[NL] Decision on zero-rating streaming services following CJEU judgment

IRIS 2023-2:1/13

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On 16 December 2022, the Netherlands' *Autoriteit Consument en Markt* (Authority for Consumers and Markets — ACM) issued a decree which declared binding the commitment made by the telecom operator T-Mobile to stop offering a data-free music service by 31 March 2023. The decree follows an important judgment of the Court of Justice of the European Union (CJEU) in September 2021, which held that so-called zero-ratings services are incompatible with EU Regulation (2015/2120) on open internet access (Open Internet Regulation) (see IRIS 2021-9/27).

Under T-Mobile's data-free music service for mobile plans, T-Mobile customers could stream music that did not count toward their data plans, a so-called zero-rating service. The ACM stated that zero-rating services are incompatible with the Open Internet Regulation, which came into force in 2016. The ACM noted that the Open Internet Regulation "offer[ed] some room for interpretation", and it was "only since the September 2021 ruling of the European Court of Justice, the highest court in these matters, has it become definitively clear that zero-rating is not allowed". Following the judgment in September 2021, T-Mobile stopped offering its data-free music service to new customers, but continued to offer it to existing customers with the data-free music service in their plans.

The ACM highlighted that it had held "numerous conversations with T-Mobile, urging it to comply with the court's ruling, and to discuss what T-Mobile could do for customers that would be affected by the discontinuation of said service". Crucially, T-Mobile has now committed to contacting existing customers, and offering them a suitable alternative during the first few months of 2023. The ACM has accepted the commitment made by T-Mobile to stop offering its data-free music service no later than 31 March 2023, so that T-Mobile will have sufficient time to contact affected customers, and to phase out the service. T-Mobile also agreed to keep the ACM informed of the progress of the entire process.

Autoriteit Consument en Markt, Openbaar besluit tot bindend verklaren toezeggingen, ACM/22/179315, 16 december 2022

https://www.acm.nl/nl/publicaties/acm-akkoord-met-toezegging-t-mobile-over-stoppen-met-zero-ratingdienst-voor-muziek

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Netherlands Authority for Consumers and Markets, Decree declaring commitments binding, ACM/22/179315, 16 December 2022

Autoriteit Consument en Markt, ACM akkoord met toezegging T-Mobile: zero-ratingdienst muziek stopt per 31 maart 2023, 16 december 2022

https://www.acm.nl/nl/publicaties/acm-akkoord-met-toezegging-t-mobile-zero-ratingdienst-muziek-stopt-31-maart-2023

Netherlands Authority for Consumers and Markets, ACM agrees with T-Mobile's commitment: zero-rating music service will end on 31 March 2023

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