[NL] Non-discriminatory Cable Access - MCM v. CasTel et al.

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A number of decisions on access for broadcasters to cable infrastructures have been taken recently in the Netherlands. The Onafhankelijke Post en Telecommunicatie Autoriteit (Independent Post and Telecommunications Authority - OPTA) has repeatedly decided that cable network operators should not be allowed simply to refuse cable access for certain channels.

The case between broadcaster MCM and regional cable network operator CasTel concerned the latter's transmission and fees policies. MCM asked CasTel to carry its Muzzik channel. At the same time, MCM demanded that, if CasTel agreed to this request, it should pay a corresponding fee which, according to MCM, would cover, inter alia, the costs incurred for programme rights, collecting society fees, etc. CasTel refused to pay such a fee and to transmit Muzzik under these conditions. CasTel argued that MCM had no legal entitlement to payments of any sort. As a matter of principle, CasTel did not pay any kind of fee, compensation or other payment to broadcasting companies. On the contrary, as a rule the network operator was entitled to demand reimbursement of the cost of carrying the channel. MCM said that CasTel's transmission and fees policy lacked transparency and was discriminatory, particularly since CasTel made certain payments to other programme providers (Eurosport and the Discovery Channel). MCM therefore demanded equal treatment. CasTel explained that Eurosport and the Discovery Channel were exceptions. Firstly, financial terms with these two channels had been agreed a long time ago. Moreover, neither channel had specific reason to broadcast in that particular region, although they were highly valued by consumers and added to the variety of channels available. It was therefore unwise to remove them. OPTA did not agree with CasTel's line of argument. It said that CasTel could not justify paying a fee to some broadcasters but not to others. Therefore, its refusal to grant MCM access to the network simply because it was demanding a fee, was unjustified. OPTA thus ordered CasTel to treat the Muzzik channel under the same conditions, particularly financial, as Eurosport and the Discovery Channel. However, the claim to equal treatment should only be upheld if the regional programming authorities found that Muzzik added to the plurality of channels available in the region and should therefore be included in the so-called "standard package". Dutch broadcasting law stipulates that the standard package (a basic range of channels, which should be offered by cable network operators at the normal subscription fee), should be compiled on the recommendation of

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special programming authorities, which may be deviated from only in exceptional circumstances. Cable network operators therefore do not have total control over which channels they carry. Instead, it is the programming authorities' task to recommend a suitably-balanced combination of channels, representing the different cultural, social and religious interests of the community. OPTA also instructed CasTel to prepare and publish a set of transparent, non-discriminatory licensing and payment guidelines in order to make its policies clear for all to see.

In two further cases, OPTA decided that cable network operator UPC should not exclude Dutch channels The Box, NieuwsNet 9 and NieuwsTV from its package for Amsterdam and the surrounding area. Earlier in the year, UPC decided to stop carrying these channels after the programming authority recommended, at UPC's request, that they should no longer feature in the standard package. OPTA used this case as an opportunity to reiterate that Dutch cable network operators are not totally free to decide which channels to carry and which to refuse access to. A channel already part of the standard package cannot be removed without good cause, particularly if the appropriate programming authority has not issued a specific recommendation to that effect. In these cases, UPC was not entitled to ask the programming authority to make new recommendations. UPC, for its part, had agreed with the municipality of Amsterdam that the standard package should not be altered until the cable networks were fully digitalised and the appropriate decoders had been distributed to customers. Over and above that, UPC wrongly obtained the programming authority's opinion not in regard to its full range of 32 channels, as extended after consultation with the municipality of Amsterdam, but only of the 26 channels in the original standard package.

Besluit inzake geschil MCM-CasTel, OPTA/IBT/2000/203072, Besluit van het college can de Onafhankelijke Post en Telecommunicatie Autoriteit op grond van artikel 8.7 van de Telecommunicatiewet, 17.11.2000

http://www.opta.nl/

Decision of the Independent Post and Telecommunications Authority, case MCM-CasTel, OPTA/IBT/2000/203072, 17 November 2000

Besluit inzake geschil The Box - UPC, OPTA/IBT/2000/203142, Besluit van het college van de Onafhankelijke Post en Telecommunicatie Autoriteit op grond van artikel 8.7 van de Telecommunicatiewet, 17.11.2000

http://www.opta.nl/

Decision of the Independent Post and Telecommunications Authority, case The Box - UPC, OPTA/IBT/2000/203142, 17 November 2000

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Besluit inzake geschil Holland Advertising Nieuwe Media BV en Media Groep West BV UPC, OPTA/IBT/2000/203144, Besluit van het college van de Onafhankelijke Post en Telecommunicatie Autoriteit op grond van artikel 8.7 van de Telecommunicatiewet, 17.11.2000.

http://www.opta.nl/

Decision of the Independent Post and Telecommunications Authority, case Holland Advertising Nieuwe Media BV en Media Groep West BV UPC, OPTA/IBT/2000/203144, 17 November 2000

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