[AT] BKS Considers Definition of Premium Sports Competition under ORF Act

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On 23 May 2012, the Bundeskommunikationssenat (Federal Communications Board -BKS) described in detail which sports competitions should be considered as premium sports competitions in the sense of the Gesetz über den Österreichischen Rundfunk (ORF Act). Under Article 4b(4) of the ORF Act, the ORF sports channel may not broadcast sports competitions that already receive a high level of coverage in the Austrian media (so-called premium sports competitions, see also IRIS 2012-4/9).

The case concerned various live broadcasts by ORF on its specialist sports channel in April and May 2012: an Austrian Football Cup semi-final, several matches at the Ice Hockey World Championship (with and without Austrian involvement) and an ATP tournament quarter-final involving an Austrian tennis player.

In September 2011, the lower-instance body Kommunikationsbehörde Austria (Austrian Communications Authority - KommAustria) had upheld a complaint that ORF had breached Article 4b(4) of the ORF Act by broadcasting the football and ice hockey matches, but had rejected a complaint concerning the tennis broadcast.

In its decision, the BKS stated firstly that it was important, when assessing the facts, to determine what a “high level of media coverage” in Article 4b(4) of the ORF Act actually meant. The most telling way of deciding this was to examine media reporting of similar sports events in the past. Comparability of such events might depend, for example, on the event’s venue or whether or not Austrian athletes were involved. After a thorough, detailed analysis of the coverage of various similar sports events in the Austrian press and television, the BKS concluded that the football and tennis matches concerned should not be classified as premium sports competitions.

However, with regard to the Ice Hockey World Championship broadcasts, the BKS differentiated between matches involving the Austrian national team and those that did not. Analysis of newspaper and television reporting had demonstrated that matches involving the Austrian team should be considered as premium sports competitions. However, matches not involving the Austrian team had been

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reported in different ways by the two types of media. For example, comparable matches at the previous world championship in 2009 had received sufficient newspaper coverage to be classified as premium sports competitions. In contrast, television reporting on these matches had fallen a long way short of the level required for them to be considered as premium competitions. Since the previous television coverage had been so different to that of premium sports competitions and since the level of newspaper reporting had not been sufficient to compensate for the lack of television coverage, the BKS thought that the matches concerned did not fall into the category of premium sports competitions.

Finally, the BKS explained that its media analysis had shown that it was possible to glean the meaning of a “high level of media coverage” and points of reference from the legislative provisions in order to foresee whether an event should be classified as a premium sports competition. ORF could be expected to make such a judgment in advance if it carried out detailed media analysis and research itself or commissioned it from a third party.

Entscheidung des BKS vom 23. Mai 2012 (GZ 611.941/0004-BKS/2012)

http://www.bundeskanzleramt.at/DocView.axd?CobId=47829

BKS decision of 23 May 2012 (GZ 611.941/0004-BKS/2012)

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