[DE] Judicial Review of the Ban on the Merger between Springer and ProSiebenSat.1

IRIS 2007-10:1/13

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In a ruling of 25 September 2007, the Federal Court of Justice (BGH) decided that a judicial review should be carried out on the decision by the Federal Cartel Office (BkartA) to ban the planned merger between Axel Springer AG and ProSiebenSat.1 Media AG. The BGH thereby quashed a decision by the Düsseldorf Regional Appeal Court (OLG), which had ruled that the appeal by Springer against the ban by the BKartA was inadmissible (see IRIS 2006-4: 10).

The OLG took the view that the subject of dispute had been settled, inferring this from the fact that the Springer publishing house and the investors group then holding the majority in ProSiebenSat.1, who had arrived at an agreement with Springer about the acquisition of the television company, had stated that they no longer wished to pursue the issue. Nor was there any desire to verify *ex post facto* whether the merger had been banned improperly.

The ruling of the BGH negated this decision to deem the application to be inadmissible, thereby referring the matter back to the OLG. In particular cases, the potential purchaser affected by this prohibition might have a considerable interest in clarifying the factual and legal positions that had emerged. This would be the case, for instance, if he had to face the possibility, in future acquisition projects, of having arguments from an earlier decision held against him, threatening him with a further ban. In the case at issue this could apply to Springer, were ProSiebenSat.1 or another broadcaster up for sale.

Beschluss des BGH vom 25. September 2007 (Az. KVR 30/06)

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=pm&Datum=2007&Sort=3&nr=41226&linked=bes&Blank=1&file=dokument.pdf

Ruling of the BGH of 25 September 2007 (Az.KVR 30/06)

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