[DE] Decision on TV “Cross-Promotion” Adjourned

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In a decision of 4 October 2000, the Verwaltungsgericht Berlin (Berlin Administrative Court) ordered, at the request of ProSieben Media AG, that its complaint against a decision by the supervisory Medienanstalt Berlin-Brandenburg (Berlin-Brandenburg Media Authority - MABB) should have suspensory effect. Following the merger of ProSieben Media AG and SAT1 Holding GmbH on 2 October 2000, ProSiebenSAT1 Media AG is the legal successor to the dissolved firm ProSieben Media AG.

The case concerned advertising on ProSieben for news broadcaster N24, which is wholly owned by ProSiebenSAT1. It was alleged that the requirement for advertisements to be separated from other items and announced as such, set out in Article 7.3, sentences 1 and 2 of the Rundfunkstaatsvertrag (Agreement between Federal States on Broadcasting - RfStV), had been breached. It was also pointed out that the advertisement for TV channel N24 should be calculated as part of ProSieben's total allocation of advertising time.

On 25 August 1999, the Arbeitskreis Werbung der Landesmedienanstalten (Land media authorities' working group on advertising) had defined the disputed practice as "self-advertising" and announced that it should not be counted as part of the allocated advertising time.

The MABB claims that ProSiebenSAT1 cannot rely on the rule set out in Article 45.3 of the RfStV, which states that advertisements for the broadcasters' own programmes do not count towards official advertising time. It argues that this rule does not apply here, since, in accordance with Article 1(b) of Directive 89/552/EEC ("Television Without Frontiers"), the "broadcaster" has editorial responsibility for the composition of television programming schedules, ie in this case, the broadcaster is N24 Gesellschaft für Nachrichten und Zeitgeschehen mbH.

The Court was unable to deem the decision clearly lawful. Doubts were raised concerning whether cross-promotion within a broadcasting group actually constituted advertising as defined in Article 2.2.5 of the RfStV and whether a channel's legal owner was the "broadcaster". The Berlin Administrative Court ruled that these questions could only be finally resolved as part of the main proceedings. Having weighed up the interests involved, the judges gave precedence to the interest of ProSiebenSAT1 Media AG for its application to have suspensory effect. They took the decision firstly on the grounds of the economic

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interest in carrying out cross-promotion for the purposes of viewer relations and, secondly, in view of pending proceedings on the establishment of a standard national procedure as described in Article 38.2 of the RfStV.

Beschluss des VG Berlin vom 4. Oktober 2000, Az. VG 27 A 217.00

Decision of the Verwaltungsgericht Berlin (Berlin Administrative Court), 4 October 2000, case no. VG 27 A 217.00

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