[DE] BGH Confirms Ban on Merger between Springer and ProSiebenSat1

IRIS 2010-7:1/12

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On 8 June 2010, the *Bundesgerichtshof* (Federal Supreme Court - BGH) confirmed the decision taken by the *Bundeskartellamt* (Federal Cartel Office - BKartA) in 2006 to ban the merger between Axel Springer AG and TV broadcaster ProSiebenSat1.

The BKartA had prohibited the planned merger due to concerns about competition (see IRIS 2006-4: 10/16). Springer's appeal against this decision was initially rejected by the *Oberlandesgericht Düsseldorf* (Düsseldorf Regional Appeal Court - OLG) as inadmissible. Springer successfully appealed to the BGH against this ruling and the matter was referred back to the OLG Düsseldorf (see IRIS 2007-10:9/13). The OLG Düsseldorf rejected the company's request for a declaratory judgement on 3 December 2008 as unfounded (see IRIS 2009-2: 10/14), but left its decision open to appeal.

The BGH has now confirmed the OLG Düsseldorf's decision. The companies involved in the planned merger would have formed an oligopoly with a dominant market position and would, between them, have represented more than 80% of the German TV advertising market. It was therefore likely that this oligopoly would have been strengthened further if the merger had been approved. The merger ban imposed by the BKartA had therefore been lawful.

Der Beschluss des BGH vom 8. Juni 2010 (Az: KVR 4/07)

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&sid=121d6152e0faa8fa7b5abf5e6f0ef025&nr=42197&pos=0&anz=1

BGH ruling of 8 June 2010 (case no. KVR 4/07)

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