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European Commission – Competition DG
Information, Communication and
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Attention: Dr. Herbert Ungerer
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Issy-les-Moulineaux, 1 July 2005

**Case COMP/C2/38788 Sector inquiry into the provision of sports content over
3G networks – Additional remarks following the presentation of preliminary
findings during the hearing on 27 May 2005**

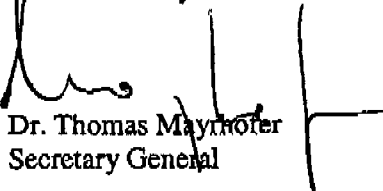
Our Ref.: I/2004.423

Dear Dr. Ungerer,

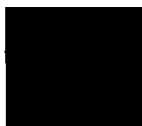
With reference to the above-mentioned matter, please find enclosed Eurosport's
further remarks following publication by the Commission of the preliminary findings
of the New Media (3 G) Sector Inquiry.

Please do not hesitate to contact me if you have any further questions.

With kind regards,
Yours sincerely


Dr. Thomas Mayrhofer
Secretary General

cc.: Angelo Codignoni



Issy-les-Moulineaux , 1 July 2005

Preliminary findings of the New Media (3 G) Sector Inquiry

Further to the public presentation of the preliminary findings of the New Media (3 G) Sector Inquiry on 27 May 2005 Eurosport wishes to make additional representations regarding the preliminary findings as presented during the hearing and in the issues paper (the "Issues Paper").

I. Background and Analysis Framework

In its introduction the Commission rightfully insists on the necessity to enhance the further take-up and development of 3 G services. The Commission seems mainly concerned about actual or potential limitations for 3 G mobile operators to access premium media content, and in particular "sports rights for 3 G".

The Commission's further analysis is focused on commercial practices in relation to licensing of "3 G sports rights" (cf. points 6 to 11 of the Issues Paper) and based on the assumption that 3 G operators are vertically integrated on the levels of rights acquisition, content editing and content distribution. The main concern of the Commission is to make sure that 3 G operators can develop attractive sports content offering ("*inter platform concern*") and that there will be more than just a few 3 G operators which obtain a market position ("*intra platform concern*").

It is apparently not a concern of the Commission to make sure that (i) TV operators get access for simultaneous, unabridged and unaltered broadcast of their TV programs on 3 G mobile networks as a distribution platform and that (ii) rights for such transmission means are made available to the TV operators by the rights holders.

II. Television as part of a 3 G content offer

As of today traditional television is already part of the 3 G content offer¹.

a) 3 G mobile networks are an additional distribution platform for TV

As a content aggregator Eurosport buys sports rights with the purpose of editing a (pan-european) sports thematic television channel to be distributed on various (sometimes competing) distribution platforms. Following convergence of digital technical standards such distribution platforms include as of today:

- Cable
- Satellite
- ADSL
- Digital Terrestrial (DVB-T/DVB-H)

¹ See the content offer made by Vodafone, Orange ;

New transmission means have been added to existing ones whenever available² to increase the reach of the Channel. Indeed, certain 3-G-operators have already started offering bouquets of TV channels similar to those offered today by satellite, cable or ADSL distribution platforms. Recently contracts for simultaneous, unabridged and unaltered distribution of Eurosport over wireless telecommunication networks ("3 G networks") have been entered into in certain territories³. From Eurosport's perspective 3 G networks are just an additional (mobile) platform for distribution of its program⁴.

b) Television as part of the 3 G mobile content offer

From the 3 G networks operator's perspective "audiovisual content" and "other services" (as for example data transmission services, music downloads etc.) may be distinguished. The content offered on 3 G networks may be partly edited by the 3 G operator himself and partly by third parties, such as, for example, editors of TV programs.

The mobile content offers of leading 3 G operators clearly illustrate this situation. The mobile content offers currently available⁵ on 3 G networks which are built around a "bouquet" of TV channels and additional content may be categorized as follows:

Content		
Audio-visual content		Other content
TV	Other audiovisual content	
Television channels ('Mobile TV') ⁶	VOD, video clips	News, Music downloads, e-mail and chats, ring tones, games

In building up their 'Mobile TV' offer the 3 G network operators very much rely on the strength of existing TV brands and broadcasters capacity to supply a quality product at a competitive price.

Criteria such as screen size, quality of images and sound, comfort of viewing and ability to watch in a group, mobility of viewing via 3 G, cost of usage, battery/power capacity and ability to personalize the viewing experience⁷ apparently do not hinder the 3 G network operators to offer existing TV programs as part of their 'Mobile TV' offer.

² cable and satellite since start of broadcast in 1989; ADSL since 2000 (Israel) ; Digital terrestrial since 2002 (Sweden) ;

³ Germany and Netherlands.

⁴ It should however be noted that mobile reception of audio-visual content can also be achieved over *broadcasting* networks such as DVB-T and DVB-H.

⁵ for instance Vodafone (cf. Vodafone.de) and Orange (in France);

⁶ Television as a 'sub-category' of audio-visual content is based on a linear daily programming schedule and produced as a continuous flow of sound and images (linear service) and which is *identical* regardless of the specific distribution platform used ;

⁷ see Issues Paper point n° 20 ;

III. Competition concerns

Eurosport's competition concerns are twofold:

a) *Lack of access for Eurosport to 3 G distribution rights*

Some sports rights holders do try to retain distribution rights for TV Programs on 3 G networks and to reserve the (downstream) 3 G distribution market exclusively to 3 G mobile operators in order to protect the market for sales to 3 G operators of audio-visual content *other* than TV programs. This strategy to retain rights for simultaneous, unabridged and unaltered distribution of the Eurosport program over 3 G networks may hamper the chances of Eurosport to be present on 3 G networks at all. As a matter of fact one or two major right holders may restrict the possibility for a TV program to extend its distribution to 3 G networks⁸ and thus hinder the TV operator to satisfy existing consumer demand. In addition, right holders would be able to force 3 G network operators to accept deceptive products despite the availability of branded TV content which meets the 3 G operators demand.

b) *Vertical integration of 3 G network operators*

Eurosport is less concerned about the restrictions which might be imposed on mobile operators – which have financial resources beyond those of any TV operator – than possible risks stemming from *vertical integration* between the content and distribution markets on 3 G even though 3 G operators tend currently to organize their offer around 'Mobile TV' and to add self produced (or third party supplied) 3 G specific content like video clips. The potential exclusion of Eurosport from this new form of (mobile) distribution might weaken Eurosport's position on its core markets, if financially powerful and vertically integrated 3 G operators decide to extend their newly built up content activities to fixed line transmission means, in particular over ADSL⁹.

IV. Conclusion

a) 3-G-networks are another distribution platform for the simultaneous, unabridged and unaltered distribution of Eurosport ('Mobile TV') which is added to the existing transmission means (cable, satellite, terrestrial and ADSL).

b) As of today 'Television' is already part of the 3 G content offer. Certain sports rights holders refuse to grant even non-exclusive rights for simultaneous, unabridged and unaltered distribution of TV programs over 3 G networks in view of maximising their revenues from 3 G distribution. This attitude might reduce the programming offer available on 3 G networks, frustrate existing consumer demand for viewing of TV programs on 3 G mobile devices and increase costs of television services over 3 G networks for both 3 G operators and consumers.

⁸ Since television is a continuous flow of sound and images and the program is distributed simultaneously, unabridged and unaltered any "black out" of specific programming may lead to consumer frustration and thus put the contractual relationship with the distributor at risk.

⁹ This is already the case for some 3-G-operators. For instance France Telecom is operating a 3 G service ("Orange") and an ADSL service ("Ma ligne TV"). Belgacom has recently acquired exclusive rights for the Belgian football league against the traditional TV operators.

c) The financially powerful 3 G operators are active on the rights, content and distribution markets and might even be fully vertically integrated in the future. The control of mobile distribution will give significant market power to these operators which could eventually be leveraged on the content and sports rights acquisition markets.

We would be grateful if the Commission could take into account in its further enquiry the points raised above.
