European Commission: Condemnation of VTM's Advertising Monopoly

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On 26 June 1997, the European Commission adopted a decision establishing that the advertising monopoly awarded by the Flemish Community to the private commercial television station VTM is incompatible with Community law. The Flemish Executive Power had awarded to VTM, through decisions of 1987 and 1991 taken pursuant to the Flemish media legislation, an 18-year monopoly including the right to be the single private television station to target the entire Flemish Community and, in so doing, broadcast advertisements. This monopoly was challenged by a complaint lodged with the Commission by VT4, a rival broadcaster targetting the Flemish audience, which had first been refused access to the cable in Flanders and Brussels but circumvented VTM's monopoly rights by establishing itself in the United Kingdom (see IRIS 1997-7: 5) The Commission now adopted a decision condemning VTM's monopoly rights. The decision is based on Article 90 of the EC Treaty, the provision which allows the Commission to ensure that Member States comply with their Treaty obligations in their relations with undertakings to which they grant exclusive rights. The decision refers, in particular, to the Treaty rules on freedom of establishment and should now make it possible for VT4 as well as for other televisioin broadcasting organisations to set up permanent or secondary establishment in the Flemish Community with a view to broadcasting, via the Belgian cable TV network (in the U.S. referred to as `cable system'), advertisements directed at the Flemish public. In fact, in its decision the Commission rejected a number of allegations that VTM's monopoly rights were justified for compelling reasons of general interest such as cultural policy objectives and the plurality of the media (VTM being owned by a number of publishing groups using, so it has argued, VTM's advertising revenues to the benefit of their publication of daily and weekly newspapers and magazines).

VTM already announced that it was considering to bring an action for damages, claiming several billions of Belgian francs, against the Flemish Community if its monopoly rights are withdrawn. It is also suggested that this threat of bringing a claim for damages will be used by VTM to bargain for other concessions from Belgian and Flemish authorities including the granting of a nation-wide license to operate a private commercial radio station as well as other elements such as commercial advertising targetting children.

Decision of the European Commission of 26 June 1997

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