[DE] ORB Need Not Pay Deutsche Telekom Fee

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In a ruling of 20 March 2002, the Oberlandesgericht Brandenburg (Brandenburg Appeal Court - OLG Brandenburg) decided that Deutsche Telekom, as cable network operator for the public broadcaster Ostdeutscher Rundfunk Brandenburg (ORB), is not entitled to charge a fee for carrying ORB's programmes. The court of second instance rejected Deutsche Telekom's claim to a monthly fee of EUR 51,000 for feeding ORB into its cable network. However, the OLG Brandenburg recognised the fundamental importance of the case and granted leave to appeal against its ruling. So far, Deutsche Telekom has not taken up the opportunity to bring its case to the Bundesgerichtshof (Federal Supreme Court). Deutsche Telekom had based its claim for payment on a decision of the Regulierungsbehörde für Telekommunikation und Post (Regulatory Authority for Telecommunications and Post - RegTP) of 24 March 1999, according to which it was not required to carry local terrestrial channels on its network free of charge. This decision had been taken because Deutsche Telekom, by charging different prices for admitting different channels, had breached the ban on discrimination enshrined in Art. 24.2.3 of the Telekommunikationsgesetz (Telecommunications Act - TKG). The RegTP had therefore demanded that it abolish this discriminatory pricing structure. However, the regulatory authority's decision was contested by ORB amongst others, and does not yet have legal force.

In any case, the OLG Brandenburg ruled that the RegTP's decision gave no adequate justification for the admission fees being demanded by Deutsche Telekom. The demand for equal treatment contained in the decision did not necessarily mean that Telekom had to charge any fees at all. Rather, the court thought that the cost of feeding in channels could just as easily be included in the connection fee charged to individual households, thus removing the admission fees altogether.

Urteil des Oberlandesgerichts Brandenburg vom 20. März 2002 (Az.: 7 U 27/01) sowie Beschluss der Regulierungsbehörde für Telekommunikation und Post (RegTP) vom 24. März 1999 (Az.: BK 3b 99/001)

Ruling of the Brandenburg Appeal Court of 20 March 2002 (case no. 7 U 27/01) and decision of the Regulatory Authority for Telecommunications and Post of 24 March 1999 (case no. BK 3b 99/001)

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