[DE] End of Examination Period for PREMIERE-Digital

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Bernd Malzanini
KEK

At its 21st sitting on 26 January 1999 in Potsdam, the Investigating Committee on Media Concentrations (Kommission zur Ermittlung der Konzentration im Medienbereich - KEK) decided that licence applications made by PREMIERE for digital pay-TV programmes could not be rejected on the grounds of the need for diversity of opinion on television. According to Article 26 (3) of the Agreement between Federal States on Broadcasting, if a company gains a predominant market position by owning the rights to a large number of programmes, further programmes owned by that company may not be granted authorisation or attempts to acquire shares in organising companies may be deemed harmful. The Investigating Committee on Media Concentrations found that PREMIERE's operation of digital pay-TV would only remain harmless as long as the shareholding companies remained independent competitors outside their involvement with PREMIERE. PREMIERE's operation of digital pay-TV, a joint venture in which the Kirch group and CLT-UFA were equal partners, was examined beforehand in several consolidated processes under European and German competition law.

In May 1998 it was prohibited by the European Commission and in October 1998 by the Federal Cartel Authority (Bundeskartellamt). Shareholdings in PREMIERE are currently owned by CLT-UFA and Canal+, each with 37.5 %, and the Kirch group, which owns 25 %. Canal+ is to pull out as a PREMIERE shareholder. It was necessary to check whether either CLT-UFA or the Kirch group, both PREMIERE partners, had a predominant share of the market. This process was based on each company's share of the viewing figures for all German-speaking programmes. In the prescribed period, these figures averaged 27.5 % for the Kirch group and 25.5 % for CLT-UFA. At present, therefore, their involvement in PREMIERE's operation of pay-TV gave neither the Kirch group nor CLT-UFA a predominant market position as far as national television was concerned. The Investigating Committee on Media Concentrations decided, however, that the Kirch group's influence on public opinion through television was not fully reflected by viewing figures alone. Rather, it held that the Kirch group's position in television funded by subscriptions and advertising had been strengthened by the operation of digital pay-TV by DF1 and now PREMIERE. Moreover, PREMIERE had gained a key position which would enable it to control the access of other pay-TV providers to the viewing public. The Kirch group also had the digital technology developed especially for pay-TV. As part of an overall business strategy, it had the power to combine its use of considerable programme resources not only on pay-TV but also in other markets.

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Currently, however, the Kirch group's advances in broadcasting and reception technology were primarily affecting pay-TV, without causing long-term hindrance to customer access to channels financed in other ways. It was also unclear, despite the group's strong position in terms of programme resources, whether public television companies or CLT-UFA broadcasters were already or may become dependent on the Kirch group for their programming. In fact, apart from national television, CLT-UFA had greater economic and financial power in the media sector than the Kirch group. However, in the Investigating Committee's estimation, neither its position with regard to technical services for pay-TV nor that in respect of film rights suggested that CLT-UFA, through its involvement in both free-to-air and pay-TV, had reached a predominant market position.

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