[DE] Springer AG's Appeal on ProSiebenSAT.1 Takeover Rejected

IRIS 2009-9:1/12

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In a decision of 7 July 2009, the *Bayerische Verwaltungsgerichtshof* (Bavarian Administrative Court - BayVGH) rejected the appeal of Axel Springer AG concerning its takeover of the broadcasting group ProSiebenSAT.1 (see IRIS 2009-2: 10).

The *Bayerische Landeszentrale für neue Medien* (Bavarian New Media Office - BLM) had refused to approve Axel Springer AG's plan to acquire all the shares in ProSiebenSAT.1 and to submit a public takeover bid for the free-floating preference shares without voting rights attached. It explained that the planned change of ownership might give Axel Springer AG a dominant influence over the expression of opinion.

In its appeal, Axel Springer AG asked for this decision to be declared unlawful. The BayVGH accepted that there was an interest to seek a declaratory judgement but rejected the appeal against an adopted administrative act as unfounded, since the BLM's decision could not be questioned. However, it dismissed the appeal on the grounds that it lacked legitimate interest. It could not be upheld either from the perspective of possible repetition or the prejudicing of a renewed takeover plan by the appellant, nor in preparation for an administrative liability procedure, to vindicate the appellant or in view of a serious breach of fundamental rights.

The BayVGH authorised an appeal to the *Bundesverwaltungsgericht* (Federal Administrative Court) to clarify the requirements for an appeal against an adopted administrative act.

Beschluss des BayVGH (Az.: 7 BV 08.254) vom 7. Juli 2009

http://www.vgh.bayern.de/BayVGH/documents/7BV08254_anonymisiert_.pdf

Decision of the BayVGH (case no. 7 BV 08.254) of 7 July 2009

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