[AT] BKS Rules on Short Reporting Right After ECJ Judgment

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In a decision of 25 February 2013, the Austrian Bundeskommunikationssenat (Federal Communications Senate - BKS) reacted to a judgment that it had obtained from the Court of Justice of the European Union (CJEU) and ended the procedure instigated following its request for a preliminary ruling.

In January 2013, the CJEU had decided that the rule on compensation for the exercise of the right to broadcast short reports on events of high public interest enshrined in Article 15 of the Audiovisual Media Services Directive (2010/13/EU, AVMSD) did not infringe the Charter of Fundamental Rights of the European Union (see IRIS 2013-3/3). Article 15(6)(2) AVMSD stipulates that any such compensation may not exceed the additional costs directly incurred in providing access.

In the original case that had been referred to the BKS, Sky Österreich, as the rightsholder, had wanted to force Österreichischer Rundfunk (the Austrian public service broadcaster - ORF) to pay additional compensation for broadcasting short reports on UEFA Europa League football matches.

In view of the CJEU's decision, the BKS essentially rejected Sky's appeal against KommAustria's decision to reject its claim. It ruled that the parties had not reached any contractual agreement on financial compensation for the acquisition of the exclusive rights. Therefore, the basic rule contained in the Fernsehexklusivrechte-Gesetz (Exclusive Television Rights Act), under which - based on Article 15(6)(2) AVMSD - only the additional costs directly incurred in providing access were due, applied. Since Sky had given ORF a free subscription, the BKS ruled that the additional cost was zero. The law did not provide for any further obligation to pay compensation.

However, the Fernsehexklusivrechte-Gesetz made provision for certain general procedures for the exercise of short reporting rights, creating a reasonable balance by reducing the value of exclusive rights (e.g. limiting the length of short reports, requiring the indication of sources and restricting the use of such reports to news programmes). Furthermore, according to the BKS, KommAustria, when establishing the practical conditions, had properly weighed the public's right to information against the right of ownership and acquisition. For example, ORF had only been allowed to broadcast the short reports at least 30 minutes after the

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scheduled end of the match concerned. In addition, ORF could only make unchanged short reports available via its online media library for 24 hours after their initial television broadcast, whereas the Fernsehexklusivrechte-Gesetz, in principle, provided for a seven-day limit.

Entscheidung des BKS vom 25.2.2013 (GZ. 611.003/0002-BKS/2013)

http://www.bundeskanzleramt.at/DocView.axd?CobId=50736

BKS's decision of 25 February 2013 (GZ 611.003/0002-BKS/2013)

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