

Media cooperation in radio market

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Introduction

Triggered by a complaint from radio station Kronehit, the Federal Competition Authority (FCA) looked into the media cooperation practices between radio broadcasters and concert and festival organisers. The investigation led to a set of FCA guidelines for media cooperation which will prevent the prevalent inequality between Austrian public broadcaster (ORF) radio stations and private radio stations as media partners of concert and festival organisers. Media cooperation practices that follow these guidelines will not prompt antitrust investigations or proceedings.

FCA investigation

The FCA analysed the media cooperation market between 2013 and 2014. The results showed that ORF is seen as the most important media partner by most national concert organisers. Almost identical contracts are concluded with ORF radio stations Ö3 and FM4, which means that ORF is granted a set of extensive and exclusive rights, including:

- the right to announce events first;
- advertising rights;
- the right to place the ORF logo on official printed artwork (eg, posters and flyers);
- the right to brand events – in particular, the right to be present at event venues; and
- ticket lottery rights.

Thanks to these exclusive rights, ORF radio stations can promote events as self-organised events, without actually organising them and without having to bear the economic risk themselves.

In 2013 and 2014 ORF held a market share of between 60% and 70% in the market for media cooperation. This market position was reached because ORF radio stations cover approximately 65% of the 14 to 49 age group, while all private radio stations reach only about 30% coverage within this listener group.

Private radio broadcasters have almost no chance of promoting concerts for international artists because ORF is typically granted exclusive rights. In doing so, private radio stations are prevented from accessing this important aspect of radio programming and thus are hindered in their efforts to generate loyalty among listeners through event promotion.

The competitive assessment showed that ORF holds a dominant position in the recipient and advertising markets for radio broadcasters in Austria.⁽¹⁾ Media cooperation contracts that grant exclusive rights to ORF are thus likely to restrict competition, according to Article 101 of the Treaty on the Functioning of the European Union, because such cooperation closes the market for private radio stations – especially in a market which is already limited because of ORF's dominant position. According to the FCA, such cooperation cannot be justified under the exemption clause of Article 101(3) of the Treaty on the Functioning of the European Union or Section 2 of the Cartel Act. If ORF demanded exclusive rights to be incorporated in media corporation contracts, its conduct might be

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classified as an abuse of its dominant market position under Article 102 of the Treaty on the Functioning of the European Union and Section 5 of the Cartel Act.

Guidelines

To avoid competition infringements in the market for media cooperation in future, the FCA published new guidelines, which were elaborated together with radio broadcasters and concert organisers. Media cooperation must now be established in accordance with those guidelines in order to prevent infringements of competition law.

The target group, coverage, airplay and transmission area (in connection with the event location) are important factors when choosing a radio station as a media partner. The promoter or organiser of an event must obtain offers from more than one potential media partner for an upcoming event.

The FCA guidelines distinguish between rights that can still be awarded exclusively to a main media partner and those which need be granted to all suitable broadcasters:

- exclusive rights:
 - first notification;
 - branding an event as an ORF event;
 - placing logos on event artwork; and
 - branding of the event venue;
- restricted rights (must be granted to all radio stations and media partners):
 - free tickets, if available;
 - accreditation for reporters who apply; and
 - rights given by the artist to the organiser (eg, meet-and-greet rights and interviews).
- unrestricted rights (must be granted to all radio stations, even those without a media cooperation contract):
 - editorial announcements and media coverage;
 - marketing campaigns connected to the event which do not compromise the exclusive rights of the main media partner (ie, these should not create the impression that it is someone's event); and
 - reporters' access to the event without a recording device if they have a ticket, including subsequent media coverage.

For further information on this topic please contact [Dieter Hauck](#) or [Esther Sowka-Hold](#) at Preslmayr Attorneys at Law by telephone (+431 533 16 95) or email (hauck@preslmayr.at or sowka-hold@preslmayr.at). The Preslmayr Attorneys at Law website can be accessed at www.preslmayr.at.

Endnotes

(1) § 4 Abs 2 Z 1 KartG.

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