[DE] ProSieben Examination Period Comes to an End

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The Investigating Committee on Media Concentrations (Kommission zur Ermittlung der Konzentration im Medienbereich KEK) decided at its 21st sitting on 26 January 1999 that changes to shareholdings in the television company ProSieben could not be classified as harmful. Authorisation was required for Thomas Kirch to increase his holdings in the basic share capital, which carried voting rights, of ProSieben Media AG from 24.5 % to 58.4 % and of REWE Zentralfinanz eG from 40 % to 41.6 %. The changes, previously submitted to the Investigating Committee on Media Concentrations for approval, had already taken place. The Investigating Committee found that, in accordance with Article 28 (2) sentence 1 of the Agreement between Federal States on Broadcasting, the ProSieben group's share of viewing figures should be counted together with that of the Kirch group. The relationship between Dr Leo Kirch and his son Thomas was merely one reason why the figures of the ProSieben and Kirch groups should be combined. A series of clues suggested to the Investigating Committee that there was continuing concurrence between the interests of both groups. For example, ProSieben obtained an unusually high proportion of the programmes it broadcast itself and on Kabel 1 from the Kirch group. The Kirch group and ProSieben not only shared certain premises, but management staff had also moved from one group to the other. Also, the long-term aim of the Kirch Foundation was, to a certain degree, the integration of the Kirch and ProSieben groups. The Commission attached particular importance to the continuing close financial ties between Dr Leo Kirch and Thomas Kirch. These links were the clearest demonstration of the extent to which the two groups were following a common business plan and were mutually coordinating their investment activities.

The combined share of viewing figures of the Kirch and ProSieben groups varied within the prescribed period between 26.61 % and 28 %. This alone was insufficient to constitute a predominant market position. The freeto-air TV viewing figures of the Kirch group were approximately equivalent to those of CLT-UFA, which was just as strong a competitor on the national television advertising market, with a similar market position. Moreover, as far as programming was concerned, public broadcasters were also in a strong position because of licence fees. As part of the assessment as to whether a predominant market position had been obtained, independent of suspicions that Article 26 (2) of the Agreement between Federal States on Broadcasting had been breached, it had been necessary above all to investigate the procurement market for fictional television programmes. All available data suggested that the Kirch group was the market

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leader for fiction rights. Information available to the Investigating Committee suggested that the Kirch group's rights in this field far outweighed those of all other German programme organisers put together. Furthermore, the Kirch group had access to every part of the market as far as German-speaking programmes were concerned (pay-per-view, pay-TV, primary and secondary rights in free-to-air TV) and could be seen as a strong client by production companies. However, there was insufficient evidence to conclude that this strong position was harming diversity of opinion in national television. Moreover, with all its shareholdings, the Kirch group was also the market leader as far as German television productions were concerned. Its market share did not suggest, however, that broadcasters were dependent on the Kirch group.

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