Court of First Instance: *mabb* Contests European Commission Decision

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The *Medienanstalt Berlin-Brandenburg* (Berlin-Brandenburg media authority - *mabb*) has filed an action for annulment with the Court of First Instance of the European Communities against a decision of the European Commission. The disputed decision challenged the legality of subsidies granted to support the transition to digital terrestrial television (DVB-T) in Berlin-Brandenburg (see IRIS 2006-1: 7).

The Commission had decided that the state aid granted by the *mabb* in order to finance the launch of digital terrestrial television was unlawful under the terms of Article 87.1 of the EC Treaty.

The *mabb* had granted around EUR 4 million to private TV broadcasters who, in return, had agreed to transmit their programmes via the new network for at least five years. It had failed to notify the Commission as required by Article 88.3 of the EC Treaty.

According to the Commission, financial aid for the transition from analogue to digital broadcasting is not, in principle, unlawful. However, it must be granted in accordance with objective criteria and must not distort competition between the different broadcasting platforms, ie terrestrial, cable and satellite.

In the *mabb's* opinion, the payments to broadcasters were made to compensate for their obligation to use the network for five years, which would be much more expensive than simply withdrawing from terrestrial broadcasting.

It also argues that companies cannot be forced under the terms of broadcasting licences to broadcast digitally and, finally, that the definition of broadcasters' obligations should remain the responsibility of the Member States. The Commission's ex-post decision cannot bring into question what has turned out to be a successful national transition strategy.

Pressemitteilung der Medienanstalt Berlin-Brandenburg vom 30. Januar 2006

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