[DE] Federal Administrative Court Allows Appeal against ProSiebenSat.1 and Axel Springer AG Ruling

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According to media reports, on 22 January 2013, the Bundesverwaltungsgericht (Federal Administrative Court - BVerwG) upheld the appeal lodged by the Bayerische Landeszentrale für neue Medien (Bavarian New Media Office - BLM) against a decision denying it leave to appeal. In so doing, the BVerwG quashed the ruling of the Bayerische Verwaltungsgerichtshof (Bavarian Administrative Court - BayVGH) on the planned takeover of ProSiebenSat.1 by Axel Springer AG and allowed an appeal on the grounds of the fundamental importance of the case under Article 132(2)(1) of the Verwaltungsgerichtsordnung (Administrative Court Procedural Code - VwGO).

In a judgment of 15 February 2012, the BayVGH had ruled that the Kommission zur Ermittlung der Konzentration im Medienbereich (Commission on Concentration in the Media - KEK) had "overstepped the boundaries of its decision-making powers in several ways" when assessing the planned takeover under competition law. The BayVGH had not allowed an appeal against its judgment.

The procedure followed the KEK's decision of 10 January 2006, in which it ruled that the planned takeover would create a dominant market position in the sense of Article 26(1) of the Rundfunkstaatsvertrag (Inter-State Broadcasting Agreement - RStV) for the companies involved. The permission required to complete the takeover was therefore refused. As the responsible Land media authority, the BLM had implemented the KEK's decision at the time. The BLM's ban on the merger was lifted as a result of the BayVGH's judgment.

The Federal Administrative Court will now again have to decide on the lawfulness of the ban on the planned takeover.

Pressemitteilung der KEK vom 14. Februar 2012

http://www.kek-online.de/Inhalte/PM%2002_KEK293_NZB.pdf

KEK press release of 14 February 2013

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