ENE-006152/2018Answer given by Ms Gabrielon behalf of the European Commission(18.3.2019)

The Commission is aware of the creation, in Hungary, of the Central European Press and Media Foundation (KESMA), the concentration of over 400 media outlets and of the fact that the Hungarian Competition Authority and the Hungarian Media Council appear to have been excluded from scrutiny of the operation by government decree which declares the operation to be of “national strategic importance in the public interest”.

On the basis of the available information, the creation of KESMA itself, as well as the concentration of the media outlets referred to in the question, fall outside the Commission's jurisdiction under the EU Merger Regulation. It is not contrary to EU law that national merger regimes allow national authorities to take into account public interest considerations when reviewing mergers. Other than Hungary, twelve Member States provide for this possibility in their respective merger control regimes, under different conditions and procedures.

Where the behaviour or practices of KESMA affect trade between the Member States, EU competition rules may apply, including the rules that prevent companies holding a dominant position from excluding others from the market or discriminating against other market players. Additional information would be necessary to assess whether KESMA holds a dominant position in some media markets, and whether its practices could fall under Article 102 of the Treaty on the Functioning of the European Union (TFEU) and/or, possibly, Article 101 TFEU. Where applicable, Hungary must also respect the relevant EU rules on State aid.

In relation to the exclusion of the Hungarian Media Council from scrutiny of the operation, the Commission refers to Articles 30(1) and (2) of the Directive 2010/13/EU as amended by the newly adopted Directive (EU) 2018/1808[[1]](#footnote-2) which establish that Member States shall ensure that national audiovisual regulatory authorities are functionally independent of their respective governments and shall ensure that they shall exercise their powers in accordance with the objectives of the Directive, including upholding media pluralism and the promotion of competition. Member States have 21 months to transpose this Directive.

The Commission will continue to monitor the situation.

1. Directive 2018/1808 of 14 November 2018 amending Directive 2010/13 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\_.2018.303.01.0069.01.ENG&toc=OJ:L:2018:303:TOC [↑](#footnote-ref-2)