

## [DE] The Bavarian Administrative Court Confirms the Revocation of a Licence Granted to DSF.

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*Christophe Wagner  
OPPENHOFF & RÄDLER RA, Berlin, currently in Washington D.C.*

Media concentration legislation principles were recently considered in a case about satellite broadcasting licences concerning the German sport channel DSF. The Bavarian Administrative Court (Bayerisches Verwaltungsgerichtshof) turned down appeals made by the Bavarian Central Office for New Media (Bayerische Landeszentrale für neue Medien - BLM) and DSF with its ruling of 19 June 1995. In so doing it confirmed the revocation of the DSF licence made at first instance.

In the case the Court followed the complaints made by the Berlin Brandenburg Media Authority (Medienanstalt Berlin-Brandenburg , MABB) which, on media concentration grounds, had taken measures against the licence granted to DSF at the end of 1992. The decision published by the BLM did not make it clear whether the basic principle of diversity of opinion would be assured. And, in the view of the Bavarian Administrative Court, guaranteeing diversity of opinion was one of the most important factors to consider when licencing private radio. Diversity in the media did not mean that the same continually changing groups of interested parties should divide up the media market between. Examining whether diversity of opinion has been respected before granting a licence is considered therefore to be extremely important, since it is difficult to reverse a negative trend in media concentration. For this reason it is requested that this should be dealt with at the proper time. The Bavarian Administrative Court directly accuses the BLM of not having carefully examined whether maximum programming limits as set out in § 21 paragraph 1 of the Agreement between the federal Länder on broadcasting ( Rundfunkstactivertrag ) were respected before granting a licence. This rule is said not only to take into account the formal programme break-down but also any other possible and real influences. In the opinion of the Court, the corresponding checks were all the more necessary since it had appeared many times in the press that both the Axel Springer Verlag and Mssrs. Leo and Thomas Kirch were involved in numerous companies in the press and radio industry, which worked closely together on mutually beneficial contracts. In the opinion of the Bavarian Administrative Court, both the usual questions of accountability within the Kirch Group and the relationship between DSF and its customers and programme suppliers should have been more closely checked and assessed before granting DSF a licence. Further, the Bavarian Administrative Court considers it necessary to clarify the relationship between the Kirch Group and the foreign investors in DSF (Berlusconi and Ringier). Finally, any possible connections with and

involvement in publishing companies should have been considered also.

In view of the necessary scale of decision, assuring diversity of opinion requires that the legal relationships between the parties involved be made clear especially concerning management control and representation. According to the Bavarian Administrative Court any person who either will not or cannot disclose his personal connections and business involvements "is not suitable as a supplier of services in the private broadcasting sector". It is the applicant's duty to prove materially that he satisfies the conditions for diversity of opinion. He must clear up all doubts concerning this and put a convincing case before the media authority before he can be granted a licence.

As in the ruling at first instance, the Bavarian Administrative Court rejected the appeal for location reasons. The BLM is deemed not to be doing its duty when it only considers the economic needs of single suppliers when taking decisions. Whether the defendants had let themselves be led by such considerations, which the documents available proved, was an irrelevant opinion which did not serve to assure diversity of supply. The revocation of the licence granted to DSF will only come into force under these proceedings when the Federal Administrative Court has taken a decision on the intervening appeal. The Bavarian Administrative Court has tried twice to use the delaying effect of the case brought by the Berlin-Brandenburg Media Authority. This case should have resulted in the immediate interruption of broadcasts but this has been avoided until now thanks to special rulings by the Bavarian Administrative Court. These special rulings are now the subject of a constitutional appeal case brought before the Federal Constitutional Court in Karlsruhe by the BerlinBrandenburg Media Authority. The highest German Court is expected soon to make its initial pronouncements as to the principle of the case.

