

[DE] Teleshopping channel has no right to greater visibility through inclusion on the "public value" list

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*Sandra Schmitz-Berndt
Institute of European Media Law*

In its judgement of 27 May 2026, the Higher Administrative Court of North Rhine-Westphalia (*Oberverwaltungsgericht Nordrhein-Westfalen* – OVG NRW) (case no. 13 A 2858/24) ruled, with regard to the teleshopping channel QVC, that teleshopping channels are not entitled to preferential visibility through inclusion in the so-called "public value list" maintained by the state media authorities.

Section 84 of the Interstate Media Treaty (*Medienstaatsvertrag* – MStV) obliges providers of smart TVs and other user interfaces to ensure that programmes that make a significant contribution to diversity of opinion and content are easier to find. This constitutes a "prominence" system, as expressly permitted by Article 7a of the Audiovisual Media Services Directive (AVMSD), under which member states ensure that audiovisual media services of general interest are given appropriate prominence. The German solution, agreed between the federal states, distinguishes between broadcasting and telemedia, as well as between private and public service broadcasters. The legislature has comprehensively defined the preferential treatment given to public service broadcasters. By contrast, it is largely for the state media authorities to determine which private broadcasting and telemedia services contribute significantly to diversity of opinion and content, and are therefore considered to be of public value. In this regard, Section 84(5) MStV sets out criteria which the state media authorities must take into account in their selection. The state media authorities, in turn, have jointly adopted statutes for the implementation of the provisions pursuant to Section 84(8) MStV on the easy discoverability of private providers (public value statutes). Decisions on what should be included on the so-called "public value list" are made by administrative act, and the content of the list is reviewed every three years by the state media authorities. In the first tender procedure in 2021, QVC was not recognised as a so-called "public value service" under Section 84 of the MStV. After the broadcaster appealed, the Düsseldorf Administrative Court (*VG Düsseldorf*) ordered the competent state media authority of North Rhine-Westphalia (*Landesanstalt für Medien Nordrhein-Westfalen* – LfM NRW) to reconsider the application, *inter alia* on the grounds of procedural errors (ref. 27 K 4656/22).

With its current appeal to the OVG NRW, the broadcaster sought a retrospective ruling that the LfM NRW should have included its channel on the list for the period 2022 to 2025. In its application, it had argued that teleshopping programmes

could, in principle, contribute to diversity of opinion and choice, and that QVC met the statutory public value criteria to a particularly high degree. Among other things, it referred to its programme content, user information, the promotion of regional and medium-sized undertakings, a 100% in-house production rate, extensive accessibility measures, the involvement of qualified staff in programme design and the fact that the entire programme was produced in Germany. It also cited specific formats and technical innovations to demonstrate its efforts to reach younger audiences. However, the OVG NRW considered that the requirements for inclusion in the public value list had not been met. Since the LfM NRW had no discretion in making this determination, the court carried out a full review of the eligibility criteria. It ruled that QVC did not meet the content-related criteria required for a public value classification, in particular regarding political and current affairs reporting, regional and local information, and programmes aimed at young audiences. The public value regulations were intended to promote the visibility of programmes that contributed to journalistic diversity of opinion but were at a competitive disadvantage with programmes that were particularly popular and featured a substantial amount of advertising. As the criteria laid down by law were exhaustive, programmes consisting solely of teleshopping were generally not included. In the court's view, neither the freedom of broadcasting protected by the Basic Law nor the freedom to pursue a profession had been infringed because the service continued to be broadcast, remained accessible via basic search functions and could further enhance its own visibility.

Given the fundamental importance of the issue, the OVG NRW granted leave to appeal to the Federal Administrative Court (*Bundesverwaltungsgericht*) in Leipzig.

Link zur PM des OVG NRW zum Urteil

https://www.ovg.nrw.de/behoerde/presse/pressemitteilungen/25_260527/index.php

Press release of the Higher Administrative Court of North Rhine-Westphalia

Link zum Urteil des VG Düsseldorf (Vorinstanz)

https://nrwe.justiz.nrw.de/ovgs/vg_duesseldorf/j2024/27_K_4656_22_Urteil_20241031.html

Judgement of the Düsseldorf Administrative Court (lower court)

Link zur Public-Value-Satzung der Landesmedienanstalten

<https://www.die-medienanstalten.de/service/rechtsgrundlagen/public-value-satzung/>

Public value statutes of the state media authorities

Link zur Gesamtliste der privaten Angebote gem. § 84 Abs. 5 MStV

<https://www.bing.com/ck/a?!&&p=4afe695d04eb07bb656d66400cda863c3102220310b165bc9cf2308af3b3c2fdJmItdHM9MTc4NTEwMDQwMA&ptn=3&ver=2&hsh=4&fclid=2a9489b9-324d-6fbe-0947-9ee133226e3c&psq=Link+zur+Gesamtliste+der+privaten+Angebote+gem.+%c2%a7+84+Abs.+5+MStV&u=a1aHR0cHM6Ly93d3cuZGllLW1lZGllbmFuc3RhbmHRIbi5kZS9maWxlYWRTaW4vdXNlcl91cGxvYWQvZGllX21lZGllbmFuc3RhbmHRIbi9BdWZnYWJlbi9WaWVsZmFsdHNzaWNoZXJ1bmcvUHVibGljX1ZhbHVlL0xpc3R1bmdlbi8yMDI1L0FscGhhbnVtZXJpc2NoZV9HZXNhbXRsaXN0ZV9WMI5wZGY>

Full list of private services in accordance with Section 84(5) MStV

