[DE] ARD examines partnership with StreamOn and Vodafone Pass

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The Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland (association of German public service broadcasters - ARD) is examining the possibility of working with the zero-rating services StreamOn (provided by Deutsche Telekom) and Vodafone Pass. These services enable users to stream programmes over the mobile Internet without using up any of their data allowance. While Zweite Deutsche Fernsehen (ZDF) and the German overseas broadcaster Deutsche Welle (DW) already work with StreamOn, the ARD is still examining whether a partnership is feasible. In particular, the streaming providers would need to bring their technical parameters and conditions into line with the ARD's requirements. This is a complex process, since the ARD is a union of nine regional broadcasting authorities, so a large number of different services would need to be adjusted in order to make them available to streaming customers.

The ARD's current examination process follows a decision taken in October 2017 by the Bundesnetzagentur (Federal Network Agency - BNetzA). It had been suggested that zero-rating models were incompatible with net neutrality, a principle initially enshrined in German law under the Telekommunikationsgesetz (Telecommunications Act) and, since 30 April 2016, under the Open Internet Regulation (Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No. 531/2012 on roaming on public mobile communications networks within the Union). The Bundesnetzagentur concluded that zero-rating services were admissible in principle, subject to certain conditions being met by providers. For example, in order to avoid conflict with the 'Roam Like at Home' principle, StreamOn must be as equally accessible to users in other EU countries as it is in Germany. Content providers must also have equal access to such services, while video streaming must be available without throttling. However, the Bundesnetzagentur's decision is not yet in force and Deutsche Telekom has appealed against it.

Meanwhile, responding to the Bundesnetzagentur in accordance with their mutual cooperation obligations, the regional media authorities have stated that, in the

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context of their platform regulation processes, they have not yet found any breach of net neutrality rules by zero-rating agencies.

Similar decisions have been taken by other European regulators, most recently by Austria's Telekom-Control-Kommission concerning the Free Stream service in December 2017 (see decision of 18 December 2017, Case no. R 5/17-11, https://www.rtr.at/de/tk/R5_17_Bescheid_18122017/R_5_17_Bescheid_A1-FreeStream.pdf).

Stellungnahme der Landesmedienanstalten

https://www.die-medienanstalten.de/fileadmin/user_upload/die_medienanstalten/Ueber_uns/Positionen/2018-01-24_DLM-Vodafone_Pass_Website.pdf

Statement of the regional media authorities

Pressemitteilung der Bundesnetzagentur zur grundsätzlichen Zulässigkeit von Zero-Rating-Modellen vom 15. Dezember 2017

https://www.bundesnetzagentur.de/SharedDocs/Downloads/DE/Allgemeines/Presse/Pressemitteilungen/2017/15122017_StreamOn.pdf;jsessionid=A2D32FD70C70A7297F64A2144CDF35F6?__blob=publicationFile&v=2

Press release of the Federal Network Agency on the admissibility of zero-rating models, 15 December 2017

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