[DE] Schleswig Administrative Court Confirms Sat.1 Licensor Switch

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In a decision of 27 May 2013, which is yet to be published, the Verwaltungsgericht Schleswig (Schleswig Administrative Court - VG) rejected complaints about the decision of ProSiebenSat.1 TV Deutschland GmbH to change licences for its channel Sat.1.

The switch was made due to disagreements between ProSiebenSat.1 and its subsidiary, Sat.1 SatellitenFernsehen GmbH (Sat.1), and the Landeszentrale für Medien und Kommunikation Rheinland-Pfalz (Rhineland-Palatinate regional media and communication authority - LMK) concerning the allocation of third-party transmission time and the broadcast of regional window programmes under Article 31 of the Rundfunkstaatsvertrag (Interstate Broadcasting Agreement - RStV).

On account of these disagreements, Sat.1 applied to the Medienanstalt Hamburg-Schleswig-Holstein (Hamburg-Schleswig-Holstein media authority - MA HSH) for a licence. For its part, the MA HSH forwarded the application to the Kommission für Zulassung und Aufsicht der Medienanstalten (Media Licensing and Monitoring Commission - ZAK), the joint licensing body of the regional media authorities. Private broadcasters in Germany are monitored by the 14 media authorities, while national issues fall within the responsibility of their central commissions, including the ZAK. Providers of channels that are broadcast throughout the country can, in principle, apply to any media authority for a licence.

After the ZAK had agreed to the switch of licensor for ProSiebenSat.1, the MA HSH granted a new licence on 11 July 2012. Sat.1 announced that it would return its LMK licence, which still had several years to run.

The LMK, supported by the Hessische Landesanstalt für privaten Rundfunk und neue Medien (Hessian regional private broadcasting and new media authority - LPR Hessen) and the private media companies to which third-party transmission time had been allocated, appealed to the VG Schleswig against the MA HSH decision to award the licence. It claimed that a licensee could not simply switch licensing authorities while a current licence was still valid. Such a switch was detrimental to the recipients of third-party transmission time, who were left at the mercy of the broadcaster. Although such “licence hopping” was not expressly

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prohibited under the RStV, it could not be in the spirit of the law. However, the VG rejected the complaint entirely.

The MA HSH has urged the regional media authorities not to take any further legal action and to settle the matter out of court. With regard to the allocation of third-party transmission time, it has promised to seek a decision acceptable to all parties.

At its meeting on 7 May 2013, the Kommission zur Ermittlung der Konzentration im Medienbereich (Commission on Concentration in the Media - KEK) decided that, as the holder of the new licence, Sat.1 is still required to grant third-party transmission time. The decrease in its market share mentioned by Sat.1, which is relevant to its obligation to allocate transmission time to third parties under Article 26(5) RStV, had no effect on the KEK's decision.

Pressemitteilung der Medienanstalt Hamburg Schleswig-Holstein vom 27. Mai 2013

http://www.ma-hsh.de/pm-6-13-sat.-1-lizenz-bei-ma-hsh-bestaetigt.html

Press release of the Hamburg-Schleswig-Holstein media authority of 27 May 2013

Pressemitteilung der KEK vom 8. Mai 2013

http://www.kek-online.de/Inhalte/pm_05_188.pdf

KEK press release of 8 May 2013

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