[NL] Targeted television advertising by KPN is permissible under the Media Act

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On 11 June 2019, the *Commissariaat voor de Media* (the Dutch Media Authority - CvdM) delivered a decision ruling that the planned introduction of targeted television advertising by the telecommunications company KPN and media company Talpa was permissible under the Media Act (*Mediawet*). KPN offers various TV packages via set-top box and the KPN iTV app, while Talpa owns the Dutch commercial television channels SBS6, SBS9 and Net5, which are distributed as part of KPN packages. Advertising spots are broadcast between programmes on these channels, and in order to increase revenue from television advertising, KPN and Talpa decided to begin collaborating on introducing targeted advertising at viewers with a pre-defined profile. In 2018, KPN informed the CvdM of the planned introduction of targeted advertising, and submitted a request for a decision on whether it was permissible under the Media Act. In particular, under Article 6.13(2) of the Media Act, KPN - as a package provider - may only distribute Talpa's programme chanels "unchanged".

KPN is able to map viewing behaviour from its KPN set-top box with data from its iTV app, and in combination with the subscriber data, KPN can create advertising profiles in respect of consumers who have given explicit permission (that is to say, who have "opted in"). KPN has also developed the technology to provide customised advertising based on viewer profiles. KPN is then able to create group profiles (e.g. "interested in sport)", which can be targeted with certain advertisements. Under the collaboration, KPN provides profile information to Talpa, and Talpa is able to sell advertising spots on the basis of these profiles. Talpa then informs KPN which advertising spots should be displayed during a period to viewers from a target group.

The CvdM noted that under Article 6.13(2) of the Media Act, KPN must distribute Talpa's programme channels "unchanged". In this regard, it referred to the ministerial explanation of the provision, which stated that the provision "mainly concerns not being allowed to [make cuts or changes] in the editorial content", and that a "package provider may also not place additional advertising". The CvdM held that while KPN does not change the programme channels, it does include advertising spots; this is done on the basis of an agreement with Talpa. Therefore, KPN does not cut or edit the programme channels, and there is no infringement on the integrity of the programme channels. The CvdM concluded

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that KPN complies with the requirement that Talpa programme channels be distributed unchanged and that under Article 6.13, it does not matter whether Talpa includes the advertising itself in the programme channels or instructs KPN to pass on the targeted advertisements.

Lastly, the CvdM added that its decision was in line with Recital 26 of the 2018 Audiovisual Media Services Directive (IRIS 2019-1/3), which provides that "[i]n order to protect the editorial responsibility of media service providers and the audiovisual value chain, it is essential to be able to guarantee the integrity of programmes and audiovisual media services supplied by media service providers. Programmes and audiovisual media services should not be transmitted in shortened form, altered or interrupted, or overlaid for commercial purposes, without the explicit consent of the media service provider".

Commissariaat voor de Media, Bestuurlijk rechtsoordeel KPN, 11 juni 2019

CvdM, Management opinion of KPN, June 11, 2019

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