[BE] VT4 Access to the Flemish Cable Networks?

IRIS 1995-1:1/40

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A major item under discussion is whether a new private commercial broadcasting organisation (VT4) licensed by the United Kingdom, will be given access to the Flemish cable networks. Refering to the judgment of the European Court of Justice in the TV10 case, the Flemish Minister of Culture actually is denying access to the cable networks in the Flemish Community. In the TV10 judgment the Court of Justice ruled that the provisions of the EEC Treaty on freedom to provide services are to be interpreted as not precluding a Member State from treating a broadcasting body constituted under the law of another Member State and established in that State but whose activities are wholly or principally directed towards the territory of the first Member State as a domestic broadcaster, if that broadcasting body was established there in order to circumvent the rules wich would be applicable to it if it were established within the first. As VT4 is not licensed by the Flemish government as a Flemish, national broadcasting organisation and as VT 4 is regarded as a broadcasting organisation wholly or principally directed to the Flemish Community, it is denied access to the Flemish cable networks. It seems that VT4 does not agree with this argument. VT4 refers to Art. 2 of TVDirective of 3 October 1989 according to which a receiving State is not entitled to deny access to the national cable network if the foreign broadcaster is licensed in another EC Member State. The attention is also drawn to the specific arguments in the TV10 case: it is explicitly recognised by the Court that the restrictions in the Netherlands Media Act were legitimate in order to safeguard a noncommercial, pluralistic broadcasting system. It is very doubtful that under the current implementation of the TV Directive a Member State that is denying access to a non-domestic European broadcaster in order to protect its own domestic commercial broadcasting organisation, could find any support in the Court's judgment in the TV10 case. The denial of access to the national cable networks based on the "general interest" exception may not be used to serve economic goals, such as the protection of the national advertising market or the protection of a domestic commercial TV organisation.

At the same time, VT4 has filed a complaint against V.T.M. and against the Flemish Government. V.T.M. is accused of abuse of a dominant position on the Flemish audiovisual and advertising market, while the Flemish Government is accused of applying national legislation which is infringing EC law.

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