changes in comparison with the previous regulation are the possibility for radio channels to mention the audio logo (tune) of the sponsor at the beginning of a sponsored programme. With regard to split screen it is now allowed that 2/3 part of the screen is used for advertising. Of course the general requirement that integrity of editorial content may not be affected by advertising always needs to be met. Compared to the previous regime there are now more options for individual advertising spots. The frequency of two times per hour is still considered to be an exception and allowed. In the reports of sports events they may occur in. A further elaboration of the rules for product placement will be laid down in a separate guideline is expected to be adopted soon (this regulation will be subject to approval by the Ministry). Also the CvdM will organize experts meetings about the new regulations during the last months of the year.

First thoughts on an European monitoring system for the diversity of news media exposure

The CvdM is currently working on a research options for a European monitoring system for measuring the diversity of exposure to news media. Our commissioner, Prof. Mr. Dr. Madeleine de Cock Buning,

plead for this idea in her speech at the Pan-European forum on media pluralism and new media in the European Parliament last June (www.mediapluralism.eu).

Despite the wide range of initiatives and activities in the field of media pluralism, an European monitoring system that continuously provides insight in the current state of affairs does currently not exist. The complexity of the concept of pluralism is, from our point of view, one of the bottlenecks. The CvdM therefore suggests to develop a rather straightforward system in order to guarantee a long term success.

The system would have a dual focus: news media (1) and the use of it (2). The focus on news media is legitimate because of its particular role in democratic societies with regard to citizen's opinion formation (i.e. the news function). The second focus is based on the user approach which is considered increasingly important. We believe that users are expected to carefully consume a diverse diet of information sources in a seemingly ever expanding amount of suppliers.

Three main research questions are formulated which could be the basis of the monitoring system.

4. What is the diversity of exposure to media of citizens (via written press, television, radio and internet) in the European Member States and how does it develop within and vary between platforms?
5. What is the diversity of exposure to news media of citizens (via written press, television, radio and internet) in the European Member States when gathering information specifically about news and current affairs?
6. How does supplier concentration develop in the European news market?

The methodology we suggest is a cross-national survey, preferably integrated into an already existing survey such as the European Commission's Eurobarometer. Input will be needed from the European Member States in order to collect the required information to apply the survey design to each Member State and to verify ownership relations.

So far, we have support from the Dutch national government (the Ministry of Education, Culture and Science) and Prof. Dr. Peggy Valcke, who carried out the Media Indicators study on behalf of the European Commission in 2009. As we are aiming to present our ideas to the European Commission, we are seeking to find more supporting parties.

Are you interested in more information about our research ideas about an European monitoring system? Or do you have suggestions or ideas to further develop these ideas?

Budget cuts and new organisation of CvdM

In the latest two country reports we mentioned the CvdM is confronted with a general budget cut of 711,000 euro yearly on structural basis from 2018. From August till October an external bureau has, together with the management team, carried out a research how to cut budget but also be able to perform the legal tasks. Despite the reduction of sources we should continue to operate as an autonomous regulator with the necessary skills and knowledge and respected by all stakeholders. The external bureau has advised us to change the existing structure in a profound way and completely rebuild the organisation. The board of commissioners has discussed this advice with the ministry and agreed upon compensating the foreseen friction costs. The next year the CvdM will be reorganised thoroughly. The whole process must be finished in November 2013, so the new organisation is ready to start in December 2013.

Country Report October 2011-May 2012

CvdM informs ministry about consequences budget cuts

As stated already in our last country report the CvdM is confronted with heavy budget cuts in near future. Not only the CvdM will have to contribute in the overall savings of 200 million euro on the media budget with a yearly saving of 81,000 euro. In addition to that and as a consequence of a general budget cut on autonomous public authorities the CvdM will have to save 711,000 euro yearly on structural basis from 2018. The first cut of 59,000 euro will come into effect in 2012 and each following year this amount will increase to a structural yearly cut of 711,000 euro from 2018. This means in total

the CvdM will be confronted with a budget cut of almost 800,000 euro yearly from that date. On a total share of the around 4 million euro the CvdM receives from the media budget this makes almost 20%. The CvdM has sent a letter to the ministry describing the possible consequences of the budget cuts. The amount of money the ministry has reserved in first instance for compensating possible friction costs (like compensation of employees whose contracts will be terminated) seems not to be sufficient at all. One of the consequences might be that CvdM will have to scale down some of its international activities the forthcoming years. An internal working group consisting from members of the management team within the CvdM is working out some scenarios and proposals in order to discuss them with the board of commissioners and ministry.

Policy guidelines classification audiovisual media services on demand and first registrations

The CvdM has adopted its Policy guidelines classification commercial on-demand media services which entered into force on 1 November 2011. The main purpose of the guidelines is clarifying when a commercial on-demand media service needs to be registered with the CvdM and is subject to its supervision. In the policy guidelines is explained how the CvdM interprets and defines concepts like catalogue, editorial responsibility, mass medium and economic service. The CvdM has created an on-line application form to facilitate the notification process. Since then the CvdM has received several applications from media service providers to register their on-demand media services. In total, around 45 services have been notified. The first decisions have been taken by the CvdM assigning the status of registered on-demand media service. These are mainly film rental services of providers like UPC, Chellomedia and Pathé Theatres. There are also services which have not been notified but which most likely can be considered as on-demand media services. These services are examined right now by the department of Registration, Licensing and Supervision. It is possible that some (news) video services of newspapers and magazines will qualify as a commercial on-demand media service. The service providers will be notified in case they need to register their services with the CvdM. At this moment there are no costs charged for registration. It is expected that after a future modification of the ministerial regulation on license fees this will become a fixed fee of around 200-300 euro.

Request to apply the UK rules regarding protection of minors on Dutch channel

In the beginning of 2012 Ofcom has contacted the CvdM with the request to ask a Dutch adult TV service provider to obey to the UK rules regarding protection of minors. The Ofcom request is based on the enhanced co-operation procedure, laid down in article 4, paragraph 2 of the AVMS Directive, which is an exception to the county-of-origin principle. This article states that in cases where a Member State has exercised its freedom under paragraph 1 to adopt more detailed or stricter rules of general public interest; and assesses that a broadcaster under the jurisdiction of another Member State provides a television broadcast which is wholly or mostly directed towards its territory it may contact the Member State having jurisdiction with a view to achieving a mutually satisfactory solution to any problems posed. On receipt of a substantiated request by the first Member State, the Member State having jurisdiction shall request the broadcaster to comply with the rules of general public interest in question. The Member State having jurisdiction shall inform the first Member State of the results obtained following this request within 2 months. If the result of this procedure is unsatisfactory, the host Member State may take appropriate measures. But before taking such measures are all sorts of conditions such as objectively necessary, proportionate and non-discriminatory. Also, the European Commission has to approve the measures. The Ofcom has received several complaints from both viewers and industry regarding the service Babestation. The Dutch rules, including the co-regulation classification system Kijkwijzer, seem to be fully respected. But from UK perspective some concerns are raised, mainly because of too explicit nature of content and too early times of broadcasting. The CvdM has informed the service provider about the request of Ofcom and asked whether it would be willing to commit itself to the UK rules. The outcome of the procedure is still unclear at this moment.

Country Report May 2011-October 2011

Commissariaat voor de Media (CvdM), the Netherlands

New Commissioner at CvdM

A new Commissioner has joined the board of the CvdM: Eric Eljon. The newly appointed commissioner has worked in the past at several broadcasters, both public service and private. In his

last function he was Director Productions and Public Affairs at SBS. Eric has an academic degree in Public Administration which he studied at the VU University Amsterdam. Within the CvdM Eric will be primarily responsible for the department of Registration, Licensing and Supervision. Eric is the successor of professor Jan van Cuilenburg who - after a membership of 10 years (2 terms) including being chairman for several years - left the CvdM in April of this year. At the occasion of his farewell the CvdM organized a well-attended meeting about public value of public service broadcasting.

Mergers PSB and cuts on media budget

The government has decided to impose serious cuts on the budgets for culture and media the forthcoming years. This means PSB will be confronted with serious budget cuts spread over the years 2012-2015. From 2015 the total cut will be 200 million structurally, which makes around 25% of the total budget. The financing of the *Wereldomroep* – the NL international broadcaster comparable to *BBC World* or *Deutsche Welle* – will be removed from media budget and transferred to Ministry of Foreign Affairs. Its tasks and budget will be reduced dramatically. Government also wants national PSB has to scale back in number of individual broadcasters. At the moment there are 24 individual organizations but government wants this number to be reduced to 8. In first instance seemed to have agreed on voluntary mergers. But they expected to be compensated for this with extra broadcasting time as well as budget. Now it seems they will receive less broadcasting time and budget they have stopped the merger negotiations and talks. Government has announced they will be legally forced to merger if they will not do it on voluntary basis before the end of the year. In case of obliged mergers the CvdM will be asked to give advisory opinions on the merger process. Also the CvdM will have to evaluate the budget cut plans of the individual public service broadcasters and how they deal with friction costs involved.

Major budget cuts for the CvdM

Not only PSB but also the CvdM itself will have to deal with serious budget cuts in near future. Not only the CvdM will have to deliver its share in the overall cut of 200 million euro on the media budget with a yearly saving of 81,000 euro. In addition to that and as a consequence of a general budget cut on autonomous public authorities the CvdM will have to save 711,000 euro yearly on structural basis from 2018. The first cut of 59,000 euro will come into effect in 2012 and each following year this amount will increase to a structural yearly cut of 711,000 euro from 2018. This means in total the CvdM will be confronted with a budget cut of almost 800,000 euro yearly from that date. On a total share of around 4 million euro the CvdM gets from the media budget this is almost 20%. Management team and Commissioners in the CvdM are now investigating and developing plans how to deal with this new situation and where to find savings within the organization. This will not be easy since the amount of work load is not to be expected to decrease in near future and new tasks have emerged like the supervision of VOD services.

Complaints about country's largest cable operator

Since 1997 the Netherlands have opted for a system in which 'programme advisory councils' have the legal task to advise cable operator which 15 television programmes and 25 radio programmes should be included in the (analogue) basis subscription package which the cable operator must transmit to the public. This system has been introduced to ensure influence of the cable subscribers on the programs they can receive and encourage plurality of the composition of the cable subscription package. When a cable operator doesn't follow the advice of the programme advisory council the CvdM can be asked to check if the reasons of the cable operator are important enough to ignore the advice. In future the system of program advisory councils will be replaced by a system of audience preference surveys, but at this very moment programme advisory roles have still a legal role.

Program advisory councils form all over the country have launched complaints with the CvdM to evaluate the decision of the country's largest cable company Ziggo to drop channels like CNN, BBC2 and other foreign broadcasters from its standard analogue programme package. Ziggo, which has three million subscribers to its services, says it needs the space on its network to provide more digital broadcast services. Ziggo states that digital is the new standard and that the majority (55% of its customers is now subscribed to digital packages. Ziggo is of the opinion it respects the legal requirements since programme advisory councils have only a say about 15 TV channels and this number is still offered by the cable company. Ziggo even considers to switch off the analogue

transmission completely and says in that case it will not have to take into account at all the advises of the advisory programme councils. The CvdM held a hearing on 23 August and will have to give a judgement in this case.

Amsterdam District Court confirmed CvdM's interpretation in several cases

The Amsterdam District Court has issued a few rulings about public service broadcasting (PSB) in favour of the CvdM. The cases mainly dealt about the question when PSB is servant to the profits of commercial third parties. One case was about the production of the CD *The Look of Love*. The CvdM imposed a fine of € 80,000 on the public service radio channel *Radio 2*. The channel arranged a (classic) orchestra and studio to produce a music album without charging the publishing record company EMI a normal market tariff for providing these services. During a month before the release of the album the PSB channel made a lot of promotion for the album and the first single released from it. According to the court the CvdM was in the right to concluded that the PSB channel enabled EMI to gain more than normal profits and it harmed the principle of non commerciality of PSB. EMI was favoured because there was no market conform remuneration charged by PSB for the services provided.

Another case was about the *TROS*, one of the PSB associations in the Netherlands. The CvdM had imposed a fine because the program *Bibaboerderij* was sponsored which is not allowed since it is a children's program broadcast by PSB. Also by broadcasting this program the public service broadcaster was servant to the commercial interests of the format owner. The children's program has been broadcasted twice a day from February 2008 till March 2009. The broadcaster paid € 123,000 for 130 episodes of the program. In a side letter accompanying the contract it was documented that the broadcaster received the same amount from the format owner for 'royalties'. The *TROS* in fact received this program for free which the CvdM considered a violation of the sponsor rules since for PSB sponsoring of children's programs is not allowed. In addition to this the CvdM also established that from May 2008 a commercial chain of supermarkets promoted a range of merchandising products belonging to this program. The format owner granted the license for this to the commercial chain and produced the program with only a part of this fee. The CvdM is of the opinion that by broadcasting so many episodes the broadcaster drew much attention to the merchandising products and enabled the format owner to gain more than normal profits. The court confirmed the CvdM's opinion regarding being servant to commercial profits. Regarding the interpretation of the sponsor rules the court disagreed with the CvdM and was not convinced the indirect financing of the program should be qualified as sponsoring. The CvdM will launch higher appeal against this part of the court's verdict.

The third and last case was dealing with another program of the same broadcaster *TROS*. In the program *All fans on deck* the *TROS* showing concerts of Dutch artists performing on a cruise ship. Viewers could book the trip in order to attend the concerts. The journey was organized by the travelling agency *Van der Valk holidays*. This company had to a large extent control over the program. The travel agency contacted the artists who did not charge a fee for their performances because the exposure they would obtain from the program. Also, not the broadcaster but the travel agency was in the position to cancel the whole program in case there was not enough interest from the audience to join the journey. The court supported the view of the CvdM that by this program format and construction the broadcaster was servant to the profits of the commercial travelling agency, also because the broadcaster gave a lot of exposure for the cruise trip through its radio and TV guide and website.

Country Report October 2010-May 2011

Commissariaat voor de Media, the Netherlands

'Temporary Act Media Concentration' repealed

From January 2011 onwards the Commissariaat is no longer in charge of media concentration.

The 'Temporary Act Media Concentration' came into force in 2007 (this Act existed alongside the Media Act and the general Competition Act), a new cross-media ownership limitation was introduced with a specific threshold for the daily newspaper market. First, the Act prohibited mergers that would lead to a market share of over 90 percent of at least two of the following markets collectively: daily

newspaper, television and radio markets (where the three markets together count for 300 percent). Secondly, the Act prohibited mergers that would lead to a market share greater than 35 percent of the daily newspaper market.

Given the ongoing increase of media concentration and the government's concern for the distribution of power in public opinion formation, the Temporary Act was extended in December 2009 to January 2012. However, the Act was recently repealed. From January 2011, specific legislation on media concentration no longer exists in the Netherlands. Publishers had called for relaxation of the ownership rules. The 35 percent threshold was argued to impede their cross-media development and it was supposed that daily newspaper titles would disappear if the thresholds remained in existence. Moreover, the ongoing increase of alternative news sources was argued to provide sufficient counterweight against the larger media companies. As for the prevention of dominant positions of suppliers, general competition law also applies to the media markets.

Of course the Commissariaat still is monitoring the media markets and media concentration. The last publication is a report on the Dutch media published in English (see <http://www.mediamonitor.nl/dsresource?objectid=11689&type=org>).

Restructuring CvdM

The CvdM has reformed its internal structure and method of working procedures. The main element is a principal separation between law enforcement and supervision. The internal structure has been changed. The enforcement tasks of the former Cable and Broadcasting department will be executed by the Legal Affairs department. The licensing and supervision tasks of the Cable and Broadcasting department together with the tasks of the Monitoring department will be executed by the new department Registration, Licensing en Supervision. A new Business Director is the link between the Commissioners and the civil servants. Business director and the heads of the departments Legal Affairs, Registration, Licensing and Supervision, Financial Supervision and the Policy department form the newly established Management Team.

Dutch Media Act for Bonaire, Sint Eustatius and Saba

From 10 October 2010 the Netherlands Antilles islands Bonaire, Saba en St Eustatius are defined as Dutch communities. As a consequence of this the audiovisual media services fall within the jurisdiction of the Dutch authorities. The media landscape and the social, cultural, geographic and economic situation on the three islands however are not comparable at all with the Dutch situation. For example: there are only 9 (small) private radio- and television broadcasters. Taken into account the differences, the Dutch parliament adopted the so called Media Act BES (**B**onaire, **S**int **E**ustatius and **S**aba). According to this act the CvdM is responsible for licensing, supervision and enforcement on the islands. Because of the differences already mentioned the CvdM wishes to have a (part time) employee in place. In preparation of the implementation of its tasks the CvdM recently visited the islands. We expect to start our activities around the summer.

Investigation of system of program listings in the Netherlands

On request of the Minister of Education, Culture and Science the CvdM investigated the situation with regard to program listings of PSB in the Netherlands. Already long time ago many parties, especially newspaper publishers, tried to acquire these data in order to be able to publish weekly program guides, separately or as a supplement to a newspaper. In the Netherlands only the PSB and one private broadcaster (which was in the past also PSB) are publishing TV and radio guides. Now newspapers can only publish daily restricted program overviews. Program listings are to a certain extent copyright protected in the Netherlands and Dutch courts (both administrative and civil courts) pointed out that newspapers and others cannot publish program overviews over a longer period without permission of the right holders (ie PSB). Already since 1998 the Media Act states that all PSB should accept publication of program guides by others after an agreement has been reached between the NPO (which represents the interests of all national PSB) and third parties. But such an agreement has never been concluded because they cannot agree on the price to be paid for these data. According to publishers the price requested is too high to make a sustainable business model possible. PSB is very reluctant to sell the listings because they are afraid to lose market share, subscribers and hence revenues.

At the beginning of the year the minister has asked the CvdM to investigate the situation and assess whether it is possible to set a reasonable price to be paid. Also the CvdM should advice about other measures which can facilitate the deliverance of programme listings. These measures should reflect a balance between the interests of PSB and the interests of commercial parties. The CvdM also asked an external bureau, specialized in determination of value of goods, to asses the value of the program listings. The CvdM concluded in its advice to the minister that compared to the markets in surrounding countries like UK, Germany and Belgium, the markets in the Netherlands is not well developed. The monopoly of PSB broadcasters does not encourage the development of on line program guides and EPG's. Also the market for companies interested in the collection and enrichment of program listings (meta database services) is less developed than in other countries where several companies are offering these services meanwhile in the Netherlands this is claimed by a solely institution working on behalf of PSB and private broadcasters.

The CvdM advised a reasonable price for the program listings which will be declined each year over a total period of five years. After five years the program listings of PSB should be available for a low price, mainly based on costs involved. This goes for the use of program listing for print TV and radio guides. For the use of program listings for EPG's and online TV guides the price should be a low fixed amount per year over a period of five years. The rationale is that the revenues of EPG's and web based TV guides are still low and market parties could not afford paying a high price. The transition period of five years enables all market parties to adapt to the new situation.

CvdM adopted new policy guidelines regarding advertising PSB

The CvdM elaborated its policy with respect to advertising rules for PSB. Especially interesting are the regulations for advertising on internet. PSB in the Netherlands is entitled to carry advertising in it programs on TV and radio and also on new platforms but is subject to more detailed and stricter rules in comparison with the private media. Section 2.98 of the Media Act 2008 states that the rules regarding advertising on TV and radio are applicable as well as much as possible to the other media offerings of PSB, ie internet websites and video on demand services. Especially the rules regarding the advertising amount and maxima are hard to apply to an internet page containing advertising by means of banners and buttons. The CvdM stated in general in its guidelines that advertising of PSB should be restricted in duration and amount and should not be dominating.

This general principle has been elaborated into more detailed requirements. On internet pages of PSB advertising (like banners) may never exceed 10% of the space of a browser page. Also there should be a clear (written) reference to inform the audience of the commercial nature of the banner. It should also be clearly separated from the editorial content for instance by a clear frame. Written advertorials – advertising disguised like an editorial article – are not allowed. The same goes for advertising techniques like 'pop ups', 'pop unders' or 'hover ads' which infringe a clear separation between editorial and commercial content. As far as VOD services (usually catch up TV services) are concerned; it is allowed to show pre-roll advertisements. These are video commercials shown usually before the program (item) starts. The CvdM policy guidelines prescribe a maximum duration of 15 seconds which is also in line with the current situation in practice.

Merger supervisory authorities announced by Minister of Economic Affairs

The Minister of Economic Affairs has announced the plan to combine competition regulator NMa, telecommunications regulator OPTA and the Consumer Authority into one joined supervisory entity. The proposal of the Minister does not foresee a merger with the CvdM. Until now the CvdM took the position it can better fulfil its tasks and competences when being an autonomous RA. Some Members of Parliament oppose to the idea of the Minister. They fear hat a merger could result in less oversight, as the sector specific and smaller OPTA will get lost within the much larger NMa. They are in favour of installing a sector specific authority comprising the CvdM, OPTA, a part of the spectrum regulator Radio Communications Agency and the Copyrights Agency, taking into account the convergence of telecommunications and media in the area of networks, services and content.

Policy guidelines on VOD services consulted

At the moment the CvdM is in the process of fine-tuning the policy guidelines that will describe more into detail the definition of an AVMS on demand and the scope of regulation. Several parties

representing a wide range of service providers, both traditional broadcasters and new media service providers have reacted to the draft guidelines and have expressed their points of view. Now we have to decide whether there is a need for further amendments of the policy guidelines. After that the policy guidelines will be formally approved by our Board and enter into force.

In general the proposals of the CvdM have been received in a positive manner. Traditional broadcasters appreciate the clear intention of the CvdM to treat all services independent from the person or company which is offering them. Especially private broadcasters fear their VOD services will be regulated meanwhile comparable services provided by other commercial parties will be left out of consideration. A few issues touched during the consultation require extra attention and/or still need to be solved:

- VOD services on internet offered by local, often non-commercial, institutions like schools, libraries, churches, non-professional sports clubs and associations: on internet, so mass medium?
- VOD services which are marketing tool of commercial companies like banks, insurance companies: how can you uphold editorial independence?

Country Report May 2010-October 2010

Commissariaat voor de Media, the Netherlands

Policy guideline for product placement

The Commissariaat voor de Media (CvdM) is close to finalising a proposal for a new policy guideline for sponsoring and product placement. According to the Dutch Media Act (which followed the Directive's approach) product placement is prohibited but allowed only under specific conditions. For PSB's there is an absolute ban on product placement. The policy guideline will set further rules on sponsoring and product placement because as far as mentioning and displaying products and services is concerned, the approach will not differ a lot. Also in case of product placement there should be no hidden advertising. According to the proposal the broadcaster has to inform the public concerning product placement by a billboard at the beginning and at the end of a programme as well as at its continuation following an advertising break, or on radio by a similar adequate identification. The only acceptable text for the announcement of product placement is: 'this program contains product placement'. Names, trademarks or any other signal on a billboard is not allowed. The provision of goods or services free of charge for the inclusion in a programme will not be regarded as product placement (or sponsoring) unless they have a significant value (for TV € 1000 and for radio € 200) and are recognizable for the viewers. Furthermore the categories of programs which can carry PP or can be sponsored are to be interpreted rather widely, the CvdM considers to not make a distinction between light and other entertainment. This is nearly impossible in practice. Also the European legislator seemed not be in favour of a narrow interpretation. For news, current affairs and political information there is of course a prohibition on sponsoring and product placement. The problem in practice is that programs are usually a mix of different genres. How to deal for instance with the phenomenon of infotainment programs? An option is to not qualify as news programs: programs that address exclusively or mainly culture, sports and entertainment news. In that case these programs therefore would be allowed to be sponsored and/or carry PP. After the proposal has been discussed in our board a consultation (of mainly private broadcasters) will be organized. After that the new policy guidelines (addressing both sponsoring and product placement in one document) will be officially adopted.

Dutch Muslim broadcaster loses broadcasting license

As mentioned in our previous country report the Commissariaat voor de Media (CvdM) allocates once in five years national broadcasting time to organisations which represent the main religious and spiritual movements in our society (article 2.42 Media Act). These religious and spiritual broadcasters are part of the national public broadcasting system and they have the legal duty to provide a religious or spiritual programme. The CvdM allocates broadcasting time to only one representative organisation of each main religion or spiritual movement in the Netherlands. After granting broadcasting time to SMON, Foundation of Co operating Muslim Organisations Netherlands, two parties participating in this

foundation had a conflict. As a result of this conflict one important group, representing many young Muslims in our country, ended its participation in the broadcaster. Therefore the broadcaster did not longer represent in a sufficient manner the Muslim community in our country. Reason enough for the CvdM to withdraw the license. Now other organizations have a new opportunity to apply for a license to provide a program aimed at Muslims in our country. The CvdM will have to hear again all candidates and evaluate all applications before granting a new license.

New players started broadcasting on PSB channels

In the Netherlands many programs on the national TV and radio channels are provided by the so called 'broadcasting associations'. Despite their public service remit they are in fact private associations who have 100,000's of members paying a yearly contribution. The Dutch PSB system is open which means that new organisations can enter the PSB system every five years. On 1 September two new broadcasters have started their activities. One is *PowNed*, an initiative of the very popular website *GeenStijl*, a site which has a notorious reputation for its provocative approach of news and who is extremely popular amongst youngsters. According to PowNed the current Dutch PSB system lacks a representative of the active young network generation who is highly interested in political and other issues and is very active on the internet. The other one is *WNL*, an initiative connected to *De Telegraaf*, the most popular daily newspaper in the Netherlands. WNL is of the opinion that the current PSB broadcasters are too biased and left-wing in their news and current affairs. It appears that WNL still has too strong ties with the national newspaper *De Telegraaf*. For instance the editors and reporters working for the daily news program of WNL are employed by the newspaper. This jeopardises the independence of PSB and the clear separation between PSB and private media, both fundamental principles of the Dutch broadcasting system. The CvdM ordered WNL to put an end to this construction and will furthermore closely monitor the activities of WNL in near future to check whether the distinction between PSB and private media is respected.

Investigation web shops of PSB

Public broadcasting associations are allowed to perform activities which relate to their television or radio programmes. One of those activities is operating a web shop in which relevant products can be sold, for example CDs or DVDs of a television production. The Media Act of 2008 enforces broadcasting associations to ask the CvdM permission for operating a web shop. Once permission is given, a broadcasting association is free to sell products. To provide insight in the current activities of the public broadcasting associations, the CvdM has started a research to map out what products are being sold by the broadcasting associations. An identical research was carried out in 2008. The first round included approximately 1600 products (of 10 websites) and the second round 1900 products (of 18 websites). This year, the websites of regional broadcasting associations have been included in addition to public broadcasting websites at national level. The results of the study will follow later this year.

Cable providers cannot be obliged to open their networks for competitors

In March of this year the Dutch Independent Post and Telecommunications Authority (Onafhankelijke Post en Telecommunicatie Autoriteit-OPTA) published its Open Cable ruling. This ruling implied that the biggest Dutch cable operators (Ziggo, UPC, Delta and CAIWO) have to open their networks and enable third parties to resell the analogue cable products (TV subscription packages). The ratio of the ruling of OPTA was to foster competition on the Dutch cable networks, a motivation which was supported by the European Commission as well. The cable operators appealed the OPTA-decision and rather surprisingly the court, the Dutch Trade and Industry Appeals Tribunal (College van Beroep voor het bedrijfsleven – CBb) overturned the OPTA-decision. The CBb's verdict has far-reaching implications for the Open Cable ruling in the Netherlands. Main reason for overturning OPTA's decision was that OPTA's analysis of the markets for distribution of TV signals, the basis of its decision, was not correct. The Tribunal agreed with the cable operators' opinion that there is already enough competition between the various distribution platforms (cable, satellite, IPTV and DTT) in the Netherlands and that there was no need to force cable operators to open their networks for competitors. There are no further appeals possible following a ruling by the Tribunal. OPTA can only try to make a new decision which is in line with the motivation of the Tribunal's verdict.

Country Report October 2009 – May 2010

Commissariaat voor de Media (CvdM), the Netherlands

Advertising time: fines for public and commercial broadcasters

An important part of the supervision carried out by the CvdM is monitoring compliance to the maximum of twelve minutes advertising time per hour. The CvdM checks listings based on data collected by SKO/ TV Times which enables the CvdM to control advertising time 24/7 and easily observe overruns of the advertising limits per hour. Already in spring 2009 the broadcasters were informed about this new system and a report of the signalled violations was enclosed. Despite the early warning the national public service broadcasting organisation (NPO) and private broadcaster SBS violated the rules in 2009 several times. The CvdM observed that NPO (Nederland 1, 2 and 3) violated the rules 6 times in 3 weeks time (the advertising time varied between 13 minutes and 46 seconds and 18 minutes) and that SBS (channels SBS6 en Net5) violated 4 times in 3 weeks (advertising time between 14 min. 4 sec. and 17 min. 37 sec.). The CvdM announced to impose a fine of €122,500 on each individual broadcaster and after a hearing a final decision will be made in a few weeks time.

Awarding new broadcasting time to religious and spiritual broadcasters

Once in every five years the CvdM must allocate national broadcasting time to religious and other spiritual organisations (article 2.42 Media Act). These religious and spiritual broadcasters are part of the national public broadcasting system because their presence is deemed to be essential. They have the legal duty to use all their broadcasting time to provide a religious programme or a programme service addressing spiritual matters and the programmes must give expression to the philosophical insights of the groups they represent. The CvdM only allocates broadcasting time to one representative organisation of each main religion or spiritual movement in the Netherlands. So far seven religions/spiritual movements have been allocated broadcasting time, in alphabetical order: Buddhist, Hindu, Humanist, Muslim, Jewish, Roman Catholic and Protestant. The amount of allocated broadcasting time depends on the number of followers in the Netherlands.

At the end of 2009 the CvdM decided following the applications of several organisations for the next period starting from September 2010. The CvdM allocated broadcasting time to BUN (Buddhist), OHM (Hindu), HUMAN (Humanist), SMON (Muslim), Joodse Omroep (Jewish), RKK (Roman Catholic) and VKZ (Protestant). The Commissariaat refused the requests of two other organisations which applied for Muslim broadcasting time; they were considered to be not representative enough. Also the application of an organisation that wanted to provide broadcasting time for the Afro-Caribbean movement (mainly representing an Afro-Surinamese traditional religion) was rejected because it was not considered to be a main religious/spiritual movement in Dutch society. The application of the so called Smokers Church, an association of people who oppose to the antismoking laws in our country, was refused because it was not considered to even represent a religious/spiritual group. The procedures for awarding religious/spiritual broadcasting time are very time consuming and lead to many internal appeal and administrative court procedures. Therefore a more simple and centralized system might be considered for the future.

End of Dutch programme councils?

Since 1997 the Dutch Media Act states that the local municipality council must install a so called 'programme council' which has the legal task to advise the cable operator which 15 television programmes and 25 radio programmes should be included in the (analogue) basis subscription package which the cable operator must transmit to the public. This system has been introduced to ensure influence of the cable subscribers on the programs they can receive and plurality of the composition of the cable subscription package. When a cable operator doesn't follow the advice of the programme council the Commissariaat can be asked to check if the reasons of the cable operator are important enough to ignore the advice. The time has come to think about a new system which fits also into the digital era and finds a balance between the interests of consumer and digital cable operators. Many stakeholders regard the current system out of date and too bureaucratic. Also the effect in practice is relatively small since the advice must take into account the must-carry channels which does not leave many channels to advise about. Furthermore, the number of autonomous cable operators is declining and their networks become more and more superregional networks, hence it seems no

longer be relevant to provide consumer influence on a municipal level. Also in the recent past the European Commission expressed critical comments on the Dutch system. According to the Commission the discretion margin of the programme councils was too large and provided too little transparency and legal certainty for the parties involved. There is a risk that expansion of the advisory role of the programme councils to the digital domain will raise new objections by the Commission. According to the wish expressed by Parliament a new model will be introduced providing more safeguards and expanding consumers' influence to the digital platforms. This so called Guarantee Model has not been formalised but most likely it will be a combination of surveys investigating the preferences of the viewers, user panels representing the subscribers and an awareness campaign by the CvdM.

Internal CvdM working group preparing further implementation of AVMS Directive

The AVMS Directive was incorporated in the Dutch Media Act on 19 December 2009 and by that Dutch legislator finalized the implementation within the given term of 2 years. In summer 2009 already a working group at the CvdM started with internal preparations to give further consequences to the implementation of the AVMS Directive. In the beginning of 2010 an electronic form has been introduced on the CvdM website, providing service providers the opportunity to register their on demand audiovisual media services with the CvdM. For linear audiovisual media services there is the obligation to apply for a license. The ministry is responsible for setting up the regulation for calculating the costs of supervision (license fee). For on demand services the CvdM has proposed to impose only a small flat fee but the ministry did not yet amend the existing regulation. Until the new regulation has been adopted by the ministry no fee will be imposed for providing an on demand audiovisual media service. Also the CvdM has worked on further elaboration of the definition of AVMS. The CvdM has tried to clarify more into detail the AVMS definition elements 'principal purpose', 'programs' and 'editorial responsibility'. Its interpretations will be discussed with industry and experts in a consultation meeting. In addition to the implementation act the issues of product placement and protection of minors will be addressed in policy guidelines of the CvdM. The draft-policy guidelines will be discussed with stakeholders as well. In its regular communication to audience and industry the CvdM has already addressed the implementation to raise the awareness of the legal and practical implications of the implementation act. From 1 July service providers which are deemed to offer an (on demand) audiovisual media service but did not notify their service yet will be directly approached by the CvdM.

Country Report May 2009 – October 2009

Commissariaat voor de Media (CvdM), the Netherlands

Fine for PSB television station for children's program

The CvdM has the intention to impose a fine of € 270,000 on the public service broadcaster TROS because of sponsoring of a children's program and by broadcasting this program being too servant to the format owner. The children's program has been broadcasted twice a day from February 2008 till March 2009. There was no commercial advertising in or around the program. The broadcaster paid € 123,000 for 130 episodes of the program. In a side letter accompanying the contract it was documented that the broadcaster received the same amount from the format owner for 'royalties'. The TROS in fact received this program for free which is a violation of the sponsor rules since for PSB sponsoring of children's programs is not allowed. In addition to this the CvdM also established that from May 2008 a commercial chain of supermarkets promoted a range of merchandising products belonging to this program. The format owner granted the license for this to the commercial chain and produced the program with only a part of this fee. The CvdM is of the opinion that by broadcasting 130 episodes of the children's program twice a day during several years the TROS draw attention to the concept of the children's programs and by that also to the merchandising products. Also the TROS enabled the format owner to gain more than normal profits by broadcasting the program on a public channel. The fine of € 270,000 is provisional and the broadcaster has given its opinion during a hearing. The CvdM will give a final decision within a few weeks.

Road show local public service broadcasters

In the Netherlands there are over 350 local public service broadcasters. In April and May 2009 the CvdM organized a road show, a series of meetings in different locations all over the country. The main

goal of this meetings was to inform the local PSB's about the new media act, rules regarding financial accountability, advertising and sponsoring, the program policy and the provision to broadcast at least 50% information, culture and education of a local character and the programme policy body. Side effects were that the CvdM could present itself as an open and approachable regulator. A mix of presentations and workshops kept the evenings interesting for all attendants. In total almost 50% off all local PSB's attended the meetings. The attendants qualified the meetings as practical and useful. The CvdM will organise new meetings in the upcoming years.

Preparation for a new logging system

The CvdM has started preparations for installing a new logging system. The old logging system is 5 years old now, and over this period we have witnessed an increase in the number of broadcasters, but also there are a lot of new developments and initiatives in the sphere of new media. The first step in the process is to describe the monitoring functions the new logging system has to support. Therefore we started with a description of the existing and the foreseen working processes the next 5 years, this based on new developments and initiatives, the AVMS directive and specialists' expectations and predictions. Also we will look at new technical facilities (e.g. media mining which can recognize automatically commercial messages) which can support us in speeding up our monitoring process. The second step is to describe the scope of the supervision of the CvdM: to what extent the CvdM will and is able to monitor media service providers regarding the scope of regulation. Once clear this is the basis for describing the functional specifications of the new logging system, which will lead to a request for proposal for the hardware part. The planning is to complete the request for proposal by January 2010. The new logging system must be operational by July 2010.

CvdM criticizes functioning NICAM in 2008

As mentioned more often in our country reports the CvdM performs each year an evaluation of the NICAM (Netherlands Institute for the Classification of Audiovisual Media). Based on its meta supervision task, the CvdM investigates how NICAM checks the classifications by the broadcasters and other members of NICAM and whether the classifications can be considered to be valid, consistent and reliable. The NICAM is based on co-regulation: the industry itself is responsible for the classification of audiovisual media products according to the rules of Kijkwijzer, which consists of content and age descriptors. In its last evaluation in July 2009 the CvdM made several rather critical comments about the functioning of the NICAM in 2008. Ad random checks by NICAM pointed out that the classification of TV programs by broadcasters was correct in only 80% of the programs investigated. This is much lower than in the previous years when the percentages were 92% and 95%. Also the cinema movies were classified less correct in 2008: 73% meanwhile in 2007 the score was 93%. In 2008 there were several complaints from parties abroad about adult TV programs who fell under Dutch jurisdiction and hence under the NICAM system. According to its internal regulations NICAM could not deal with these complaints since they were submitted anonym. The CvdM suggested NICAM to adapt its internal regulations in order to be able to address these complaints. NICAM should also consider more sanction measures in addition to the severe measure of withdrawal of membership of NICAM, which in practice will be hardly applied. Furthermore the CvdM also recommended to establish in future a policy regarding the possible impairing nature of texts like erotic advertisements in teletext services. Now the system is entirely focused on audiovisual material.

CvdM advises about applications PSB associations

The Dutch national PSB system is unique by its composition of different organizations. Many programs on the national radio and TV channels are provided by the so called 'broadcasting associations'. Although they have a PSB remit they are in fact private associations who have 100,000's of members paying a yearly contribution. In June 2009 they applied again to obtain the right to broadcast the next 5 years; a so called 'recognition'. The CvdM is one of the 3 parties - the others are the Council of Culture and the Board of Governors of Dutch PSB - who advise the Minister of Education, Culture and Science about the applications. The minister decides in the end but in practice the advises are more or less followed by the minister. Besides the 10 existing broadcasting associations, this time also 2 new parties applied for broadcasting time. One is *PowNed*, an initiative of the very popular website *GeenStijl*, a site which has a notorious reputation for its provocative approach of news and who is extremely popular amongst youngsters. According to *PowNed* the current Dutch PSB system lacks a representative of the active young network generation who is highly interested in political and other

issues and is very active on the internet. The other one is *WNL*, an initiative of De Telegraaf, the biggest daily newspaper in the Netherlands. WNL is of the opinion that the current PSB broadcasters have a too left-wing approach in news and current affairs. According to WNL it can contribute a necessary more conservative element to the current PSB system. The CvdM had a positive advise about PowNed since it can provide added value to the PSB system. With regard to WNL the CvdM has more reservations due to the too strong ties with the commercial newspaper De Telegraaf. As long as these ties have not been cut the CvdM cannot give a positive advise to the minister. About the most already existing broadcasters the CvdM gave positive advises except for LLink (a broadcaster focused on environmental issues and nature), mainly because its financial management failed and because its programming did not provide enough added value to the PSB system. About the broadcaster TROS the CvdM could not give a positive advice since the broadcaster could not demonstrate in a sufficient matter to the CvdM that it will respect the media regulations.

Top salaries in PSB

The issue of top salaries of anchormen, governors and other employees in PSB is often debated in the Netherlands. The Law on Publication of Top Salaries financed from Public Means (WOPT) obliges public financed organizations to publish all top salaries, which means all salaries above € 181, 000 (amount set for 2008). This amount is comparable with the salary of the prime minister in the Netherlands and therefore often referred to as the *Balkenende-norm*. The government want to restrict the top salaries in public sector as much as possible to the level of the Balkenende-norm. The CvdM investigated the annual reports of the national PSB organizations and concluded that the total number of salaries above € 181,000 in PSB has decreased from 54 in 2007 to 47 in 2008. The total number of governors with a top salary has increased in 2008 with 1 to 18, meanwhile the number of program makers and presenters has decreased from 37 in 2007 to 29 in 2008. Broadcasters can circumvent the rules of WOPT by hiring program makers who produce the programs through own companies instead of being employed by the public service. In that case the salaries of the program makers are not governed by the WOPT.

Country Report November 2008 – April 2009

Commissariaat voor de Media (CvdM), the Netherlands

New definitions and relaxation rules for private broadcasters in new Media Act

The new Media Act which came into force on 1 January 2009 includes important amendments for both PSB and private broadcasters. Many long existing legal definitions have been revoked or adapted in a substantial way. One of the major changes for PSB is the abolishment of the principal distinction between on one hand TV and radio programmes and on the other hand audiovisual content offered via platforms like digital theme channels and websites. From 1 January all these activities are deemed to be belonging to the main task of PSB which is offering audiovisual content regardless the platform used. Another important change for PSB is the abolishment of legal program content obligations. Before, PSB had to broadcast certain minimum percentages of information, education and culture. Also a maximum percentage (25%) for amusement was laid down in the Media Act. These legal percentages are replaced by more concrete goals regarding program categories, audience reach and special target groups which have been laid down in a performance agreement concluded between PSB and the Minister of Education, Culture and Science. The CvdM will report yearly to the Minister about the performance by PSB. Once in 5 years the PSB will have to submit a new plan for its program policy regarding TV, radio, digital theme channels and services via internet based platforms. The CvdM will send its opinion on these PSB plans to the Minister.

Many definitions in the Media Act have been adapted. The Media Act does not speak anymore of 'broadcaster' but of 'media service provider'. Also the long existing distinction between a program for general purposes and a program for particular purposes (subscription program) has been abolished. Elementary for a program for particular purposes was that the consumer had concluded a direct agreement with the program provider, but this did not reflect anymore the situation in practice.

Especially for private broadcasters many rules regarding advertising and sponsorship have been liberalised. This is done with the aim to create a level playing field between Dutch broadcasters and broadcasters operating from abroad (like Luxembourg) but targeting the same Dutch audience. In line

with the AVMS Directive the requirement of minimum 20 minutes break between two advertising blocks has been repealed. Films can now be interrupted more often by advertising since the duration of advertising is calculated into the duration of the movie (according so called gross-principle). Split-screen advertising will be allowed under certain conditions; the CvdM carried out a consultation of broadcasters and will come up with new policy guidelines. In sponsor references/credits slogans will be allowed as long as they are not too promotional for sponsor products, i.e. by direct encouragement or special recommendations of products. A stricter rule for both private broadcasting and PSB is the introduction of a ban on advertising for alcohol beverages between 6.00 a.m. and 9.00 p.m.

Public service broadcaster should end publishing TV guide

The CvdM has decided that the public service broadcaster AVRO must put an end to the publishing of the TV guide 'TV Film'. In 2005 the broadcaster received a permission of the CvdM to carry out this secondary activity on the condition that within three years the activity would not longer be loss-making. Since the activity after this period still generates a loss for the broadcaster it will affect in a negative way the performance of the main task of the broadcaster which is providing TV and radio programs. The broadcaster has 6 months to run down all activities regarding the TV guide. The broadcaster has lodged an appeal against the decision of the CvdM.

Forbidden sponsorship of medical programs of PSB

A recent examination by the CvdM demonstrated that medical programs of public service broadcasters are sensitive to violations of sponsor rules. For PSB sponsoring of programs is not allowed as a general principle with the exception of a few categories (registration of sports, charity shows, cultural and educational programs). The investigation of the CvdM pointed out that some of the medical programs of PSB received contributions of private enterprises which is not allowed. Other programs received contributions from non-private institutions like charity organizations. Some of these charity organizations received money from pharmaceutical companies with the direct purpose to invest this money in the programs of PSB. In many cases almost all program production costs were covered by external parties.

According to the CvdM this practice endangers the editorial independence of PSB and invited the broadcasters to discuss this issue.

Rules merchandizing PSB liberalized

When public service broadcasters in the Netherlands wanted to (let) develop merchandizing products they needed to demonstrate a sufficient relationship of the product with a specific program or the broadcaster itself. As a consequence of this the CvdM had to investigate per individual product whether this was the case. Also there was a difference between own produced programs (whose merchandizing products were subject to the strict conditions) and programs purchased by broadcaster (whose merchandizing products were already developed by third parties without being subject to these conditions). In order to terminate this discrepancy between own programs and programs purchased and also to avoid time consuming controls, the CvdM has decide to liberalize its policy. Under the new regime it will be possible for public service broadcasters to grant license (permissions) to third parties for developing products belonging to specific programs. The only requirements are that all costs of the activity should be covered and fair competition should not be disturbed.

CvdM publishes new report on media concentration

The CvdM has published its 7th report 'Media concentration at sight'. As usual the report describes trends and developments in the Dutch media sector. According to the report the format requirements for commercial terrestrial radio frequencies had a negative effect on the diversity of the new offer. The report calls for a more flexible system, which allows formats to be adapted if necessary. The report concentrates on shares in media ownership and control but the CvdM experiences in that respect increasing difficulties to obtain reliable data from public sources. According to the CvdM a legal obligation for market parties to submit this information if necessary should be considered. In a special chapter the growing importance and impact of search engines on the internet has been addressed. Since search machines receive all income from advertisers or affiliated commercial parties (and not the consumers) commercial purposes prevail. Although the market for search engines is highly

concentrated and dominated by one specific provider (Google), it is remarkable to notice there is not yet any policy or legal framework regarding search engines established.

Country Report May 2008 – October 2008

Commissariaat voor de Media (CvdM), the Netherlands

Ministries have to end program contributions

Ministries have a long tradition of contributing to programs of both PSB and private broadcasters with the aim to communicate messages of public interest to the audience. This practice has to stop by a decision of government on 1 August 2008. For contributions to programs by ministries some conditions have been laid down but a content analysis by the CvdM pointed out that the ministries not always have acted accordingly. The important principle that the contribution may not exceed 50% of the program costs is usually respected. But in contradiction to other requirements ministries often failed to inform that they have financed a program and about the purpose of the contribution. The investigation by the CvdM demonstrated that 13% of all ministries involved did not mention their contribution at all, meanwhile almost 60% failed to motivate the contribution. Also in 5 programs a minister was acting, which is not allowed in case the ministry has given a contribution to this program. Due to this lack of transparency and failure to respect the rules the government has decided to put an end to this practice. The investigation by the CvdM showed that in 2006 and 2007 ministries spent € 8.5 million on programs.

Definition of audiovisual media service

The CvdM is preparing already for some time the implementation of the Audiovisual Media Service Directive (AVMSD). Together with the ministry a joint project group has been installed and the CvdM delivered important input to the Ministry for the new bill of the Dutch Media Act. On one hand the bill and especially its explanatory note provide more guidance in addition to the AVMSD criteria. On the other hand the implementation bill leaves the CvdM as a supervisor enough space to find operational criteria to define 'audiovisual media service' and by that way determine the scope of regulation. The CvdM has experienced most difficulties with the interpretation of the term 'program' and the criterion 'principal purpose is provision of programs'. But meanwhile we have made progress and found an approach that seems to work out in practice and enables us to impose clear limits to the scope and by that to the number of services to be supervised. During the meeting in Dublin the CvdM will inform the EPRA-colleagues more into detail about the experiences so far and the ongoing process.

Meta supervision NICAM

The CvdM yearly informs the minister about the outcomes of the 'meta supervision' of the NICAM (Netherlands Institute for the Classification of Audiovisual Media). In this evaluation the CvdM focuses on how NICAM checks the classifications by the broadcasters and other members of NICAM and whether the classifications can be considered to be valid, consistent and reliable. The NICAM is based on co-regulation: the industry itself is responsible for the classification of audiovisual media products according to the rules of Kijkwijzer, which consists of content and age descriptors. Just like the years before the CvdM has informed the minister that NICAM and Kijkwijzer function well and prove to be an adequate instrument to protect minors from harmful audiovisual content. The CvdM however stressed this year that the portrayal of erotic advertisements in teletext services on TV needs more attention. Until now these advertisements have not been addressed by the classification system but the CvdM has recommended NICAM to include it in Kijkwijzer, since more and more viewers complaint about this practice. Also in Germany and Belgium has been dealt with this issue. Furthermore the CvdM pointed forward that the NICAM system does not address the so called 'information channels' of cable network operators, with the consequence that these channels could carry possible harmful content (like erotic scenes) during daytime. The CvdM has advised the Minister to change the Media Act with that respect, making it possible that in future these channels will be covered by NICAM and Kijkwijzer.

Positive evaluation CvdM

Once in 4 years the Minister has to inform Parliament about the functioning of the CvdM. Main question to be addressed in the evaluation is whether the CvdM operates efficient and effective. The

last evaluation was comprised of 2 parts: a self evaluation by the CvdM and an evaluation by an independent bureau on request of the ministry. The outcome of the evaluation is positive and shows the CvdM executes its legal tasks in an adequate way. That a large majority of the CvdM decision challenged by broadcasters is upheld by the administrative courts is an indication of the good quality of the decisions. For the evaluation some broadcasters and other stakeholders have been interviewed about their opinion on the CvdM. Most interviewed parties were positive and only few criticized the long duration of some procedure with the CvdM and a too bureaucratic approach. Although the number of broadcasters has increased enormously during the last years the working staff of the CvdM has kept more or less the same size: \pm 50 fte's. According to the evaluation this proves the CvdM works in an effective way. One of the recommendations of the evaluation is that the CvdM should work in a more predictable and transparent way which can be achieved by more consultations with the sector and improved policy guidelines and communication.

Protocol cooperation CvdM and telecom authority

The CvdM and the Independent Post and Telecommunications Authority (OPTA) are in the final stage of establishing a joint protocol. The document explains how both authorities work together in issues and procedures that are addressed by CvdM and OPTA at the same time. It has been agreed that both regulators inform and consult each other in cases of common interest like conditional access issues and electronic program guides (epg's). This protocol should be the standard for cooperation in future and meets the requirement of the Telecommunications Act which states that cooperation between supervisors in issues of common interest should be based on formal agreements.

Rules for counting members PSB associations

The Dutch national PSB system is unique by its composition of different organizations. Many programs on the national radio and TV channels are provided by the so called 'broadcasting associations'. Although they have a PSB remit they are in fact private associations who have 100,000's of members paying a yearly contribution. At the latest in June 2009 they have to apply again to obtain the right to broadcast the next 5 years; a so called 'recognition'. They have to prove they have enough members: which is at least 150,000 for existing broadcasters and 50,000 for new applicants. Together with the data about the number of members they must submit their statutes and a policy plan to the CvdM. The CvdM will evaluate everything and send his comments to the Minister who formally decides about the applications. The CvdM has recently informed the broadcasters about the rules regarding counting, for instance which presents (discounts on the contribution) broadcasters may offer to attract new members.

Country Report October 2007 - May 2008

Commissariaat voor de Media (CvdM), Netherlands

Fines for PSB radio channels because of excessive promotion

The CvdM has the intention to impose a fine of € 80,000 on the public service radio channel *Radio 2*. According to the CvdM the channel has contributed to the production and promotion of a CD. The channel arranged a (classic) orchestra and studio to produce the album without charging record company EMI a normal market tariff for providing these services. During a month before the release of the album the PSB channel made a lot of promotion for the album and first single released from it. Because the PSB channel received a part of the commercial revenues, there is the assumption that the channel was driven by commercial goals when giving attention to the album in its programs. By this practice the channel enabled EMI to gain more than normal profits and it harmed the principle of non commerciality of PSB, according to the CvdM. The fine of € 80,000 is provisional and the broadcaster can give its opinion and try to prove its innocence in a hearing held at the CvdM.

Also *Radio 3FM*, the PSB pop music channel, risks a fine because of excessive promotion of a commercial product. During a week the radio channel paid a lot of attention to *The Simpsons Movie*. Tickets were given away as prizes to listeners and seven times a day a promo of 30 seconds was aired outside of the advertising blocks. Also each hour after the news and commercials a promo of 15 seconds for the movie was broadcasted. In four programs there was an editorial item devoted to the movie and on request of film distributor 20th Century Fox it was stressed very often when the movie

would be released in cinema. The CvdM is of the opinion that the attention for the movie and the arrangements with the film distributor went beyond what is deemed to be reasonable for PSB. By this practice the radio channel enabled 20th Century Fox to gain more than normal profits and it harmed the principle of non commerciality of PSB. The CvdM decided to impose a provisional fine and organized a hearing for the broadcaster to defend its behaviour

Regional public service broadcasters often infringe sponsor regulations

A survey of the CvdM points out that a lot of regional public service broadcasters violate the rules regarding sponsoring. In general sponsoring is prohibited for PSB. As an exception to this general principle, it is allowed to receive a (financial) contribution of a third party for cultural programs and programs covering sports or charity events. Also these events may be sponsored and the name of the sponsor may be mentioned by the broadcaster. Government institutions or public bodies are not considered as sponsor. As a result of this they can contribute to all kinds of programs, unless the contribution is done by a (private) enterprise of this institution/body. A lot of regional public service broadcasters received contributions from private enterprises of public institutions which was not allowed. Sometimes they tried to hide the contribution by splitting the contributions in a contribution of a public institution for the program and a contribution for the rest. But the CvdM looks upon the financing as a whole and does not allow sponsoring when a private enterprise is involved in financing. Also sometimes events have just been 'invented' to make sponsoring of a program possible. Sponsoring of programs about events is only allowed if they are 'real events' which means they also would have taken place and have attracted audience without being covered on TV.

Subtitling obligations into force

On 1 January 2008 the new subtitling obligations in the Media Decree came into force. National public service broadcasters (PSB) and national private broadcasters (reach of at least 75% of population) are obliged to subtitle a minimum percentage of the (originally in Dutch language) programmes. For each following year the percentage is set higher (grow path) and for PSB the percentages are set higher than for private. For national PSB the amount of subtitled programs should be 80% in 2008 and grow to 95% in 2011. National private broadcasters should subtitle in 2008 at least 15% and grow to a percentage of 50% in 2011. The new requirements regarding subtitling have also been elaborated in the newly amended Policy Guidelines Program Quota of the CvdM.

CvdM announces its policy for 2008: more signalling, advising and co-regulation

In March 2008 the CvdM described its supervision and maintenance policy for 2008 in its yearly letter to the minister. The CvdM foresees that its role to signal and advise will become more important in future, especially taking into account the growing amount of audiovisual content over the internet. It is likely that issues like independence of information, protection of cultural values and journalistic ethics will be raised more often in future. The CvdM stresses the importance of own responsibility of the media in these areas but suggests to monitor the functioning of systems of self regulation on aspects like validity and reliability. This is carried out now with regard to the protection of minors by the system of NICAM/Kijkwijzer and can be considered as a very successful way of co-regulation, which is also advocated by the European Commission. Furthermore, supervision and maintenance of (media) legislation do not necessarily have to lay at one and the same organization. For instance in the field of call TV and other forms of participation TV, the CvdM could carry out the monitoring and the public prosecutor could be responsible for sanctioning.

Dramatic decline national and international news content in newspapers last 20 years

In autumn last year the Monitor Media Concentration of the CvdM published the report 'Media concentration at sight 2006'. In this report there is a special focus on the position of newspapers in the last 20 years. The report demonstrates that the newspaper market has changed fundamentally during the last two decades and witnessed a dramatic reduction of the number of autonomous publishers and titles of newspapers. The CvdM decided to introduce the term 'core newspaper'. 'Core newspaper' implies a newspaper with unique national and international news content. Regional or local information can be added by means of editions or titles. The number of 'core newspapers' gives an indication of diversity of national and international news content in the Dutch newspaper press. During the last 20 years the number of 'core newspapers' has been decreased by 50%. Especially in the case of regional

newspapers there has been a dramatic decline since more and more regional newspapers share their national and international news content with newspapers of the same publisher. The diversity of regional and local news content however has remained more or less on the same level.

Country Report April 2007 - October 2007

Commissariaat voor de Media (CvdM), Netherlands

First advice of CvdM based on Temporary Act Media Concentration

The CvdM has given its first advice based on the Temporary Act Media Concentration to the Netherlands Competition Authority (NMa). The CvdM concluded that the acquisition of the *Sky Radio Limited* and *Sky Radio Nederland B.V. (Sky)* by the publisher *Telegraaf Media Groep (TMG)* did not exceed the maximum percentages of market shares stated in the act. TMG, publisher of the most popular newspaper in our country *De Telegraaf*, increased its share of 28% in Sky which exploits the popular private radio channel *SkyRadio* to 100%. The CvdM concluded that as a consequence of this acquisition the total share of TMG and Sky on the markets of radio and newspapers became 41.9% and therefore remained below the legal maximum of 90% for all markets. The companies are not active on the TV market. Following the advice of the CvdM the NMa permitted the acquisition. As described in the previous country report, there has been a relaxation of cross ownership rules in our country. Before, a publisher was only allowed to own a private broadcaster when his share on the daily newspaper market did not exceed 25%. The new act enables publishers to have a total share on the markets of newspapers, TV and radio together of maximum 90% (total market in this instance 300%). On the newspaper market the share (circulation) may not be bigger than 35%. Supervision is primarily performed by the NMa but it needs to consult the CvdM about the diversity aspects.

PSB fails to broadcast enough arts

The CvdM concluded national PSB did not broadcast sufficient programmes consisting of arts in 2006. Calculated over whole day (00-24) the percentage was only 9.5% instead of the legal minimum percentage of 12.5%. In comparison with 2005, PSB broadcast 300 hours of arts programmes less. The CvdM considers it a severe violation since it is a core task of PSB to provide enough arts programming and has the intention to impose a fine of 54,000 euro. In a hearing PSB has the opportunity to defend itself. The other programme requirements have been met however. Besides the minimum percentage of 12.5% for arts there are minimum percentages for cultural programmes (25%) informative or educational programmes (35%) and a maximum percentage for amusement (25% for each individual channel). Since in near future there will be an agreement between the ministry and national PSB regarding all targets of PSB, the legal programme requirements will likely be repealed.

Court puts CvdM in right in case about sub licenses to broadcast football

The CvdM has been put in the right by the court in a case about sub licenses to broadcast summaries of the national football competition. Two years ago these rights were acquired by the - at that time new - private broadcaster *Talpa*. According to the NOS, the coordinating broadcaster of national PSB, article 71t of the Dutch Media Act, the so called 'right of preference', gives the NOS the first right to broadcast events of major importance to society like the national football competition. The NOS held the opinion that in case a private broadcaster obtains the broadcasting rights, this broadcaster is obliged to grant sub licenses to the NOS. Therefore the NOS requested the CvdM to force Talpa to sell sub licenses for a reasonable price. The CvdM held the opinion that the main goal of article 71t Media Act is to safeguard these reports can be received by a large majority of the audience. Since the programmes of Talpa were transmitted through all cable networks and could be received by almost the whole population in our country, the CvdM did not see reasons to force Talpa to grant sub licenses. NOS lodged an appeal with the court; on 25 July 2007 the Amsterdam court dismissed the request of NOS and agreed with the CvdM that Talpa did not infringe the Media Act. Talpa (meanwhile called *Tien*) ceased broadcasting recently. Many Tien programmes and assets have been sold to broadcaster RTL Netherlands, which started the channel RTL8. Founder of Talpa, John de Mol, acquired a share of 26.3% in RTL Netherlands.

New policy regarding external parties working for local PSB's

The CvdM has established new policy guidelines for local PSB cooperating with commercial companies. Because of the lack of (qualified) employees, local public service broadcasters (PSB's) often use the services of commercial companies for activities like producing programmes or selling advertising time. If these companies also hire the services of other third parties, long 'chains' of

commercial parties emerge, in which it is hard for a PSB to stay in control and keep the editorial responsibility. The CvdM has observed several cases in which local PSB's lost their editorial independence and became too servant to the financial interests of third parties. The new policy guidelines of the CvdM stresses the importance of a clear contract in which is stated that the third party gains not more profits from the activities for a local PSB than is reasonable and market conform. Also a programme statute should guarantee the broadcaster keeps the editorial responsibility, regardless the involvement of external parties. Also the external producer should be fully aware of and follow the programme policy established by the programme deciding body (pbo) of the broadcaster.

Amendment of Sanction Regulation

On 1 May 2007 the CvdM has amended its Sanction Regulation. The new Regulation enables the CvdM to impose immediately a low fine of € 150 in case a broadcaster does not provide all necessary information. The CvdM can impose this fine without having to organise a hearing before. Also it will be possible to impose repeating fines in case the broadcaster keeps on infringing the obligation to provide information. The amendment of the sanctions will especially affect local public service broadcasters who often fail to submit all information in time. To facilitate for broadcasters to provide all necessary information, the CvdM introduced an electronic form on its site, which broadcasters can easily complete.

CvdM repeals Regulation Sports Programmes

On 1 March 2007 the CvdM has withdrawn its Regulation Sports Programmes. In this Regulation the CvdM has stated on which conditions advertising during sports events was allowed. It was an elaboration of article 30a of the Dutch Media Decree, which states that a television programme covering or showing an event may only contain avoidable advertising expressions. Article 30a only applies if the event takes place in the Netherlands or the report is produced by or for a national broadcaster and is primarily intended to be broadcast as a television programme. Advertising is only allowed if it is not dominating. The Regulation stated for instance that boardings along the pitch may only contain the names or logos of sponsors and advertisers and no slogans. Also the Regulation contained specific conditions for the size and dominance of the advertising in the stadium and rules for virtual advertising. The CvdM decided to repeal the Regulation because of a recent liberalisation of the advertising regime for private broadcasters. Also private broadcasters contested the legitimacy following a judgement of the Council of State in 2005. Despite the recent developments, the CvdM considered the Regulation successful for many years because it provided broadcasters legal security about what advertising was allowed in the stadiums. Also it strengthened their negotiation position towards the organisers of sports events and owners of sports accommodations whose intention is often to show as much as advertising as possible.

Country Report October 2006 - April 2007

Commissariaat voor de Media (CvdM), Netherlands

Temporary Act on Mediaconcentration

The Temporary Act on Mediaconcentration has been adopted by the Parliament in April. Main principle of this act is the relaxation of cross ownership rules. Now a publisher may only own a private broadcaster as long as his share on the daily newspaper market is not 25% or more. The new act enables publishers to have a total share on the three markets of newspapers, TV and radio of maximum 90% (total market in this instance 300%). On the newspaper market the share (circulation) may not exceed 35%. For the individual radio and TV markets no maximum percentage has been set since plurality is supposed to be safeguarded by the presence of PSB. The new act applies to increasing share by mergers et cetera and not to autonomous growth. So a share exceeding 90% on all three markets or 35% on the newspaper market as a consequence of increased popularity amongst the audience is permitted. Supervision is primarily performed by the Dutch Competition Authority (NMa) based on general competition legislation, but in case of a merger the NMa will have to consult the CvdM about all aspects of plurality and diversity. The act has a temporary nature because the outcome of the revision of the European Directive and its scope with regard to new services and the effects of new developments in media are still unclear.

More liberal regime for private broadcasters

The CvdM will adopt new policy guidelines which give publishers and other media companies more possibilities to launch or take a share in a private broadcaster. Private channels will be allowed to

carry the name of a newspaper, magazine or website. Background of this amendment of policy is to enlarge the possibilities for publishers, broadcasters and other media companies to co operate and offer content through different media outlets. For an individual programme it will be allowed to carry a commercial name or brand in its title as long as general sponsor and advertising rules are met; so here no restriction to solely publishers or other media companies applies. Main reason for this liberalisation is to create a more level playing field for channels falling under Dutch jurisdiction and channels operating from abroad but aiming directly at the Dutch audience.

Call TV under investigation

The bureau of the Public Prosecutor in the Netherlands is investigating call TV programmes broadcast by private broadcasters. According to the Act on Games of Chance only persons and organizations who have a licence are allowed to offering games of chances or betting games. Only under certain conditions, laid down in the Code of Conduct Promotional Games of Chances, which came into force on 1 January 2006, broadcasters do not need such a license. Main principle of this code of conduct is that a game of chances is only allowed if it promotes a product, service or organization and may not be offered as an autonomous service. For each product, service or organization only once a year a promotional game of chances, existing of max 13 drawings, is permitted. The costs for communication may not exceed € 0.60 for each transaction and the audience has to be informed in advance. The broadcaster should be reluctant in offering the game to minors or encouraging them to participate. The Public Prosecutor investigates whether call TV programmes meet all provisions of the code. There have been a lot of complaints of the public and some programmes even have been blamed for being fraud because they call upon audience to call or send sms meanwhile the price had already been given away. It is primarily a matter of maintenance of criminal law, but we have offered our assistance, for instance by proposing improvements of the code.

CvdM establishes new policy guide lines on secondary activities and tasks

The CvdM prepares an amendment of the policy guidelines regarding secondary activities of PSB. An important element of the new guidelines will be a clarification and relaxation of the legal requirement there is a relation between the activity and the programme. All secondary activities which increase the involvement of the audience in the programme will now be allowed. The same goes for activities which stimulate innovation of a programme. Secondary tasks are a different category of activities, namely other means to offer programme content to the audience like digital theme channels or internet activities. The CvdM has stated in draft guidelines they should meet the same legal conditions as the main task of broadcasting programs because just like the main task their function is to fulfil the legal PSB remit. This means they should be non commercial, contribute to plurality, reflect society as much as possible and reach the general audience and-or specific target groups. If this is the case they are considered to fulfil the democratic, social and cultural needs of society, as required by the EC Communication on State Aid.

Country Report April 2006 - October 2006

Commissariaat voor de Media (CvdM), Netherlands

Not allowed to order commercial services on websites public service broadcasters

The CvdM has requested two national public service broadcasters to stop immediately with offering on their websites the possibility to the audience to conclude transactions with providers of commercial services. On the websites belonging to the consumer service programmes of two broadcasters, insurances were compared on line through 'a search and compare programme' provided by an external party. After the comparison it was possible to select one of the insurance companies and make a deal. Although technically spoken the transaction took place in the domain of a third party, for the audience it was if the public service broadcaster provided the possibility to conclude a transaction with the insurance company. Article 55 of the Media Act states that public service broadcasters should not be servant to third commercial parties to benefit more than normal economic profits. According to the CvdM the behaviour of the two broadcasters could not be considered as normal economic activities of PSB and could result in more than normal economic profits for the insurance parties and should therefore be prohibited. The CvdM shortly investigated websites of consumer service programmes in Germany and the UK and observed they did not offer the opportunities to contact directly a commercial party and conclude a transaction.

Meta supervision NICAM.

Since 2005 the CvdM has the task to perform so called 'meta supervision' of NICAM (Netherlands Institute for the Classification of Audiovisual Media) and more specific the quality of the classifications of programmes, films etcetera. Arrangements regarding this 'meta supervision' have been laid down in a covenant between both parties. On the basis of information given by NICAM the CvdM concluded that the classification system is reliable: 93% of all films and 83% of all television programs were correctly classified. To further improve the classification system, NICAM decided to give more additional training to the people responsible for the classifications and NICAM will improve the software. The CvdM established that 90% of all television programmes were broadcasted in accordance to their classification. This means that for example programmes intended for persons over the age of 12 were not broadcasted before 8 p.m. Audience research shows that over 93% of the Dutch people find the NICAM system reliable. Less than 10% of all complaints turned out to be true. A recent international comparison of film classifications showed that 90% of the film classifications were consistent with classifications in other European countries. When it comes to the use of pictograms on film ladders and text services, improvements can be made. NICAM has already undertaken action to improve the correct use of pictograms.

Shortage PSB programmes aimed at minorities

The NPS, the national Program Service Foundation, is a public service broadcaster with the specific legal task to dedicate certain percentages of its programming to programmes related to culture, arts and information about or aimed at cultural and ethnic minorities. The Media Decree states that on radio 25% and on TV 20% of the programming of NPS should consist of minorities programmes. The NPS failed to reach these percentages in 2005. Reasons for failure are, according to the NPS, the expansion of total broadcasting time due to reruns of programmes in the night on television and extra broadcasting time on Radio 4 (the station for classical music). The CvdM has started a sanction procedure and suggested a fine of € 27.000,-. The NPS has the right to defend itself in a hearing before a fine will be imposed.

Country Report October 2005 - April 2006

Commissariaat voor de Media (CvdM), Netherlands

Dutch audience well informed by news according to CvdM report

The Dutch audience is very well informed by the daily news and current affairs: more than 95% of the public consults a news medium during a period of two days. This is one of the main findings of the fourth report on media concentration published by the CvdM. In total 66 news sources have been observed in the Netherlands: 32 newspapers and magazines, 17 radio and TV programmes and 17 websites. Remarkable is that out of 66, four news media reach almost half of the market share. Public service broadcasting holds with its radio and TV news two of the four most popular news sources in our country. Radio is the most popular news medium amongst the Dutch audience. In the conclusions of its report the CvdM suggests to liberalize the current cross ownership regulations, although a maximum market share will be necessary for newspapers, TV and radio. Also an additional instrument to regulate the power of news media to influence opinion in society is necessary.

Self evaluation demonstrates efficiency of CvdM

Despite a media sector which has grown very fast and become much more complex, the workforce of the CvdM has only slightly increased through the years. A recent self evaluation by the CvdM demonstrated it works in a very efficient way. The self evaluation was performed because the state secretary of media affairs has to inform parliament about the functioning of the CvdM each four years. Between 1990 and 2004 the number of TV stations has raised from 92 to 161 and the number of radio stations from 235 to 374. This enlargement of the broadcasting sector did not lead to a comparable growth of the number of employees with the CvdM: 46 employees in 1988 vs. 53 in 2004. This is remarkable, especially taking into account four new tasks have been attributed to the CvdM. Also the nature of the work of the CvdM has changed since the media sector has become highly competitive. Many (commercial) parties request the CvdM to intervene, especially when public service broadcasters launch initiatives in the sphere of secondary activities which could distort competition.

Financial doom scenario for national public service broadcasting

In its advice to the state secretary on the budget for 2006-2010 of national public service broadcasting the CvdM has warned for the weak financial position of PSB. According to the CvdM government

should support PSB since the deficits are caused by external circumstances, like an important decrease of advertising revenues. If PSB will not be compensated this will have a serious impact on quality of programming and the new channel profiles. PSB predicts in near future it will not even be able to comply with legal obligations like the content programme and independent and European quota provisions. The CvdM supports a technology neutral approach of content. PSB should be able to offer its information and services by different techniques, including new digital technical platforms like theme channels.

Possibilities for co operation broadcasters and other media should be extended

The CvdM is in favour of more possibilities for broadcasters to co operate with publishers and other media as part of a multi media strategy. A few years ago the CvdM already investigated by a questionnaire how other EPRA-members dealt with this issue. Recently the authorities from Germany and UK provided additional and very helpful information. The possibilities for editorial co operation between broadcasters and publishers have already been enlarged in our country. Key issue now is to what extent titles of programmes should be allowed to carry the name of a magazine or newspaper and even if other third (commercial) parties are allowed to be mentioned in a programme title. With respect to publishers the German system of the so called Verlags TV could be an interesting option. The CvdM would welcome any interesting information or opinions of other EPRA-members regarding this issue.

Country Report April 2005 - October 2005

Commissariaat voor de Media (CvdM), Netherlands

Restructuring of PSB

Government has proposed a fundamental restructuring of national PSB (Publieke Omroep) in the Netherlands. Main element is a further centralization of national PSB and decreasing the influence of the different PSB associations (which are private organizations with members but financed by public money and fulfilling a public service mission). The role of the board of directors of Publieke Omroep will be reinforced and the board of supervision in which the chairpersons of the different broadcasting associations are represented will be transferred in a advisory board. Furthermore is stated in the new plans that the programming of PSB should solely consist of news, opinion and debate, culture and education. Entertainment as such would not be allowed; only if it would serve the function of news or one of the other categories mentioned before. News can only be offered by the NOS and opinion and debate by the existing broadcasting associations. In the category of culture and education the existing broadcasting associations could offer programmes but also third (private) parties after a tender. Furthermore the possibilities for the PSB associations to develop (commercial) secondary activities will be increased. In its comments to the government plans the CvdM suggested to make another distinction between the categories of programmes, which would reflect more the practical situation; for instance news and background info is hard to divide. Also the CvdM opposes to liberalize possibilities for commercial activities of PSB associations too much taking into account European competition law provisions. As long as innovation is not bothered The CvdM is in favor of further centralization of management.

New regulation self promotion

In the European TWF Directive self promotion is considered as a special type of advertising. In order to allow self promotion also to be broadcast outside of advertising blocks the CvdM has adopted new guidelines. In so called 'exemption decisions' of the CvdM is stated that under which conditions self promotion can be broadcast. Main principle is that self promotion – like programme announcements and logo's of broadcasters – should not contain advertising for third parties. The new guidelines of the CvdM came into effect on July 1st and will apply for two years. Reason for this restricted duration is uncertainty about definition of self promotion in the future TWF Directive as well as the effects of the guidelines in daily practice.

No legal right for national PSB to broadcast football competition

The question whether third parties - not being rights holders - should obtain the legal right to make short reports delivered via new media platforms like internet and mobile phone was raised recently on European level. A comparable issue has been discussed lately in the Netherlands. Except for a short interval in the year 1996, the matches of the national football competitions have always been broadcast by the NOS, the national (coordinating) PSB organisation in the Netherlands. After a tender

organised by the national football association, the right to broadcast summaries of the national football competition was acquired by the brand new private broadcaster Talpa, which started broadcasting from September 2005. According to the NOS article 71t of the Dutch Media Act, the so called 'right of preference', gives the NOS the first right to broadcast events of major importance to society like the national football competition. The NOS was of the opinion that in case a private broadcaster obtains the broadcasting rights, this broadcaster is obliged to grant sub licenses to the NOS. Therefore the NOS requested the CvdM to force Talpa to grant sub licenses to NOS. The CvdM concluded that the main goal of the legal stipulations is to avoid that reports of events like the national football competition would 'disappear' behind a decoder and therefore to safeguard that these reports can be received by a large majority of the audience. Taking into consideration that the programme of Talpa is transmitted through all cable networks and therefore can be received by almost the whole population in our country, the CvdM did not see reasons to force Talpa to grant sub licenses. The CvdM acknowledged there was a legal assignment for the NOS to broadcast the programmes in which a large part of the society is interested in but it could not be (anymore) interpreted as a legal obligation for a private broadcaster to share the broadcasting rights. The CvdM suggested NOS to refer to their journalistic responsibility and the right to free gathering of news when demanding Talpa for granting sub licenses. The CvdM is however not in the position to force Talpa to do so.

Meta supervision of CvdM on NICAM

Recently the CvdM has obtained the task to perform so called 'meta supervision' of NICAM (Netherlands Institute for the Classification of Audiovisual Media) and more specific the quality of the classifications of programmes, films etcetera. This means each year NICAM will have to report to the CvdM on how it will safeguard the quality of the classification and the control performed by NICAM itself. NICAM should demonstrate to the CvdM to what extent the classifications are reliable, valid, stable, consistent and precisely. At least once in two years there should be a comparison with classifications in other European countries. NICAM introduced in 2001 a uniform classification system for film, TV, video, DVD, called 'Kijkwijzer'. The system is based on a classification by age (all ages, not suitable for children younger than 6, 12 or 16 years old) and content descriptors, e.g. indications on what the 'harmful content' consists of (violence, sex, fear, discrimination, drugs and alcohol abuse and coarse language). The organisations affiliated to NICAM classify productions themselves on the basis of the Kijkwijzer coding form.

Country Report October 2004 - April 2005

Commissariaat voor de Media (CvdM), Netherlands

Amendments of sponsor regulation

The CvdM is preparing some amendments of its policy guidelines for sponsoring of private and public broadcasters. The current guidelines were established in September 2000 and after 4 years of practical experience the CvdM concluded that some provisions need to be actualised. The current guideline for private broadcasters allows references of the sponsor only at the beginning and/or at the end of the programme. Under the new guideline for private broadcasters it will also be possible to mention the sponsor immediately before or after advertisement blocks, which are interrupting the programme. For public broadcasting the situation of maximum two references remains the same. Another liberalisation of the sponsor rules will be the possibility for both public and private broadcasters to include the email address or web address in the billboard (sponsor reference). Furthermore the new guidelines clarify (minor) contributions which are not recognizable as such should not be considered as sponsoring. These are minor contributions in relation to the total costs of the realisation or the acquisition of programmes like for instance, the catering, bouquets and the clothing of the anchor men or women. According to the new guidelines these are contributions which do not exceed the value of € 500 for a TV-programme or € 100 for a radio programme. Companies providing these (minor) contributions can be mentioned in the credit titles at the end of the programme. All parties are in the position to give their comments to the draft guidelines, after that the guidelines will be finally assessed.

New task of the CvdM

Since 1 January 2005 the CvdM is entrusted with a brand new competence: the task to maintain and supervise the fixed book prizes in the Netherlands. The Dutch system only counts for books in the Dutch and Frisian language from the Netherlands. Books have to be sold to the consumer at the price set by the publisher or importer. This price is as a principle fixed for one year. After half a year the

publisher is free to amend once the fixed price, after one year he can adapt once again the fixed price or abolish it. The system of fixed book prices has the aim to guarantee a broad and diverse offer of books in our country. The idea of a fixed price for books is it that it enables little bookshops to survive and to sell also less popular books. In a total free book market it is to be expected that big general retailers who only offer popular books and bestsellers will dominate the market. A fixed book price also leads to clarity for the consumer who can be sure that the book he finds in one shop, will be sold for the same price in another shop. The old system was based upon an exemption of the Dutch Competition Act. Due to European legislation (article 81 EU-Treaty) an exemption is no longer possible. Therefore government opted for a legal regulation of the fixed book price and decided to entrust the CvdM with the task of supervision since government did not want to found a new autonomous public authority for this job.

Fines for exceeding advertising volume

In November 2004 The CvdM has imposed a fine of € 81,000 to national public broadcasting (PO) because it exceeded in 2003 the yearly maximum for advertising (6.5%). The promo spots and announcements for non profit organisations are counted into the total amount of advertising time of national public broadcasting. This is not the case for private broadcasting where only advertising messages are calculated into the total amount. According to PO the way the CvdM calculated the total advertising time was unfair compared to private broadcasters who have much more room to broadcast advertisements. The CvdM replied it is simply a consequence of the Dutch legal system in which public broadcasting is subject to different definitions and stricter rules. Over the year 2004 both public and private broadcasters have been fined because of breaching several advertising provisions. During the period September-November 2004, the CvdM determined that the maximum of 12 minutes advertisements an hour was exceeded. Sometimes also teleshopping windows lasted too long, the interval between two advertisements blocks was too short, films were interrupted too often and advertisement blocks were not recognizable as such. It seems there is tendency within broadcasting companies to plan less carefully the advertising schemes. In the interest of both viewers and fair competition, the CvdM considered serious fines were necessary. In total the CvdM announced fines for a total amount of € 243,000: € 108,000 for public broadcasting and € 94,500 for private broadcasters. All broadcasters had the opportunity during hearings to give their views on the findings of CvdM before the final fines will be determined.

CvdM presents third report on media concentration

In November 2004 the CvdM presented to the State Secretary its third "Monitor Media Concentration". This report 'A View on Media Concentration: Concentration and diversity of the Dutch media 2003' contains an overview of concentration levels in the written press, radio and television. One chapter of the report addresses the situation in ten European countries, based on the study, commissioned by the CvdM, called 'A Mapping Study of Media Concentration and Ownership in Ten European Countries' by David Ward. The Monitor shows that the daily paper and television sector in the Netherlands are still dominated by the activities of three strong suppliers, so the principle of 'three is the rule' still applies in 2003. With regard to the regional newspaper market there is declining internal pluralism due to cooperation between individual editorial offices. The CvdM also observed an increasing role of foreign (US) media companies and investment companies in media sector. The CvdM would be in favour of limiting the market share of publishers of daily newspapers and television broadcasters to an absolute maximum of 35 percent. Another recommendation is that publishers should be permitted to own stakes up to 100 percent of a television- or radio-channel, providing their market share on the TV- or radio market is limited to a maximum of 15 percent. Also the CvdM suggested to develop a 'pluralism-test'. In the next Monitor more attention will be paid to regional information suppliers. Furthermore, the CvdM will focus on diversity of news and current affairs offered on all platforms (including internet), cross media allies and the way the audience uses media. The public importance of providing information is also stressed in a recent report called 'Focus on Functions' of the Netherlands Scientific Council for Government Policy (WRR). This report sees the media landscape as a cluster of six social and democratic functions: news services, background to current affairs and opinion forming, entertainment, arts and culture, specialized information and, finally, advertising and public relations. The report considers general entertainment, advertising and public relations not belonging to the core business of public broadcasting.

Al Manar TV banned from Dutch satellite

In March 2005 the Lebanese channel Al Manar TV was removed from a Dutch satellite, following a formal notice of the CvdM. In December 2004 the channel was already banned from the French

Eutelsat satellite, following a verdict of the French Council of State due to the anti-Semitic nature of some of its programmes. In contradiction to several press publications about this issue the reason for removing the channel from the Dutch satellite was not primarily its content. The main reason for the formal letter of the CvdM was the fact that the channel was lacking a broadcasting license. The CvdM requested the operator New Skies Satellites (NSS) to undertake necessary steps to end this illegal situation. The CvdM held the opinion the station would need a license from the Dutch authorities due to article 2, paragraph 4, a and b of the TWF Directive, which states that a broadcaster should fall under a member state, if they use a frequency granted by that member state or satellite capacity belonging to that member state. NSS replied that it was not in the first position to block the signal of Al Manar TV because the channel was part of a multiplex of the French company Globecast, which hired capacity on the NSS satellite. After a request of NSS, Globecast decided to remove the signal of Al Manar TV on 23 March 2005. In practice the effect is relatively marginal, since it still will be possible to receive Al Manar TV in Europe via satellites of two other providers: ArabSat en NileSat. Both satellite companies are established in the Middle-East and not affected by the regulations of the TWF Directive. In the case Al Manar TV would have been broadcast under a Dutch license and would have shown programmes inciting to hatred, it would be primarily dealt with by criminal law in the Netherlands. Article 137d of the Dutch Penal Code implies justice (the public prosecutor) can launch a criminal investigation or trial in case of hate speech. A possible action is always undertaken afterwards a broadcast, in case penal offences have been found. The possible sanctions in practice are imprisonment of maximum one year or a fine of the third category, which means € 4,500. As a special condition in combination with a provisional sanction it is possible to prohibit the broadcast of a certain programme.

Country Report April 2004 - October 2004

Commissariaat voor de Media (CvdM), Netherlands

Dispute about theme channel of PSB

Besides their main task which consists of providing programmes, public service broadcasters (PSB) in the Netherlands are allowed to perform so called secondary tasks. These are other ways to fulfil the public service remit. Secondary tasks are not defined in law, but in the explanatory note to the bill is stated that internet services and theme channels can be considered as examples of secondary tasks. To secondary tasks the same rules apply like to all other secondary activities of broadcasters:

- the activity should not have a negative effect on the performance of the main task of -the broadcaster (which is providing programmes);
- the activity is connected with and even supports the main task;
- the activity does not lead to unfair competition in relation to other parties offering the same or comparable service.

PSB wants to run the radio channel Colourful Radio, which would be the 6th national radio channel. PSB presented this initiative as an attempt to reach ethnic and cultural minorities in our country. According to our authority, the Commissariaat voor de Media, this is not the case. After evaluating the programme format, the Commissariaat concluded that the music channel is aimed at youngsters in general and does not focus predominantly at minorities. The Commissariaat holds the opinion that a minority channel for at least 75% should consist of programmes that are about minorities or should be aimed at them. Also the current programme format is not distinctive enough from other music channels run by private broadcasters and the main pop music channel of PSB. Therefore the Commissariaat obliges PSB to broadcast not more than 50% music on the theme channel. The amount of music in the current programme format exceeds this percentage. This decision is after appeal by PSB upheld by the Commissariaat. The first decision of the Commissariaat was suspended by the State Secretary of Media Affairs; something which happened only very rarely in history. A questionnaire sent out to all EPRA-members earlier this year demonstrated that only a very few countries have developed criteria for theme channels.

Comparative study on media concentration

The growth of media companies and trends towards concentration raise serious issues as to their impact on the independence and diversity of media products in the Netherlands. At the request of the Dutch government the Commissariaat voor de Media has developed a monitor to identify and describe these trends. Through the Mediamonitor, a project that provides both an annual report and website, the Commissariaat analyses the effects of media concentration on the supply of content including

news and information. Since 2001 two reports have been published on media concentration in the Netherlands as part of the Mediamonitor. The reports cover both the print industry (newspapers and magazines) and television and radio. The third Mediamonitor report has just been published. International companies own a large number of media companies in Europe and the Netherlands is no exception to this rule. To obtain a clearer sense of media concentration in the Netherlands the Commissariaat voor de Media has commissioned an international comparative analysis of the media markets in a number of European countries. The covered countries - selected either for their geographical size or because of the similarity of their media sectors to the situation in the Netherlands - are: Belgium, France, Germany, Italy, Luxembourg, Spain, Switzerland, Sweden and the UK. The media researcher David Ward has provided the report called: 'A Mapping Study of Media Concentration and Ownership in Ten European Countries'. One of the main findings is that levels of concentration differ considerably in the ten countries as well as in the different sectors within each country investigated in this report. High concentration in one sector may be complemented by a moderate degree of concentration in another sector in the same country. However, calculations of media concentration show that in nearly all sectors included in the report concentration levels are increasing. The map study and our Mediamonitor reports are available on the website <http://www.mediamonitor.nl/>

New media and regulation

More and more the Commissariaat is confronted with new initiatives in the sphere of new media. Telecom operators who want to offer programmes by cell phone or live reports of football matches via the internet. PSB and private broadcasters are offering more and more services on the internet, included radio and even TV programmes. Mostly they were broadcast before on regular TV or radio, but this is not always the case. National PSB broadcasted for instance live feeds of the Olympic Games exclusively via internet. All these developments raise questions about the scope of media regulation. Although PSB has to respect some provisions to maintain the public character, the services on internet are in our system of legislation not considered as broadcasting. Especially in the case of so called webcasting the question is whether this distinction between internet and broadcasting can be justified any longer. The Commissariaat has together with the Ministry of Education, Culture and Science installed a project group who will study the subject more into detail and will do proposals for regulation, if necessary. An investigation amongst EPRA-members earlier this year demonstrated that at this moment there is no country in Europe where webcasting is regulated as broadcasting. But some other countries are studying the topic as well and do not exclude the chance that in future webcasting and maybe other services will be considered and regulated to the same extent as broadcasting. This might depend on characteristics of new services like impact on audience and degree of user control.

PSB receives in 2002 € 20 million of third parties

A survey of the Commissariaat pointed out that seven percent of the TV programmes of national PSB is (partly or entirely) financed by third (commercial or non-commercial) parties. The total amount of the contributions was € 20 million, which equals to four percent of the gross programme costs. In three percent of the programmes external parties financed more than half of the programme costs. Remarkable is that in the category of programmes about health, one out of three programmes is financed by external parties, sometimes even the entire programme. The Commissariaat is in favour of stricter procedures to safeguard the independency of programme makers. Furthermore a complete overview of the financing of programmes is needed, which could be achieved by presenting all contributions in a similar way in the annual accounts of PSB. In the credit titles of a programme – to inform the audience – all external contributions should be mentioned. The Commissariaat also recommends a maximum of 50% for contributions of third parties. News, current affairs programmes and other journalistic productions should not be financed at all by third parties. The Commissariaat launched the investigation after critical publications in Dutch press; for the survey 2100 programmes and more than 50,000 episodes have been collected in one data base.

Country Report October 2003 - April 2004

Commissariaat voor de Media (CvdM), Netherlands

Investigation contributions of third parties to the programmes of public service broadcasters

The CvdM has started an investigation on the contributions of third parties to the production or purchase of programmes of the public service broadcasters. The investigation concentrates on the

contribution of third parties that are not regarded as sponsors under the Media Act. The reason for this investigation is that since September 2000 the possibility of sponsoring of programmes of the public service broadcasters is limited to cultural programmes, programmes relating to sport or consisting of the report of events in an ideal context. In the Media Act sponsorship of a programme is defined as "the provision of financial or other contributions by a government institution or private company not normally involved in broadcasting activities or in the making of audio-visual productions, to the production or purchase of a programme for the purpose of facilitating or enabling its broadcast". From this definition can be learnt that not everybody can be regarded as a sponsor under the Media Act. Government institutions and other non commercial institutions or non profit organisations, like establishments of charitable nature are no sponsor in the sense of the law. This means that these parties can still contribute to the creating of any particular programme. These so called non-sponsors are contributing more and more to programmes of public service broadcasters. Because of this development article 64c of the Media Act changed last January. According to this article, establishments which have obtained broadcasting time shall furnish the Media Authority with an annual report in writing detailing their income from sponsorship contributions, the sponsored programmes and the capacity of the sponsors, specified according to the programmes. A new paragraph is added that states that this article also applies to contributions of government institutions and other non commercial institutions or non profit organisations. The reason for this change is that a complete overview of all contributions to programmes of the public service broadcasters enhances the transparency. In its final report the CvdM will give an overview of the contributions of third parties. The report will also give an insight into the production sector. All independent producers who have produced programmes for the public service broadcasters are asked to give information on the total costs, the sales figures and the contributions of third parties to their programmes. The report will also go into the criticism that third parties are more and more determining the form and content of programmes instead of the public service broadcasters. The final report will be published in the summer.

The CvdM can impose higher fines

Article 135 of the Media Act gives the CvdM the possibility to impose administrative fines. On 1 January 2004 the Media Act was amended. The administrative fines are raised and divided into three categories: the category up to a maximum of € 225,000, the category up to a maximum of € 135,000 and the category up to a maximum of € 35,000. Until the first of January the administrative fines were divided into two categories with a maximum of € 90,000 and € 22,500 respectively. The first category (with fines up to a maximum of € 225,000) is reserved for the violation of rules that serve the public interest, such as the use of exclusive broadcasting rights (list of major events) and the must carry obligation. The second category (with fines up to a maximum of € 135,000) is reserved for the violation of rules on advertising and sponsoring. The last category (with fines up to a maximum of € 35,000) is reserved for the violation of administrative obligations. The reasons for this raise are the fact that the fines have not been raised for the last fifteen years and to create more flexibility. Under the old regime for example violation of the programme obligations resulted in the same fine as the fact that a broadcaster did not deliver his annual report in time. The CvdM is working on the amendment of their policy guidelines to implement these new fines.

Commercial broadcasters fined because of exceeding advertising limits

In December 2004 the CvdM has fined five commercial broadcasters, mainly because of exceeding the advertising limits. The total amount of the fines imposed on the three general interest and the two music channels is € 172,500. In many cases the broadcasters did not respect the maximum of 12 minutes an hour or interrupted films too often for advertisements. In some case the advertising was not clearly separated from the programme. Most contraventions took place during broadcasting live programmes, sports events and movies. The last years, the CvdM warned commercial broadcasters frequently that after investigations the advertising volume was found too big. The recent finings of the CvdM are based upon an investigation during last summer as well as some additional tests on a random basis.

Financing public service broadcasting questioned by European Commission

Following complaints of private broadcasters, the European Commission asked in 2002 the Dutch authorities to clarify some aspects of the financing system of national public service broadcasting. On 3 February 2004, 1,5 year after the answers of the Dutch authorities, the Commission decided to launch a probe into the additional funding of Dutch public service broadcasters. The probe focuses on eight public service broadcasting associations and their umbrella organisation NOS. The

Commission's preliminary conclusion was that the Dutch State has provided the public service broadcasters with more funding than necessary to finance the public service. The excess funding, from the year 1992 onwards, was provisionally estimated by the Commission at € 110 million. In addition, the Commission questioned whether the beneficiaries of the public funds use these excess public funds to cross-subsidise their non-public service commercial activities. The Commission believed that some "new media" activities, such as SMS-services that are performed by the public broadcasters are commercial activities outside the remit of their public interest tasks. The Commission takes the position that these activities as purely commercial activities should not be funded by the State. In addition, the Commission asked questions regarding the issue of "cross-subsidisation". The Commission wondered whether the public service broadcasters' activities in the markets for advertising and the acquisition of sports transmission rights are in line with normal market behaviour. In a letter of 24 March 2004 the Dutch authorities were required to deliver information on the annual funding of Dutch public service broadcasting. On 30 April 2004 the Dutch authorities replied to the Commission. In their answers also the organisation and remit of Dutch public service broadcasting is explained into detail. Without knowing these aspects the system of financing cannot be fully understood. The Dutch authorities take primarily the position that there is no ad hoc funding in the sense of article 87, paragraph 2, of the EC-Treaty. If one can speak of state funding, it must be considered as already existing state funding, mentioned in article 88, paragraph 1, of the EC-Treaty. Subsidiary the Dutch authorities consider this state funding as legitimated according to article 86, paragraph 2, of the EC-Treaty. With regard to new media activities of the Dutch public service broadcasting the authorities are of the opinion that these are closely linked to the main task of the broadcasters and should be allowed, also according to the Communication on the application of State aid rules to public service broadcasting of 15 November 2001.

Country Report April 2003 - October 2003

Commissariaat voor de Media (CvdM), Netherlands

CvdM presents second report on media concentration

A cohesive media policy calls for a good insight into the sector and into all changes that it is experiencing. It is for this reason that the CvdM has been commissioned a few years ago with the Media Concentration Monitor. On the 16th of May 2003 the CvdM presented to the State Secretary its second Media Concentration Monitor to the Dutch cabinet. This report 'A View on Media Concentration: Concentration and diversity of the Dutch media 2002' contains an overview of concentration levels in the written press, radio and television. The distributors of the media, in particular the cable suppliers, are described as well and the report also includes an overview of the information supply through the internet.

The Monitor shows that the daily paper, television and cable sectors are all dominated by the activities of three strong suppliers. This principle of 'three is the rule' still applies in 2002. There have been no major changes in the relations on the various markets. With respect to daily papers, interrelations between the three major publishers, with a joint market control of 90% of the market, have hardly changed with respect to 2001. Public service broadcasting is facing two strong commercial opponents in the television sector and the three suppliers jointly control 85% of the market. In the cable sector, it seemed for a short time that UPC's parent company would take over the third major company Casema, but this transaction failed to materialize partly due to an investigation of the Dutch National Competition Authority, the NMa, into a possible position of power resulting from this deal. 'Three is the rule' still prevails in the cable sector.

In order to prevent that the level of supplier concentration on the commercial television market becomes too high, the CvdM recommends to amend legislation as to include a maximum market share of 30% on the viewers market. Actually, a recommendation that already dates from last year. This will guarantee that there are minimally three parties operating on the Dutch market. Taking into accordance the developments on internet, as well as the potential benefits for content of co operation between different media, the CvdM recommends loosing cross ownership restrictions. But this should – similar to horizontal concentration – be combined with a restriction of the market share in another medium (i.e. maximum market share of 30% on daily newspapers and market share of 10% on radio or television market). The fact that commercial broadcasting also caters for a need, becomes clear from an analysis of public preferences. This implies that the continuity and the operations of the commercial stations are increasingly vital to the diversity and quality of the presented programmes.

The operational continuity of especially the commercial broadcasters is under pressure. Therefore, certainly in view of the fact that the stations are part of international groups, stimulation of and investments in the audiovisual sector should be reintroduced on the political agenda on a European level. More so than before, the main focus of attention should be on the development of regional and national audiovisual markets. Within the framework of the European guideline 'Television without Borders', which is to be revised, this aspect should also be taken into account.

Further and more detailed information can be found on the website www.mediamonitor.nl which will be launched officially by the State Secretary on 30 October 2003 and will periodically be updated according to the latest data.

Websites public service broadcasters almost free from advertising

The CvdM has investigated to which extent websites of the national public service broadcasters contain commercial banners, buttons, advertorials, the offering of products/services of third parties and other commercial elements. Main conclusion is that the websites have a strong public character and that the existing guidelines of the CvdM only needed a few amendments. Advertising on the sites is very rare and is always carried by banners or buttons. To make the commercial nature of these messages completely clear, broadcasters are now required to put an additional text in a banner or button stating explicitly 'advertising message'. Links to third parties as long as they have a function in the context of the information on the website are explicitly allowed by the CvdM in its new guidelines. Only products directly linked to a broadcast programme – like a video, DVD, CD or book – may be directly offered on a website by a public broadcaster. The broadcasters have been required to bring their websites in accordance with the guidelines, if this was not yet the case.

Public service broadcasters should stop offering journeys to their members

In the Netherlands public service broadcasting is partly fulfilled by 8 broadcasting associations who have members that pay a yearly contribution to the broadcaster. These associations are entitled to organise activities, as long as they truly strengthen the relationship with their members. A few of these associations have a long tradition of organising journeys for their members. After an investigation the CvdM concluded that these activities are not necessary for a good and democratic functioning of the associations and do not correspond to the specific identity of the broadcasters. According to the CvdM it is not the task of public broadcasters to act as a travel agency and its intention is to prohibit these activities by 1 January 2005. In a hearing the broadcasters strongly opposed the idea; the CvdM will take a final decision in short term.

Commercial broadcasters fined because of exceeding advertising limits

The CvdM has the intention to fine five commercial broadcasters because of structural exceeding the advertising limits. The total amount of the fines is € 265.500. In many cases broadcasters did not respect the maximum of 12 minutes an hour and interrupted films too often for commercials. Sometimes the advertising was not clearly separated from the programme. Most contraventions took place, meanwhile broadcasting live programmes, sports events and movies. The last years, the CvdM warned commercial broadcasters on a regular basis that after investigations the advertising volume was found too big. The recent findings of the CvdM are based upon an investigation over last television season as well as some additional tests on a random basis. Public broadcasters did meet the advertising restrictions and limits. After hearings, in which the broadcasters can defend themselves, final decisions about the sanctions will be taken.

Public service broadcasters meet content programme obligations

Two times a year (before 1 April and 1 October) the NOS has to report to the CvdM on all broadcast programmes in the preceding period. The CvdM evaluated the reports over 2002 and concluded public service broadcasting meets all its programme requirements. In the Netherlands the total television broadcasting time of all the public service broadcasting associations together must be used to provide a complete programme service, which should at least include programmes of a cultural, informative, educational and entertaining nature. At least 25% of the broadcasting time shall be used for cultural programmes and at least 35% must be used for programmes of an informative or educational nature. At least 12.5% of the total television broadcasting time used by all the broadcasting associations together, shall consist of or relate to arts. For entertainment applies a maximum of 25% for each individual channel.

In 2002 almost 60% of the broadcasting time was devoted to information and education; meanwhile in 2001 this was 56%. The amount of culture has dropped from 33% in 2001 to 29% in 2002. The percentage of the programmes related to art was 13.4 %. The amount of entertainment on the public channels 1, 2 and 3 in 2002 has been respectively 20.5, 12.4 and 12%. On recommendation of the CvdM public service broadcasting has used a broader appreciation of 'entertainment' by classifying educational quizzes, light foreign fiction, cabaret and satire in this category. One may discuss the way programmes are classified because very often a programme contains a mix of culture, information and entertainment. But regardless the way of categorizing, public service broadcasting managed to meet all content programme requirements in 2002.

Country Report October 2002 – April 2003

Commissariaat voor de Media (CvdM), Netherlands

Increasing number of teleshopping programmes in the Netherlands

There has been a significant increase in the number of teleshopping programmes offered by private broadcasters during the last half year. The biggest Dutch department store V&D and mail order company Wehkamp now have their own programmes on Dutch TV. These programmes differ a lot from the former, mainly in the US produced, homeshopping programmes. The new teleshopping programmes have a very long duration (1 à 2 hours) and are characterised by much more editorial content and a less promotional character. A problem with these new formats is that the commercial purpose of the programme may not (always) be clear to the audience. Because they fall under the teleshopping regime there are no restrictions with regard to advertising and sponsoring. Main characteristic of teleshopping is the direct offer to the public and the possibility of the viewer to order the product or service presented directly via telephone, internet et cetera. The CvdM is considering to impose the obligation to teleshopping programmes to always have a direct relation between the content and format of the programme and the direct offers made in the programme. The CvdM would like to know the view of other EPRA-members on this issue.

Exclusive rights hinder pan-European broadcasters

A procedure about the compliance with European quota stipulations indicated that pan-European broadcasters experience great difficulties to obtain the rights for broadcasting European fiction because the rights are sold for each European country separately. UPC, a private broadcaster active in several European countries, informed the CvdM of the fact that it can hardly obtain the broadcasting rights of European serials and other fiction. These pan-European broadcasters want to offer their European fiction via satellite in more European countries; but this is almost impossible since regional or national exclusivity already has been granted to another broadcasters in most of the cases. Therefore they can mainly buy fiction from the US with as a consequence they cannot comply with the European quota provisions. The CvdM would like to know if other EPRA-members experienced the same effects of exclusive broadcasting rights.

Cable operator and broadcaster may not co operate to undermine advice programme council

In the Netherlands programme councils, which should be installed for each individual cable network, have to advise which programmes should be part of the legal basis package of 25 radio and 15 TV-programmes. Programme councils must represent the viewers and take into consideration their preferences. In a recent case the private broadcasters HMG and SBS refused to give the cable operator permission to include their programmes in the basis package, which was not in accordance with the advice of the programme council. The refusals were laid down in arrangements between the broadcasters and the cable operator. As a consequence of that not all households connected to the cable network could receive the programmes of these popular channels. The CvdM decided that the arrangements were in conflict with the purpose of the legal system of the programme councils and that the advice of the programme council had to be respected.

Monitoring media concentration becomes permanent task

Two years ago the CvdM has been assigned with the temporary task to monitor the concentration developments in the Dutch media. Once a year, or more often if necessarily, the CvdM reports its findings to the Dutch State Secretary for Media Affairs. On the basis of these findings will be evaluated if there is a need for new regulations or intervention powers for the CvdM. In April the State Secretary has informed the CvdM the monitor task will be a permanent one. On May 13th. 2003 the CvdM will present its second report "A view on media concentration 2002, Concentration and diversity of the

Dutch media in 2002". This report will give a detailed overview of the media concentration developments and their consequences for plurality in the field of daily newspapers, magazines, the internet, radio and television (production packaging as well as distribution). An English summary of the report will soon be published. Also a website of the CvdM exclusively dedicated to the monitoring of media concentration in the Netherlands will be on line soon. In the autumn of 2003 a comparative study of European legislation regarding media ownership and concentration is planned.

National Report April - October 2002

Commissariaat voor de Media, Netherlands

Public broadcasting under fire in the Netherlands

National public service broadcasting in the Netherlands is experiencing some difficulties at this moment. First the new government, established after the elections of May 2002, announced to cut the national broadcasting budget by € 30 million. According to the government public service broadcasting can operate much cheaper by pushing back the costs of bureaucracy and overhead. Before the budget can be cut down, the Media Act will have to be amended; so it will not have any consequences for the budget of 2003. This is a consequence of the abolishment of the licence fee on 1 January 2000, when was stated that the budget should not be lower than the level of the revenues of the licence fee in 1998, and must yearly be corrected for inflation. This legal guarantee was introduced to avoid political discussions about the budget of the public service broadcasting each year. Still some think the proposed cut on the budget has political motivations: some representatives of the new political party LPF (List Pim Fortuyn) who's in government spoke of a "revenge" on the national public broadcasters because – according to the LPF – their attitude towards and reporting on the LPF were to negative.

There is also a big discussion in our country on distortion of competition by public broadcasting. The private broadcaster Holland Media Groep (HMG), who runs three national TV channels – of which two are under Luxembourg jurisdiction – has lodged a complaint with the European Commission. This complaint is now being investigated by the European Commission and the Commissariaat had to answer a lot of questions, especially related to the financial policy of the broadcasters. The complaint is dealing with aspects like the transparency of financing, the (financial) supervision by the Commissariaat, the allowance of secondary activities, the functioning of the STER (who sells advertising time on the national public radio and TV channels) and the way broadcasting rights of sports events are acquired by public broadcasters. The complaint has been followed by many critical publications in the press on the functioning of public service broadcasting in our country.

To complete the misery for national public broadcasters there is also a management crisis going on, since the Supervisory Board and the Board of Directors of the central public broadcasting organisation (NOS) have a conflict. This is due to the typical organisation of public broadcasting in our country. The Board of Directors is in charge of the important management decisions like which programmes should be scheduled on which channel. But the public broadcasting organisations can obstruct a lot of decisions because they are all by their chairpersons represented in the Supervisory Board. Most public broadcasters want to keep their programmes as much on only one TV-channel ("home-channel"), because they are afraid to lose their own "face" when their programmes will be divided over all three channels. The Board of Directors on the contrary wants to create three recognisable TV channels and fill them with programmes that fit in the format, regardless who is the responsible broadcaster.

Commissariaat wins procedures about advice programme councils

Recently Court has put the Commissariaat in the right in a several cases about the advice of programme councils. A programme council is installed in every area with a cable network to give a binding advice on the composition of the so called "basis package" of 15 TV and 25 radio programmes that should be transmitted to the public. Only for weighty reasons the cable operator can deviate from the advice. Court has decided that the Commissariaat has a broad interpretation margin to consider whether a cable operator who refuses to put a programme in the basis package has weighty reasons not to do so.

The use of names of media in programme titles

The Commissariaat has asked a public broadcaster not to use any longer the name of a cafe-restaurant in the title of a TV talk show. According to the Commissariaat the use of a commercial name, brand or logo in the title of a programme of channel will inevitably result in surreptitious advertising. An interesting question is whether this policy should be followed as well when the programme is part of a multimedia strategy. For instance when a media concern runs a TV-station, a website and a magazine, would it then be allowed to give a programme or channel the same name as the magazine? Maybe some EPRA-colleagues have interesting views on this issue.

Media concentration

The website of the Commissariaat about the monitoring of media concentration in the Netherlands will be ready by the end of November of this year.

National Report Commissariaat voor de Media October 2001 – April 2002

Financial Supervision: Commissariaat presents report "Media concentration in vision"

Two years ago the Commissariaat voor de Media has been assigned with the task to monitor the concentration developments in the Dutch media. Once a year, or more often if necessarily, the Commissariaat has to report its findings to the Dutch State Secretary for Media Affairs. On the basis of these findings will be evaluated if there is a need for new cross ownership regulations or intervention powers for the Commissariaat voor de Media.

On 21 March 2002 the Commissariaat voor de Media has presented the report "Media concentration into vision". This report gives a general overview of the media concentration developments in the field of daily newspapers, radio and television. Also it analyses the branch of cable operators. In each sector there are three strong market parties operating. It seems one can speak of a "law of three". As a consequence of this the market of suppliers of media is highly concentrated. At the market of daily newspapers 90% of national and regional daily newspapers belongs to three big publishers. At the market of television three big parties reach 84% of the viewers. In the cable sector three big companies have a market share of 84%. With regard to these developments the Commissariaat proposes to take legal measures to avoid further concentration of daily newspapers and television.

The market of daily newspapers is more or less over concentrated. At the national newspapers market two publishers are dominant. With four newspapers PCM Publishers has a market share of 54.8% and the other publisher, De Telegraaf, has with only one newspaper a market share of 40.5%. At the total regional market publisher Wegener has a share of 52,5%. The Commissariaat strongly recommends government to undertake a more active press policy. The Press Fund (Bedrijfsfonds voor de Pers) should extend the possibility to support (financially) newspapers within concerns. Further the Commissariaat suggests the foundation of a platform in which representatives of the newspapers sector are participating with as aim to introduce incentives policy. To prevent any further concentration in the newspapers sector a legal limitation of market share has been proposed by the Commissariaat.

The television sector demonstrates less concentration. Nevertheless, also here a strong concentration can be found. As far as it concerns commercial television a maximum market share of 30% should be fixed in law, in order to draw a clear (border) line for the near future. Also more specific investigation of the consequences of concentration is recommended, especially to which extend the independence of information (supply) by channels is effected. With regard to the radio sector the Commissariaat recommends a partly distribution of terrestrial frequencies on the basis of (content) formats of the channels. To create full competition between different news channels, a national terrestrial coverage of at least one private news radio station should be achieved. Compared to other European countries, the Dutch cable market shows an appropriate offer for a reasonable price. Especially the stagnation of the digitalisation of Dutch cable networks is regarded as a problem. A well arranged regime of access for each supplier of cable services and a bigger influence of the programme councils (who advice cable operators on the composition of their packages offered) should compensate the actual monopoly of the three cable companies.

An English translation of a summary of the report of the Commissariaat will be finished in near future and can be sent to you on request.

Broadcasting Time and Cable Issues: Commissariaat establishes new regulations regarding access to cable networks

On 9 October 2001 the Commissariaat has established the "Policy guidelines deviation by cable operator of advice programme council". In these policy guidelines the Commissariaat explains under which circumstances a cable operator is allowed to deviate from the advice of programme council. On 20 November 2001 the Commissariaat has also established the "Model regulation programme councils". The Commissariaat expects the model regulation to be helpful for programme councils in order to function in a careful way which is in compliance with the intentions of the legislator.

Programme Supervision: Commissariaat establishes "Policy guidelines programme quota"

On 18 December 2001 the Commissariaat voor de Media has established the "Policy guidelines programme quota". In these guidelines the Commissariaat explains how it interprets the terms 'European product', 'independent product' and 'originally Dutch or Friesian product'. Also the exemptions policy by the Commissariaat and the way broadcasters should report on the broadcast productions has been described in the guidelines.

Further information on the new regulations/guidelines can be found on the Web site of the Commissariaat (English section): www.cvdm.nl.

National Report Commissariaat voor de Media, April 2001 – October 2001

Programme Supervision: Local Broadcasters Monitor 2000

In April 2001 the Commissariaat presented its "Local Broadcasters Monitor 2000". This report contains the findings of the integrated supervision by the Commissariaat of the local public service broadcasters in the Netherlands. The report demonstrates how the local broadcasters comply with the legal programme provision to broadcast programmes which consist of at least 50% information, culture or education of a local character. Furthermore, the financial position of the local broadcasters and the functioning of their programme policy bodies have been investigated. To get an overall picture of the performance of a local broadcaster the Commissariaat asks the broadcaster to send each year before 1 June its programme schedule, an annual report on the activities of its programme policy body and its annual account. Since an important number of broadcasters failed to deliver one or more documents requested, the Commissariaat will intensify its publicity policy to convince broadcasters of the importance to provide all relevant information and, if necessary, take other measures.

The Commissariaat has imposed fines to three broadcasters which, even after some reminders, have not delivered any information at all. Because of the lack of information the Commissariaat could only evaluate the programming of 118 of the total number of 315 broadcasters and concluded that only one third of them has been broadcasting 50% or more information, culture or education with a local nature, as prescribed by the Dutch Media Act. This is a decline since the last investigation of the programming of local broadcasters. The Commissariaat recommends that the programme policy body of a local broadcaster should meet more often and should be given a greater influence on the programming. Furthermore the percentage of information, culture and education could be increased by more (programmatic) co operation with the regional public service broadcasters. The Commissariaat also concluded that the financial position of local broadcasters needs to be improved and that more money from the municipality fund should be designed for local broadcasters.

Financial Supervision: decision of Commissariaat on theme channel upheld by court

The decision of the Commissariaat in which it allowed a theme channel as a secondary ('sideline') activity of the public service broadcaster NOS has been confirmed by district court (administrative law section). Eight Dutch private radio stations, united in the association VCR, who protested against the allowance of a theme channel, have launched now further appeal at the highest administrative court in the Netherlands, the Council of State (administrative law division). Since a few years the NOS runs as a secondary ('sideline') activity De Concertzender, which broadcasts different types of classic music and contemporary experimental music. This channel, originally founded as a public local radio channel in Amsterdam, later on had had a private status but went into financial trouble. Because the format of De Concertzender was considered as a valuable addition to the national public classic radio channel (Radio 4), the NOS decided to continue the channel as a secondary activity. Since the NOS receives extra money from the state budget for financing the channel, the secondary activity is not loss-making and therefore does not have a negative effect on the main task. The Commissariaat decided that the

theme channel also meets the other legal criteria for secondary activities: the theme channel has a connection with the main task and does not lead to unfair competition with other market parties.

Broadcasting Time and Cable Issues: pay per view channels regarded as broadcasting

Several cable operators who offer pay per view services in the Netherlands held the position that they didn't need a licence for private broadcasting because their services should not be regarded as a programme service in the sense of the Dutch Media Act but as an (interactive) telecommunications service. So, the operators were of the opinion that their services didn't have to meet the European quota and other programme provisions of the Dutch media legislation. After an investigation the Commissariaat conversely came to the conclusion that each of these services must be considered as a programme service since they were not transmitted on individual request but at fixed times. The operators use a so called carousel programming in which a same movie is broadcast on different channels with only short intervals in between. Due to this system the viewer is not completely free in choosing the moment of watching a movie and you cannot speak of (full) interactive services. Such a near video on demand service must be regarded as a programme service for special broadcasting purposes which should obtain a licence for private broadcasting. Since the Commissariaat considers it as only one programme service broadcast via different channels, one licence per service is enough.

National Report Commissariaat voor de Media November 2000 – April 2001

Programme Supervision: Advertising messages in football stadiums

On 22 March 2001 the Commissariaat has imposed a fine of NLG 30,000 (13,614 Euro) on the national public service broadcaster NOS (Broadcasting Foundation of the Netherlands), because in its reports of matches of the national football competition advertising messages were shown. After a large investigation the Commissariaat has established that in reports from six Dutch football stadiums advertising messages could be seen on the boarding along the pitch. According to article 30a of the Dutch Media Decree a television programme covering or showing an event may only contain avoidable advertising expressions: advertising messages are not allowed. In its Regulations Sports Programmes the Commissariaat has given its interpretation of article 30a Media Decree and has laid down its policy with regard to advertising at sports events. Boardings along the pitch may only contain the names or logos of sponsors and advertisers; slogans or other promotional messages are strictly forbidden. After the Commissariaat imposed a provisional fine of NLG 120,000 (54,450 Euro) on the NOS in November 2000, the Commissariaat organised some hearings to give all the parties involved the opportunity to give their opinion. The NOS acknowledged the reports to be in breach of the Regulations Sports Programmes but explained it was not in the position to bring the situation in the stadiums in accordance with the relevant rules. The NOS is dependent on the co operation of the owners/managers of the football stadiums. Besides the NOS, also the KNVB (the National Dutch Football Association) and the NV Eredivisie (the organisation which represents the clubs in the First League) gave their opinion. All the parties declared that they will try to get the stadiums clean of advertising messages before 1 March 2001; just shortly after the start of the second half of the competition. After a new investigation the Commissariaat now has concluded that in many stadiums the advertising messages have disappeared. Because in six stadiums the boardings still contain advertising messages, the Commissariaat has turned the provisional fine into a definitive lower fine of NLG 30,000. The Commissariaat will now investigate if other (private) broadcasters also violate the relevant rules and if necessary launch sanction procedures.

Financial Supervision: Advice on budget 2001-2005 of national public service broadcasting

The Commissariaat has sent its opinion on the budget for 2001-2005 of the national public service broadcasters to the state secretary for media affairs. The board of directors of the NOS has drawn up the budget and sent it to the Commissariaat and the state secretary. The decision of the state secretary about the volume of the budget for 2001 is also based upon the commentary of the Commissariaat. The Commissariaat has advised to increase the budget because of the growth of the broadcasting time of the religious and ideological societies which have obtained broadcasting time. Because BNN, the newest public service broadcaster which has youngsters as target group, has also gained more broadcasting time the budget should be increased. The Commissariaat has also given a positive advice on some other proposals of the NOS. The Commissariaat did not agree with the enlargement of the budget proposed by the NOS for the gaining of broadcasting rights of sports events. According to the Commissariaat the financial resources for sports programmes should be

found in the normal available budget. Furthermore the Commissariaat has advised to restrict the proposed rise of the budget in general.

Cable and Licence Affairs: Model regulation for the functioning of programme councils

In January 2001 the Commissariaat has drawn up a provisional model regulation for the functioning of programme councils. For each cable network a so-called programme council must be installed which has as its legal task to advise the cable operator as to which 15 television programmes and 25 radio programmes form the basis package that the cable operator must at least transmit to the public. The cable operator has the legal duty to ask for the advice and may only ignore this advice for weighty reasons. Dutch government wants to increase the independence of programme councils (from the cable operators) and to improve the functioning of cable operators. Therefore a regulation stipulating the composition of the programme council and the realisation of the advice, should be approved by the Commissariaat. According to the provisional Model Regulation Programme Council of the Commissariaat the programme council should be representative for the cable subscribers in terms of age, sex, ethnic and cultural background. Other provisions of the Model Regulation are:

- the programme council should have at least 7 and at most 15 members;
- the advice of the programme council should be transparent, clear and well motivated and must show in which way the programme council has taken the existing social, cultural, religious and spiritual needs of the local community into account;
- the installation and the provisional advice of the programme council should be made public in local and regional media;
- after publication of the provisional advice, subscribers to the cable network as well as programme providers have during six weeks the possibility to give their opinion.

Commissariaat voor de Media

National Report May 2000 – October 2000

Programme Supervision

Limitation sponsoring public service broadcasters

As a consequence of an amendment of the Dutch Media Act (Concession Bill of 30 March 2000) the possibilities of sponsoring for public service broadcasters have been limited dramatically. The assumption is now that programmes of public service broadcasters are not sponsored, unless the law allows sponsorship explicitly. This basic principle intends to underline the non commercial nature of public service broadcasting. Before, sponsorship of programmes of public service broadcasters was allowed, except some programme categories like programmes consisting of news and programmes mainly aimed at minors under the age of twelve.

Under the new sponsoring system, which came into force on 1 September 2000, only the following categories of programmes of public service broadcasters are allowed to be sponsored:

- programmes of a cultural nature;
- programmes consisting of a report or coverage of one or more sports events or sports matches;
- programmes consisting of a report or coverage of events for a charitable cause

The programmes mentioned above are not allowed to be sponsored when they fully or partly consist of news, current affairs or political information or when they are mainly aimed at children under the age of twelve years.

To make it still possible for public service broadcasters to broadcast programmes which already have been produced before the new sponsoring rules were made public, the Commissariaat has established some interim provisions.

New regulations Commissariaat

Furthermore the Commissariaat has established some new regulations in which it has laid down its policy with regard to sponsorship as well as advertising at sports events:

- Regulations sponsoring public service broadcasters;
- Regulations sponsoring private broadcasters;
- Regulations sports programmes.

These regulations may be considered as an interpretation by the Commissariaat of the rules, put in both the Media Act and the Media Decree. In the Regulations sports programmes is now stated that virtual advertising is allowed under the following conditions:

- during the broadcasts of a sports event;
- on a location which is usually used for advertising (for instance the boarding along the pitch).

Financial Supervision

Monitoring of media concentrations

As mentioned in our last national report the government has proposed to assign to the Commissariaat the monitoring function of concentration developments in the media. According to the government the Commissariaat, with its experience, knowledge and independent position in the media, is the most suitable organisation to monitor the main developments in the media. Once a year, or more often if necessarily, the Commissariaat can report its findings to the Parliament. Recently there was discussion about media concentrations between the Second Chamber of Parliament and the State Secretary for Education, Culture and Science.

According to the State Secretary there is at this moment no need for further cross ownership regulation. For the monitoring we proposed to the Secretary to place an amount of 1.0 million Dutch guilders (+ 454,000 Euro) for a period of two years at the disposal of the Commissariaat. To collect all the relevant information during the monitoring the Commissariaat will appeal to other external organisations like universities and research institutions. Concentration developments as well as ownership percentages in companies will have to be described, not only in the television and radio sector but also in relationship to the press, new media and producers market. Next year the Commissariaat should report for the first time its findings to government and Parliament. After two year the functioning of the monitoring will be evaluated. The Second Chamber of Parliament agrees with the proposals of the government and the Commissariaat can now make a start with the organisation of the monitoring.

Public service broadcasters allowed to offer Internet provider services

The Commissariaat has approved that the NCRV, one of the eight public service broadcasting associations in the Netherlands, offers internet providers services to its members. Since 1 March 2000, members of the NCRV (a broadcaster of protestant signature) have the possibility to get a subscription to the Internet for free. The members can also choose to pay for a subscription, in which case they will get filtering software to block content which could be harmful to children. Another extra for money is the assistance by a helpdesk. The broadcaster created a special portal site with links which could be interesting for its members. The Commissariaat considers this initiative as a so called association activity which is in accordance with the relevant provisions of Media Act and the Commissariaat's Regulation secondary and association activities public service broadcasters . According to the Commissariaat it is essential for broadcasting associations to have good possibilities to communicate with their members. The entrance to Internet, a special portal for members and e-mail facilities can improve the communication between broadcaster and members and by that way contribute to a good democratic functioning of the broadcasting association.

The EO, another public service broadcasting association, also offers Internet provider services. With special software, called FilterNet, the EO (a broadcaster of evangelistic signature) intends to block all information of violent or pornographic nature. Because also non-members can subscribe to this service, the Commissariaat regards it as an secondary activity. According to the Commissariaat the service is in compliance with the relevant provisions for secondary activities because:

- the activity does not have a negative effect on the performance of the main task of the broadcaster which is providing programmes;
- the activity is connected with and even supports the main task;
- the activity does not lead to unfair competition in relation to other parties offering the same or comparable service.

Most Internet activities of public service broadcasters will be regarded as so called secondary tasks: a new category of activities of public service broadcasters which has been introduced by the recent Concession Bill. In the near future the Commissariaat will publish regulations on these secondary tasks. There will be no strict regulation but the basic principle will be that Internet activities should be in accordance with the public task of public service broadcasters. This means that their Internet activities should meet the following conditions:

- public content;
- non-commercial;
- distinction between advertisements and content.

Cable and Licence Affairs

Court puts Commissariaat in right in jurisdiction case

On 7 September 2000 the Amsterdam court has disallowed the appeal of HMG (Holland Media Groep) and the Luxembourg company CLT against the decision of the Commissariaat that its channels RTL4 and RTL5 should be under Dutch jurisdiction. Until now RTL4 and RTL5 have been licensed by the Luxembourg authorities. The Commissariaat decided already in 1997 that:

- HMG is the broadcasting organisation which is responsible for both programmes;
- HMG is established in the Netherlands.

The Commissariat based its decision on the new article 4 of the Dutch Media Act which came into force on 1 September 1997 and which was referring to the establishment criteria of the new European Directive and also on (at that time recent) judgements of the European Court of Justice. According to the Commissariaat, not CLT but HMG was since its foundation in 1996 responsible for the programmes RTL4 and RTL5. The Commissariaat concluded that, although the head office of HMG may be located in Luxembourg, the editorial decisions on programme policy are taken in the Netherlands because the functions of programme director, chief editor and editor are fulfilled in the HMG-office in Hilversum. Furthermore a significant part of the working force involved in the pursuit of the television broadcasting activity is located in Hilversum. In the Netherlands there are about 400 people working for HMG, meanwhile in Luxembourg about 60 people, mainly technicians are stationed. Therefore HMG should apply for a licence (for private broadcasting) at the Commissariaat and the programmes RTL4 and RTL5 should comply with the Dutch media legislation.

The broadcasters lodged an appeal but the Commissariaat was put in the right by the Amsterdam court. The court followed the Commissariaat in its interpretation of "editorial decisions about programme schedules". The court agrees with the Commissariaat that not the place where shareholders or directors determine and take the final responsibility for the general programme schedules is relevant but the location where the daily editorial decisions by programme directors, editors in chief and editors are taken. According to Commissariaat and court the place where the implementing decisions are taken on a daily basis is decisive because that's also the place where the heart of the (economic) activities of the broadcaster is situated. The broadcasters can make further (and last) appeal to the administrative law division of the Council of State. Meanwhile the Commissariaat will give HMG new terms to apply for a licence and to bring the programmes RTL4 and RTL5 in accordance with the Dutch media legislation.

Application new public service broadcasting association rejected

At this moment eight public service broadcasting associations have broadcasting time on three national television and five national radio stations. It's possible for newcomers to gain broadcasting time by applying for a provisional concession. Before the State Secretary of Education, Culture and Science will award broadcasting time an applicant must fulfil the following legal requirements:

- the association should have at least 60,000 members;
- the association has full legal capacity;
- the sole or main purpose of the association, as laid down in its constitution, is to provide a programme service for general broadcasting purposes;
- the aim of the association, as laid down in its constitution, is to reflect in its programme service a particular social, cultural, religious or ideological movement within society, as indicated in the constitution, and, through its programme, to address the task of satisfying social, cultural, religious or ideological needs existing amongst the public.

Applications for a provisional concession must be accompanied with:

- a policy plan; and
- a statement of the number of members of the broadcasting association as ascertained by the Commissariaat voor de Media

The policy plan shall include the broadcasting association's programme service policy. The policy plan must also show that the programme service which the broadcasting association intends to provide is,

both in terms of the content of programmes as well as the scope of those programmes, sufficiently different to the programme services provided by the broadcasting associations which have obtained broadcasting time as to increase the level of diversity within national broadcasting.

This year one organisation: DNO (De Nieuwe Omroep = The New Broadcaster) applied for a provisional concession and wanted to be part of the public service broadcasting sector from 1 September 2000. The organisation wanted to provide programmes about three themes: the tension between economy and ecology, the tension between wealth and poverty and the convergence of old and new media. The Commissariaat was requested by the State Secretary to evaluate the policy plan and concluded that the intended programmes were not sufficiently different to the programme services provided by the current broadcasting associations as to increase the level of diversity within national broadcasting. Many of the programmes that DNO was intending to broadcast are already being provided by the other public service associations. Furthermore, the Commissariaat was of the opinion that the other public service broadcasting associations are developing more and more activities in Internet and other new media so DNO could either be supplementary in that area. Finally, mainly for these reasons the State Secretary decided to reject the application of DNO. DNO has already announced to make appeal against this decision.

Commissariaat voor de Media National report November 1999 – April 2000

This time the national report of the Commissariaat voor de Media will focus on three developments in the Dutch media: reality soap programmes, adult TV channels and concentrations in the media. Tendencies which, according to some, could harm the human dignity, the development of minors and the plurality and accessibility of information.

Reality soap programmes and the protection of human dignity

'Reality soap programmes' like Big Brother, De Bus and Geboeid caused a lot of commotion in our country during the last half year. In the first programme, broadcast from September until December 1999 10 people were locked up in a house for 16 weeks. They were not allowed to leave the house and didn't have radio, television, newspaper or telephone. Almost completely isolated from the rest of the world they were observed 24 hours a day by camera's, installed in every single room and the garden. The participants in the programme could be voted out by the others. At the end only one person remained, selected by the Dutch viewers who could vote for their favourite by telephone. The winner received 250,000 Dutch guilders (+ 113,000 Euro).

Big Brother was a big hit in the Netherlands. The programme broadcasted by the commercial broadcaster Veronica on prime time often drew more than 1 million viewers. The Internet site of the programme with live pictures from the Big Brother-house was also very popular and scored hundreds of thousands hits a day. The Dutch producer Endemol, the inventor of the programme sold the BB-format to a German broadcaster. In Germany there was even more tumult about the programme. Our German colleagues, the Landesmedienanstalt in Hessen, even obliged the responsible broadcaster to guarantee the participants a camera-free hour in the German version of Big Brother.

After the big success of Big Brother, the same production company sold two comparable programmes to private broadcaster SBS6, the main concurrent of Veronica. In De Bus 11 persons are staying for months in a bus which is travelling through the country. The people are also filmed 24 hours a day and the last person leaving the bus will also win a fortune, the amount will depend on the ratings of the programme. A (slight) difference with Big Brother is that the Bus-passengers have more contacts with the outside world. In the last programme Geboeid (Chained) one woman or man is chained up to 4 other men or women, and every day she or he should send one person away. They are also observed by camera's the whole day.

Many people think that this time the commercial broadcasters go a bridge too far and find these programmes the summit of bad taste. To get high viewing rates commercial broadcasters are nowadays willing to make misuse of people. People who, in return for money and a chance to become famous, are willing to give up their privacy and, according to some critics, even their dignity. The reality soap programmes pose the question if just like the protection of children against sex and violence the protection of human dignity should be an autonomous aim of programme supervision.

The last programme Geboeid was even heavily criticised by national politicians. According to the chairman of the fraction of the Christian-Democratic party in Dutch Parliament these programmes demonstrate that more stringent programme supervision is needed. He said that these programmes don't belong on an open channel, but in premium package, only to be received with a decoder. Furthermore he proposed to give the Commissariaat the opportunity to supervise the programmes before they have been broadcast. The Commissariaat immediately objected this proposal: prior supervision could easily lead to censorship and is forbidden by the Dutch Constitution. Therefore the Dutch Media Act only allows the Commissariaat to control a programme after it has been broadcast. Besides that the Commissariaat does not like to play the role of a moralist/censor. It also lacks the experience and knowledge for such a task. Moreover, people in favour of more supervision forget that most public service and commercial broadcasters will commit themselves to the NICAM: the national institute for the classification of audio visual media), which is based on self-regulation.

The NICAM will be responsible for the classification and broadcasting times of images which could damage persons younger than 16 years old. The Commissariaat will supervise if broadcasters respect the unlimited prohibition of broadcasting images which could seriously damage viewers under the age of 16. To avoid differences of opinion between Commissariaat and NICAM about the interpretation of damage, Commissariaat and NICAM will use the same system of classification. In future NICAM will classify programmes, television films, video films and probably even other media products like computer games. When a programme is classified as not suitable for young viewers, broadcasters will commit themselves to not broadcast this programme before a certain time. The audience will also have the possibility to complaint about broadcasters or programmes. Broadcasters which will not become member of the NICAM will fall directly under the supervision of the Commissariaat.

Adult TV channels and the protection of minors

In March of this year the Commissariaat granted a licence for commercial broadcasting to Private Blue and Gold Broadcasting. This station will broadcast the programme Private blue and gold, consisting of erotic/pornographic pictures, documentaries and other programmes for adults. Only subscribers to the channel, who have a specific decoder will be able to receive the programmes. The programmes will also be aimed on countries like Spain and Hungary, but not on countries that would not allow these programmes like the United Kingdom. In the past the Commissariaat has already granted some licences to comparable adult TV channels. In the meantime the Commissariaat has received another application for a licence of Wenzel Media. This organisation wants to run the following 4 channels: Sex tv, Sex tv Movie, Sex tv Première and Gay tv, aimed at several European countries. Only people who have a special decoder and smart card are able to receive the coded programmes of this adult TV channel.

If adult TV channels are expected to broadcast programmes or movies that might impair seriously the physical, mental or moral development of minors, the Commissariaat will not grant a licence. Furthermore, technical measures (a decoder is needed) or the time of the broadcasts must ensure, in accordance with article 22, paragraph 2 of the European Directive, that minors are not able to watch the programmes of these broadcasters which might impair (not seriously) their development. When a licence has been granted, there is always a possibility that the Commissariaat will withdraw the licence when a broadcaster infringes article 22 of the European Directive. In the case of Private Blue and Gold Broadcasting the Commissariaat concluded there was no reason to refuse the licence in advance. In the case of Wenzel Media, the Commissariaat has not decided yet.

Media concentration and the protection of plurality

Some recent mergers in the Dutch media also caused commotion in our country. The American UPC (United Pan-Europe Communications) will take over SBS (Scandinavian Broadcasting Systems). UPC has offered 2.8 billion dollar. SBS has 10 television and 17 radio channels. In the Netherlands the Scandinavian company runs 2 television channels: SBS6 and Net5. UPC owns the cable networks in cities like Amsterdam and with 2.2 million subscribers it reaches more than one third of all households connected to cable in our country. A year ago UPC has also launched 6 special interest television channels in the field of sports, films and lifestyle and daughter company Chello offers Internet services via the cable. UPC and SBS together will be active in 18 European countries. Both companies want to combine the distribution channels of UPC with the content of the SBS broadcasters.

Recently UPC has announced that it is interested in the broadcasting rights of the Dutch national football competition. Many people are concerned that UPC will make abuse of its position as cable

operator by giving preferences to its own channels like SBS6 and that it will be difficult for other programme providers to get entrance to the cable networks of UPC. Last year broadcasters like MTV, CNN and Canal+ complained at the Dutch Telecom authority OPTA about the cable tariffs they had to pay to UPC.

Telecom and Internet companies need content to make their product more attractive for the people, so they are buying broadcasters and producers which have the experience and knowledge to make interesting programmes and provide other information. This tendency is perfectly illustrated by the merger between America Online and Time Warner and later EMI. For the same reason the Spanish Telecom company Telefónica will probably buy all the shares in Dutch production company Endemol. Offered price: 5.5 billion Euro. Endemol is already producing programmes for the Spanish market and Big Brother has already been sold to the Spanish private broadcaster Tele 5.

More and more people fear that too much information will come in the hands of a few powerful companies, which is a serious threat to the plurality and accessibility of information in our society. Two years ago there were already some concerns about the tendency of concentration and the Dutch government installed the "Advice Commission cross-ownership rules in the media" to investigate if additional regulation of the concentrations in the Dutch media is needed. The commission came in April 1999 with its conclusions. The commission found there was until that moment no danger for the plurality and accessibility of information in Dutch society. According to the commission the existing rules are sufficient and adequate to protect plurality and accessibility of information. The commission had the following recommendations for the government:

The main task for the government is to guarantee free competition and sufficient provisions for public (broadcasting) services in the media. Media policy should be aimed at the continuity of public service broadcasting, a clear separation between the public and private broadcasting sector on each geographic level and an adequate supervision by the Commissariaat. There is no need for more programme content related rules for commercial broadcasters like channel differentiation to get a licence. The general competition authority NMa should in its supervision and policy pay attention to the criterion of plurality in the media. To protect the journalistic impartiality and by doing so also the plurality of information, not only newspapers but also broadcasters and other media need an editorial statute which must in any event safeguard the editorial independence of the journalists, editors and other employees charged with the editorial process. The commission underlined that its conclusions and recommendations were very much based on the observations on that time. In the dynamic media sector situations can change very quick. Therefore an independent institution should monitor all relevant developments in the media, so that monopolies which might be a danger to plurality and accessibility of information could be recognised in time.

Very recently, on 20 April 2000, the Dutch government gave its reaction to the results of the investigation by the commission. The government agreed with most of the commission's conclusions and recommendations. Just like the Commissariaat, the government thinks that co-operation between public service broadcasters and private partners should be allowed under strict conditions, as laid down in a regulation of the Commissariaat. Furthermore the government thinks that programme service or editorial statutes don't need further regulation. According to the government these statutes can be achieved by self regulation. An important proposal of the government is to guarantee by law (Telecommunications Act) network providers (cable operators) to open on reasonable conditions their network for other providers of programme services. The last important proposal of the Government is to assign to the Commissariaat the monitoring function of concentration developments in the media. According to the government the Commissariaat, with its experience, knowledge and independent position in the media, is the most convenient organisation to monitor the main developments in the media. Once a year, or more often if necessarily, the Commissariaat can report its findings to the Parliament.

Commissariaat voor de Media National report May 1999 – October 1999

Programme Supervision

In the year 2000 all Dutch public service broadcasters will operate under one concession of the Dutch Broadcasting Foundation (NOS). This is the main element of a proposal to amend the Dutch Media Act (Mediawet), which the government submitted to the Lower Chamber of Parliament on 2 July 1999.

As a consequence of that the current concessions of the individual public service broadcasting organisations, which are due to expire on 1 September 2000, will be abolished and replaced by one concession granted to the NOS for a period of 10 years. The new concession will have the status of a public service mission and should stimulate the co operation between the public service broadcasters under the umbrella of the NOS. Once in the five years the functioning of the broadcasters will be evaluated. A new task of the Commissariaat will be the assessment of the policy plan that the board of directors of the NOS has to draw up each five years. Another proposal is to increase the percentages for information and education: 35% (now 30%), culture: 25% (now 20%), Dutch/Frisian: 60% (now 40%). Another proposal is to enlarge the powers of the board of directors of the NOS and to limit the influence of the individual broadcasting organisations. Nowadays each organisation broadcast all its programmes on only one of the three national television channels: the so called 'home channel'. In future the board of directors will have the power to place at maximum a third of the programmes of a individual broadcaster on another television channel than the home channel. The board of directors is in favour of a clear format and an own character of each channel to enlarge the attractiveness of public service broadcasting. Not the broadcaster but the viewer should have its home channel. The board of directors is planning to reach forty percent of the Dutch viewers.

The Council of State has criticised the centralisation of control and management with the NOS and the growing influence of the government. The Commissariaat has also made its critical comments to the proposal and communicated these to the Lower Chamber of Parliament. The government has proposed to limit the possibilities of sponsoring for public service broadcasters. Under the new system only the following categories of programmes of public service broadcasters would be allowed to be sponsored:

- programmes of a cultural nature
- programmes consisting of a report or coverage of one or more sports events or sports matches.
- programmes consisting of a report or coverage of events for a charitable cause.

The programmes mentioned above are not allowed to be sponsored when they fully or partly consist of news, current affairs or political information or when they are specially aimed at children under the age of twelve years. According to the Commissariaat the proposed restrictions on sponsoring go not far enough. The Commissariaat is in favour of a total ban on sponsoring for public service broadcasters. This would create a clearer distinction between private broadcasting and public service broadcasting. Besides that sponsoring makes only a relative small amount on the total budget of national public service broadcasting. In 1998 the revenues of sponsoring were only + 14 million Dutch guilders (+ 6.4 million Euro), meanwhile the total income of the national public service broadcasters was + 1.4 billion Dutch guilders (+ 640 million Euro). Furthermore the Commissariaat considers the new sponsoring regime as not workable in practice. It would be very difficult for the Commissariaat to control the compliance of the broadcasters with the proposed legal conditions.

Financial Supervision

The Dutch government has decided to abolish the licence fee. In future public service broadcasting will be financed from the general state budget. At this moment every household in the Netherlands which possesses a television or radio receiver has to pay a licence fee. The licence fee for radio and television is now at maximum 216 Dutch guilders (+ 98 Euro) per household (including possible regional and local supplements). The licence fees are collected by the Radio and Television Licensing Service and the revenues are transferred to the Ministry of Education, Culture and Science which allocates the money to the broadcasting budget. In 1998 the revenues of the licence fees, exclusive the local and regional supplements, were about 1,2 billion Dutch guilders (+ 540 million Euro).

The other source of income of the broadcasting budget are the revenues of advertising on the national public radio and television. These advertising revenues are collected by the STER: the Radio and Television Advertising Foundation that broadcasts advertisements of third parties on the five national public radio and three national public television channels. Via the Commissariaat these revenues go to the Ministry of Education, Culture and Science and are added to the broadcasting budget. In 1998 the advertising revenues were approximately 400 million Dutch guilders (+ 180 million Euro).

The government wants to replace the licence fee by a state contribution which will be paid out of the national tax revenues. There are principal as well as practical arguments given for the abolishing of

the licence fee. A principal reason is the government considers the current financing system, in which the obligation to pay a licence fee depends on the possession of a radio or television set, outdated. The government points out that in near future it will be possible for the public to receive programmes also by another means like the personal computer (Web-tv). A more practical reason is a structural saving of the administration costs of the Radio and Television Licensing Service. The government expects yearly to save approximately 60 million Dutch guilders (+ 27 million Euro). Furthermore the problem of tv licence dodgers (people who improperly don't pay a licence fee) will be solved in the future.

The new plans of the government led to many critical comments. Opponents pointed out that the Licence Service works very efficiently the last years: low administration costs and meanwhile a high percentage of the people pays the licence fee. More principal is the fear of public broadcasters and other parties that the height of the financing of public service broadcasting will be discussed yearly when the national budget is drawn up. Furthermore the possibility for the regional and local authorities to raise the licence fee with a supplement for regional or local broadcasting will disappear. As a compensation for this the government will increase the municipality and province fund. The Commissariaat thinks the proposed raise of the funds won't cover the costs of local and regional public service broadcasting and has advised to reserve more money. In the plans of the government the local and regional authorities would have to transfer the money from the funds to the local and regional public service broadcasters. To assure the independence of the broadcasters the Commissariaat has proposed to take over this role. The government has promised the independence of the financing of public service broadcasting in future will be guaranteed just like under the old system.

Cable and Licence Affairs

In the field of cable services and licensing the Commissariaat has noticed the following interesting tendencies during the last six months:

- * Special interest channels. There is a growing amount of special interest programmes in the Netherlands. The American company UPC for example has been licensed by the Commissariaat to offer a several theme channels: Extreme Sports and Film 1 and other specific sports and movie programmes. These programmes will be broadcast in the regions where UPC owns the cable network but also via the cable networks of competing companies.
- * Introduction of the decoder. UPC has also purchased the cable network in the town Haarlem. The local council of Haarlem has agreed with the selling price of 150 million Dutch guilders (+ 68 million Euro). With 66,000 households connected to the cable network this means UPC has paid 2,300 Dutch guilders (+ 1000 Euro) per connection: a record in the Netherlands. UPC is intending to offer pay television and Internet. The company will also provide telephone services via the cable network. Pay tv is still regarded as the killer application to make the cable network really profitable. Yet many people are not willing to spend much money on the necessary equipment like a decoder to receive these new services. As a result of that attitude of the audience the majority of the cable operators does not dare to invest in new services which would be interesting for the public. So everyone is waiting for everyone and nothing really happens. To break through this continuing impasse UPC has decided to give every household in Haarlem a decoder for nothing, hoping that the audience will then pay for the new services
- * Free access to Internet. More and more companies offer Internet to the public without charging costs for registration or subscription. A huge competition is expected between some established Internet providers like Planet Internet and new companies like Zonnet and Freeler who are only charging the telephone costs. The Dutch commercial radio station Radio 538 and record store Free Record Shop are participating in Zonnet. The Dutch commercial music television channel TMF is also going to offer free Internet to the audience. Freeler is an initiative of some banks and an assurance company. The largest Dutch telecom company KPN is also planning to launch free access to the Internet.

**National report EPRA-meeting Vevey
Commissariaat voor de Media
November 1998 - April 1999**

Independent productions

Since 1 January 1999 the Dutch Media Act obliges the national public broadcasters to broadcast at least 25 percent productions which are manufactured by independent Dutch producers. Purpose of this modification is to strengthen the position of the independent producers as well to stimulate the plurality of public broadcasting in the Netherlands. The increase of the quorum of independent productions was already a legal obligation since the modification of the Media Act of 13 November. Until now broadcasters and producers had the opportunity to consult with each other how to fulfill this legal obligation. Originally it was the intention that the Commissariaat would confirm the agreements between the parties in a covenant.

The public broadcasters had many objections against the new quorum. According to them they have been duped by a successful lobby of the producers. Besides that the broadcasters consider the quorum harming their autonomy as programme makers. The broadcasters find that they derive their right to exist from the making of programmes. For that reason they can't be forced by the government to order more programmes from third parties. The producers on the other hand indicate that their position had become weaker the last years because the broadcasters have the tendency to produce more programmes by themselves. According to the producers there is also the tendency that former employees of broadcasters founded an autonomous production company and after that went producing only for their former employers. In the view of the association of independent producers: the OTP, it is not fair to consider these companies as fully independent producers. The OTP bases its opinion on the Guidelines for the supervision on the implementation of the articles 4 and 5 of the European Directive Television without Frontiers. Nevertheless these guidelines have the status of recommendations and not of binding provisions.

Because the parties involved failed to come into an agreement, the Dutch State Secretary for media affairs has asked the Commissariaat to report on the reached percentages during the years 1996 and 1998. The Commissariaat established many differences between the way broadcasters classify programmes and the way producers label programmes. Often a broadcaster labelled a programme as an own production, while it has been made by independent production company. After there was a correction of the data the public broadcasters turned out to fulfill almost the quorum of 25 percent. There even was a rise from 22,7 to 24,7 percent. This percentage includes programmes made by independent producers on request of a broadcaster, co productions between broadcasters and producers and also the reruns. The Commissariaat concluded there was indeed an increase of production companies that work exclusively for one broadcasting company.

As a result of the reports the Commissariaat has proposed to:

- 1) Improve the report of the public broadcasters and to make the account of the public broadcasters more transparent.
- 2) Count for the quorum independent productions only the programmes between 16.00 and 24.00 p.m. to exclude reruns broadcasted during the night and morning.
- 3) Count for the quorum programmes made by producers who work for only one broadcaster but to oblige the broadcasters to report on these productions.
- 4) Connected to the quorum make better agreements about the exploitation of programme rights by the independent producers

Financial situation regional radio

In the Netherlands each province has a regional public broadcaster that provides a programme aimed at the province. The province South-Holland even has two regional public stations. All thirteen regional stations provide a radio programme and nine of them also a television programme. Regional public broadcasting is financed by the licence and advertising. The citizens pay a surcharge for regional broadcasting to the national licence fee. In almost all provinces this is for radio about 10 guilders (4.5 Euro) a year: in all provinces together this makes 58 million guilders (26.36 million Euro) a year. The

national government contributes to the financing in thinly populated provinces. The contribution of national government comes to around 20 million guilders (9 million Euro) a year. The revenues of regional advertising are roughly 25 million guilders (11.4 million Euro).

In order of the ministry of Education, Culture and Science the Commissariaat has recently investigated the financial position of regional public radio because some stations dealt with large financial problems. A working group consisting of the Commissariaat, the ministry, the provinces and the regional broadcasters has made some proposals to improve the financial condition. Regional broadcasters have to make some measures to improve their management. Further there is a need for a periodical examination of the regional broadcasting business. In near future a study of the efficiency is needed meanwhile the quality of the programmes should be maintained. For other improvements some amendments of the law or decisions of the State Secretary are necessary. Such improvements could be: a rise of the maximum of the regional surcharges, an indexing of the regional surcharges, an increase of the budget for regional stations or a compensation for the collection costs of the regional surcharge. Given the bad financial situation of some regional stations the working group has advised the government to take the necessary steps as quick as possible.

Programme councils and their advice about the basis package

In the Netherlands the cable operators are not totally free in their composition of their cable packages. The Media Act says that the local council must install a so-called programme council which has as its legal task to advise the cable operator as to which 15 television programmes and 25 radio programmes form the basis package that the cable proprietor must at least transmit to the public. The cable operator may only ignore this advice for weighty reasons. So the cable operator has a legal duty to ask for the advice. The cable operator may also ask for advice concerning the other programmes than the mentioned 15 television and the 25 radio programmes which must be transmitted to all the public. The latter request for advice has a voluntary character. The programme council must take the existing social, cultural, religious and spiritual needs of the local community as a guiding principle in the composition of the programme package. Members of the local council are not allowed to become a member of the programme council. Only those persons can be appointed who are experts in the fields in which the programme council gives its advice. The programme council must reflect the major social, cultural, religious and spiritual movements existing in the given municipality. Often the cable networks in a number of communities are linked so that functions as one cable network. For practical reasons the sixth paragraph says that in this case the different community councils may jointly install a single programme council for the connected networks.

When a cable operator doesn't follow the advice of the programme council the Commissariaat can be asked to check if the reasons of the cable operator are weighty enough to deviate from the advice. In the meantime the Commissariaat has taken a first decision in a conflict. The Amsterdam cable operator A2000 had refused to put the programme of CNN in the basis package. Thereupon the programme council complained to the Commissariaat. According to the Commissariaat the programme council had advised indeed A2000 to transmit CNN, yet the programme council had failed to make clear that it wanted CNN in the basis package of fifteen television programmes. For that reason the cable operator was free to deviate from the advice of the programme council.

National Report Commissariaat voor de Media

Violence on television

In October 1996 the Commissariaat imposed the private broadcaster SBS6 with a fine of 10.000 Dutch guilders (4.700 European Currency Unit). The fine has been imposed because SBS6 broadcasted too early two films (Black rain and Hamburger hill) which, after censorship under the Film Censor Act, were not passed as suitable for viewing by persons under the age of sixteen. According to article 53 of the Dutch Media Act films which have been submitted to the Dutch Board of Film Censors and were not passed as suitable for viewing by persons under the age of sixteen shall not begin until 10.00 p.m. During that time those films were even not allowed to be shown before 9.00 p.m. SBS6 let the films start at 8.30 p.m. and violated against article 53 of the Media Act. Furthermore in contravention with article 53 the broadcaster didn't announce the rating given by the film censors prior to the start of the film. This was the first time that a broadcaster has been fined for the violation of article 53 of the Media Act. Article 53 says also that films which have been submitted to the Netherlands Board of Film Censors and were not passed as suitable for viewing by persons under the age of twelve shall not begin until 8.00 p.m. It has to be stressed that the Commissariaat does not investigate whether a film

contains too much violence; that is the task of the Dutch Board of Film Censors. The only fact that is relevant to the Commissariaat is the rating given by the Netherlands Board of Film Censors.

In his Directive Television and Youth of 17th. December 1996 the Commissariaat has elaborated in which manner it will supervise the compliance with article 53. On the basis of the text of article 53 the Commissariaat finds that the rules of article 53 for the broadcasting of rated films are also applicable to the broadcasting of parts of those films. This has as a consequence that if a film has the rating 'unsuitable for children under 16 years', also the parts of these films (for example in a promo) are not allowed to be shown before 10.00 p.m.: just like the film itself. If a broadcasting institution is intending to show the promo at an earlier time, the broadcasting institution must ask the Dutch Board of Film Censors to review the fragment(s). The broadcasting institutions have an own responsibility for the other programmes and film which have not been submitted to the Dutch Board of Film Censors like for instance television films. The broadcasting institution has to consider itself whether these films/programmes are suitable for broadcasting on a certain time. If a film/programme will be broadcasted after 8.00 p.m. because the broadcaster has considered the film/programme not suitable for viewing by children under the age of twelve years the broadcaster has to mention this immediately prior to the start of the film/programme. This announcement can have a visual or oral character.

The Commissariaat cannot impose fines for the broadcasting of films/programmes which have not been rated by the Dutch Board of because the broadcasting of these films/programmes belong to the selfregulation of broadcasters. Although the Commissariaat investigated in 1997 how broadcasters deal with their own responsibility broadcasting of these films/programmes. With help of the criteria of the Dutch Board of Film Censors the Commissariaat selected 21 programmes of the public broadcasting institutions, the private broadcasters SBS6 and Veronica which contained violating scenes. Two videoclips of The Music Factory (the Dutch MTV) were also selected. This 23 items have been submitted to the Board of Film Censors that studied the items according the usual proceeding. The Board of Film Censors concluded that 21 programmes where not suitable for viewing by children under the age of twelve or sixteen years. Eleven programmes of SBS6, six programmes of Veronica, two programmes of the public broadcasters and two videoclips of TMF were considered as not suitable for viewing by youngsters. The conclusion of the Commissariaat was that the public broadcasting companies give a good interpretation of their own responsibility but the private broadcasters SBS6 and Veronica will have to change their programmes to comply with the own responsibility of article 53 of the Media Act.

Secondary activities

The Commissariaat has established the Directive 'Secondary activities and association's activities public broadcasting institutions'. This directive which has come into effect on 15 March 1998 gives rules for the secondary activities and the broadcasting association activities as an association. The regulation of the secondary activities of the public broadcasters was one of the most important parts of the liberalisation of the Media Act on 1 September 1997. In the first paragraph of article 57 of the Media Act the main task of the public broadcasters is mentioned explicitly: the providing of programmes (radio and television) for which they have obtained broadcasting time. In the second paragraph the secondary activities are described as: "All the activities and work of an organisation with broadcasting time that are not directly connected or related to the organisation's performance of the main task, with the exception of a broadcasting association's activities as an association".

The previous Media Act stated that secondary activities were to be an exception for which an authorisation of the Commissariaat was needed. Due to the liberalisation broadcasters are permitted to start secondary activities and prior authorisation is not needed anymore. In the mentioned directive the Commissariaat stated that the public broadcasting institutions have to report each secondary activity to the Commissariaat not later than the day they start with the activity. Then the Commissariaat will investigate whether a broadcaster's activities comply with the three stringent criteria for secondary activities of article 57a of the Media Act: no negative influence on the main task; a certain relation with the primarily/main task and no unfair competition. In principle the secondary activities have to be self-supporting. It is not allowed to finance the activities with public funds. An exception to this rule has been made for the activities of the broadcasters on the Internet because it is generally accepted that public broadcasters can manifest themselves on the Internet. The revenues of the secondary activities have to be used for the programmes of the broadcasting institutions. An eventually loss may not be transferred to the public funds. The advertising on radio and television for the secondary activities are subject to more stringent rules. The public broadcasting institutions can no longer make publicity for

their programme guides in their own broadcasting time. The broadcasting institutions will have to buy advertising time when they want to bring the secondary activities to public notice.

Jurisdiction

On 20 November 1997 the Commissariaat decided that on the basis of article 4 of the Dutch Media Act the programmes RTL4 and RTL5 fall under the supervision of the Commissariaat. Article 4 of the Dutch Media Act describes when a provider of commercial or subscription programmes falls under the jurisdiction of the Netherlands. The new article 4 refers to the European directive Television without Frontiers. The new European directive states that a broadcaster falls under the legislation of the member state where the broadcaster has been established. The location of the main office, the place where the editorial decisions on programme schedules are usually taken and the place where the majority of the workforce involved in television broadcasting activities are located are the important criteria to determine where a broadcaster is established. After an intensive investigation of the practical situation and consultation of many documents (press publications, extracts of the Chamber of Commerce annual reports) the Commissariaat concluded that not the media company CLT-UFA in Luxemburg but the subsidiary company Holland Media Groep (HMG) has to be considered as the responsible broadcaster for the programmes RTL4 and RTL5. The Commissariaat stated that the editorial decisions on programme schedules for RTL4 and RTL5 are taken by employees of HMG in the Netherlands and that majority of the workforce involved in the television broadcasting activities for RTL4 and RTL5 are working for HMG in the Netherlands. HMG has to ask the Commissariaat an authorisation for commercial broadcasting and the programmes RTL4 and RTL5 have to comply with the rules of the Dutch media legislation.

Commissariaat voor de Media: national report

Integrated supervision of local public broadcasters

The Commissariaat has launched a new policy to strengthen the public character and programmes of local public broadcasters. In the Netherlands there are about 350 public broadcasters on local level. Since two years they have company of private 'colleagues'. Until now, almost 400 companies obtained a licence for private broadcasting of the Commissariaat and many of them are operating on local and regional level. The Dutch media legislation makes a clear distinction between public and private broadcasting: not only on national but also on regional and local level. Because of their public status the local broadcasters have some legal rights, which the private broadcasters don't have. In each municipality a terrestrial air frequency is reserved for a local public broadcaster and above that cable operators are obliged to distribute the signal of the broadcaster. Some public local broadcasters even get public money: the municipal council can decide to raise the licence fee with a surcharge for the costs of local radio broadcasting. Until now, not many municipal councils have decided to do so.

As a consequence of the legal distinction between public and private broadcasting public local and regional broadcasting companies should be non commercial and make programmes with a public nature. Public broadcasters have a public mission and must prove that they are really public by heart, so the public local broadcaster cannot restrict himself by only playing popular records. For that reason the Dutch Media Act requires that at least 50% of the programme of a public local or regional broadcasting organisation should consist of information, culture or education which has a particular relevance to the municipality or province for which the programme is intended. On the other hand this doesn't mean that only programmes with a 'high cultural' character have to be broadcast. A local cultural agenda, a report of local sports events, a programme about the social life in the town or a registration of a concert of local musicians: all these programmes will be regarded as having a cultural or informational nature.

The Commissariaat has a legal task to control whether the public broadcasters fulfill their public tasks. Although the majority of local broadcasting companies function on small budgets and can only afford to work with volunteers who are good-willing but don't have a professional education, the Commissariaat has the opinion that it must be possible for local broadcasters to broadcast more public programmes. There were good reasons to change the way of supervision over the local broadcasters. During the period Mai 1996-July 1997 the Commissariaat investigated how public local and regional broadcasters fulfill their legal obligations. The programmes of the public regional broadcasters, with the exception of one, all contained more than 50% information, culture or education. How different the situation of the public local broadcasters was. Out of 31 local broadcasting companies - controlled at

random - only four proved to have enough programmes of informational, cultural or educational nature.

In 1996 the Commissariaat imposed fines on several local broadcasters who didn't comply with the rules. Unfortunately these fines didn't result in better behaviour until now, so the Commissariat concluded that random controls are not sufficient to force the broadcasters to become more public. For that reason the Commissariaat has now decided to start with a system of so called integrated supervision. The Commissariaat wants a yearly report of the function of the local public broadcaster: the financing, the programme schedules and very important: the role of the body that determines the programme of the broadcaster. According to the Media Act every local public broadcaster should have such a body and its members should represent the main social, cultural, religious and spiritual forces within the municipality or province. To strengthen the public character of the broadcaster and the public nature of its programmes the Commissariaat wants the 'representative body' to take more responsibility in the management and programme policy of the broadcaster. In cooperation with the OLON, the association of local broadcasters, the Commissariaat will give recommendations to raise the influence of the body on the programme policy. The Commissariaat wants the body to give each year account about the programme policy. By that way the Commissariaat will get a better supervision over the broadcaster and its programmes. The Commissariaat also recommended that local broadcasters should make more co-productions with local broadcasters in the nearby towns and the regional broadcaster to raise the public nature of the programmes. The public local broadcasters that after an integrated control have proved to have no functioning 'representative body' will eventually risk losing their licence.