[BE] Court Confirms RTBF's Right to Publish Written Content on its Website

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Since 2010, Belgian French-language newspaper publishers have been in dispute with the Belgian public service broadcaster RTBF, which they accuse of developing its online activities, more specifically by publishing written content on its website in addition to the audiovisual content that forms part of its public broadcasting remit. The newspaper publishers claim that this written content creates unfair competition, especially as it benefits from public funding in the form of the annual subsidy granted to the RTBF by the French Community of Belgium.

The publishers have brought three legal actions in total. Firstly, a complaint submitted to the European Commission in February 2011 is currently being investigated. Secondly, an application for a judicial review was lodged with the Council of State in April 2013 concerning the current RTBF management contract, which covers the 2013-2017 period. Thirdly, and most importantly, legal proceedings were instigated with Charleroi Commercial Court in September 2010.

Charleroi Commercial Court dismissed the publishers' case at the end of 2011. After the publishers appealed, Mons Appeal Court issued its decision on 20 January 2014, confirming the disputed rulings and, in turn, dismissing the publishers' case.

The publishers had argued, firstly, that the RTBF had acted outside its public service remit by publishing written content on its website. The Appeal Court noted, in response, that the notion of public service was changing and that a teleological interpretation of the statutory object of public-law corporations, including the RTBF, should be used rather than a literal one. Since the written content was incidental to the audiovisual content, it concluded that its publication exceeded neither the object nor the public service remit of the RTBF.

The publishers had also accused the RTBF of commercially exploiting this written content by receiving income from advertising shown alongside it on the Internet. Noting that the RTBF's current management contract explicitly allowed it to broadcast advertising not only on radio and television but also on the Internet, the Appeal Court rejected the publishers' argument. Since the written content was not illegal, neither was commercial exploitation of it.

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Finally, the publishers had argued that the use of the RTBF's public subsidy for publishing written content online constituted new state aid that should have been notified to the European Commission. The Appeal Court rejected this argument: since the Internet activity was not a new activity in the sense of the TFEU but only a natural evolution of the relevant market, the aid did not need to be notified to the Commission.

The remaining question concerned the compatibility of the state aid granted to the RTBF with the provisions of the Treaty. However, Mons Appeal Court ruled that this question fell under the exclusive jurisdiction of the European Commission, to which the case had already been referred by the publishers and which was expected to issue a decision in the near future.

It seems that the publishers may appeal against the Mons Appeal Court judgment.

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