[DE] Federal Administrative Court Finds Axel Springer's Takeover of ProSiebenSat.1 Acceptable Under Media Law

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In a judgment of 29 January 2014 (case no. 6 C 2.13), the Bundesverwaltungsgericht (Federal Administrative Court - BVerwG) ruled that the plaintiff Axel Springer AG's intended 2006 takeover of ProSiebenSat.1 Media AG was acceptable under media law and therefore decided in the last instance that the Bayerische Landeszentrale für neue Medien (Bavarian New Media Office - BLM) had been wrong to stop the takeover.

In 2005, the plaintiff had wanted to take over ProSiebenSat.1 Media AG (the sole shareholder in broadcasters Sat.1, ProSieben, Kabel 1, 9Live and N24) and indicated this intention to the relevant Land media authority, the BLM. After examining the situation, the Kommission zur Ermittlung der Konzentration im Medienbereich (Commission on Concentration in the Media - KEK) of the Land media authorities decided that, in view of Axel Springer AG's strong position in the press sector and the audience share of ProSiebenSat.1 Media AG, the merger could result in a dominant market position in the television sector. The BLM therefore stopped the plaintiff from completing the intended takeover in 2006.

After its takeover plans had been rejected, the plaintiff lodged an administrative court action for a declaratory judgment declaring the decision to refuse permission under media law as unlawful. The Bayerische Verwaltungsgerichtshof (Bavarian Administrative Court) upheld this complaint on 15 February 2012 (case no. 7 BV 11.285, see IRIS 2012-4/15) in a decision now confirmed by the BVerwG. The legal threshold for a dominant market position is an audience share of 25%. ProSiebenSat.1 Media AG's market share of only around 17% after the deduction of programme windows and transmissions by third-party broadcasters was so far below the legal threshold that the plaintiff's activities in other media-relevant markets had not been sufficient to create a dominant market position. The further the broadcaster's audience share fell below the 25% threshold, the less it constituted a dominant market position, even taking into account activities in other media-relevant markets.

Pressemitteilung des Bundesverwaltungsgerichts Nr. 9/2014 (BVerwG 6 C 2.13) vom 29. Januar 2014

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