[DE] KEK report: media concentration law must be amended and adapted

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Jan Henrich
Institute of European Media Law (EMR), Saarbrücken/Brussels

On 11 December 2018, the Kommission zur Ermittlung der Konzentration im Medienbereich (Commission on Concentration in the Media - KEK) published its sixth report on the development of concentration and measures to protect diversity of opinion in the German private broadcasting sector, entitled “Protecting Diversity of Opinion in the Digital Age”.

The report, published every three years in accordance with Article 26(6) of the Rundfunkstaatsvertrag (Inter-State Broadcasting Agreement - RStV), is designed to identify concentration trends at an early stage in order to prevent television companies, individually or in groups, from gaining a dominant market position. To this end, it analyses in detail the integration between television and other media-related markets, horizontal integration between broadcasters in different transmission areas, and international integration in the media field. The sixth edition covers matters such as the market share of radio, newspapers, magazines, and online media, as well as plurality-related aspects of the up- and downstream markets of television sports and fiction rights, programme platforms, and transmission methods, concluding that there is a clear need for reform. Specific chapters are devoted to the media platform revolution and new online power relations, as well as the importance of intermediaries for safeguarding plurality.

According to the sixth report, the German television landscape remains characterised by a huge diversity of programme providers. Along with the 21 public television channels, another 169 private channels held national broadcasting licences in 2018. These were joined by teleshopping stations, channels with foreign licences, and more than 200 regional and local programmes. Three large groups of broadcasters dominate the German television market: the public service broadcasters with a combined audience share of 46.7% in 2017, the RTL Deutschland media group with 23.2%, and ProSiebenSat.1 Media SE with 17.8%. However, the KEK pointed to the continuing fragmentation of the television market linked to the growth of specialist channels and pay-TV services. Radio is still dominated by ARD’s public broadcasters, who have a 55% market share. The largest private provider is the RTL group with 7%.

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The report also highlights changes in the media market: on the provider side, there has been an increase in the number of mergers and takeovers, cross-media integration, and newspaper monopolies linked to the creation of central editorial offices. Digitisation is leading to a blurring of the boundaries between different media types: new, cross-media value chains are being formed, the use of moving images on all online platforms is increasing, on-demand and streaming services are being offered separately from or alongside linear broadcasting, while economic necessity is leading to cross-media ventures such as newspaper online services or broadcaster online apps. As far as media consumer behaviour is concerned, younger generations are tending to reject traditional media in favour of online communication methods such as blogging and Twitter, a trend reflected in declining newspaper circulation figures and reduced levels of interest in journalistic radio and television content. As a result, the KEK reports that the power of online media in terms of opinion formation is constantly rising compared with that of traditional television. Traditional media companies that produce online content, however, are losing their influence on public opinion because they are being forced to adapt their business strategies to the large international platform groups, in particular Google, Facebook, and Amazon. This pressure to adapt is forcing them to move their activities away from the classic core business of publishing.

Intermediaries, on the other hand, thanks to algorithmic selection and strategic communication techniques, are clearly gaining power over public opinion. In online media, non-journalistic actors with political relevance are also exerting greater influence on public opinion.

The report concludes that, in view of the fundamental changes to the media landscape, broadcasting concentration control that only considers television is not suitable to effectively counter threats to diversity in the online sector. It therefore calls for the urgent introduction of an overall market model designed to safeguard plurality in both negative defensive and positive creative ways, independent of television and including all media markets relevant to opinion formation. Unfortunately, although the current draft paper for discussion of an Inter-State Media Agreement (see IRIS 2018-8/16) contains new rules on the concepts of broadcasting, platform regulation, and intermediaries, it does not tackle the need to reform media concentration law.

6. Konzentrationsbericht der Kommission zur Ermittlung der Konzentration im Medienbereich, „Sicherung der Meinungsvielfalt im digitalen Zeitalter“, 11. Dezember 2018

https://www.kek-online.de/publikationen/medienkonzentrationsberichte/news/sechster-konzentrationsbericht-2018/

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6th concentration report of the Commission on Concentration in the Media, "Protecting Diversity of Opinion in the Digital Age", 11 December 2018

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