[NL] Dutch telecom company granted exemption from must-carry rules for new app

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KPN, a Dutch landline and mobile telecommunications company, has been granted an exemption from the must-carry rules with regard to its new television service. The telecom provider developed a new service in the form of a mobile application that serves a package with 18 linear television channels, catch-up television, on-demand-content, and recording options. A subscriber pays an all-inclusive fee per month to use the service (called “Play”). KPN offers Play as an over-the-top (OTT) service, meaning that the service is available over the open Internet using Internet access from any Internet service provider.

On the basis of Article 6.13 of the Dutch Media Act 2008, KPN is subject to the so-called must-carry rules (see IRIS 2013-7/22 and IRIS 2015-1/34). Section 1 of the article states that every subscriber of a digital programme package should receive at least a standard programme package from its service provider. This means every broadcasting network provider is obliged to retransmit a set of predetermined television and radio channels. Section 2 of the article determines that a standard package should encompass, among others, the three television channels of the Dutch public service broadcasters, and two channels from regional and local public service broadcasters. Article 6.14d of the Dutch Media Act 2008 provides that the Commissariaat voor de Media (the Dutch Media Authority - CvdM) may exempt a company from the must-carry rules under certain conditions.

The CvdM did exempt KPN from the must-carry rules for Play. Initially, the Media Authority decided that the telecom provider had to be subjected to the rules. On appeal, it considered the rationale of the must-carry rules is a pluralistic and diverse programme offering. It reasoned that the market for apps like Play is different from traditional cable networks. In the case of apps, there is no lack of competition or scarcity that may cause an incomplete range of channels for the end user to choose from. Neither are apps like Play, for a significant amount of users, the primary means by which to receive television and radio signals. Furthermore, the CvdM found that KPN had successfully demonstrated that compliance with the must-carry rules in this case would result in sizable extra costs for KPN. Due to the higher costs, Play would no longer be commercially viable. The telecom company would be unable to respond to consumer demands to pay only for content they wish to receive. This would hinder innovation, partly to the detriment to the end user. The CvdM concluded that KPN would be

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exempted from the must-carry rules until 1 January 2017. At this time the Media Authority will review the situation.

Commissariaat voor de Media, Beslissing op bezwaar, 14 juli 2015

http://www.cvdm.nl/wp-content/uploads/2015/07/KPN-bob.pdf

Dutch Media Authority, Appeal Decision, 14 July 2015

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