[NL] Regulation clarifying the provision on net neutrality

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On 11 May 2015, the Dutch Ministry of Economic Affairs issued a policy regulation clarifying the provision on net neutrality, which is codified in Article 7.4a of the Dutch Telecommunication Act (DTA). The policy regulation was adopted after the Ministry of Economic Affairs held a national consultation round, inviting stakeholders to comment on certain aspects regarding net neutrality. According to Article 21 of the Framework Act on Independent Governing Bodies (Kaderwet Zelfstandige Bestuursorganen), the Dutch Ministry of Economic Affairs has a mandate to issue policy regulations which clarify the scope and subject matter of certain provisions that fall under the portfolio of the Ministry.

Following from Article 7.4a DTA, public electronic communication networks which deliver Internet access services and providers of Internet access services are not allowed to interfere with Internet traffic, unless one of the derogations under Article 7.4a (a), (b), (c) or (d) DTA can be deemed applicable. The policy regulation clarifies the meaning of Internet access, since some aspects were still unclear. The explanatory memorandum states that the notion of Internet access has to be construed broadly, in order to prevent circumvention of the provision on net neutrality. However, according to the policy regulation, the offering of a single service over the Internet protocol is not deemed to constitute the offering of an Internet access service and is therefore exempted from the net-neutrality provision under Article 7.4a DTA. This means that providers of a single service over the Internet protocol are exempted from the provision on net neutrality and therefore do not have to offer unrestricted access to the Internet. As an example, the explanatory memorandum states that the offering of a separate single service like an email service or a music streaming service cannot be deemed to constitute the offering of an Internet access service and is therefore allowed without offering unrestricted access to the Internet, due to the fact that this falls outside of the scope of Article 7.4a DTA. Furthermore, the explanatory memorandum states that the offering of two separate services as a bundle constitutes the providing of Internet access and therefore falls within the scope of Article 7.4a DTA. This means that providers of a bundle of two separate services over the Internet protocol have to grant the end user unrestricted access to the Internet.

Conversely, according to the policy regulation, public electronic communication networks which deliver Internet access services and providers of Internet access services are not allowed to offer a single service in conjunction with Internet

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access where the provider discriminates between the separate single service and Internet access. The explanatory memorandum states that this means that providers are no longer allowed to offer a single separate service, such as Skype or Spotify, in conjunction with Internet access, where the data use of the single separate service is exempted from the regular data plan of an end-user. The policy regulation argues that, by exempting the data use of certain services from the data plan, providers positively discriminate amongst services on price by exempting them from the pricing scheme under the regular data plan.

Lastly, the policy regulation clarifies the meaning and scope of providers of Internet access services. In order to fall within the scope of the net-neutrality provision, providers of Internet access services have to be deemed to grant access to the public at large. The explanatory memorandum states that this means that providers of Internet access services, which can be deemed to grant access to a restricted number of persons, such as companies and institutions that grant Wi-Fi access to their customers and employees, are exempted from the net-neutrality provision.

Besluit van de Minister van Economische Zaken van 11 mei 2015, nr. WJZ/15062267, houdende beleidsregel inzake de toepassing door de Autoriteit Consument en Markt van artikel 7.4a van de Telecommunicatiewet (Beleidsregel netneutraliteit)

https://zoek.officielebekendmakingen.nl/stcrt-2015-13478.html

Decree of the Minister of Economic Affairs of May 11, 2015, no. WJZ/15062267, on Article 7.4a of the Telecommunications Act (Net neutrality)

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