[DE] Judgment on Telekom's duty to act as intermediary in respect of telephone-sex suppliers

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In a recently published decision of 8.12.1995, the Court of Appeal in Düsseldorf dismissed the claim of a telephone-sex supplier against Deutsche Telekom concerning the provision of a connection to foreign telecommunications companies using direct dialling.

The judgment was made in a case brought by the operator of a so-called "telephone contact service", which supplied two different types of erotic contacts.

In both cases a foreign telecommunications company was involved in providing the connection between the client in Germany and the relevant service company. For providing the connection, Deutsche Telekom paid the foreign telecommunications company a fee, from which, as a result of contractual agreements with the foreign telecommunication or service companies, a specific amount accrued to the complainant. After Deutsche Telekom switched all suppliers of telephone sex services in Germany over from direct to manual operation, thereby taking over itself the provision of connections through its foreign department, the complainant's revenue from these contacts was also reduced because of the reduced payments to the foreign telecommunications companies. The complainant reports daily turnover losses in the region of DEM 20 000. The complainant therefore applied for a provisional order to oblige Deutsche Telekom to permit connections with foreign telecommunications companies by direct dialling, or to prohibit it from blocking direct dialling under threat of a fine.

The Court of Appeal dismissed the claim on the grounds of the lack of a suitable claim. The court held that there was neither contractual claim by the complainant against Deutsche Telekom, nor could the complainant deduce telecommunication relations between the telephone client in Germany or the foreign telecommunications company with Deutsche Telekom on the basis of a contract in favour of third parties, as it is not in this respect included in the scope of the protection of conditions of performance. The Court also excluded claims in tort. This made it clear that the Court viewed the supply of telephone sex as a sex-related service as immoral because of its "depersonalised commercialisation". The Court nevertheless based its decision on the claim's lack of operative dependence. It was true that Telekom's attitude, by its own admission, was motivated by abuses in connection with telephone-sex activities. The Court was nevertheless convinced that the switch occurred with a view to preventing the

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abusive provision of connections between Deutsche Telekom and foreign telecommunications companies and thereby substantial losses for Deutsche Telekom. The purpose of the measure was therefore not to interfere with the operators of telephone-sex companies, and for this reason Deutsche Telekom was not bound by any liability to pay compensation. Even if in the case in hand the complainant's operation was significantly affected, there was basically no entitlement on the part of Deutsche Telekom clients to direct dialling. A corresponding measure would need to be adopted basically excluding damages.

OLG Düsseldorf, Urteil vom 8. Dezember 96 22 U 91/95.

Court of Appeal in Düsseldorf, judgment of 8 December 1995 - 22 U 91/95.

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