European Commission: Next Step against Belgium for Non-Compliance with “Must-Carry” Rules

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On 6 May 2008, the European Commission sent a reasoned opinion to Belgium on the application of EC broadcasting legislation, in the context of “must-carry” rules imposed on broadcasters in the bilingual region of Brussels-Capital. Such rules, which involve obligations imposed on network operators, as for example cable companies or telecom operators, to transmit specific radio and television broadcast channels and services, are permitted under Article 31 of the EC’s Universal Service Directive. According to the directive, “must-carry” rules can be introduced when a significant number of end-users of the networks in question use them as the principle means to receive radio and TV broadcasts. The rules must be:

- necessary to meet clearly defined general interest objectives;

- proportionate and transparent; and

- subject to periodical review.

The infringement proceedings against Belgium come on top of a preliminary ruling handed down by the European Court of Justice on must-carry legislation in the Brussels-Capital Region in December last year. The ECJ, on the basis of Article 49 EC Treaty (freedom of services), ruled that must-carry rules must pursue an aim in the general interest and be proportionate to that aim. The latter, in turn, implies that that the manner in which they are applied must be subject to a transparent procedure which is based on objective non-discrimnatory criteria known in advance.

Two letters of formal notice had previously been sent to Belgium by the Commission in July 2006 and June 2007. Nevertheless, when the Electronic Communications Act of the Brussels-Capital Region was amended in March 2007, the Commission’s concerns were not addressed. The Commission considers that the current regime lacks clarity and transparency, that the number of channels that can be designated is excessive and that, as things now stand, network operators and broadcasters are uncertain as to their rights and obligations.

Telecoms Rules: Belgium receives final warning on broadcasting “must-carry” rules, Brussels, 6 May 2008

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