European Commission: Several Provisions in Flemish Regulations on Radio and Television Broadcasting Found Incompatible with EC Treaty

IRIS 1997-9:1/3

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The "Codex", which coordinates the various Flemish regulatory provisions concerning radio and television broadcasting, is in the news again (see IRIS 1997-8: 6 and IRIS 1997-7: 5). In a Decision on 26 June 1997, taken on the basis of Article 90(3) of the EC Treaty, the European Commission tackled the exclusive right to broadcast televised advertising in Flanders. The provisions in question are firstly Article 80, paragraph 2 of the Codex, which provides that the Flemish Government may only authorise, from among the television broadcasters which belong to it or have its authorisation and direct themselves to the Flemish Community, one body to broadcast commercial and non-commercial advertising, and secondly Article 41 paragraph 1 of the same Codex which stipulates that one private television broadcaster may be authorised by the Flemish Government to broadcast to all the Flemish Community. The combination of these two provisions amounts to granting a monopoly for televised advertising, exercised in the event by VTM (Vlaamse Televisie Maatschappij NV) , a private television company established in Flanders and authorised by decision of the Flemish authorities on 19 November 1987. In the belief that the monopoly on televised advertising as it exists in Flanders favours the company VTM and results in a serious disadvantage to foreign television companies, the company VT4 Ltd, which is established in the United Kingdom but broadcasts programmes to the Flemish public in Dutch, lodged a complaint with the European Commission. Recalling the provisions of Article 90(1) of the EC Treaty concerning the existence of exclusive and special rights for the benefit of certain undertakings and those of Article 52 of the same Treaty concerning the suppression of restrictions to the freedom of establishment, the Commission felt that the monopoly exercised by VTM for televised advertising aimed at the Flemish public was tantamount to excluding any operator from another Member State wishing to establish itself in Flanders. The Commission also considered that the monopolisation of advertising VTM VTM revenue by was not justified by imperious reasons of general interest. In its defence, had indeed argued that by reason of the specific constitution of its capital, its main shareholders being Dutch-language publishers with registered offices in Flanders, the revenue from advertising was redistributed in the national press sector, thereby guaranteeing the existence and pluralism of the Flemish press. This argument was not deemed admissible by the Commissioners.

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As a result the Commission held that these national provisions are incompatible with Article 90(1) taken in conjunction with Article 52 of the said Treaty and has invited the Belgian authorities to put an end to the infringement this constitutes. These authorities are required to inform the Commission of the measures taken in this respect, within a period of two months starting from the notification of the present decision.

Commission Decision of 26 June 1997 pursuant to Article 90(3) of the EC Treaty on the exclusive right to broadcast television advertising in Flanders. OJEC of 6 September 1997, N°L 244: 18

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