[AT] Importance of Diversity of Opinion in Licensing Decision

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In its judgment of 17 December 2003, the Verwaltungsgerichtshof (Administrative Court) ruled on a complaint about the appeal decision made by the Bundeskommunikationssenat (Federal Communications Office) concerning a radio licence.

The Court gave its views for the first time on key issues concerning the granting of licences and frequency allocation in accordance with the Privatradiogesetz (Commercial Radio Act - PrR-G), issues which may also be important for the television sector.

As part of a legal procedure, the relevant regulatory body, Kommunikationsbehörde Austria (Austrian Communications Authority - KommAustria), had granted the claimant a licence for the provision of a radio service. Following an invitation for tenders for frequencies in an adjacent coverage area, an application by the claimant to extend its own coverage area by adding this adjacent area was rejected on the grounds of diversity of opinion. The frequencies were allocated to another broadcaster.

In the Court's view, KommAustria had to decide whether free transmission capacity was being used to extend an existing coverage area or to create a new one. The choice between these two fundamentally similar ways of using free transmission capacity should, in accordance with Art. 10.1.4 of the PrR-G, take into account diversity of opinion in the coverage area, population density, the profitability of the radio broadcaster as well as political, social and cultural aspects. The Court, however, stressed in particular how the creation of a new coverage area would affect diversity of opinion, as well as strengthening the economic position of a broadcaster already operating in another coverage area.

Judgment of the Administrative Court, 17 December 2003, case no. 2003/04/0136

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