[DE] Monopolies Commission Investigates ARD and ZDF Complaint against Telekom

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Following a joint complaint by ARD and ZDF, the Bundeskartellamt (Federal Monopolies Commission) is investigating whether Deutsche Telekom AG is abusing its dominant market position with respect to contracts governing the feeding of programmes into the cable network. The complaint centres on the fact that Telekom has an agreement with broadcasters exempting it from paying any copyright on the programmes carried on its network.

In addition, Telekom demands a fee for public service channels to be included on the cable network. The Regulierungsbehörde für Telekommunikation und Post (Regulatory Authority for Telecommunications and Post) had previously ruled that public and private broadcasters should be treated equally in terms of cable charges (see IRIS 1999-4: 14). Members of the ARD are currently appealing against this decision before the Verwaltungsgericht Köln (Cologne Administrative Court).

By complaining to the Federal Monopolies Commission, ARD and ZDF hope to stop Deutsche Telekom AG "abusing its dominant market position" by refusing to pay any copyright charges. The Commission has stated that it is examining a possible breach of anti-monopoly legislation. Section 20 b of the May 1998 amendment to the Urheberrechtsgesetz (Copyright Act) states that cable companies are liable for copyright on programmes they broadcast. This amendment was introduced in order to transpose into German law Council Directive 93/83/EEC on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (see IRIS 1998-5: 12). ARD and ZDF are hoping, through their action, to force Telekom to pay between DEM 80 and 93 million per year as reasonable compensation for the fact that it includes both channels on its network and charges viewers a monthly subscription fee. If the complainants' argument is upheld, there will be major consequences for the German cable market, since private broadcasters would also demand compensation from Telekom for the copyright on their programmes.

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