[DE] ZAK objects to cooperation between Google and German Health Ministry over online health portal

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On 15 June 2021, the *Landesmedienanstalten* (state media authorities) ruled on the first six cases linked to possible discrimination against journalistic and editorial providers by media intermediary Google on the basis of the *Medienstaatsvertrag* (state media treaty – MStV), which came into force on 7 November 2020.

Since the treaty came into force, media intermediaries have been subject to German media regulation aimed at protecting diversity of opinion. Search engines, which are a type of media intermediary, aggregate and select third-party editorial content and present it in the form of search results. According to Article 94(2)(2) MStV, they are prohibited from systematically and unfairly blocking websites. The state media authorities are responsible for monitoring search engine operators' efforts to ensure that media content can be found without discrimination. They also check whether media intermediaries make clear the criteria they use to automatically select and present media content.

In proceedings brought against Google Ireland Ltd. by the *Medienanstalt Hamburg/Schleswig-Holstein* (Hamburg/Schleswig Holstein media authority – MA HSH), the state media authorities' *Kommission für Zulassung und Aufsicht* (Commission on Licensing and Supervision – ZAK) objected to a breach of the principle of non-discrimination enshrined in Article 94 MStV. A complaint filed under Article 94(3)(1) MStV by Wort & Bild Verlag Konradshöhe GmbH & Co. KG, a publishing company that operates the website www.apotheken-umschau.de, was also upheld.

Both procedures relate to cooperation between Google and the German Federal Health Ministry, under which content from the national health Internet portal www.gesund.bund.de was given special prominence in the German version of the Google search engine between 10 November 2020 and 10 February 2021. The ZAK found that this cooperation had unfairly discriminated against other providers of journalistic and editorial content. Since the arrangement had already been ended on the basis of a cartel law decision, there was no need to apply for a prohibition order.

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However, on formal grounds, the ZAK rejected four further complaints concerning *Google News Showcase* lodged by regional publishing companies that were not part of this service. *Google News Showcase*, a news portal first made available in Germany on 1 October 2020, only displays the content of participating publishers. The four complainants feared that integration of *Google News Showcase* into the Google search engine would give an unfair advantage to the participating publishing companies.

The main reason why these four complaints were rejected was the fact that the four regional publishers, as far as the evidence suggested, had not actively sought to participate in the *Google News Showcase*. Under the MStV, there was no need to wait for an invitation from Google. Furthermore, the ZAK believed there were strong arguments to suggest that *Google News Showcase* should not be classified as a media intermediary, but as a media platform as defined in the MStV. For that reason, there was no need to make a decision on the complainants' allegation of discriminatory conduct based on Article 94 MStV.

Following this complaint procedure, however, the ZAK will verify whether *Google News Showcase* made its criteria of access transparent in accordance with Article 85 MStV, making particular reference to the rules for media platforms and user interfaces that entered into force on 1 June 2021.

Pressemitteilung der ZAK

https://www.die-medienanstalten.de/service/pressemitteilungen/meldung/neue-vorschriften-zur-diskriminierungsfreiheit-zak-entscheidet-die-ersten-faelle

ZAK press release

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