[DE] ‘StreamOn’ injunction confirmed

IRIS 2019-8:1/14

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In a decision of 12 July 2019, the Oberverwaltungsgericht Nordrhein-Westfalen (North Rhine-Westphalia Higher Administrative Court) confirmed the decision of the Bundesnetzagentur (Federal Networks Agency) to ban Deutsche Telekom’s ‘StreamOn’ service in its current form and rejected an appeal against a first-instance summary judgment of the Verwaltungsgericht Köln (Cologne Administrative Court).

‘StreamOn’ is a so-called zero-rating service, which means that the data used to stream audio and video services from certain content providers is not deducted from mobile customers’ monthly data allowances. Telekom customers can add the service free of charge as part of their mobile contracts. However, for customers on certain tariffs, Telekom had limited broadband speeds for video streaming to a maximum of 1.7 Mbits/s. Moreover, ‘StreamOn’ could only be used in Germany, so audio and video streaming outside Germany was deducted from customers’ data allowance.

As the German telecommunications regulator, the Bundesnetzagentur had decided that ‘StreamOn’ violated the principle of net neutrality, as well as European roaming regulations. It had banned the mobile provider from offering the service in its current form in December 2017. Although the zero-rating service could, in principle, continue to be offered, the ‘roam like at home’ principle would need to be adhered to and unthrottled bandwidth made available. This was the only way of ensuring compliance with the equal treatment requirement, a cornerstone of European net neutrality rules. The Verwaltungsgericht Köln and now the Oberverwaltungsgericht Nordrhein-Westfalen both rejected urgent actions brought by the mobile provider contesting the ban.

The judges explained that net neutrality protected a fundamental functional principle of the Internet for the benefit of all users. It was violated if video streaming speeds were deliberately throttled compared to other services or applications. Furthermore, under European roaming rules, it was prohibited to charge an additional fee for roaming services in other European countries compared with the domestic price. The current system would result in less favourable pricing structures in other European countries.

Following the Higher Administrative Court’s decision, which cannot be appealed, the Bundesnetzagentur’s decision is temporarily effective, pending a decision in

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the main proceedings.

Beschluss des Oberverwaltungsgericht NRW, 13 B 1734/18

https://www.justiz.nrw.de/nrwe/ovgs/ovg_nrw/j2019/13_B_1734_18_Beschluss_20190712.html

Decision of the Higher Administrative Court NRW, 13 B 1734/18

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