[DE] Digital Television Comes to Germany; Media Giants Bertelsmann and Kirch Notify Brussels Commission of Intended Digital Pay-TV Merger

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Wolfgang Closs
Institute of European Media Law (EMR), Saarbrücken/Brussels

Having agreed in June 1996 to merge the German Pay-TV channels Premiere and DF1, Bertelsmann AG (CTL/UFA) and the Kirch Group have now notified the European Commission, as the authority responsible for supervising mergers under the Concentrations Control Regulation (Regulation (EEC) No. 4064/89 of 21 December 1989 on the control of concentrations between undertakings). The Commission will shortly be considering whether the merger, which is of Community significance, is compatible with Article 2 of the Regulation.

At the same time, the Investigating Committee on Media Concentrations (Kommission zur Ermittlung der Konzentration im Medienbereich - KEK - see IRIS 1997-6: 13) - is considering the merger at national level. In October 1997, the two concerns, in consultation with Deutsche Telekom, had agreed with the media authorities in several Länder that digital TV programmes could be experimentally licensed and operated jointly on cable, using the D-box decoder system. Assuming that the merger is compatible with the law on monopolies, final approval can be granted only on the basis of a new regulation, which will be introduced when the Agreement on Broadcasting between the Federal States in United Germany is amended for the fourth time in the course of 1998. The experimental licensing of digital TV is controversial; the representatives of some Land media authorities feel that the activities which have been started cannot be reversed if the merger is forbidden or conditions are imposed.

In the meantime, at the instigation of EC Commissioner Karel Van Miert, the European Commission's Directorate General for Competition has written to Bertelsmann AG and the Kirch Group, threatening to institute formal proceedings unless they immediately cease using and marketing the D-box decoder for Premiere digital, and take active measures to counter the impression, given in advertising, that they have actually agreed on a common decoder for digital television. The European Commission fears that use of the D-box before it approves the merger is creating a de facto situation, i.e. constitutes anticipated implementation of the collective agreements on opening-up of the digital television market in Germany. This violates the prohibition on mergers prior to approval by the European authorities.

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In a statement, the Commission stressed that this measure in no way anticipated the decision which would be taken on the intended merger during the monitoring process.

The two concerns see the European Commission's demand as a competitive handicap, since it leaves Premiere as the only European Pay-TV channel forbidden to use a decoder. None the less, Premiere has agreed to stop marketing Premiere-digital via D-box. This means that no further contracts are being concluded, in addition to those signed with digital subscribers before 15 December 1997.

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