[DE] Radio Reporting from Football Stadiums

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In an appeal procedure (case no. KRZ 37/03), the Kartellsenat (Cartels Chamber) of the Bundesgerichtshof (Federal Supreme Court - BGH) decided on 8 November 2005 that football clubs could charge a special fee to radio broadcasters reporting inside their stadiums.

The judges of the BGH therefore upheld the earlier decisions of the Landgericht Hamburg (Hamburg District Court) of 26 April 2002 and Oberlandesgericht Hamburg (Hamburg Court of Appeal) of 12 June 2003. The radio broadcaster had lodged a complaint against the Hamburg-based football clubs HSV and FC St. Pauli and the DFL Deutsche Fußball Liga GmbH (German Football League - DFL), claiming that the clubs did not own any radio broadcasting rights over their home Bundesliga matches. The broadcaster also wanted to know whether the football clubs concerned were entitled to charge more than the normal entrance fee and more than cost price for the use of press facilities, participation in press conferences, access to mixed zones and use of a workspace and technical services.

According to the BGH's decision, the football clubs concerned, as match organisers, could decide that the purchase of a match ticket did not include authorisation to broadcast reports from the stadium. There was nothing in competition law to contradict this principle. The right to make access to the stadium - including as a condition for radio reporting - dependent on conditions such as the payment of a fee formed part of the football clubs' rights as "householders". The BGH considered that the clubs were entitled to charge more than the normal entrance fee because radio broadcasters made more intensive use of access and required workspaces and technical services, for example, that were not used by other spectators or press representatives.

The freedom to broadcast (Art. 5.1.2 of the Basic Law) did not entitle radio broadcasters to enter and use a stadium at cost price. Otherwise, the organisers of Bundesliga matches would be denied part of the economic benefit from the service they provided, which was subject to the constitutional protection of the occupational freedom (Art. 12.1 Basic Law).

However, the chamber added that the marketing of radio broadcasting rights should not result - through a contractual obligation to disseminate football

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reports, for example - in restrictions to radio broadcasters' programming freedom and their right to provide their listeners with up-to-date information uninfluenced by third parties.

The radio broadcaster is now considering appealing to the Bundesverfassungsgericht (Federal Constitutional Court).

Urteil des Bundesgerichtshofs (Kartellsenat) vom 8. November 2005 - Az. KZR 37/03

Ruling of the Cartels Chamber of the Federal Supreme Court), 8 November 2005 - case no. KZR 37/03

Pressemitteilung des Bundesgerichtshofs

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=pm&Datum=2005&Sort=3&nr=34238&pos=5&anz=159

Press release of the Federal Supreme Court

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