



Media Ownership Monitor – Germany
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The 'Media Ownership Monitor' (MOM) is one of GMR's flagship projects.

Description of the legislation on media concentration and ownership as well as its implementation, monitoring and transparency

I.1. Legal framework

Which laws are supposed to prevent media concentration and monopolies? On what hierarchy level of law (e.g. constitution, civil code, special laws or decrees; national/regional) is media concentration being addressed?

1. Constitution

According to Article 5 (1) sentence 2 of the German Basic Law (GG), freedom of the press and freedom of reporting are guaranteed by radio and film. The Federal Constitutional Court derives from this the legislator's obligation to create a "positive order" for broadcasting that promotes freedom of opinion. Accordingly, it is essential that the diversity of opinions existing in society is expressed in broadcasting to the greatest possible extent and completeness. In this sense, a dominant power of opinion is restrictive of diversity and must be prevented. The legislator must take material, procedural and organizational measures to prevent any excessive influence of individual broadcasters or programmes on the formation of public opinion. This must also be done preventively, as the Federal Constitutional Court regularly points out that undesirable developments in the media sector are difficult to reverse.

2. Media concentration law

The constitutional requirements are taken up in the Interstate Media Treaty. Among other matters, this also regulates media concentration law for private providers of nationwide television channels. According to Section 60 (1) of the Interstate Media Treaty, television broadcasters may offer any number of channels unless they thereby acquire a dominant influence on public opinion. This is presumed to be the case if a provider and the programs attributable to it achieve an audience share of 30% or more, calculated as an annual average ("audience share model"). The presumption of dominant position also exists if the audience share is below 30%, but the company has a dominant position on a related market or an overall assessment of its television and related market activities shows that its influence on opinion is comparable to that of a company with a 30% audience share. A bonus regulation allows percentage points to be deducted from the relevant audience share if regional window programs (2%) or broadcasting times for independent third parties (3%) are offered.

3. ARC

The aim of antitrust law is to ensure free economic competition and prevent the abuse of economic power. The relevant regulations can be found in the Act against Restraints of Competition (GWB). Because journalistic media are not only sources of information, but also economic goods, they are (also) subject to the ARC. Although antitrust law indirectly contributes to ensuring the diversity of providers, the Federal Constitutional Court recognizes that the sole application of merger control is not sufficient to ensure diversity of opinion in broadcasting and to prevent predominant power of opinion.

Antitrust law pursues different objectives than media concentration law and is much more limited in its scope of application. In the area of broadcasting, merger control pursuant to Sections 35 et seq. GWB only applies to mergers of broadcasting companies, but not to the establishment of broadcasting companies by individual companies that already have a strong or even dominant market position in other areas. Internal growth also does not fall within the scope of application of antitrust law. However, if this leads to predominant power of opinion, it is covered in accordance with Section 60 MStV.

However, a mere restriction of economic power in the area of private broadcasting or media companies through antitrust law does not necessarily guarantee the diversity of opinion required by the constitution. Changes in shareholdings in the media sector can be permissible under antitrust law, but can still lead to the formation of dominant power of opinion, for example through cross-media effects. Conversely, company cooperations can be problematic under antitrust law, although they may be permitted or even politically desirable in terms of ensuring diversity, for example to ensure the journalistic coverage of a region.

4. State media laws

In order to ensure diversity of opinion in local and regional broadcasting, the state media laws contain safeguarding provisions that differ from state to state. The common regulatory objective of diversity of opinion is supported in each case by a state media concentration law. The respective state media authorities are responsible for implementing these state law provisions and monitoring compliance with them. The state of North Rhine-Westphalia prohibits press companies with a dominant position in the market for local daily newspapers from owning more than 75% of the operator's capital or voting rights. In addition, they may only have a stake in the economic pillar and may not exert any influence on the editorial pillar ("two-pillar model").

What types of media are included in or excluded from the regulation? Is there regulation for digital media?

The safeguarding of diversity of opinion places a particular focus on the broadcasting sector. While press companies are subject to media concentration regulations in conjunction with broadcasting companies, press mergers are mainly controlled on the basis of antitrust law. Traditional concentration control does not take place in the online sector (media intermediaries, platforms and user interfaces). However, in a leading media law decision from 2018, the Federal Constitutional Court stated: "The digitalization of the media and, in particular, the network and platform economy of the Internet, including social networks, favour - on the contrary - concentration and monopolization tendencies among providers, distributors and intermediaries of content."

If no - or not sufficient - legislation exists: is there legislation in the making? What is the status quo of the political process?

See below, Reform.

Please, describe how the law defines media concentration (e.g. cross-ownership; audience share, circulation, turnover/revenue, the share capital or voting rights). Are family members included in the conflict of interest rules? How is their affiliation considered in the definition of ownership?

The Federal Constitutional Court calls on legislators to prevent the risk of "**concentration of opinion power**". According to the court, this arises when "opinion leaders who have broadcasting frequencies and financial resources at their disposal are significantly involved in shaping public opinion". According to Section 60 (2) MStV, dominant power of opinion is presumed if a provider and the programs attributable to it achieve an audience share of 30% or more, calculated as an annual average. The presumption of dominant power of opinion also exists if the audience share is below 30%, but the company has a dominant position on a related market or an overall assessment of its television and related market activities shows that its influence on opinion is comparable to that of a company with a 30% audience share.

Does legislation take into account vertical integration (i.e. control by a single person, company or group of some of the key elements of the value chain, i.e. production, aggregation, distribution and related industries such as advertising or telecommunications)? How?

In accordance with the provisions of the Interstate Broadcasting Treaty to ensure diversity of opinion, it is stipulated that media-relevant related markets are also taken into account when assessing the predominant power of opinion of a television broadcaster (Section 60 (2) sentence 2 MStV). If programs attributable to a company reach an audience share of 25%, it is assumed that dominant influence on public opinion exists if the company has a dominant position on a media-relevant related market or if the overall assessment of the activities on television and on media-relevant related markets shows that the influence on public opinion thereby achieved corresponds to that of a company with an audience share of 30%. The term "media-relevant related market" is not explicitly defined in the Interstate Media Treaty. The explanatory memorandum lists advertising, radio, press, rights and production as examples.

Have there been changes in the legislation on media concentration issues over the past 5 years?

With the entry into force of the Interstate Media Treaty (MStV) in 2020, the area of license-free "minor broadcasting" was expanded. Broadcasting programs that are of minor importance for the formation of individual and public opinion or that reach or will reach fewer than 20,000 simultaneous users on average over a six-month period do not require a license. This also eliminates the need for an examination under media concentration law for this area. A new feature of the Interstate Media Treaty is an extended power of the KEK to exempt minor cases from the media concentration review (de minimis regulations). This concerns cases that are only of minor importance for safeguarding diversity of opinion as well as minor changes in shareholdings or other influences. The media concentration regulations have remained unchanged. In a protocol declaration, however, the federal states emphasize that they would like to work towards a sustainable media concentration law that takes all media-relevant markets into account.

The 2013 amendment to antitrust and competition law considerably simplified the merger control regulations for press publishers in order to enable mergers to stabilize media diversity. In particular, the threshold above which mergers must be reviewed by the authorities was drastically increased, resulting in fewer mergers in the press sector requiring notification. The aim was to expand the scope for publishers under antitrust law and strengthen their competitiveness compared to other types of media. The 2017 amendment to antitrust and competition law also aimed to improve the competitiveness of broadcasting companies. The legislator intended to give broadcasting companies more leeway to consolidate their economic basis through mergers and increase their competitiveness in an environment of growing competition from other internet-based media and changing media consumption habits.

Have there been any major new market entrants or mergers & acquisitions (M&As)? How have these cases been handled? Have there been any important conflicts?

In its latest report, the KEK primarily reports on the increase in the shares held by MFE MEDIAFOREUROPE N. V. and Mediaset España Comunicación S. A. ("MFE/Mediaset ESP"), which it controls, in ProSiebenSat.1 Media SE. In May 2022, MFE/Mediaset ESP increased its stake from a previously approved 19.11% to a total of 24.26%, before reducing it to 22.72% in November 2022. At the same time, the voting rights of MFE/Mediaset ESP from financial instruments in accordance with the provisions of the German Securities Trading Act (WpHG) increased to a total of 6.29%, which gave MFE/Mediaset ESP 29.01% of the voting rights under securities law. Although these financial instruments are not decisive for the examination under media concentration law, as they do not currently constitute capital shares or exercisable voting rights within the meaning of Sections 62 and 63 of the Interstate Media Treaty (MStV), they have given MFE access to further shares in the company. The KEK has therefore decided that any concrete steps by MFE to increase its shares to more than 25 percent of the capital or voting rights through the acquisition of shares or the exercise of financial instruments must be notified prior to execution.

MFE is controlled by Fininvest S. p. A., the family holding company of Silvio Berlusconi, and holds an indirect interest in the broadcasters belonging to the ProSiebenSat.1 Group. The prerequisite for attributing the stations of the broadcasting group to this higher level of shareholding is that MFE and ProSiebenSat.1 Media

SE are considered affiliated companies within the meaning of stock corporation law. However, with a temporary capital share totaling 24.26% and currently 22.72%, MFE does not hold a majority of voting rights in ProSiebenSat.1 Media SE. There are also no indications that MFE has an influence similar to control, for example through personnel interdependencies at management level, reservations of consent or close supplier relationships. Therefore, according to the current decision-making situation, the ProSiebenSat.1 Group's programs are not attributable to MFE or Berlusconi.

Is media concentration currently on the agenda on legislators and policy makers? What are the blind spots on media concentration legislation?

The State Media Treaty focuses on safeguarding diversity of opinion on television. However, the former importance of television for the formation of individual and public opinion is dwindling due to online platforms and changing usage habits. The restriction of review activities to linear nationwide television has therefore been considered insufficient for some time. There are calls for diversity protection to be extended holistically to all media markets and for all relevant players in the field of journalistic media, including intermediaries, to be covered. A protocol declaration to the 2020 Interstate Media Treaty states: "The federal states are committed to a sustainable media concentration law. This must be able to effectively counter the real threats to diversity of opinion. The media markets have opened up in recent years, bringing other media genres in addition to television, the possible consequences of cross-media mergers and also those on upstream and downstream markets increasingly into focus. A reformed media concentration law must therefore take all media-relevant markets into consideration."

Is there specific legislation on foreign investment/ownership within the media business?

According to Section 53 (1) MStV, a license may only be granted to a natural or legal person who has their residence or registered office in Germany, another member state of the European Union or another state party to the Agreement on the European Economic Area and can be prosecuted in court. Pursuant to Section 52 (2) MStV, a broadcaster's license may be refused or revoked if the broadcaster's programming is directed in whole or in substantial part at the population of another state that has ratified the European Convention on Transfrontier Television and the broadcaster has established itself in Germany for the purpose of circumventing the provisions of the other state and the provisions of the other state that the broadcaster intends to circumvent are the subject of the European Convention on Transfrontier Television.

In April 2022, an amendment to the Bavarian Media Act, also known as the "Lex Berlusconi", came into force. While previous regulations were aimed at preventing dominant opinion power, the Bavarian Regulatory Authority for New Media (BLM) now has the power to order measures to safeguard both diversity of opinion and diversity of information. The new regulations on diversity of information should also apply to nationwide offerings. As part of the amendment, the wording of Art. 4 Para. 3 No. 1 BayMG was also changed to ensure that the provider's composition under company law does not authorize any individual to exercise a significant influence in the company's executive bodies. The assessment of whether an influence is significant is made on the basis of a media-specific analysis and is likely to be made if a shareholder has a direct shareholding under company law of 25% or more. In contrast, according to the previous wording, a controlling influence is only assumed from a shareholding under company law of 50% of the shares.

I.2 Implementation - control and monitoring of media concentration

Is there an institutional system to address media concentration in place? What sectors - e.g. press, broadcasting or new media - are included? What are the responsible bodies governing media concentration? What are the tasks, duties and responsibilities of the authority/ies defined in detail in the law (e.g. grant licenses, compliance monitoring, sanctioning, other)?

The Commission on Concentration in the Media (KEK) is responsible for ensuring diversity of opinion in private television at a national level. In terms of uniform concentration control, it acts as a decision-making body and mediating authority for all state media authorities in this area. Its decisions are binding. In its latest report, the KEK describes the tasks assigned to it by law as follows:

1. **Licenses:** The KEK decides whether the licensing or modification of a license for a nationally distributed channel is unobjectionable with regard to safeguarding diversity of opinion. Licensing cases which are only of minor importance for the safeguarding of diversity of opinion can be processed within the framework of a simplified procedure (de minimis directive).
2. **Monitoring of shareholdings:** Pursuant to Section 63 MStV, broadcasters and their stakeholders are obliged to notify any planned changes in ownership structures prior to their implementation. This is because predominant influence on public opinion can also arise through changes in the ownership structure of broadcasters or through mergers of licensed broadcasters. There are exceptions for minor changes in shareholdings or other influences (de minimis Directive). The acquisition or sale of less than 5 percent of the capital or voting rights of a company is deemed to be a de minimis threshold.
3. **Third transmission times, regional windows:** In the context of promoting diversity, the KEK is involved in procedures for the selection and licensing of broadcasters of third transmission times and regional windows by obtaining opinions in cooperation with the relevant state media authority.
4. **Action against dominant influence on public opinion:** Irrespective of whether a new channel is licensed or there are changes in the ownership structure, a company can acquire dominant influence on public opinion as a result of increasing viewer numbers or the loss of competitors. In such cases, Section 60 (4) of the Interstate Media Treaty provides for various unbundling measures that must be proposed by the KEK in order to reduce the predominant power of opinion. These include, for example, the provision of broadcasting time for independent third parties and the integration of regional window programs in accordance with Section 60 (4) of the Interstate Media Treaty.
5. **Determination of audience shares:** According to the current provisions of the law, audience shares are an essential criterion for determining predominant power of opinion. When determining audience shares, the KEK uses data from AGF video research. These audience shares are calculated as average values and indicate the proportion of total viewing time attributable to a specific program for a specific period.
6. **Reporting:** The KEK publishes a media concentration report every three years, which deals with the development of concentration in private broadcasting and measures to ensure diversity of opinion. Current overviews of programs, audience shares, media-relevant related markets and company profiles are available on the KEK website, and all decisions of the Commission are published promptly. The KEK's media database contains information on company holdings in the areas of television, radio, press and online media.

If there are more than one authority assigned (e.g. media authority, competition authority, etc.): how is the differentiation of competencies of the diverse authorities defined? Does it work or are there overlaps or blind spots?

In order to ensure a closer link between antitrust and media law, the antitrust authorities cooperate closely with the state media authorities and the KEK and exchange information to the extent necessary for the fulfillment of their respective tasks. Before an antitrust prohibition is issued in proceedings relating to the nationwide distribution of television programs, agreement is reached with the KEK. In addition to the Monopolies Commission and the supreme state authorities, the KEK is given the opportunity to comment in cases concerning the nationwide distribution of television programs as part of the procedure for granting ministerial approval.

Prior to a prohibition under antitrust law in proceedings relating to the nationwide distribution of television programs, the Federal Cartel Office must consult with KEK pursuant to Section 40 (4) sentence 3 ARC ("consultation"). In procedures for approval by the Minister pursuant to Section 42 (5) sentence 2 ARC, which

concern the area of nationwide distribution of television programs, the opinion of KEK must be obtained in addition to the opinions of the Monopolies Commission and the highest state authorities.

Are there any explicit constitutional or other legal guarantees of independence of the authorities (media, competition, telecommunication...) from political and/or commercial interference?

The Federal Constitutional Court assesses the state media authorities as follows: "They are organizational units that are legally autonomous from the state and independent of it, which carry out their activities independently and on their own responsibility within the legal limits."

How are the appointment procedures for the authorities defined (e.g. transparent, democratic and objective and designed to minimize the risk of political or commercial interference, for instance by including rules on incompatibility and eligibility)? Are they respected in practice?

The KEK is composed of six experts in broadcasting and commercial law, three of whom must be qualified judges, as well as six legal representatives of the state media authorities in accordance with state law. The experts and two substitute members are appointed by mutual agreement by the Minister Presidents of the federal states for a period of five years. The six representatives of the state media authorities and two substitute members are elected by the state media authorities for the term of office of the KEK. The members of the KEK act independently of instructions in the performance of their duties. The KEK acts as the central body of the federal states and supports the respective competent state media authority in carrying out its tasks under media concentration law within the framework of nationwide media supervision.

Is the budget adequate and consistent for the authority to safeguard its independence and/or protect it from coercive budgetary pressures and to perform its functions?

The state media authorities receive a share of 1.8989% of the broadcasting fee revenue. With a broadcasting fee of €18.94 per month, the state media authorities receive 36 cents rounded up. In the 24th KEF report, the Commission to Determine the Financial Requirements of Public Service Broadcasting reaffirms its proposal to review the share of the broadcasting contribution revenue received by the state media authorities. At a joint conference of the federal and state courts of audit in 2017, the courts of audit found that the fixed percentage share of broadcasting contribution revenue in some cases led to considerable structural overfunding of the state media authorities. This results from the continuously high returns from the state media authorities' share of the broadcasting contribution. In addition, the different regulations under state law on the use of the returns would lead to an opaque system.

What sanctioning power do the authorities have to accomplish its role (e.g. power to refuse license requests and to divest existing media operations where plurality is threatened or where unacceptable levels of ownership concentration are reached)? Are there effective appeal mechanisms?

According to Section 64 MStV, the state media authorities can impose so-called "measures to ensure diversity" on a broadcaster or company. These are the granting of broadcasting time to independent third parties (§ 65) or the establishment of a program advisory board (§ 66). In addition, the state media authorities can impose fines of up to EUR 500,000, for example in cases where changes in shareholdings are not reported in accordance with the provisions of the Interstate Media Treaty. The state media authorities can also revoke or withdraw licenses in the event of violations of the licensing regulations.

Please describe the method and the criteria for assessing the level of media concentration. (e.g. thresholds based on objective criteria, such as audience share, circulation, turnover/revenue, distribution of share capital or voting rights; taking into account both horizontal integration (mergers within the same branch of activity) and vertical integration (control by a single person, company or group of key elements of the production and distribution processes, and related activities such as advertising)).

According to German media concentration law, audience shares are an essential basis for the assessment of predominant power of opinion. Audience shares are to be calculated taking into account all German-language programs of public broadcasters and private broadcasters that can be received nationwide (Section 61 MStV).

Is the authority accountable to the public for its activities, (e.g. is it required to publish regular or ad hoc reports relevant to their work or the exercise of their missions)?

According to Section 60 (6) MStV, every three years or at the request of the federal states, the state media authorities must jointly publish a report by the KEK on the development of concentration and on measures to ensure diversity of opinion in private broadcasting and in doing so publish the interdependencies between television and media-relevant related markets, the horizontal interdependencies between broadcasters in different broadcasting areas and the international interdependencies in the media sector.

The Bundeskartellamt publishes its decisions on its own website.

Can the Government arbitrarily overrule the decision of the authority? In what cases? Are there cases of illegal state interference?

In Germany, the principle of administrative legality applies. The actions of the administration and therefore also the government are bound by the constitution, including the principle of equality in Article 3 of the Basic Law and the prohibition of arbitrariness. All government action must comply with the principle of proportionality.

Have there been cases of merger and acquisitions over the past five years? How proactive and how detailed has the authority implemented the regulation on media ownership?

Decisions of the KEK and the Bundeskartellamt are issued as administrative acts and are fully subject to judicial review. The reviews and reasons for the decisions are correspondingly detailed.

In its 24th report, the KEK summarizes takeovers in the media sector in recent years:

In August 2021, the Bertelsmann Group announced the merger of the television group RTL Deutschland and the publishing house Gruner+Jahr. The aim of this merger is to create a cross-media media company with TV, radio, streaming services, online offerings and magazines. RTL will take over Gruner + Jahr's magazine business and brands in full. The brands and editorial teams of both companies are to be merged into a journalistic powerhouse, which will also benefit the RTL+ streaming service. This merger offers synergy potential, particularly in the area of sports publications such as "11Freunde" and the expansion of RTL's sports program to include broadcasting rights for various soccer competitions.

RTL Deutschland has also entered into a strategic partnership with the German TV and movie producer Constantin Film AG. Both companies have agreed on a multi-year framework agreement for the cross-platform licensing of exclusive free TV and exclusive streaming rights for all theatrical productions in Germany. This securing of exclusive content strengthens the position of the company's own streaming service RTL+.

In December 2020, Mediengruppe RTL Deutschland and Telekom Deutschland agreed an "Initiative for Innovation" in the German media market. This initiative aims to bring together the growth markets of streaming and personalized advertising. Telekom is integrating the RTL+ streaming service into its Magenta TV platform and expanding the Magenta Smart and Smart-Flex tariffs to include RTL's streaming service. It has also agreed to expand the collaboration in the areas of technology, marketing and content.

Together with the Discovery Group, ProSiebenSat.1 operates the OTT platform Joyn, which offers over 60 free TV programs and an extensive media library. The aim of the joint venture is to establish its own streaming platform on the national market.

In 2021, the Italian media group Mediaset acquired further shares in ProSiebenSat.1 Mediengruppe in order to establish a European media holding company under the umbrella of MFE MEDIAFOREUROPE N.V. However, rumors of a further takeover or cooperation with RTL or Springer have been denied.

In May 2021, the merger of the media business of US telecoms provider AT&T, bundled in WarnerMedia, with media group Discovery was announced to create Warner Bros. Discovery. The aim is to form a counterweight to the streaming groups Netflix and Walt Disney.

In July 2021, TF1 and M6, the two leading commercial television groups in France, announced their merger. The aim is to create a French "streaming champion" based on the previously separate platforms.

In August 2021, the Axel Springer media group announced the acquisition of the US news magazine Politico and the technology news site Protocol. With a reported purchase price of USD 1 billion, this is the Springer Group's largest acquisition to date.

Have there been cases in which regulators refused license requests, mergers or forced divestment of existing media operations in order to avoid excessive concentrations of media ownership?

In 2021, the German Federal Cartel Office prohibited the acquisition of full control over the publishing companies of the "Ostthüringer Zeitung" by Funke Mediengruppe. Funke Mediengruppe is the publisher of the "Thüringische Landeszeitung", whose circulation area partly coincides with that of the "Ostthüringer Zeitung". As a result of the planned merger, which has now been prohibited, both the "Ostthüringer Zeitung" and the "Thüringische Landeszeitung" would have been under the exclusive control of the Funke Mediengruppe.

In 2006, the KEK rejected the takeover of ProSiebenSat.1 Media AG by Axel Springer AG. The KEK justified this with ProSiebenSat.1's strong position in nationwide private television. In combination with Axel Springer AG's dominant position in the daily press, this would, in the opinion of the KEK, lead to a predominant power of opinion. According to the audience share model, this would result in an influence on opinion that would correspond to an audience share of over 42 percent in nationwide television. The KEK had offered to forego the acquisition of a station (Sat.1 or ProSieben) or to make the stations plural within Germany. The Federal Cartel Office also had reservations about the merger plans.

What are the main challenges for the authority on the implementation?

In the KEK's annual report, the Commission points out that there are certain deficits in the determination of audience shares. The KEK complains that the database available to it is incomplete. There are gaps in public viewing, hotels, restaurants and public facilities, hospitals and prisons, for example. Live streams on the internet are also not fully covered.

The KEK also calls for media concentration law to be adapted to digitalization.

Does decisional practice of the authorities indicate that they use their powers in practice in the interest of the public? Have there been cases of the abuse of regulatory power? What, when? Are the authorities considered a political or technical body?

Yes, the Federal Cartel Office's press release rejecting the merger between Funke and "Ostthüringer Zeitung" states, for example, that this "would have eliminated the last competition between regional daily newspapers in the Jena and Gera areas. However, readers benefit from choice, not from newspaper monopolies. Even if both publishers already cooperate very closely today, merger control must protect existing competition and editorial diversity."

I.3 Transparency of media ownership

Please describe binding (legal) and non-binding (voluntary) transparency and disclosure practices of media companies with regard to ownership, investment and revenue sources?

As part of the licensing procedure, broadcasters of nationwide television must submit extensive documentation in accordance with the Interstate Media Treaty (§ 55 MStV, see below for details). The state media authorities also have extensive rights to information and powers of investigation in this regard (§ 56 MStV). The state media authorities must be notified of any changes.

In contrast, print and online media in Germany are largely unregulated. Not all of the 16 state press laws contain provisions on the disclosure of ownership. In this area, it is difficult to determine the ownership structure of print media in all federal states. All state media laws contain regulations to avoid "double monopolies" and restrict overlaps between press and broadcasting. Potential shareholdings in other media can oblige publishers to disclose their ownership structure in the event of planned mergers.

In the press sector, it is possible to find out the ownership structure, but it depends on the specific legal form of the company and differs from other company forms in the case of listed companies.

After the end of each calendar year, broadcasters of nationwide broadcasting and those directly or indirectly involved in it are obliged to immediately submit a declaration to the competent state media authority as to whether and to what extent a change has occurred in the relevant participation and attribution facts pursuant to § 62 MStV within the past calendar year.

Which media organizations are covered by the reporting requirements? To whom must disclosure be made? How often/ in what cases does the data have to be updated?

The transparency obligations under media law apply to nationwide broadcasting (TV and radio). However, there are hardly any nationwide radio stations, so in practice it is mainly TV companies that are subject to this obligation.

What information is required to be disclosed? (e.g. key persons/bodies and their functions in the media; details of shareholders and size of their holding, beneficial owners; interests of the people/body in other media / economic sectors; people influential to the programming/editorial policy; political or other affiliations of the owners and its family members; public advertising revenues, funding from other external sources)

The submission obligation includes in particular (1.) the disclosure of direct and indirect shareholdings as well as the capital and voting rights relationships in this and the associated companies in accordance with the German Stock Corporation Act, (2.) the disclosure of relatives among the participants and representatives of the person or partnership or members of a body of a legal entity, (3.) the provision of the articles of association and the provisions of the applicant's articles of association, (4.) the disclosure of agreements between the direct or indirect participants relating to the joint organization of broadcasting as well as to fiduciary relationships and relevant relationships.

Pursuant to § 63 MStV, broadcasters and the parties involved in them must generally notify any planned changes in shareholdings prior to their implementation. However, there is an exception to this notification obligation for minor changes in shareholdings or other influences that are regulated by the KEK's de minimis guideline for notification obligations (notification obligation guideline). This guideline applies to broadcasters and participants of all company forms. The acquisition or sale of less than 5 percent of the capital or voting rights of a company is deemed to be a de minimis threshold. However, minor changes in shareholdings remain subject to notification if (1.) the shareholding thresholds of 25%, 50% or 75% are reached, exceeded or fallen below, (2.) an increase or decrease of at least 5% in a previously notified shareholding is brought about by one or more successive transactions, or (3.) a shareholding in a listed stock corporation reaches or exceeds 5% and exceeding this threshold has not already been the subject of a notification within a preceding period of 12 months.

How accessible is the information to the public? In what manner is the information to be made available? Is it comprehensible for the general public?

The Commission on Concentration in the Media (KEK) maintains an online media database with information on company holdings in various media sectors, including TV, radio, press and online.

This user-friendly website provides quick and easily accessible ownership results, along with links to other companies and media outlets.

How is this monitored and regulated? Are there any sanctions for the failure to report?

The state media authorities can impose fines of up to EUR 500,000 if broadcasters violate the obligation to report changes in shareholdings.

Transparency provisions: Does the responsible body monitor the fulfillment of the provision? Do the media fulfill the requirements?

Yes, the State Media Authorities/KEK monitors the reporting obligations, which are, however, complied with by the media companies as far as can be seen.

I.4 Other state influence on media organizations

Does the state impose prohibitive taxes or levies on media organizations? Does the state tax policy and practice discriminate against or favor specific private media outlets over others?

No. On the contrary, the press benefits from a reduced VAT rate (7% instead of 19%). This is linked to objective criteria. There is no evaluation of content.

What entry barriers does the regulatory and institutional system create for new entrants to the media market (e.g. start-up fees or other restrictions)?

Journalism is a liberal profession. In principle, a broadcasting license for TV and radio stations is required, which must be applied for at the state media authorities of the federal states. The licensing criteria are set out in law. Since 2020, the license requirement for so-called petty broadcasting no longer applies. No license is required for broadcasting programs that are only of minor importance for the formation of individual and public opinion or that reach an average of less than 20,000 simultaneous users over a six-month period or are forecast to do so.

Does media concentration play a role in the process of spectrum allocation?

Yes, the principles to be observed when allocating frequencies include program diversity and provider diversity.

Is the decision-making process about the allocation of frequencies between public, private and community broadcasters transparent, open, participatory and overseen by an independent regulatory authority, which meets international standards and is free from political or commercial interference or control by any vested interest?

Yes, the state media authorities are independent of the state and act on the basis of laws in which the allocation of frequencies is regulated in detail. Decisions are issued as administrative acts and can be challenged in court.

Is the state advertising distributed to media fairly, for example proportionately to their audience share? How would you describe the rules of distribution of state advertising? Is it being monitored?

There are no specific legal regulations in Germany. Rather, this area is left to general public procurement law. Public procurement law binds public authorities to the principle of transparency and is regulated in Section 97 I GWB. It stipulates that contracting authorities must ensure appropriate publicity in award procedures. The transparency requirement obliges contracting authorities to publicize the upcoming award of a contract in such a way that interested companies are given the opportunity to apply for the tendered contract. The government refrains from advertising directly in the media. Instead, advertising budgets are allocated to advertising agencies, which take responsibility for how the advertising is disseminated via various channels such as billboards, newspaper advertisements, online platforms, etc. There are no reports from NGOs about non-transparent advertising allocations and there are no press publications on this topic.

Is there a monitoring of advertising allocation?

Although there are no explicit regulations, the media industry is very attentive and actively reports on the government's advertising expenditure.

Are there others laws or policies by which the state/ government interferes in the media business (e.g. blocking of websites, censorship)? Which? Is freedom of press and editorial independence is guaranteed in law and respected in practice? (please elaborate only shortly)

There are no laws or measures with which the state or government can exert influence on the media. The freedom of the media in Germany is enshrined in the constitution. For example, the financing and supervision of public broadcasting is organized independently of the state. According to the press laws of the federal states, the press is "free", in particular free from state influence.

Have there been any major changes in these topics (state advertising, process of spectrum allocation, taxes for media outlets) over the past five years? Have there been conflictive cases or law suits on these topics?

No.

I.5 Network Neutrality and Media Diversity

1. Legal framework

What laws or other rules are used to regulate net neutrality, if any?

With the "TSM Regulation", the European legislator has enshrined net neutrality and the best-effort principle in law. Net neutrality within the meaning of the TSM Regulation exists if the internet access provider treats all traffic in a network equally (i.e. neutrally) regardless of content, application, service, sender and recipient.

What is the legal status of the pertinent norms? (constitutional law, statutes, regulatory decisions, local ordinances, etc.)

European regulation that is binding and directly applicable in the Member State, like a law.

How does the law define net neutrality?

Equal treatment of all data traffic in a network regardless of content, application, service, sender and recipient.

If laws addressing net neutrality are not in place, are laws to do so being proposed?

NOT APPLICABLE

Have laws to address net neutrality been proposed previously?

NOT APPLICABLE

Are lawmakers discussing net neutrality?

NOT APPLICABLE

2. Implementation

How is net neutrality being regulated?

The European legislator has enshrined net neutrality in law with the "TSM Regulation". Internet access providers must treat all traffic in a network equally, regardless of content, application, service, sender and recipient. There are few exceptions to this principle. Supervision is carried out by the Federal Network Agency.

What regulatory agencies or authorities are charged with enforcing net neutrality norms?

The Federal Network Agency has the power to issue orders to ensure compliance with the provisions of Regulation (EU) 2015/2120 and to enforce them by means of a penalty payment if necessary. It can also impose fines for certain violations of the net neutrality regulations. The Telecommunications Modernization Act, which came into force on 1 December 2021, raised the maximum fine for particularly serious violations to EUR 1 million.

What is/are the enforcement mechanism/s? (imposition of sanctions, voluntary agreements, etc.)

On April 28, 2022, decisions were made by the Federal Network Agency regarding the zero-rating offer "StreamOn" from Telekom Deutschland GmbH and the "Vodafone Pass". The marketing of these add-on options was prohibited and the termination of existing customer contracts was ordered. These measures were taken following a ruling by the European Court of Justice on September 2, 2021, which stated that such zero-rating offers contradict the principle of equal treatment of data traffic. The Court prohibits both technical and tariff-based unequal treatment between different types of traffic within a tariff. Zero-rating options treat data traffic unequally in that certain services and applications are not counted towards the data allowance and can therefore be used indefinitely.

If enforcement mechanisms exist, are they effective?

The network operators have taken measures to ensure the smooth operation of the networks. If necessary, they can use approved traffic management measures in accordance with the Network Neutrality Ordinance. The Federal Network Agency has developed guidelines for the telecommunications industry with solutions and measures for appropriate traffic management. Overall, the national regulatory authorities have sufficient regulatory instruments at their disposal to respond adequately to such crisis situations. The close cooperation of all parties involved - including regulatory authorities, BEREC, companies, national authorities and the European Commission - was crucial in ensuring that the communication networks continued to function reliably even under the conditions of Covid-19.

Which enforcement mechanisms have been effective, and which have been ineffective?

The prohibition of Telekom Deutschland GmbH's "StreamOn" tariff options and the "Vodafone Pass" are effective, as these tariffs, which are contrary to net neutrality, are no longer offered.

What entities do net neutrality norms apply to? / What is the scope of net neutrality regulation? (broadband, mobile, etc.)

The principles of net neutrality impose certain obligations on internet access services. In principle, these services may not block, slow down or otherwise treat content on the internet unequally. Any form of blocking on the internet, such as DNS, IP or URL blocking, is therefore in principle a violation of net neutrality.

What exceptions exist to the application of net neutrality norms? (traffic management, safety, legality of content, etc.)

With regard to traffic management, different traffic categories are permitted as long as there are objectively different technical requirements for the quality of service. This is referred to as "appropriate traffic management".

Such traffic management must be transparent, non-discriminatory and proportionate and must not be based on purely commercial interests. A special category of traffic against payment is therefore not permitted. Furthermore, the actual content must not be monitored and the measures must not be maintained for longer than necessary.

However, there are exceptions to the principle of equal treatment of all types of traffic for exceptional traffic management measures. These are permitted in order to comply with legislation, by order of a court or authority, to protect network integrity and security and to prevent or alleviate exceptional or temporary network congestion.

The regulation also allows the provision of special services under strict conditions. These can be offered in addition to Internet access against payment if optimization of data transmission is objectively necessary to meet the requirements of the content, applications or services. This may be the case in particular if the service requires reliable and stable transmission.

DNS blocks are generally prohibited due to net neutrality, but exceptions can be made under certain circumstances. The Clearingstelle Urheberrecht im Internet (CUII) is an initiative of companies, industry associations and internet access providers that is investigating whether DNS blocks should be set up for websites that infringe copyright in order to block illegal content. This makes it easier for rights holders such as music or film studios to take faster action against such websites. As the legal process leading up to the establishment of a DNS block is often lengthy and can be costly, the CUII procedure is intended to avoid civil court disputes between rights holders and internet access providers. A three-member review committee, which also includes former judges from the Federal Court of Justice, examines applications from rights holders for DNS blocks and recommends them if necessary. The Federal Network Agency evaluates the CUII's recommendations, taking into account the net neutrality requirements. A DNS block will only be set up if there are no concerns about net neutrality.