[AT] Provisional Results of the Monitoring of Advertising May Not Be Published

IRIS 2007-6:1/7

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The *Kommunikationsbehörde Austria* (Austrian Communications Authority - KommAustria) has a statutory duty to monitor the compliance with advertising regulations of all Austrian television and radio programmes. At monthly intervals, it has to assess the programmes of all broadcasting stations containing advertising. Up until now, the authority has met its obligation to publish the results "in an appropriate way" by publishing them on the website of the *Rundfunk und Telekom Regulierungs-GmbH* (Broadcasting and Telecommunications Regulation Company - RTR). If KommAustria suspects a breach of the law, it must provide the broadcasters with these results for comment. When deciding on whether to report the behaviour of the *Österreicher Rundfunk* (Austrian Broadcasting Corporation - ORF) to the *Bundeskommunikationssenat* (Federal Communications Board - BKS) or, in the case of a private broadcaster, to look into the breach further *ex officio*, KommAustria must take account any comments made by the broadcasters. After that, proceedings to establish whether the law has been broken, or administrative criminal proceedings, may be instigated.

The purpose of the obligation to publish the results was not only to enable the competitors of the monitored broadcaster to complain to the broadcasting regulators and file complaints under competition law, but also to ensure the transparency of the advertising monitoring procedure.

On 15 March 2007, the Constitutional Court terminated the obligation to publish the results because it considered it unreasonable that mere grounds of suspicion against named broadcasters should be made known without their being able to prevent, or respond to, this.

KommAustria then stopped publishing the results of the monitoring of advertising at RTR's website. Legally binding decisions establishing whether the statutory advertising regulations have been breached are to continue to be published on the Internet.

Entscheidung des Verfassungsgerichtshofs vom 15. März 2007 (Az.: G 138/06)

http://www.vfgh.gv.at/cms/vfgh-

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site/attachments/4/1/4/CH0006/CMS1176800288536/kommaustria_g_138-06.pdf

Constitutional Court decision of 15 March (ref. no.: G 138/06)

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