[GB] Regulator's Refusal of Consent for Exclusive Broadcasting of Danish Football Matches Upheld

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Tony Prosser
University of Bristol Law School

The highest UK court, the House of Lords, has overturned the earlier decision of the Court of Appeal which had struck down a decision of the Independent Television Commission refusing to consent to TV Danmark 1 exercising exclusive rights to Danish football matches (See IRIS 2000-8: 7 and IRIS 2000-10: 6. See further IRIS 2001-4: 6). In the process, the Court gave a different interpretation of the "Television Without Frontiers" Directive from that of the Court of Appeal. There is no further right of appeal in the UK legal system. TV Danmark 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 had sought to acquire the rights but had made a much lower offer; however the UK regulator had, under the Directive, refused consent to TV Danmark 1 as the public service broadcasters had expressed a renewed interest in acquiring shared rights. The Court of Appeal had held that, although the object of the Directive was maximum coverage, this had to be balanced against other factors such as the need to sustain competition and to uphold contracts.

The House of Lords held that the purpose of article 3a(3) of the Directive is perfectly clear: "It is to prevent the exercise by broadcasters of exclusive rights in such a way that a substantial proportion of the public in another member state is deprived of the possibility of following a designated event. The obligation to achieve that result is in no way qualified by considerations of competition, free market economics, sanctity of contract and so forth". It was not sufficient merely to provide an opportunity for public service broadcasters to bid for the rights in a fair auction. Both the Directive and the UK implementing legislation (Part IV of the Broadcasting Act 1996) concern the exercise of rights, not their acquisition. Therefore it was not unlawful for the UK regulator to take into account the renewed interest of the public service broadcasters; indeed it was obliged to do so by the Directive.

R v. Independent Television Commission, Ex Parte TV Danmark 1 Ltd., House of Lords, 25 July 2001, [2001] UKHL 42

http://www.publications.parliament.uk/pa/ld200102/ldjudgmt/jd010725/dan-1.htm

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