[DE] Commercial breaks - Court of Justice Asked for Preliminary Ruling

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On 17 December 1997, the Stuttgart Appeal Court (Oberlandesgericht Stuttgart) suspended proceedings in the dispute between the ARD (the first public television channel) and the private channel Pro 7. At the same time, it put several questions concerning interpretation of the revised "Television without Frontiers" Directive (Directive 97/36/EC) of the European Parliament and of the Council of 30 June 1997 to the Court of Justice of the European Communities in Luxembourg, in accordance with the preliminary decision procedure provided for in Article 177 of the EC Treaty.

The case concerns an application for an injunction under Section 1 of the Unfair Competition Act, and the point in dispute is whether, when the intervals at which feature films or television films may be interrupted are being calculated, advertising breaks may be counted (gross principle) or not (net principle). Article 11, para. 3 (unchanged) of the "Television without Frontiers" Directive states that programmes of this kind may be interrupted every 45 minutes, when their scheduled duration is more than 45 minutes. An additional break is permitted if their scheduled duration exceeds two or more 45-minutes periods by at least 20 minutes. Article 44 (4) of the third amended version of the Agreement on Broadcasting between the Federal States contains a similarly worded rule, although it refers to programme length, rather than "scheduled duration". The plaintiffs argue that the Agreement enshrines the net principle and that the defendants are thus guilty of unfair competition in exhausting all the possibilites offered by the gross principle. The defendants argue that the gross principle applies at least in Community law, which is violated by the stricter rule allegedly embodied in the Agreement between the Federal States. It is true that Article 3 (1) of the "Television without Frontiers" Directive does allow Member States to apply stricter rules to operators within their jurisdiction, but this intention was not sufficently clear when the latest amendment to the Agreement on Broadcasting between the Federal States (which served, inter alia - in its old version - to implement the Directive) was being prepared. The defendants claim in any case that the net principle is incompatible with Community Law, which takes precedence.

The Appeal Court is asking the Court of Justice to indicate, firstly, which principle is imposed by Article 11 (3) of the "Television without Frontiers" Directive and, secondly, whether - assuming the Agreement between the Federal States

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embodies the net principle - this is incompatible with the Directive or primary Community law.

Oberlandesgericht Stuttgart, Beschluß vom 17. Dezember 1997, Gesch.-Nr. 4 U 226/96

Stuttgart Appeal Court, decision of 17 December 1997, File No. 4 U 226/96

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