[DE] Federal Cartel Agency Approves DVB-H Consortium

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The *Bundeskartellamt* (Federal Cartel Agency - BKartellA) has given the green light to the creation of a joint venture between the three mobile network operators T-Mobile, Vodafone and O2 for the construction and operation of a platform for mobile television broadcasting based on the DVB-H standard. It does not believe that the companies involved are likely to create or strengthen a dominant position in the markets concerned.

The company was founded in connection with the call for tenders for DVB-H frequencies and for the use of these frequencies, issued by the *Bundesnetzagentur* (Federal Networks Agency) and the *Landesmedienanstalten* (*Land* media authorities) (see IRIS 2007-3: 12). It will provide the technical services required for the production and transmission of digital TV signals, purchase programme content and bundle content into programme packages for mobile TV based on the DVB-H standard. Marketing to end customers will be carried out individually by the three parent companies and possibly by other shareholders in the joint venture.

On the one hand, the BKartellA assessed the markets that are directly linked to mobile TV broadcasting (end customer market, wholesale market, market for the acquisition of marketing rights). It does expect the new joint venture or its parent companies to acquire significant shares in these markets. However, these are newly emerging technology markets that are still in their experimental phase. The market shares likely to be held by companies that have so far barely, if at all, been active in these markets are therefore not stable enough to constitute a dominant market position.

The Cartel Agency also considered whether the creation of the joint venture might have an effect on the parent companies' positions in the mobile communications end customer markets for data services and telephony (including SMS). It investigated whether, in view of the high market shares held by T-Mobile, Vodafone and O2, the merger would result in the creation or strengthening of an oligopoly. However, it decided that the mobile data services market was still a young, rapidly developing market, so there was very little reason to engage in oligopolistic practices. In the mobile telephony market, the strategic importance of mobile television for narrowband telephony services was so small that there was no cause for concern in this area either.

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Following this decision of 13 August 2007, the BKartellA now plans to conclude a separate examination of the merger from the point of view of the competition between the three companies involved. According to the BKartellA, the co-operation will harm competition, especially in the newly emerging mobile broadcasting market. However, it believes that the commitments entered into by the companies are sufficient to dispel any current concerns over competition. These particularly include undertakings not to link DVB-H services with television/video services via mobile phone (e.g. UMTS) or with mobile phone contracts, to allow platform customers to select channels and channel packages (in compliance with binding media law provisions), to ensure that DVB-H end devices are compatible with other mobile TV standards (such as DMB) and to allow DVB-H services to be received via devices other than mobile phones.

The consortium involving T-Mobile, Vodafone and O2 is competing, inter alia, with a joint venture established by MFD Mobiles Fernsehen Deutschland GmbH and Neva Media. Publishing houses Hubert Burda Media and Holtzbrinck hold stakes in Neva Media. MFD offers a service based on the rival DMB standard in Germany.

Pressemitteilungen des BKartellA vom 18. Juli 2007

http://www.bundeskartellamt.de/wDeutsch/aktuelles/presse/2007_07_18_II.php

BKartellA press releases of 18 July 2007

Pressemitteilungen des BKartellA vom 14. September 2007

http://www.bundeskartellamt.de/wDeutsch/aktuelles/presse/2007_09_14.php

BKartellA press releases of 14 September 2007

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