[DE] Frankfurt Court of Appeal on Central Marketing of Film and Television Rights for Motor Racing Events

IRIS 1999-2:1/9

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By its judgement on 15 December 1998, the 1st Cartel Division of the Frankfurt am Main Court of Appeal (Oberlandesgericht - OLG) dismissed the appeal by a television production and marketing company against the International Automobile Federation (Fédération Internationale de l'Automobile - FIA). The plaintiff was opposed to changes in Article 26 of the FIA statutes made by resolution on 20 October 1995 and 11 January 1996, under which (with effect from 1 January 1997) all film and television rights in motor racing events taking place in more than one country belonged to the FIA. The FIA subsequently appointed International Sportsworld Communicators Ltd. (ISC) to handle the exclusive marketing of the film and television rights covered by the resolutions in question.

The plaintiff company claimed that the FIA resolutions contravened European anti-trust law and were also invalid under domestic law. It demanded that the FIA desist from centrally marketing the film and television rights, since the company - which had hitherto contracted directly with the race organisers - had had its rights infringed. Contrary to the decision at the court of first instance (see IRIS 1998-4: 8), the Court left the question open whether the FIA was to be viewed as co-organiser and accordingly co-owner of the rights. According to the findings of the Federal High Court (Bundesgerichtshof - BGH) in the case on the central marketing of UEFA Cup home matches by the German Football Association (see IRIS 1998-1: 7), the contrary view might be fully justified in the instant case. Nonetheless, in the view of the Court, there may still be infringement of anti-trust regulations if the FIA met the criteria as organiser and were to be viewed as original owner of the television rights. However, the Court left the objective assessment of the compatibility of the FIA resolutions with anti-trust law unresolved.

The Court dismissed the plaintiff's application on more formal grounds: even if the decision by the FIA on handling its own marketing were invalid under Art. 85 of the EEC Treaty, the plaintiff could not thereby derive rights of its own, since anti-trust law does not grant subjective rights to any aggrieved participant in the market. According to BGH case law, Article 85 of the EEC Treaty is only recognised as a remedial statute within the meaning of BGB § 823 para 2 insofar as "the impairment of free competition is directly aimed at the party concerned".

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The Cartel Division came to the conclusion that only directly identifiable aggrieved parties in an affected market segment, such as blocked-off competitors, are covered. This did not apply to the plaintiff company, however. As the FIA "television resolution" only concerned the marketing of television rights without affecting the awarding of production contracts, the Court did not see the plaintiff as being the object of any intentional agreement. It could only have asserted rights of its own if it had been discriminated against in the choice among various film and television companies. The fact that the plaintiff had not made any recordings of racing events was based not on the FIA marketing decision but the fact that one of the plaintiff's immediate competitors had made a better offer and received the production contract from ISC. In the Court's view, the plaintiff could nevertheless have proceeded on the basis of § 26 para 2 of the Anti-Cartel Law (Gesetz gegen Wettbewerbsbeschänkung - GWB), pleading possible unfair treatment regarding the award of production contracts. However, it had not done so.

The German Football Association (Deutsche Fussballverband-DFB) has in the meantime applied to the European Commission for a negative test or special exemption in respect of the central marketing of broadcasting transmission rights for 1st and 2nd division league and DFB Cup matches in accordance with Council Regulation No. 17. The application specifically does not extend to the disposal of rights for UEFA Cup home matches.

Urteil des OLG Frankfurt am Main vom 15. Dezember 1998 Az. 11 U (Kart) 16/98.

Judgement by the OLG Frankfurt am Main (Court of Appeal) on 15 December 1998 file No. 11 U (Kart) 16/98.

Sache Nr. IV/37.214, ABl. Nr. C 6 vom 9. Januar 1999.

Case No. IV/37.214, ABl. No. C 6 dated 9 January 1999.

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