[DE] Cologne District Court Confirms ARD/ZDF Content Supply Agreement Cancellation

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In a ruling of 14 March 2013 (case no. 31 O 466/12), the Landgericht Köln (Cologne District Court) rejected the action filed by the cable network operator Kabel Deutschland AG for confirmation that the content supply agreement concerning the television programmes of the public service broadcasters ARD and ZDF remained valid. The cable operator claimed that the cancellation of the agreement was invalid.

The plaintiff is a national broadband cable network operator. For two decades, it has transmitted television programmes, including those of the public service broadcasters, via its cable networks in return for a fee and given the broadcasters access to its networks.

The defendant (Westdeutscher Rundfunk Köln - WDR), together with eight other regional broadcasters and Deutsche Welle, is a member of the Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland (German public broadcasters' association - ARD). At the end of 2012, the public service broadcasters cancelled their agreements concerning the retransmission of their TV channels by Kabel Deutschland and Unitymedia.

In its action against WDR, Kabel Deutschland claimed that the cancellation was invalid. It argued that, in accordance with their remit, public service broadcasters had to distribute their programmes via the cable network. If they were transmitted via satellite and terrestrial means only, the obligation to serve the whole population would not be met.

The court rejected the main action against the defendant as partly inadmissible and partly unfounded. Since the agreement had been concluded with all the ARD members, Kabel Deutschland could not take action against only one broadcaster (WDR).

In any case, the cancellation was valid. It did not constitute an immoral abuse of market power under Article 138 of the Bürgerliches Gesetzbuch (Civil Code - BGB), since the ARD members were not obliged to broadcast via cable. Rather, under Article 19 of the Rundfunkstaatsvertrag (Inter-State Broadcasting Agreement - RStV), the broadcasters had a degree of discretion when deciding

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which transmission methods to use, and should particularly take into account the principle of economic efficiency when making such decisions. Incidentally, since the defendant continued to offer its programmes to the plaintiff, a “must-offer obligation”, which did not apply here anyway, could not exist on the grounds of competition law. Neither was it immoral that the broadcasters profited from the fact that Kabel Deutschland was continuing to broadcast the relevant programmes - now free of charge - since it was doing so in its own interests. The court did not specify whether it thought this interest was (also) based on a possible “must-carry” obligation. However, it thought that the cancellation was compatible with Articles 1, 19 and 20 of the Gesetz gegen Wettbewerbsbeschränkungen (Act against restraints of competition - GWB).

Urteil des LG Köln vom 14.3.2013 (Az. 31 O 466/12)

http://openjur.de/u/618050.html

Ruling of the Landgericht Köln (Cologne District Court) of 14 March 2013 (case no. 31 O 466/12)

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