Court of First Instance: Upholds Decision by European Commission on Incompatibility of VTM's «Monopoly» with Article 90, para. 1 taken in Conjunction with Article 52 of the EC Treaty

IRIS 1999-9:1/8

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On 26 June 1997, the European Commission adopted a decision (97/606/EC; see IRIS 1997-9: 4) according to which the exclusive right granted to VTM to operate Flemish-speaking commercial television was incompatible with Article 90, para. 1 of the EC Treaty (now Art. 86, para. 1) taken in conjunction with Article 52 of the Treaty (now Art. 43). As a result of this decision, in 1998 the Flemish Parliament amended the decree on the audiovisual sector by abolishing the exclusivity of the licenses granted to VTM (IRIS 1998-5: 13). Meanwhile, VTM applied to the Court of First Instance in Luxembourg to have the Commission's decision annulled. In a judgement delivered on 8 July 1999, the court rejected VTM's application, thereby upholding the Commission's decision of 26 June 1997. In accordance with the legal provisions of the decree on radio and television broadcasting, Vlaamse Televisie Maatschappij (VTM), a private Flemish-language television company established in Flanders had obtained in 1987, by decision of the Flemish Government, the only authorisation for a private television broadcasting body directed at the whole of the Flemish-speaking Community for a period of 18 years. VTM had also obtained exclusive authorisation to broadcast advertising in its capacity as a television station broadcasting to the whole of the Flemish-speaking Community. According to the Commission, the purpose and effect of these exclusive licenses was unquestionably protectionist, and incompatible with the Articles of the Treaty dealing with freedom of competition and freedom of establishment. In its judgement of 8 July 1999, the regional court found that the Commission had not erred in its appreciation of the situation when it noted that VTM's monopoly of broadcasting advertising material by television directed at the Flemish-speaking public was tantamount to excluding any operator in any other Member State who wished to become established or to create a subsidiary establishment in Flanders in order to broadcast advertising directed at the Flemish-speaking public on the Belgian television network. The court also upheld the decision that the cultural policy arguments aimed at preserving the diversity of the written Flemish-language press could not be used to justify the corresponding provisions of the Flemish decree on the audiovisual sector. It is interesting to note that the court affirmed that the public subsidy granted to the public-sector channel BRTN/VRT could not be used to justify VTM's exclusive right either. The court considered that BRTN/VRT «is placed in a particular situation in

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that it is responsible for the management of a service of general economic interest within the meaning of Article 90, para. 2 of the EC Treaty (...). The fact that a public-sector channel receives subsidies from public funds cannot have as a necessary corollary the granting to a private channel exclusive rights to broadcast advertising over the entire territory concerned». VTM's case against the Commission's decision of 26 June 1997 was rejected en bloc.

Arrêt du 8 juillet 1999 du Tribunal de première instance (aff. T-266/97).

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61997TJ0266:fr:PDF

Judgement of 8 July 1999 by the Court of First Instance - case T-266/97.

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