[DE] Dispute over Advertising for Private Betting Services Still Not Resolved

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Nicola Weißenborn
Institute of European Media Law (EMR), Saarbrücken/Brussels

No final decision has yet been taken on the future of advertising for private betting services in Germany.

In a ruling of 28 March 2006, the *Bundesverfassungsgericht* (Federal Constitutional Court - *BVerfG*) had decided that, in its current form, the state's sports betting monopoly in the *Bundesland* of Bavaria was incompatible with the *Grundgesetz* (Basic Law) (see IRIS 2006-6:8). According to subsequent *BVerfG* decisions of 4 July 2006 (case no. 1 BvR 138/05) and 2 August 2006 (case no. 1 BvR 2677/04), the same applied to the state's sports betting monopolies in Baden-Württemberg and North Rhine-Westphalia. However, the civil and administrative court case-law that has followed the *BVerfG's* ruling has so far failed to produce a common answer to the question of whether and to what extent the organisation of private sports betting in Germany is lawful.

Since the situation was so unclear, the *Direktorenkonferenz der Landesmedienanstalten* (Conference of Directors of *Land* media authorities - *DLM*) had decided to discuss the conclusions drawn from the court rulings with representatives of private and public service broadcasters (see IRIS 2006-6:10). Their position was stated in a joint declaration of 3 July 2006. The participants in the discussion, including representatives of public service broadcasters *ARD* and *ZDF* as well as the *Verband Privater Rundfunk und Telemedien* (Private Broadcasting and Telecommunications Union - *VPRT*), agreed that the inconsistency of the court rulings showed that the legal issues could be interpreted in different ways; the manner in which the responsible authorities dealt with private sports betting services was also inconsistent. However, the participants did not reach a consensus regarding the legal situation and the resulting assessment of the risks. Whereas *ARD* and *ZDF* eventually called for a ban on the broadcast of advertising spots for private sports betting services, the *Landesmedienanstalten* (*Land* media authorities) said that such action against private broadcasters would represent a supervisory measure which in turn would constitute an intrusion into the broadcasting freedom of the broadcaster concerned and require the legal situation to be unambiguous.

Subsequently, at a meeting held on 10 July 2006, the *Gemeinsame Stelle Programm, Werbung, Medienkompetenz* (Joint Body on Programming, Advertising

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and Media Competence - *GSPWM*) of the *Landesmedienanstalten* and the *VPRT* agreed a list of measures through which advertising for sports betting in the programmes of private broadcasters should be restricted in the short term. Private broadcasters will therefore take various anti-addiction measures, such as by making specific reference to addiction prevention in advertising spots for sports betting services and giving details of appropriate advice centres.

Meanwhile, the dispute over advertising for private betting services continued. The *Bayerische Landeszentrale für neue Medien* (Bavarian New Media Authority - *BLM*) won a court case against an order issued in May by its supervisory body, the *Bayerische Staatsministerium für Wissenschaft, Forschung und Kunst* (Bavarian State Ministry for Science, Research and the Arts). It had been asked by the Ministry to prohibit TV advertising for a sports betting service. In a decision of 30 June 2006, the *BLM's* Media Council had declared its belief that all the *Landesmedienanstalten* should act in the same way and rejected the idea that Bavaria should plough a lone furrow. On 18 August 2006, the *Verwaltungsgericht München* (Munich Administrative Court) decided in an urgent procedure to restore the suspensive effect of the complaint against the Bavarian State Ministry's order, which had been issued with an instruction that it should take immediate effect. The court ruled that, under Art. 19.2.3 of the *Bayerische Mediengesetz* (Bavarian Media Act - *BayMG*), programming activities, including advertising, could only be interfered with by supervisory bodies if the *BLM's* monitoring authority failed to take any action at all.

It is also worth mentioning a decision taken at the end of August by the *Bundeskartellamt* (Federal Cartels Office), through which the regional lottery companies and the national association of lottery and football pools agencies were prevented from committing various breaches of German and European cartel law. For example, they were prohibited from impeding commercial betting agents who run stationary lottery offices in supermarkets or petrol stations, for example, and from dividing the market geographically amongst the 16 German lottery companies. However, the decision only concerned competition issues, rather than whether or not the state monopoly on betting and lotteries was justified.

In April this year, the European Commission also launched an inquiry and sent to Germany, as well as other EU member states, an official request for information on national legislation on sports betting, in order to verify its compatibility with the free movement of services, enshrined in Art. 49 of the EC Treaty.

Pressemitteilung Nr. 13/2006 der DLM vom 23. Juni 2006 zur gemeinsamen Erklärung

DLM press release no. 13/2006 of 23 June 2006 on the joint declaration

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Pressemitteilung der GSPWM Nr. 04/2006 vom 11. Juli 2006

GSPWM press release no. 04/2006 of 11 July 2006

Pressemitteilung der BLM Nr. 29/2006 vom 30. Juni 2006

BLM press release no. 29/2006 of 30 June 2006

Beschluss des Verwaltungsgericht München vom 18. August 2006

http://www.vgh.bayern.de/VGMuenchen/documents/06-02945.pdf

Decision of the Munich Administrative Court, 18 August 2006

Beschluss des Bundeskartellamtes vom 23. August 2006

http://www.bundeskartellamt.de/wDeutsch/download/pdf/Kartell/Kartell06/B10-148-05.pdf

Decision of the Federal Cartels Office, 23 August 2006

European Commission press release of 4 April 2006

http://europa.eu/rapid/pressReleasesAction.do?reference=IP/06/436&format=HTML&aged=1&language=EN&guiLanguage=en

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