[DE] Broadcasting Commission adopts resolution on facilitating cooperation in the broadcasting sector

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On 4 March 2026, in view of the growing market power of global platforms, the Broadcasting Commission of the federal states *(Rundfunkkommission der Länder*) published a resolution on facilitating cooperation in the broadcasting sector. The resolution reflects the fact that advancing digitalisation and changes in media use are creating the need for German broadcasting regulations to be reformed. With the Seventh Interstate Treaty on the Amendment of Interstate Treaties on Media Law - Reform of Public Service Broadcasting (*Siebte Staatsvertrag zur Änderung medienrechtlicher Staatsverträge – Reform des öffentlich-rechtlichen Rundfunks*), which came into force on 1 December 2025, the federal states have already started reforming public service broadcasting. A central element of this is coordination and cooperation between broadcasters to ensure quality, efficiency and diversity in the long term. This includes cooperation between public and private broadcasters designed to strengthen their competitiveness against global competitors.

In its resolution, the Broadcasting Commission points out that the (federal) legislator is required to create the necessary framework under antitrust law for such forms of cooperation. It therefore calls for the implementation of the provisions of the federal government's coalition agreement to create an exemption under competition law for public service broadcasters through an amendment to the Act against Restraints of Competition (*Gesetz gegen Wettbewerbsbeschränkungen* – GWB) and to facilitate cooperation between private media companies.

The Broadcasting Commission also expresses support for the idea of enshrining in German competition law the antitrust exception for undertakings entrusted with services of general economic interest provided for in Article 106(2) of the Treaty on the Functioning of the European Union (TFEU). The aim is to increase legal certainty for public broadcasters – in particular with regard to their cooperation obligations provided for in the Seventh Interstate Treaty – and to harmonise European and national antitrust law. In this regard, the Broadcasting Commission also proposes the introduction of a new paragraph 1a in Article 185 GWB to regulate the application of the GWB to "undertakings entrusted with services of general economic interest under state law". It would adopt the wording of Article 106(2) TFEU in its description of the undertakings covered.

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In addition to this new provision, the Broadcasting Commission also sees the need for broadcasters as a whole to be exempted from the ban on cartels enshrined in Article 1 GWB. Such an exemption already exists in Article 30(2)(b) GWB for the press sector, enabling press publishers to enter into otherwise unauthorised cooperation agreements and thus strengthen inter-media competition. It is suggested that the procedural privilege of Article 30(2)(b) sentence 3 GWB also be adopted for this purpose; this states that press publishers are entitled to a decision by the competent antitrust authority upon application if, in the case of an agreement on publishing cooperation, the conditions for a prohibition under Article 101(1) TFEU are not met according to the information held by the antitrust authority and the applicants have a significant legal and economic interest in such a decision. This would also cover cooperation with and between private broadcasters and press publishers that are not entrusted with services of general economic interest within the meaning of Article 106(2) TFEU in the future. However, the special characteristics of public service broadcasters should also be taken into account. In this context, it is emphasised that cooperation must serve to fulfil their constitutional mandate. This mandate is understood to mean guaranteeing the essential basic provision of diverse programme content to the public. Public service broadcasters should offer programmes that are not subject to market constraints. The Broadcasting Commission therefore concludes by pointing out that purely commercial activities of public service broadcasters must not be covered by the exemption.

Link zum Beschluss der Rundfunkkommission

https://rundfunkkommission.rlp.de/fileadmin/rundfunkkommission/Dokumente/Beschluesse/2026-03-05_RFK_TOP_2_GWB_Novelle.pdf

Link to the decision of the Broadcasting Commission resolution

https://rundfunkkommission.rlp.de/fileadmin/rundfunkkommission/Dokumente/Beschluesse/2026-03-05_RFK_TOP_2_GWB_Novelle.pdf

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