European Commission: Austrian regulatory measures blocked

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In a decision of 12 January 2018, the European Commission prevented Austrian regulator KommAustria from introducing measures that would place the national public service broadcaster ORF at an undue competitive advantage. The decision concerned KommAustria's plans for continued regulation of the market for analogue terrestrial radio broadcasting in Austria. Unlike other broadcasting markets, the analogue radio broadcasting market has not seen growing infrastructure competition or inter-platform competition due to the importance of analogue FM radio devices, particularly in cars.

KommAustria stated that this market had remained largely unchanged since it was last assessed in 2013. It therefore proposed further regulatory measures to the European Commission. However, the Commission criticised these proposals. In particular, it rejected the idea that the supply of radio transmission services by the main operator (ORS) to its parent company (ORF) should remain excluded from the regulated market. It also pointed out that ORS's only notable competitor had only a limited regional presence and only a few broadcasting sites. Another reason for rejecting the proposal was the fact that ORF would receive a different and arguably better service than its direct competitors and, as the majority owner of its supplier (ORS), could influence the latter's decisions concerning infrastructure development. Furthermore, under KommAustria's plans, ORF would also be subject to different price conditions than competing radio broadcasters.

The Commission therefore questioned the compatibility of the proposals with EU telecoms rules and the principles of EU competition law, and decided to block the implementation of the planned regulatory measures in their proposed form. After the Commission consulted the Body of European Regulators for Electronic Communications (BEREC) as part of the so-called Phase II investigation in November 2017, it became clear that its concerns were fully shared by the BEREC.

KommAustria will now prepare a new regulatory proposal taking the concerns of the BEREC and the Commission into account, and this will be subjected to further examination.

European Commission press release of 15 January 2018

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https://ec.europa.eu/digital-single-market/en/news/european-commission-blocks-austrian-regulator-introducing-measures-which-would-unduly-favour

Beschluss der Kommission vom 12. Januar 2018 gemäß Artikel 7 Absatz 5 der Richtlinie 2002/21/EG (Rücknahme eines notifizierten Maßnahmenentwurfs) - Sache AT/2017/2020: Vorleistungsmärkte für Rundfunkübertragungsdienste in Österreich

https://circabc.europa.eu/sd/a/85e0640a-3983-48b3-b6a6-557f381bbe5c/AT-2017-2020%20Adopted_DE.pdf

Commission decision of 12 January 2018 pursuant to Article 7(5) of Directive 2002/21/EC (Withdrawal of notified draft measure) - Case AT/2017/2020: Wholesale markets for broadcasting transmission services in Austria

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