[DE] Sport Gets Special Treatment in new Monopolies Law

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The German Bundestag passed the sixth Act amending the Act against Restrictions on Competition (Gesetzes gegen Wettbewerbsbeschränkung - GWB) on 8 May 1998. The Federal Council (Bundesrat) also passed it by a large majority on 29 May 1998. The way is therefore clear for the Act to take effect on 1 January 1999. At the end of last year, the Federal Court (Bundesgerichtshof - BGH) had ruled that central marketing of television rights for the home matches of teams competing for the European Cup and the European CupWinners' Cup violated Section 1, para. 1, sentence 1 of the GWB (see IRIS 1998-1: 7). The ensuing debate gave rise to demands that sport be made a special case (see IRIS 1998-2: 13). Speaking at the World Sports Forum in St. Moritz on 8 March 1993, the Director General of the European Commission's DG IV declared that granting an exemption for sport in German law would in no way ensure exemption at Community level. He considered a general exemption unnecessary, undesirable and unjustified, since the rules on competition were sufficiently flexible to accommodate sport's special features.

In spite of this statement and of the Federal Cartel Office's reservations, an exception has now been made in the GWB for the central marketing of television rights to sports events. Under Section 31 of the GWB, Section 1 (which prohibits monopolies) does not apply to central marketing of television rights to sports fixtures by sports associations which «in fulfilment of their social policy role, also have a duty to promote sport among young people and amateurs, and are enabled to do so by receiving an appropriate share of the income from central marketing of these television rights».

6. Novelle des Gesetzes gegen Wettbewerbsbeschränkung (GWB). Gesetzesbeschluß des deutschen Bundestag vom 08. Mai 1998, Drucksache 418/98

Sixth Act amending the Act against Restrictions on Competition. Resolution passing an Act of 8 May 1998, German Bundestag, document No. 418/98

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