[NL] Conflict between Cable Network Company and Pay TV Channel about Transmission

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In a decision of 28 January 1999, the president of the Amsterdam district court held that the refusal of a cable network company to include a clause in a contract with a pay TV channel providing for the possibility of changing the transmission agreement where required by the authorities, was neither fair nor reasonable. A2000 owns and exploits the cable network in the Amsterdam region. Canal+ offers pay-TV programmes. Only subscribers to Canal+ can receive its programmes by use of a decoder. In the early 1990s, A2000 and Canal+ had an agreement allowing Canal+ to transmit its pay-TV programmes on two channels. This agreement expired on 31 December 1995. After lengthy negotiations, the parties were unable to reach an agreement on the conditions for extension of the transmission contracts, in particular the transmission fee. The question before the Court was whether A2000 abused its dominant position or else acted contrary to what the principles of reasonableness and fairness require by refusing to accept a transmission contract for six months or, alternatively, an agreement that allows for premature rescission or modification of the contract depending on the decision of the Independent Post and Telecommunications Authority (OPTA, Onafhankelijke Post en Telecommunicatie Autoriteit) and/or the Dutch Competition Authority (NMa, Nederlandse Mededingingsautoriteit). The OPTA will, on request of Canal+, determine what a reasonable cost calculation for transmission would be. Canal+ has also asked the opinion of the NMa on whether A2000 has abused its position of power by demanding an excessive or unreasonable and discriminatory transmission fee and by refusing to co-operate in the digital transmission of pay-TV signals.

The court held that A2000 has a monopoly position on the market for the transmission of television programmes in the Amsterdam region. The court did not consider A2000's wish to conclude a contract for a year to be unreasonable. The court, however, forbade A2000 to stop the transmission of the Canal+ programmes if Canal+ signs the contract within two working days of this decision. It was ordered that the contract becomes final only after the OPTA and/or the NMa has given an opinion in which case the obligations set by these authorities will apply. Canal+ will now pay the sum stated in the contract as an advance to the rate for the year 1999 that will finally be established.

Amsterdam district court 28 January 1999, Canal+ vs. A2000.

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