

[AT] BKS Clears ORF of Breaching Sponsorship Ban in Stock Market Programme

IRIS 2012-7:1/9

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On 23 May 2012, the Bundeskommunikationssenat (Federal Communications Board - BKS) ruled that Österreichischer Rundfunk (Austrian public service broadcaster - ORF) had not infringed the ban on sponsorship of news programmes and political information broadcasts enshrined in Article 17(4) of the ORF-Gesetz (ORF Act - ORF-G) by broadcasting its weekly “Schauplatz Börse” programme.

A complaint had been lodged, arguing that the programme “Schauplatz Börse” was a topical news programme for the stock market and financial sector, which should not be sponsored. The topical nature of the programme was clear from the continuous scrolling text showing share prices and exchange rates, which was typical of financial news programmes. The latest results of listed companies, including their current share price or the relevant stocks- or currency-related political situations were presented and analysed in each programme.

Responding to the complaint, ORF argued that news programmes typically reported on current events, covered a wide range of themes related to home, foreign, cultural and economic affairs and included reports prepared in the style of news stories. “Schauplatz Börse” did not provide any topical news reporting, but analysed developments in the stock and money markets. Contrary to the complainant’s description, the running text at the bottom of the screen did not show current share prices and exchange rates, but only the changes compared to the previous week. This was particularly relevant, since the programme was broadcast on Saturdays, when the stock markets were closed.

In its decision, the BKS agreed with ORF and, in line with its previous decisions, ruled that news programmes had to contain reports on current events in fields relevant to the formation of public opinion, prepared in the style of news stories. The concept of “news” should be interpreted in its narrow sense, so it did not include every form of reporting on actual events. The sponsorship ban only applied to news programmes and political information broadcasts which, from the outset, needed “special protection” from any kind of influence on the formation of public opinion in sensitive areas, as well as from any impression that such influence was being exerted by a third-party advertiser.

According to the BKS, “Schauplatz Börse” dealt with individually selected, more or less current financial events, but focused on developments in the stock and money markets in order to meet investors’ interests. However, the programme did not provide political information or, in a narrower sense, information on economic policy. It should not, therefore, be categorised as a news programme or political information broadcast in the sense of Article 17(4) ORF-G and, as such, did not fall under the sponsorship ban enshrined in that provision.

In this case, the BKS also did not consider that the sponsor had unlawfully influenced the programme’s content. Neither the sponsorship contract nor the plausible assurances given by ORF concerning the programme’s usual production processes had, in any way, provided grounds for suspecting that the sponsors’ experts had or could have forcibly exerted any influence beyond the simple suggestion of themes. The same applied to the role and authority held by the programme presenter. Neither had the proceedings revealed any evidence that the sponsor had made its financial contribution dependent on the fulfilment of certain requests or that, due to other circumstances, the sponsor was specifically liable to issue threats in relation to the programme’s content.

Entscheidung des BKS vom 23. Mai 2012 (GZ 611.966/0004-BKS/2012)

<http://www.bundeskanzleramt.at/DocView.axd?CobId=47830>

BKS decision of 23 May 2012 (GZ 611.966/0004-BKS/2012)

