[DE] BVerwG Quashes BayVGH Ruling on Axel Springer AG's takeover of ProSiebenSat.1

IRIS 2011-2:1/18

Anne Yliniva-Hoffmann
Institute of European Media Law (EMR), Saarbrücken/Brussels

In a judgement of 24 November 2010, the *Bundesverwaltungsgericht* (Federal Administrative Court - BVerwG) quashed the decision of the *Bayerische Verwaltungsgerichtshof* (Bavarian Administrative Court - BayVGH) concerning Axel Springer AG's planned takeover of private television broadcaster ProSiebenSat.1 (P7S1) and referred the case back to the BayVGH.

The legal dispute concerned Axel Springer AG's plan to acquire all the shares in P7S1 and to submit a public takeover bid for the free-floating preference shares without voting rights attached. The *Bayerische Landeszentrale für neue Medien* (Bavarian New Media Office - BLM) and the *Kommission zur Ermittlung der Konzentration im Medienbereich* (Commission for the Investigation of Media Concentration - KEK) refused to grant approval for the merger, which is necessary under media law, on the grounds that it would give Axel Springer AG a dominant influence over the expression of opinion. The media company finally relinquished its takeover plans, but asked for a declaratory judgment stating that the refusal was unlawful. This request was rejected in the lower instance courts. The BayVGH considered the appeal inadmissible on the grounds that it lacked legitimate interest (see IRIS 2009-9/12).

The BVerwG has now decided that the appellant has an ongoing interest in a decision on the merits in this case. For Axel Springer AG, the refusal to approve the takeover under media law creates a danger that "potential sellers will not take it into consideration as a serious negotiating party for any future takeover."

In June 2010, the *Bundesgerichtshof* (Federal Supreme Court) had confirmed the decision of the *Bundeskartellamt* (Federal Cartel Office) to ban the merger (see IRIS 2010-7/12).

Pressemitteilung des BVerwG zum Urteil vom 24. November 2010 (Az. 6 C 16.09)

http://www.bverwg.de/enid/9d.html?search_displayContainer=13466

BVerwG press release on the ruling of 24 November 2010 (case no. 6 C 16.09)

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026