[DE] Draft Reform of the Restraints on Competition Act Provides for Easing of the Regulations on Press Mergers

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On 23 March 2012, the German government introduced a draft amendment to the Gesetz gegen Wettbewerbsbeschränkungen (Restraints on Competition Act - GWB), concerning, inter alia, the regulations on controlling press mergers.

In Germany, the regulations on stakeholdings and ownership are to be found at various levels. The GWB, which falls within the competence of the Federal Government, contains general, cross-sectoral rules of antitrust legislation, and the purpose of the draft submitted is to adapt these rules to the developments of EU merger control law. In order to maintain media diversity, the Rundfunkstaatsvertrag (Inter-State Broadcasting Agreement) contains fundamental provisions governing public service and private broadcasting in the dual broadcasting system of the Länder and, consequently, also rules on the legality and monitoring of broadcasters' shareholdings in other companies. Moreover, the media and/or press laws of the Länder contain rules that provide for additional measures to safeguard diversity of opinion in the media.

The amendments to the GWB now proposed concern the "turnover threshold", by which is meant the figure for the total worldwide revenues of the press companies intending to merge, above which figure the Bundeskartellamt (Federal Cartel Office) examines the planned merger. The multiplication factor for the turnover threshold is to be reduced from 20 to 8 (section 38(3) GWB), which means that eight times stricter rules would apply in the future to takeovers in the press sector than in other sectors (see section 35 GWB). In terms of numbers, this means a rise in the turnover threshold from EUR 25 million to EUR 62.5 million. The change would particularly benefit small and medium-sized publishers, whereas no support is to be given to the purchase of small publishers by large publishing houses. In order to ensure that this is not encouraged, the multiplication factor 20 is to be retained for calculating the minor market threshold (section 36 GWB).

Bodies representing specific interests, such as the Bundesverband Deutscher Zeitungsverleger (Federal Association of German Newspaper Publishers - BDZV), criticised the changes envisaged as insufficient and would like to see more extensive reforms, for example making it easier for publishers in economic difficulties to be taken over and put back on an even keel or redefining the markets subject to monitoring by the Federal Cartel Office in accordance with technological developments in the field of publishing. In addition, the basis for

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calculating the amount relevant for the turnover threshold should be limited to the advertising and distribution revenues of newspapers and magazines.

Entwurf der Bundesregierung für ein Achtes Gesetz zur Änderung des Gesetzes gegen Wettbewerbsbeschränkungen

http://www.bmwi.de/BMWi/Redaktion/PDF/G/gwb-novelle,property=pdf,bereich=bmwi,sprache=de,rwb=true.pdf

Federal Government's draft of an Eighth Law amending the Restraints on Competition Act

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