[DE] Conference of Directors of the Regional Media Authorities Sets Limit for Audience Market Shares

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Under § 26 para. 2 of the Agreement between the Federal States on Broadcasting (RundfunkstaatsvertragRfStV), it is assumed that an audience market share of 30% leads to a predominant power of opinion-making. Among other things, a television broadcaster having reached this threshold must not be granted any further licence.

The same applies if the audience market share is slightly below this value, provided that further conditions stated in § 26 of the RfStV are met. The law has left open the extent of the figure below the 30% line that is still considered "slightly below".

In the context of the registration of the Discovery-Channel, the Conference of the Directors of the Regional Media Authorities (KDLM) has now decided that predominant opinion-making power does not exist according to the Agreement between the Federal States on Broadcasting in the case of market shares below 28%. The decision was taken within the deadline of three months after the appeal to the body set up by the federal agreement and with the legally required quorum of æ of the members.

Considering the actual legal examination procedures dealing with media concentration in the Federal Republic of Germany, particular importance is attached to this decision of the KDLM. In the opinion of the KDLM, there will be, inter alia, no need for further examinations in the future, as to whether a company has a dominant market position in a media-relevant associated market if the 28% threshold is not reached. The decision has led to a discussion with the commission for the establishment of concentration in the field of media (Kommission zur Ermittlung der Konzentration im Medienbereich - KEK). According to the federal agreement on broadcasting, the KEK shall secure the variety of opinion independently of the regional media authorities when granting a license to private television broadcasters.

The KEK is opposed to a fixed threshold and wishes in any case to take into account the holdings of a television broadcaster in associated markets for their examinations. It views the decision of the KDLM as a violation of its competence and criticises the fact that it will be bound by the fixed audience market share of

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28% as set by the decision of the KDLM.

The regional authorities maintain the need for the establishment of a lower limit, basing their arguments on the principles of a constitutional state and the constitutional obligation for accuracy.

Beschluß der Konferenz der Direktoren der Landesmedienanstalten (KDLM) „Discovery Channel" vom 7. November 1998.

Decision of the Conference of Directors of the Regional Media Authorities (KDLM) "Discovery Channel" dated 7 November 1998.

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