[AT] BKS Submits Short Reporting Rights Question to ECJ

IRIS 2011-8:1/11

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On 31 May 2011, the Austrian *Bundeskommunikationssenat* (Federal Communications Board - BKS) asked the Court of Justice of the European Union (ECJ) for a preliminary ruling on the application of Article 15 of the Audiovisual Media Services Directive 2010/13/EU (AVMSD), which regulates short reporting rights.

The procedure before the BKS concerned a decision taken by the *Kommunikationsbehörde Austria* (Austrian Communications Authority - KommAustria) in December 2010 in a dispute between *Österreichischer Rundfunk* (Austrian Broadcasting Corporation - ORF) and *Sky Österreich GmbH* (Sky). In 2009, Sky acquired the exclusive pay-TV rights for the UEFA Europa League for the seasons 2009/10 to 2011/12 in Austria and signed a contract granting short reporting rights to ORF. Under this contract ORF was obliged to cover the cost of providing access to the broadcast signal as well as rights fees of EUR 700 per minute. The contract was only valid until the entry into force on 1 October 2010 of Article 5(4) of the *Fernsehexklusivrechtegesetz* (Exclusive Television Rights Act - FERG), which states, in accordance with the AVMSD, that the television company "is only entitled to compensation for the additional costs directly incurred in providing access". A dispute then arose between the parties concerning the obligation to pay the additional rights fees for the broadcast of matches held after 1 October 2010. In the end, the matter was referred to KommAustria, which decided on 22 December 2010 that "there is only an entitlement to compensation for the additional costs directly incurred in providing access. Since Sky gave ORF [...] a free subscription to the channel concerned, the related cost amounts to EUR 0. Article 5(4) FERG does not provide scope for any additional obligation to pay "reasonable" compensation [...], but rather its clear wording rules out any such interpretation."

In its appeal against this decision, Sky argued that the compensation rule of Article 15(6) AVMSD and Article 5(4) FERG violated national constitutional law, the EU Charter of Fundamental Rights and the European Convention on Human Rights. It claimed that the indiscriminate and comprehensive exclusion of any kind of compensation for the restriction of exclusive rights was disproportionate and in breach of the fundamental right of ownership.

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The BKS has now suspended the appeal procedure and asked the ECJ whether Article 15(6) AVMSD is compatible with primary law.

Entscheidung des BKS zur Aussetzung des laufenden Verfahrens (GZ 611.003/0004-BKS/2011) vom 31. Mai 2011

http://www.bundeskanzleramt.at/DocView.axd?CobId=43863

BKS decision suspending the current procedure (GZ 611.003/0004-BKS/2011) of 31 May 2011

Entscheidung der KommAustria vom 22. Dezember 2010 (KOA 3.800/10-006)

http://www.rtr.at/de/m/KOA_3800_10_006/Bescheid_Kurzberichterstattungsrecht.pdf

KommAustria decision of 22 December 2010 (KOA 3.800/10-006)

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