[DE] Licence Fees for Live Horse Racing Broadcasts

IRIS 2004-4:1/16

Caroline Hilger
Saarbrücken

On 10 February 2004, the Bundesgerichtshof (Federal Supreme Court - BGH) quashed a decision of the Oberlandesgericht Düsseldorf (Düsseldorf Regional Appeal Court - OLG Düsseldorf) and referred the matter back to the OLG.

The proceedings concerned the following facts: more than 20 bookmakers had lodged a complaint against the provider of live audiovisual transmissions. The defendant had acquired from the German horse racing associations exclusive rights to commercially exploit audiovisual transmissions of horse races organised in Germany. The dispute concerned the extent of the fees which the plaintiffs had to pay under the terms of contractual agreements with the defendant in order to broadcast TV pictures of domestic horse racing in their respective betting offices. The plaintiffs' first claim was for equal treatment with two companies, which under similar agreements with the defendant had to pay much lower fees. In contrast to the plaintiffs, whose business mainly involved customers betting directly against them, the two aforementioned companies ran betting offices under a franchise system in bars and amusement arcades. The latter were only involved with tote betting (where customers bet against each other and the bookmaker or betting office keeps back a certain percentage), acting on a commission basis on behalf of the racing associations.

The OLG Düsseldorf had essentially granted the request that the defendant should not be allowed to charge the plaintiffs more than double the fee paid by the two other companies. The defendant appealed against this verdict.

This appeal was upheld. The BGH agreed with the OLG Düsseldorf's view that the defendant was a company with a dominant market position in the sense of Article 19.2.1 of the Gesetz gegen Wettbewerbsbeschränkungen (Act against Restrictions of Competition - GWB), since it was the only provider of live broadcasts of German horse racing. The live broadcasting of horse races held at German race courses was an independent market, since coverage of foreign races was a separate product, with which the bookmakers could not achieve their business aim of encouraging customers to bet on horse races in Germany. On account of its dominant market position, the defendant therefore had to observe the ban on discrimination enshrined in Art. 20.1.2 GWB. Like the OLG Düsseldorf, the BGH considered that the defendant had discriminated against some customers by charging different fees. However, in contrast to the OLG, the BGH thought that the defendant's claim that it had charged the lower fees purely in order to

© European Audiovisual Observatory (Council of Europe) 2026

promote competition and that the fees charged to the bookmakers who were complaining actually only covered its costs could be an objective reason for the discriminatory treatment. The OLG Düsseldorf had not examined this aspect sufficiently in its decision and had failed to take it into account in weighing up the parties' interests. Therefore, the assumption that the lower fees represented the benchmark figure for the pricing structure did not stand up to examination in the appeals procedure.

Urteil des Bundesgerichtshofes vom 10. Februar 2004, Az.: KZR 14/02

http://www.bundesgerichtshof.de/

Judgment of the Federal Supreme Court, 10 February 2004, case no.: KZR 14/02

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026