European Commission: German “Must-Carry” Case Closed, but Belgium Is Taken to Court

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On 8 October 2009, the European Commission decided to close an infringement procedure against Germany relating to European “must-carry” provisions, as set out in the Universal Services Directive. The Directive forms part of the EU’s Telecoms Package, which is currently under revision. Under the Directive, Member States are obliged to ensure a minimum level of availability and affordability of basic services, as well as a basic set of rights for the benefit of European consumers. According to Article 31, proportionate and transparent “must-carry” rules can be set for clearly defined general interest objectives, if the network providers affected are the principal source of radio or television broadcasts for a significant number of end-users. The proceedings against Germany had been initiated by a complaint concerning rules obliging cable operators in Germany to broadcast certain public television channels. The legal situation was clarified by means of a preliminary ruling by the European Court of Justice (ECJ) in December 2008. According to the Court, EU rules do not forbid such “must-carry” rules, provided that the obligations imposed do not give rise to unreasonable economic consequences.

In contrast to the German case, a second “must-carry” infringement procedure involving Belgium has arrived before the Court: After the final warning given to Belgium in November 2008 in relation to the lack of clarity and transparency in “must-carry” rules in the Brussels-Capital region failed to yield amending legislation, the Commission decided, on 8 October 2009, to initiate proceedings before the ECJ. The Commission considers that the current regime lacks clarity and transparency, that the number of channels that can be designated is excessive and that, as things now stand, network operators and broadcasters are uncertain as to their rights and obligations. Belgium, on the other hand, maintains that its provisions conform fully with EU Telecoms rules. The Court has already given a preliminary ruling on the matter of “must-carry” rules in the region, clarifying that the requirement of transparency means that relevant rules should be based on objective non-discriminatory criteria known in advance.

“Telecoms: Legal action against Germany, the Netherlands and Sweden closed while Belgian must-carry rules case goes to Court”, IP/09/1491, Brussels, 8 October 2009

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