

Broadcasting (Major Events Television Coverage) (Amendment) Act 2003

2003 13



Number 13 of 2003

BROADCASTING (MAJOR EVENTS TELEVISION COVERAGE) (AMENDMENT) ACT 2003

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Number 13 of 2003

**BROADCASTING (MAJOR EVENTS
TELEVISION COVERAGE) (AMENDMENT) ACT
2003**

AN ACT TO GIVE FURTHER EFFECT TO ARTICLE 3A OF COUNCIL DIRECTIVE NO. 89/552/EEC OF 3 OCTOBER 1989 AS AMENDED BY DIRECTIVE NO. 97/36/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 30 JUNE 1997; TO REGULATE IN THE COMMON GOOD AND FOR THE PURPOSES OF THAT DIRECTIVE THE SALE AND EXERCISE OF RIGHTS TO EVENTS DESIGNATED UNDER SECTION 2 OF THE BROADCASTING (MAJOR EVENTS TELEVISION COVERAGE) ACT 1999, AND TO REGULATE THE EXERCISE BY BROADCASTERS OF EXCLUSIVE BROADCASTING RIGHTS THAT THEY MAY HAVE PURCHASED, TO ENSURE FOR THE PURPOSE OF THAT DIRECTIVE THAT A SUBSTANTIAL PORTION OF THE PUBLIC IS NOT DEPRIVED OF THE POSSIBILITY OF FOLLOWING EVENTS LIVE OR ON A DEFERRED BASIS ON FREE TELEVISION SERVICES WHICH EVENTS ARE REGARDED BY THE MINISTER FOR COMMUNICATIONS, MARINE AND NATURAL RESOURCES AS

BEING OF MAJOR IMPORTANCE TO SOCIETY AND TO AVOID SPECULATIVE RIGHTS PURCHASES OF EVENTS DESIGNATED BY THE MINISTER FOR COMMUNICATIONS, MARINE AND NATURAL RESOURCES UNDER THE SAID SECTION 2; AND FOR THAT PURPOSE TO AMEND THE BROADCASTING (MAJOR EVENTS TELEVISION COVERAGE) ACT 1999; AND TO PROVIDE FOR CONNECTED MATTERS.

[22nd April, 2003]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Interpretation.

1.—(1) In this Act—

“broadcaster”, “free television service” and “qualifying broadcaster” have the meanings assigned to them, respectively, by section 1 of the Principal Act;

“Council Directive” means Council Directive No. 89/552/EEC of 3 October 1989¹ as amended by Directive No. 97/36/EC of the European Parliament and of the Council of 30 June 1997² ;

“designated event” means an event designated under section 2 of the Principal Act;

“designation order” means an order under section 2 of the Principal Act;

“event” has the meaning assigned to it by section 1 of the Principal Act and includes the whole event or where part of it has already taken place the remainder;

“event organiser” means the person who is legally entitled to sell the rights to the event;

“Principal Act” means [the Broadcasting \(Major Events Television Coverage\) Act 1999](#) ;

“rights” in relation to the broadcast of a designated event, means the exclusive or non-exclusive rights to broadcast the event.

(2) In this Act—

(a) a reference to any enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended or extended by or under any subsequent enactment including this Act,

(b) a reference to a section is a reference to a section of this Act, unless it is indicated that reference to some other enactment is intended, and

(c) a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended.

Application.

2.—This Act applies to a designated event which is designated, before or after the passing of this Act, under section 2 of the Principal Act, whether or not any agreement or arrangement has been entered into between the event organiser and a broadcaster in respect of the acquisition by the broadcaster of rights to the event, and where such an agreement or arrangement has been entered into before the passing of this Act, in respect of those rights, it was entered into after the publication of the Council Directive concerning an event which takes place after 13 November 1999 (being the date Article 3a of the Council Directive was given effect to by the Principal Act).

“Minister”.

3.—Section 1(1) of the Principal Act is amended by substituting for the definition of “the Minister” the following definition:

“‘Minister’ means Minister for Communications, Marine and Natural Resources;”.

Qualifying broadcaster may apply to High Court to obtain rights from event organiser to provide coverage of designated event on free television services in State, etc.

4.—(1) Where an event has been designated under section 2 of the Principal Act, and if within 56 days, or such other lesser or greater period which the Minister directs, before the event or a part of it takes place the event organiser has not made an agreement or arrangement with a qualifying broadcaster to enable it to provide coverage on free television services in the State of the event or part of it, as determined under section 2(1)(b) of the Principal Act in the designation order

which designated the event—

(a) subject to *subsection (3)*, a qualifying broadcaster may apply to the High Court in a summary manner for an order directing the event organiser to give rights to the qualifying broadcaster to provide such coverage and upon such terms as are fixed by the High Court, including the fixing of reasonable market rates, in respect of the acquisition of the rights, or

(b) within that period a qualifying broadcaster has not so applied, the event organiser may apply to the High Court in a summary manner to request the High Court to invite qualifying broadcasters to make such an application.

(2) Subject to *subsection (3)*, the High Court may, on application to it under *subsection (1)* by a qualifying broadcaster, direct the event organiser, upon such terms as to the Court appears just and proper, to give to the qualifying broadcaster rights to provide coverage of the designated event or part of it on free television services, as determined under section 2(1)(b) of the Principal Act in the designation order which designated the event, notwithstanding that all of the terms for the acquisition of the rights to provide coverage under *subsection (1)*, have not yet been fixed by it, including the fixing of reasonable market rates.

(3) *Subsection (1)* does not apply where an event organiser decides, prior to the making of an application under *subsection (1)*, not to allow coverage of an event or a part of it, as determined under section 2(1)(b) of the Principal Act in the designation order designating the event, on any television service provided by a broadcaster. Where an event organiser has so decided, the event organiser must notify, as soon as possible, the Minister.

(4) The High Court in fixing the terms under *subsection (1)* may, in arriving at a computation of reasonable market rates, to be paid by a qualifying broadcaster for the acquisition of the rights under that subsection, refer the computation of the rates to an arbitrator appointed by the High Court. The arbitrator shall report to the Court and the parties, by way of issuing an award, setting out the amount that he or she

decides are reasonable market rates.

(5) An arbitration under *subsection (4)* shall be conducted in accordance with such procedures as are determined by the Court referring the computation of the rates to the arbitrator. The Court may, in determining such procedures, give such directions as it considers just and proper for the processing of the arbitration, including fixing the period within which the award of the arbitrator is to be issued.

(6) Where in an application under *subsection (1)*—

(a) the High Court has fixed the reasonable market rates, or an arbitrator has issued an award under *subsection (4)*, and prior to the High Court making a final order in respect of the application, or

(b) in the circumstances referred to in *subsection (2)*, the High Court indicates that it will fix the reasonable market rates for coverage of the event after the event has taken place, and prior to the event taking place,

the qualifying broadcaster may withdraw the application. The High Court may in these circumstances, having regard to the intention of the broadcaster making the application, award such costs to such party or parties to the application as it considers appropriate.

(7) The High Court may, either of its own motion or on application to it by an arbitrator appointed under *subsection (4)*, give, from time to time, such directions in connection with the arbitration as it considers just and proper.

(8) Where more than one qualifying broadcaster applies under *subsection (1)* for rights to provide coverage of a designated event or part of it, and the High Court has fixed under this section the terms upon which a qualifying broadcaster may obtain the rights, the event organiser may choose to which qualifying broadcaster it gives the rights.

(9) Where there is an existing contract in respect of an event or part of it between the event organiser and another broadcaster, who is not a qualifying broadcaster, the High Court in an application to it under *subsection*

(1) shall decide to whom and in which proportions monies in respect of the reasonable market rates, fixed under this section in respect of the acquisition of rights to the event or part of it, should be paid.

(10) The High Court may, if it considers it necessary, for the purposes of exercising its powers under this section, adjust an existing agreement or arrangement, in respect of rights to a designated event or a part of it, between the event organiser and a broadcaster, who is not a qualifying broadcaster.

(11) Without prejudice to *subsection (2)*, when considering any matter under this section, the High Court may make such interim or interlocutory order as it considers appropriate.

Arbitration in respect of reasonable market rates where event organiser is willing to sell broadcasting rights to designated event to qualifying broadcaster.

5.—(1) Where an event organiser is willing to sell rights enabling a qualifying broadcaster to provide coverage on free television services in the State of a designated event or a part of it, as determined under section 2(1)(b) of the Principal Act in the designation order which designated the event, but the qualifying broadcaster and the event organiser have not agreed the amount to be paid in respect of the acquisition of the rights, the following provisions of this section apply.

(2) The qualifying broadcaster or the event organiser may request the other to agree to the appointment of an arbitrator for the purposes of fixing reasonable market rates for the acquisition of the rights referred to in *subsection (1)*. In default of agreement, on the appointment of an arbitrator by the parties, the Minister may appoint an arbitrator, who he or she considers to be suitably qualified in this regard, within 21 days of being notified by either party of such default.

(3) An arbitrator appointed under *subsection (2)* shall issue his or her award, in writing, which, subject to *subsection (4)*, shall be a provisional award. The arbitrator shall notify the parties concerned of the award.

(4) An award issued under *subsection (3)* is not binding on the qualifying broadcaster concerned unless, within the period of 21 days from the date of issuing of the award of the arbitrator under *subsection (3)*, the qualifying broadcaster has notified the event organiser concerned of the qualifying broadcaster's acceptance of

the award.

Criteria for determining reasonable market rates.

6.—In determining that which constitutes reasonable market rates or terms for the purposes of this Act and the Principal Act, the High Court or an arbitrator shall have regard to, *inter alia*—

- (a) previous fees (if any) for the event or similar events,
- (b) time of day for live coverage of the event,
- (c) the period for which rights are offered,
- (d) the revenue potential associated with the live or deferred coverage of the event,
- (e) the purposes of Article 3a of the Council Directive and the rights conferred on Member States of the European Communities to regulate the exercise of broadcasting rights, and
- (f) such other matters as may appear to be relevant.

Obligation to give copy of agreement or arrangement to broadcasting rights to Minister.

7.—(1) The Minister may, where he or she considers it is in the public interest, direct an event organiser who has entered into an agreement or arrangement with a broadcaster in respect of the broadcasting rights to a designated event to give to the Minister, at the Department of Communications, Marine and Natural Resources, within such period specified in the direction, a copy of the agreement or arrangement.

(2) Where an agreement or arrangement referred to in *subsection (1)* is not in writing, the event organiser must, upon receiving a direction of the Minister, notify the Minister of the agreement or arrangement and set out all its terms and conditions.

Service of directions and notification.

8.—(1) Where a direction or notification is required under this Act to be given to a person, it shall be in writing, addressed to the person and given to the person in one of the following ways—

- (a) by delivering it to the person,
- (b) by leaving it at the address at which the person

ordinarily carries on business,

(c) by sending it by post in a pre-paid registered letter addressed to the person at the address at which the person ordinarily carries on business,

(d) if an address for the service of directions or notifications has been furnished by the person, by leaving it at, or sending it by pre-paid registered post addressed to the person at that address,

(e) in any case where the person giving the direction or notification considers that the immediate giving of it is required, by sending it, by means of a facsimile machine, to a device or facility for the reception of facsimiles located at the address at which the person ordinarily carries on business or, if an address for the service of directions or notifications has been furnished by the person, that address, provided that the sender's facsimile machine generates a message confirming successful transmission of the total number of pages of the direction or notification and it is also given in one of the ways referred to in any of the preceding paragraphs.

(2) For the purposes of this section—

(a) a company registered under the Companies Acts 1963 to 2001 is deemed to carry on business at its registered office, and every other body corporate and unincorporated body is deemed to carry on business at its principal office or place of business, and

(b) the Minister is deemed to carry on business at the Department of Communications, Marine and Natural Resources.

Review of designated events.

9.—(1) Subject to *subsection (2)*, the Minister shall review, from time to time, designated events and the designation of events under section 2 of the Principal Act.

(2) A review under *subsection (1)* shall be—

(a) in the case of the first review, not later than 3 years after the passing of this Act, and

(b) in the case of any subsequent review, not later than 3 years after the preceding review.

Short title, collective citation and construction.

10.—(1) This Act may be cited as [the Broadcasting \(Major Events Television Coverage\) \(Amendment\) Act 2003](#) .

(2) [The Broadcasting \(Major Events Television Coverage\) Act 1999](#) and this Act may be cited together as the Broadcasting (Major Events Television Coverage) Acts 1999 and 2003 and shall be construed together as one.

¹ OJ No. L298/23, 17.10.89.

² OJ No. L202/60, 20.7.97.