[DE] Lower Saxony Administrative Court of Appeal overturns immediate effect of dctp licence to broadcast on RTL Programme

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Daniel Bittmann
Institute of European Media Law (EMR), Saarbrücken/Brussels

In a decision taken on 11 July 2014 (case no. 10 ME 99/13), the Niedersächsische Oberverwaltungsgericht (Lower Saxony Administrative Court of Appeal - OVG) quashed an order that a licence granted to dctp to broadcast a third-party window as part of the RTL programme should take immediate effect.

On account of its high viewing figures, RTL is obliged to make airtime available to independent third parties in the form of a window programme. For a five-year period beginning in July 2013, the Niedersächsische Landesmedienanstalt (Lower Saxony media authority - NLM) therefore invited tenders for a total of 105 minutes of airtime per week. As well as dctp, which is already a licensed window programme provider - and whose window programme covers, among others, Spiegel-TV and parts of stern-TV- and Focus TV, which wants to broadcast its own programme and other productions, submitted a bid to the NLM. In June 2013, the NLM assembly chose dctp and the NLM director implemented the assembly's decision by granting the licence to dctp. At the same time, he ordered that dctp's licence should take immediate effect. Focus TV appealed to the Verwaltungsgericht Hannover (Hanover Administrative Court - VG Hannover) against the NLM's decision to grant the licence and applied for interim measures to lift the order that the licence should take immediate effect.

The VG Hannover rejected Focus TV's urgent application on 27 November 2013 (case no. 7 B 5663/13). However, overturning the VG's decision following a further appeal by Focus TV, the OVG quashed the order that dctp's licence should take immediate effect.

The OVG explained that the order giving the licence immediate effect should have been issued by the NLM's assembly, which had chosen and licensed the third-party window provider, rather than by its director. The OVG also queried the assembly's decision that the licence should take immediate effect, taken in February 2014, since it was not sufficiently clear whether the decision had been taken independently and in an open, unbiased way. The assembly should therefore take a new decision on whether the dctp licence should take immediate effect. Until such a decision was reached, RTL was not obliged to broadcast the dctp window programme.

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The OVG’s decision cannot be appealed.

Beschluss des Niedersächsischen Oberverwaltungsgerichts, Az. 10 ME 99/13, 11. Juli 2014

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Decision of the Lower Saxony Administrative Court of Appeal, case no. 10 ME 99/13, 11 July 2014

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