# [AT] Free Stream does not violate net neutrality

**IRIS 2018-2:1/8**

*Sebastian Klein*
*Institute of European Media Law*

On 18 December 2017, the Telekom-Control-Kommission (Telecom Control Commission - TKK), Austria's regulatory body for the telecommunications market, decided that the 'Free Stream' telecommunications service provided by A1 does not violate net neutrality. 'Free Stream' is a so-called zero-rating service, which means that data is streamed to customers for specific services free of charge. Users can stream videos and music from specific partners (for example, YouTube or Spotify) without the data coming out of the allowance stipulated under their contract. After the service was notified to the TKK, the latter instigated proceedings against A1 on the grounds that the service could be violating the net neutrality principle enshrined in Regulation (EU) 2015/2120.

In its decision of 18 December 2017, the TKK ruled that the so-called 'traffic shaping' operated by A1 infringed Article 3(3)(3) of Regulation (EU) 2015/2120. This involves throttling the speed of streaming services provided as part of the 'Free Stream' service in order to reduce the picture quality of some videos. The TKK considered this a form of manipulative interference in data traffic; it was to the detriment of users and did not fall under any of the exceptions mentioned in Article 3(3) of Regulation (EU) 2015/2120. In this respect, A1 was instructed to improve the service within eight weeks, although it could appeal against the decision.

However, the TKK did not object to the zero-rating itself and did not think the 'Free Stream' service violated net neutrality. It ruled that Regulation (EU) 2015/2120 did not explicitly ban such services. Such agreements would only be inadmissible under Article 3(2) of the regulation if they amounted to a 'commercial practice' that materially reduced end-users' choice concerning available services, applications or content (according to Recital 7 of the regulation).

With this ruling, the TKK aligned itself with a series of decisions by European regulatory authorities that found zero-rating services compatible with net neutrality.

***Bescheid der Telekom-Control-Kommission vom 18. Dezember 2017 (R 5/17-11)***

https://www.rtr.at/de/tk/R5_17_Bescheid_18122017/R_5_17_Bescheid_A1-

© European Audiovisual Observatory (Council of Europe) 2026

FreeStream.pdf

*TKK decision of 18 December 2017 (R 5/17-11)*

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026