European Commission: German Regulations on the Issue of Terrestrial Radio Licences under Investigation

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On 12 September 2000 the Commission of the European Communities sent to the Federal Republic of Germany a reasoned opinion concerning discrimination in the issue of broadcasting licences in Rheinland-Pfalz. On 17 August 1999 the Commission had drawn up a letter of complaint on this subject, to which the Federal Republic of Germany had replied on 8 October 1999.

The case concerned the granting of the third regional terrestrial radio licence to broadcaster Rockland Radio, which is partly owned by the holder of the other two licences, RPR. One company which failed to win the licence was Eurostar, 75% of which is owned by French broadcaster NRJ. An initial appeal against the issue of the licence to Rockland Radio, lodged with the Verwaltungsgericht Neustadt (Neustadt Administrative Court) was withdrawn before the Court could reach a verdict. NRJ took the case to the European Commission instead. The complaint and the Commission's opinion referred to the provisions of Sections 6.3.1, 11.2.6 and 12.3.3 of the Landesrundfunkgesetz (Regional Broadcasting Act - LRG) of 28 July 1992. Section 6.3.1 stated that broadcasting licences should be valid for ten years. Section 11.2.6 stipulated that new terrestrial radio stations should have an essentially different type of programming style than that of existing broadcasters. Section 12.3.3 made provision that, when deciding which of several bidders who all fulfil the necessary conditions should be awarded a licence, consideration should be given to whether programmes, or at least parts of them, are actually made in Rheinland-Pfalz or whether the development of private radio in the Land would be promoted in some other way.

The Commission considers the disputed regulations to be in breach of the freedom of establishment provided for in Articles 43 et seq of the EC Treaty. It is particularly critical of the fact that the local broadcaster RPR was the only terrestrial radio broadcaster to benefit from the decision to extend the validity of licences to ten years, to the exclusion of other broadcasters. In the Commission's opinion, Section 11.2.6 of the LRG affords unfair protection for RPR, since competition is hampered by the requirement for a different type of programming style and therefore the chances of becoming established in the broadcasting sector in Rheinland-Pfalz are greatly restricted. It also finds that the broadcasting model, derived from the provisions of Section 12, as well as the preferential treatment given to broadcasters that produce programmes in Rheinland-Pfalz,

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discriminate against foreign broadcasters.

On the other hand, the Federal Government and the Landeszentrale für Privaten Rundfunk (National Private Broadcasting Authority), the relevant supervisory bodies, claim that the regulations are essential to the economic viability of regional private radio. They point out that, since the transmission area includes only a few major towns and cities, regional radio would be jeopardised if competition were made even fiercer as a result of channels broadcasting from neighbouring Länder, or if licences were valid for too short a period. Moreover, this system was necessary to ensure a varied media landscape because the relatively small transmission capacity meant that it was totally unfeasable to accommodate broadcasters from outside the Land.

The Commission urged the Federal Republic of Germany to comply within two months. If it fails to do so, the Commission can appeal to the European Court of Justice under the terms of Article 226 of the EC Treaty.

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