[DE] Cable providers must treat private broadcasters equally

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On 23 February 2017, the Kommission für Zulassung und Aufsicht (Commission on Licensing and Supervision - ZAK) of the Landesmedienanstalten (regional media authorities) decided that platform operator NetCologne may not charge some private channels for carrying their programmes while, at the same time, carrying others free of charge.

Since 2015, during the introduction of a new business model, NetCologne GmbH had, one by one, been replacing its existing agreements with broadcasters with new ones. This meant that some broadcasters had to pay for their programmes to be distributed while others did not. A number of private broadcasters, including Sport1, complained about this to the Landesanstalt für Medien Nordrhein-Westfalen (North Rhine-Westphalia regional media authority - LfM), which was responsible for NetCologne.

The LfM agreed with the complainants. The platform provider's claim that it could not introduce the new business model for all broadcasters simultaneously on account of the market position of individual broadcasters or broadcasting groups was not sufficient justification for its actions. Although there was no reason why it should not introduce new agreements and business models, there should not be a transitional period during which some broadcasters had to pay it to distribute their programmes while others did not. This was discriminatory and therefore breached the Rundfunkstaatsvertrag (Inter-State Broadcasting Agreement). The ZAK therefore thought that similar broadcasters should be treated equally and ordered NetCologne GmbH to actively reinstate equal treatment; otherwise, there was a risk that unequal treatment - including that of smaller private broadcasters - would be exacerbated further.

The charging of cable feed-in fees continues to occupy the courts in relation to a dispute that first erupted in 2012, following the cancellation of agreements between ARD and ZDF on the one hand and Vodafone and Unitymedia on the other. When ARD and ZDF refused to pay the fees on the basis of the 'must-carry' rules, Kabel Deutschland and Unitymedia submitted several complaints to the courts. In June 2015, the Bundesgerichtshof (Federal Supreme Court - BGH) had decided that the cable network was obliged to carry the channels, but that there was no obligation for them to pay for the privilege (rulings of 16 June 2015, case nos. KZR 83/13 and 3/14). The cable network operators lost EUR 27 million per

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year as a result of this decision.

ZAK-Pressemitteilung 04/2017 vom 23. Februar 2017: Einspeisekonditionen von Plattformbetreibern: ZAK setzt Gleichbehandlung von Anbietern durch

http://www.die-medienanstalten.de/presse/pressemitteilungen/kommission-fuer-zulassung-und-aufsicht/detailansicht/article/zak-pressemitteilung-042017-einspeisekonditionen-von-plattformbetreibern-zak-setzt-gleichbehandlu.html

Commission on Licensing and Supervision, press release 04/2017 of 23 February 2017: feed-in conditions of platform operators: Commission on Licensing and Supervision demands equal treatment of broadcasters

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