[DE] Discussion on Broadcasting Time for Independent Third Parties, Part 2

IRIS 2004-2:1/18

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In a decision of 15 December 2003 the Lower Saxony Oberverwaltungsgericht (Administrative Court of Appeal OVG) also dismissed the appeal by the production company, Focus TV Produktions GmbH (Focus TV), against the first instance decision by the Hannover Administrative Court. Focus TV had lodged an application for temporary relief from the decision to award its competitor, the Development Company for Television Programs (DCTP), a licence as an independent third party for programmes broadcast by RTL Television (see IRIS 2004-2: 9, supra).

The application for the re-establishment of the suspensive effect of the objection against the licensing of the DCTP was unsuccessful. The OVG dismissed it as ill-founded. The relevant regulatory body, the Lower Saxony Regional Media Authority, had merely satisfied the purely formal requirements regarding reasons set out in section 80, paragraph 3, first sentence of the Verwaltungsgerichtsordnung (Administrative Courts Act VwGO). It had argued in its decision that it would be contrary to the public right to the protection of the diversity of opinion if an objection by a competitor had suspensive effect. Furthermore, the immediate execution of the decision had had to be ordered in the interests of the window programme organiser, whose livelihood may otherwise have been threatened. There had also been a threat to its independence, for if it had not been licensed as an independent third party within the meaning of section 31 of the RstV, then it would have relied on the programming decisions of the main programme organiser. The OVG did not examine the substantive merits of this reasoning, as there was no provision for this in section 80, paragraph 3, first sentence of the VwGO.

In the Court's opinion, the question as to who should be held liable under sections 31, paragraph 3 and 28 of the RstV, owing to the complex company law participation structures of Spiegel TV, which provides some of the material broadcast by DCTP, required some clarification in the main proceedings. It was also left until the main proceedings to examine the question of whether the supplier of a substantial share of the broadcasting time of a window programme organiser could be regarded in itself as an organiser within the meaning of section 31 paragraph 3 of the RStV. The varying choice of words in section 31 of the RStV would tend, however, to argue against such an interpretation.

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Oberverwaltungsgericht Niedersachsen, Beschluss vom 15. Dezember 2003, Aktenzeichen 10 ME 108/03

Lower Saxony Administrative Court of Appeal, decision of 15 December 2003, case no. 10 ME 108/03

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