[DE] Court Pulls Plug on Merger between Callahan Nordrhein-Westfalen and NetCologne

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Wolfram Schnur
Institute of European Media Law (EMR), Saarbrücken/Brussels

On 11 April 2001, the Oberlandesgericht Düsseldorf (Düsseldorf Regional Court of Appeal - OLG) issued temporary injunctions to prevent Callahan Nordrhein-Westfalen GmbH (CNRW) from taking over cable network operator NetCologne.

The Bundeskartellamt (Federal Cartels AuthorityBKartA) had sanctioned the proposed merger on 4 April 2001. It had decided that, bearing in mind the number of NetCologne customers, the merger would only slightly strengthen the dominant market position of the cable network operator CNRW in respect of programme providers and level 4 network operators. It also thought that the advantages of the merger for the fixed network telephony market and narrow- and broadband Internet services outweighed the disadvantages of market dominance. By acquiring NetCologne, CNRW would sooner be able to compete with Deutsche Telekom AG (DTAG). Due to legitimate arrangements made under company law and the economic necessity for CNRW to venture into markets currently dominated by DTAG, the Cartels Authority did not consider that DTAG, which owns 45% of CNRW through its subsidiary Kabel Deutschland GmbH, would pose a considerable threat to competition.

Responding to a complaint about the Cartel Authority's decision, however, the OLG Düsseldorf issued an urgent ruling, expressing serious doubts over its legality. It particularly questioned the Authority's view that NetCologne had little competitive power and its positive endorsement of CNRW's accelerated entry into the fixed network telephony market through its acquisition of NetCologne. The Court also had reservations about the legality of the company law arrangements concerning highly restricted information rights for Kabel Deutschland GmbH and therefore DTAG as a shareholder in CNRW. As well as the legal possibility of withholding information from a shareholder, the Court thought consideration should also be given to whether a shareholder in this specific situation might in fact also be denied market-related information.

Beschluss des Oberlandesgerichts Düsseldorf - Kartellsenat, Aktenzeichen: Kart 22/01 (V)

Ruling of the Düsseldorf Regional Court of Appeal, Cartel Chamber, case no. Kart 22/01 (V)

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