

[DE] Licence for national Sat.1 television channel is lawful but regional window obligation remains

IRIS 2019-2:1/5

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In a decision of 29 November 2018 (cases 3 LB 19/14 and 3 LB 18/14), the third chamber of the Oberverwaltungsgericht Schleswig-Holstein (Schleswig-Holstein Administrative Court of Appeal - OVG) ruled that the licence granted to ProSiebenSat.1 TV Deutschland GmbH by the Medienanstalt Hamburg/Schleswig-Holstein (Hamburg/Schleswig-Holstein media authority - MA HSH) for the national television channel Sat.1 is lawful. However, it added that a regional television provider that holds a licence to broadcast a regional window programme in Rhineland-Palatinate and Hessen, whose right to do so was questioned during the proceedings and is the subject of a separate procedure, remains entitled to require Sat.1 to transmit its regional programme.

The proceedings concern disputes dating back to 2012 between Sat.1 and the (current) supervisory body, MA HSH, on the one hand, and the Hessische Landesanstalt für privaten Rundfunk und neue Medien (Hessian commercial broadcasting and new media authority - LPR Hessen), the Landeszentrale für Medien und Kommunikation Rheinland-Pfalz (Rhineland-Palatinate media and communication authority - LMK) and a regional window programme provider on the other. In 2012, Sat.1 applied to the MA HSH for a licence to broadcast its full window programme because it was evidently dissatisfied with the way in which the LMK, which had previously been responsible for such issues, had handled the allocation of third-party transmission time. It was able to do this because the new licence application was submitted to the MA HSH by ProSiebenSat.1 TV Deutschland GmbH rather than by Sat.1 Satelliten Fernsehen GmbH, which had applied to the LMK. The new licence was granted by the MA HSH on the condition that Sat.1 Satelliten Fernsehen GmbH handed back its licence. This decision was disputed by the LMK, the LPR Hessen and a media company that provides regional programmes broadcast on Sat.1 in a complaint that was dismissed in 2013.

However, following an appeal by the three complainants, the first-instance decision was largely upheld. In response to the LMK's appeal, the OVG Schleswig-Holstein ruled that the disputed new licence was lawful. The disputed decision had not concerned a change in ownership structure, in which case the LMK would have remained responsible under current German law, but a new licence, responsibility for which fell to the media authority to which the application was made, i.e. the MA HSH. Regarding the appeal lodged by the LPR Hessen, which claimed that the licence granted by the MA HSH infringed its rights concerning the licensing of regional windows, the OVG Schleswig-Holstein ruled that the

complainant had no right to appeal. Only the appeal lodged by the regional window provider was partially upheld: although the licence granted by the MA HSH was lawful, the licence held by the regional window provider remained valid in Rhineland-Palatinate and Hessen. The regional window programme was linked to the Sat.1 television channel, not the provider.

Pressemitteilung des OVG Schleswig-Holstein vom 30. November 2018

https://www.schleswig-holstein.de/DE/Justiz/OVG/Presse/PI_OVG/2018_11_30_Sat1.html

Press release of the Schleswig-Holstein Administrative Court of Appeal, 30 November 2018

