[NL] Dutch Cable Companies not Obliged to Resell their Products

IRIS 2010-8:1/38

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On 31 May 2010 the Court of The Hague decided that two cable television companies, Ziggo and UPC, cannot be obliged to resell their products to alternative providers, as this might breach their contractual obligations. The Dutch Telecom Regulator (OPTA) wanted to stimulate market competition by allowing alternative providers to offer packages (internet, telephony and television) by way of reselling television signals offered by Ziggo and UPC. These plans are now thwarted.

Last year, OPTA imposed a 'wholesale line rental - cable' obligation on Ziggo and UPC. OPTA wanted to oblige the two companies to sell their products to alternative providers at a fixed (low) rate. On 22 December 2009, the European Commission approved the tariffs suggested by OPTA (see IRIS 2010-2: 1/3) and on 30 March 2010 OPTA published its final rules and tariffs for UPC and Ziggo (see IRIS 2010-5: 1/31).

In its decision OPTA did not however regulate questions regarding copyright obligations. The reselling of television signals could lead to copyright infringement, since UPC and Ziggo have signed contracts with all television channels enabling them to broadcast their programmes legitimately, while the reselling parties (Tele2 and Online) would not have cleared such rights, rendering their broadcasts of such material of questionable legality, while also resulting in significantly lighter administrative burdens for themselves in comparison to those imposed on Ziggo and UPC. One of the largest TV providers (CLT) has prohibited UPC and Ziggo from distributing wholesale TV signals to other providers. OPTA did not opine on this problem, but held that the matter was better suited to judicial review.

This resulted in a complaint, submitted by newcomers Tele2 Nederland B.V. and Online Breedband B.V. against UPC and Ziggo. The complaint regarded the obligation of 'third party billing' by UPC and Ziggo, both of whom were hesitant to execute the obligations set out by OPTA. The Court of The Hague found that UPC and Ziggo are not obliged to execute the obligation imposed by OPTA, if this would breach their contractual obligations. Tele2 and Online are now obliged to sign contracts with each individual TV provider before broadcasting their programmes. The two companies have announced that they are considering an appeal, while one has indicated that it has already started negotiations with the

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TV providers.

Tele2&Online v. UPC&Ziggo. Kort geding, 31 mei 2010, sector civiel recht, Rechtbank 's-Gravenhage. Zaaknummer/rolnummer: 364673/KG ZA 10-531

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Tele2&Online v. UPC&Ziggo. Interim Injunction, 31 May 2010, sector civil law, Court of The Hague. Casenumber/listnumber: 364673/KG ZA 10-531

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