[DE] Administrative Court Criticises Award of Third-party Broadcasting Time

IRIS 2013-1:1/13

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On 23 August 2012, the Verwaltungsgericht (Administrative Court) in Neustadt an der Weinstrasse ruled that the award of third-party broadcasting time by theRhineland-Palatinate Landeszentrale für Medien und Kommunikation (Regional Media and Communications Agency - LMK) in the case of the main broadcaster Sat.1 SatellitenFernsehen GmbH (Sat.1) was unlawful. It criticised virtually the entire selection and licensing procedure, especially owing to the failure to involve Sat.1.

According to section 26(5) of the Staatsvertrag für Rundfunk und Telemedien (Inter-State Agreement on Broadcasting and Telemedia - RStV), Sat.1 is obliged to provide broadcasting time for independent third parties. Pursuant to section 31(4), first sentence, RStV, the LMK invited tenders for this broadcasting time, which was - lawfully - divided into four broadcasting windows based on duration and time of day. Against the wishes of Sat.1, the third-party broadcasting licences were awarded to the current licensees, News and Pictures GmbH & Co. KG and DCTP Entwicklungsgesellschaft für TV-Programm mbH.

The Administrative Court considered this procedure unlawful for several reasons. In particular, the LMK had disregarded the requirement to reach agreement with the main broadcaster as required by section 31(4), third sentence, RStV. The efforts to agree on the selection with Sat.1 having failed, section 31(4), third to fifth sentences provides for a multi-stage selection procedure, which must be strictly adhered to. The LMK, the court said, had not taken sufficient account of Sat.1 in that procedure and accordingly breached the company’s rights under the RStV to be consulted. Proper involvement in the selection procedure was, it pointed out, vitally important for ensuring the freedom of broadcasting of Sat.1 as enshrined in Article 5(1), second sentence, of the Grundgesetz (Basic Law - GG) and its freedom of ownership as guaranteed by Article 14 GG.

Furthermore, the court went on, awarding the licence to DCTP was unlawful as the strict requirement in section 31(5) RStV to reach agreement on the appropriate funding of the third-party programme had not been met. In connection with the award of the licence, the LMK had provided for the continuation of the remuneration agreement for the current licence period between Sat.1 and DCTP, but Sat.1. had considered the payment based on that agreement unreasonable. The LMK had failed to check whether the remuneration paid thus far was

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appropriate. Section 31(5) and (6) RStV did not empower the LMK, as a State body, to impose an agreement based on private law, as it had done in the instant case, as that was not compatible with the freedom of contract enshrined in Article 2(1) GG.

Urteil des VG Neustadt an der Weinstraße vom 23. August 2012 (5 K 417/12.NW)

http://www3.mjv.rlp.de/rechtspr/DisplayUrteil_neu.asp?rowguid={EEF2D117-0BA6-4E81-95D9-C22F62EC991C}

Judgment of the Neustadt an der Weinstrasse Administrative Court of 23 August 2012 (5 K 417/12.NW)

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