[DE] Federal Administrative Court Rejects Competitors' Claim for Access to Telekom's Dark Fibre

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On 28 January 2010, the *Bundesverwaltungsgericht* (Federal Administrative Court - BVerwG) decided that Deutsche Telekom AG is not obliged to provide its competitors with access to its optical fibres between cable distributors and main distribution frames (MDFs).

In the proceedings, Deutsche Telekom had appealed against a regulatory order issued by the *Bundesnetzagentur* (Federal Network Agency - BNetzA) on 27 June 2007. The order obliged the former monopolist to grant its competitors access not only (as before) to the 8,000 or so MDFs, but also to the cable ducts between the MDFs and the 300,000 or so cable distributors. The decision to broaden the obligation to provide access was based on the fact that Deutsche Telekom, by extending its VDSL network, was bringing its digital transmission technology nearer to customers' end terminals in order to achieve higher transmission rates. Direct access to the cable distributors would enable competitors to create their own broadband infrastructures. However, this would not mean providing access to Deutsch Telekom's VDSL technology. Nevertheless, according to the order, Deutsche Telekom had to make its own dark fibre available to competitors, in return for payment, if it was unfeasible to install additional fibre optic cables due to technical or capacity reasons.

The BVerwG has now lifted the latter obligation, since the BNetzA failed to provide sufficient evidence that such access was justified. However, the court confirmed the other provisions of the order.

When announcing the order, the BNetzA had argued that Deutsche Telekom, unless it provided subsidiary access to its fibre optic cables, could, by filling the cable conduits in an inefficient manner, prevent its competitors from accessing cable distributors in order to extend their own networks.

Pressemitteilung des BVerwG zum Urteil vom 27. Januar 2010 (Az. 6 C 22.08)

http://www.bverwg.de/enid/726ea824eda4cdb04832a2c6a21c814a,9ec9377365617263685f646973706c6179436f6e7461696e6572092d093132373736093a095f7472636964092d09353737/Pressemitteilungen/Pressemitteilungen_9d.html

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Press release of the BVerwG on the ruling of 27 January 2010 (case no. 6 C 22.08)

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