[DE] Cartels Office Opposes Liberty's Purchase of Cable Networks

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In a decision of 25 February 2002, the Bundeskartellamt (Federal Cartels Office - BKartA) prohibited Liberty Media's planned acquisition of six regional cable networks owned by Deutsche Telekom AG (DT). The authority had already expressed reservations about the American media company's proposal in a warning issued at the end of January; following subsequent negotiations with the company, which were apparently unsuccessful, the Cartels Office's misgivings concerning the restriction of competition in the cable TV market have prevailed.

The Cartels Office ruled that the merger, investigated in accordance with German competition law (para. 37 of the Gesetz gegen Wettbewerbsbeschränkungen - Competition Restrictions Act - GWB), would strengthen dominant positions in the supply market for broadcasting signals to final customers (final customer market: cable television), the market for feeding signals into broadband cable networks (input market) and the market for the supply of network level 3 signals to operators of network level 4 (signal supply market). The BKartA did not believe that the different broadcasting access and distribution methods were interchangeable, since many users had no terrestrial or satellite alternatives to broadband cable reception due to legal provisions or actual circumstances.

Unlike the companies that had previously acquired cable networks in Baden-Württemberg, Hessen and North Rhine-Westphalia, Liberty was a potential competitor of Deutsche Telekom because it already held dominant positions with existing cable network operators; moreover, it was also a programme content provider.

The other business activities announced by Liberty were also a factor in the cartel authority's decision. Liberty's reluctance to use MHP (Multimedia Home Platform), the generally accepted standard in Germany, in the decoders it planned to distribute to cable subscribers would have hindered the chances of open, competitive cable access, especially since the decoders would not have been equipped with a Common Interface. Furthermore, Liberty's efforts to acquire as many network level 4 operators (supplying television signals to households) as possible or to co-operate with them on an exclusive basis were detrimental to fair competition.

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Liberty also put a damper on the hope, expressed during media policy discussions linked to the sale of DT's cable networks, that digital cable capacities would be rapidly increased because the network would have operated at the same level (around 510 Mhz) until further notice. In the opinion of the Cartels Office, this would not have allowed sufficient competition to DT's dominant market position in the local voice telephony market. Consequently, the likelihood of improvements in other markets was considered insufficient to justify the merger.

Beschluss des Bundeskartellamts vom 25. Februar 2002

http://www.bundeskartellamt.de/260202PressekonferenzLiberty.pdf

Decision of the Federal Cartels Office, 25 February 2002

Abmahnung des Bundeskartellamt vom 31. Januar 2002

http://www.bundeskartellamt.de/31_01_2002.html

Warning of the Federal Cartels Office of 31 January 2002

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