[AT] KommAustria Conditionally Approves ORF Special Interest Channel

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The Austrian media sector is currently discussing the plan of *Österreichischer Rundfunk* (Austrian Broadcasting Corporation - ORF) to launch a new information and culture channel. On 18 May 2011, as part of a prior evaluation, the *Kommunikationsbehörde Austria* (Austrian Communications Authority - KommAustria) conditionally approved the broadcast of the ORF special interest channel, after which the Austrian competition authority intervened and criticised what it considered to be the inadequacy of the conditions laid down.

For the approval of a new special interest channel, Article 4c of the *ORF-Gesetz* (ORF Act) states that the media authority must conduct a prior evaluation, in which it should assess whether the channel would help the ORF to fulfil its core public mandate without distorting competition in the television market. The *Bundeswettbewerbsbehörde* (Federal Competition Authority) and the *Public Value-Beirat* (Public Value Review Board), set up by the Federal Government, have a duty to participate in this evaluation process.

The approval granted by KommAustria is essentially subject to two conditions. ORF is prohibited from advertising its new channel through so-called “cross promotion” on other ORF channels. Only brief references to the channel’s content are permitted during programmes on other ORF channels. ORF is also prohibited from selling advertising slots on the new channel as part of a package with advertising on its other channels. This measure is designed to prevent ORF from offering discounts to the disadvantage of other broadcasters and from developing structural superiority. According to the Act, KommAustria may not interfere with the content or editorial freedom of the new channel. KommAustria commissioned *Rundfunk und Telekom Regulierungs-GmbH* (Regulatory Authority for Broadcasting and Telecommunications - RTR) to draw up its own comprehensive evaluation.

According to media reports, both the competition authority and ORF have filed objections with the *Bundeskommunikationssenat* (Federal Communications Board - BKS) against the KommAustria decision. The competition authority is demanding tougher conditions for the special interest channel. Keen to agree a compromise, ORF therefore promised not to broadcast any advertising between 8 and 10 p.m. on two evenings per week for the next three to five years. ORF is also thought to

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be prepared, for the time being, not to actively seek to secure the third channel slot for the special interest channel, and not to broadcast US blockbusters. In return, the competition authority has hinted that it could withdraw its demand for a percentage limit on fictional content, while at the same time reserving the right to ask the European Commission to examine a compromise, if necessary.

If ORF and the competition authority reach an agreement, both parties are expected to withdraw their objections with the BKS, whereupon the KommAustria decision would acquire legal force.

Bescheid der KommAustria vom 18. Mai 2011

http://www.rtr.at/de/m/KOA1124011024

KommAustria decision of 18 May 2011

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