[GB] Court Overturns Regulator's Refusal

IRIS 2000-10:1/11

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The case concerning the broadcasting of Danish football matches referred to in IRIS 2000-8: 7 has now been resolved by the UK Court of Appeal in favour of the private broadcaster. The background is that TVDanmark 1, a broadcaster established in the United Kingdom, had acquired exclusive rights to broadcast to the Danish population football matches involving the Danish national team in World Cup 2002. This broadcaster only reaches 60% of the Danish population. The Danish public service broadcasters, which reach a much higher percentage of the population, had sought to acquire the rights but had made a much lower offer. The UK regulatory body, the Independent Television Commission, had however refused to consent to TVDanmark exercising the rights as the public service broadcasters had expressed a renewed interest in acquiring the rights. The Commission considered that the amended "Television without Frontiers" Directive prevented a substantial proportion of the public from being deprived of coverage through the granting of exclusive rights. The Commission's Code on Sports and Other Listed Events, to which it was required by law to have regard, permitted consent to be given if other broadcasters had had a fair opportunity to bid for rights themselves.

The Court of Appeal decided that, although the object of the Directive was maximum coverage, it was not an object to be achieved at any cost and other factors had to be borne in mind, such as the need to sustain competition and to prevent public service broadcasters from becoming over-dominant as well as the need to have regard to the binding nature of a contract. It was sufficient compliance with the Directive to regulate at the point of acquisition of rights and it would be a radical departure from the Commission's Code to attempt to regulate post-acquisition, as the Commission had attempted to do.

Regina v Independent Television Commission, Ex parte TVDanmark 1 Ltd, The Times, 25 October 2000

http://www.thetimes.co.uk/article/0,,24383,00.html

ITC's Code on Sports and Other Listed Events

http://www.itc.org.uk/

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