

The Netherlands
Commissariaat voor de Media (CvdM)

Tbilisi meeting
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Council of State upholds CvdM fines for infringement of different violations of the Media Act 2008 based on the same fact complex

Last year we informed you about an important ruling of the Amsterdam district court on a decision of the CvdM in the case “Het Sprookjesboomfeest”. In this case the CvdM imposed two different fines for violations by the public service broadcaster TROS of both the prohibition of being servant to the commercial interests of a third party and the regulations on television advertising. The TROS had been servant to the commercial interests of and promoted goods of the famous Dutch amusement park “De Efteling”. Recently, on 7 July 2014 this ruling was upheld by the Council of State, the highest general administrative court in the Netherlands. The principle importance of this ruling is that the Council of State confirmed that a certain conduct can result in different violations of the Media Act and that in such case the CvdM may impose different fines based on the same body of facts. Because of the cohesion of both violations, one of the fines was mitigated by the Council of State.

CvdM gives positive advice about new licences for public broadcasting associations

The Dutch national public service media system is unique by its composition of different organizations. Many programs on the national radio and TV channels are provided by so called ‘broadcasting associations’. Although they have a public service remit they are in fact private associations who have members; private person who are required to pay a yearly minimum fee (contribution).

On 31 January of this year they applied to obtain the right to broadcast during the period 2016-2020 within the public service media system. This right, the legal term is ‘recognition’, will be granted for 5 years if all legal requirements are met. The Dutch media authority (CvdM) is one of the 3 parties - the others are the Council for Culture and the Board of Governors of Netherlands Public Broadcasting (NPO) - who advise the State Secretary of Education, Culture and Science about the applications. The minister decides in the end but in practice the advises are more or less followed by the minister.

This was the first time the new merged associations had to apply for a license: TROS/AVRO, KRO/NCRV, VARA/BNN and the autonomous broadcasters EO, Omroep MAX and VPRO. Two broadcasters: Powned and WNL applied for the aspirant-status (provisional recognition), in which case not 150,000 but only 50,000 members are needed. Both broadcasters already operated under this status for the last 5 years and asked for extension of this provisional recognition. A third broadcaster applying for this status was HUMAN.

The CvdM has checked the membership administration and informed the State Secretary all broadcasters have proven they have enough members: the merged broadcasters have all more than the minimum of 150,000 and the aspirant- broadcasters demonstrated to have more than the minimum threshold of 50,000 members. In its advice of 31 July 2014 the CvdM also concluded that all other requirements were met and informed the State Secretary all applicants are eligible to obtain a new licence for the next 5 years. Despite its positive advice the CvdM also made some critical observations. Several broadcasters lack an efficient system of internal checks and balances. The CvdM considers good governance as extremely important for public funded organizations and recommended them to improve their system of internal supervision.

CvdM publishes new report regarding meta supervision of NICAM

The CvdM yearly informs the minister about the outcomes of the 'meta supervision' of the NICAM (Netherlands Institute for the Classification of Audiovisual Media). In this evaluation the CvdM focuses on how NICAM checks the classifications by the broadcasters and other members of NICAM and whether the classifications can be considered to be valid, consistent and reliable. The NICAM is based on co-regulation: the industry itself is responsible for the classification of audiovisual media products according to the rules of Kijkwijzer, which consists of content and age descriptors. Just like the years before the CvdM has informed the minister that NICAM and Kijkwijzer function well and prove to be an adequate instrument to protect minors from harmful audiovisual content. The Kijkwijzer age descriptors are used in a reliable way and the NICAM supervises carefully the system. The number of parents using Kijkwijzer has increased. Nevertheless surveys demonstrate as well that a slightly less percentage of parents trust and use Kijkwijzer. The CvdM suggested this is something that NICAM should focus more on in the near future.

The CvdM also suggested NICAM to further explore possibilities to extend the current system of co-regulation to VOD media services. The recent agreement concluded between NICAM and between NICAM and the association of VOD service providers in the Netherlands, VodNed is praised by the CvdM as a good example. VodNed has reached an agreement with NICAM to apply the classification tool Kijkwijzer. As a consequence the VOD service providers reunited in VodNed: RTL XL, MovieMax, Pathé Home, Videoland, WappZapp, Maxx-XS and meJane.com inform now in their video catalogues consumers by using the age and content descriptors.

Unlike is the case for the VOD services of public service media the commercial media service providers are not legally obliged to use the Kijkwijzer for their on-demand offer. So now the private operators have opted on a voluntary basis to apply the classification system to their VOD services.

Evaluation Law on Fixed Book Prices

Since 1 January 2005 the CvdM is entrusted with the legal task to supervise and enforce the fixed book prices in the Netherlands. The Dutch system of fixed book prices only counts for books in the Dutch and Frisian language published in the Netherlands. According to the Law on Fixed Book Prices books should be sold to the consumer at the price set by the publisher or importer. As a principle the price is fixed for one year. After half a year the publisher is free to amend once the fixed price, after one year he can adapt once again the fixed price or abolish it. The system of fixed book prices has the aim to guarantee a broad and diverse offer of books in our country. The assumption is that a fixed price for books enables little bookshops to survive and to sell also less popular book titles. In a total free book market it is to be expected that there will be a shakeout and big general retailers offering popular books and bestsellers will dominate the market.

In 2014 the Law on Fixed Book Prices is being evaluated. As a first step the CvdM decided to carry out a self-evaluation and commissioned an external bureau to evaluate the role and function of the CvdM. From the interviews with stakeholders conducted by the external bureau can be concluded that most parties are positive about the role of the CvdM. Only sometimes the administrative procedures are considered to be too time-consuming. Furthermore it was suggested to introduce also less formal procedures to handle cases. The Council for Culture sent also its advice to the Minister and proposed to prolong the current law and system of fixed book prices for 4 more years. The Minister sent the advices to parliament and will come with an opinion later this year.

Although not an official advisor during the evaluation process, the ACM (Authority for Consumers and Markets) published a negative opinion on the Law on the Fixed Book Prices: This authority dealing with fair competition and consumer protection held the opinion it leads to market distortions and even more important does not contribute to its purpose; the protection of less popular book titles.

The CvdM uses its more extensive powers to impose an order subject to a penalty

In our previous country report we informed you about a new Broadcasting Distribution Bill being adopted by Parliament. This Act has come into force on 1 January 2014 and has led to some major changes in the legislative framework regarding the access of broadcasting services to cable and other networks in the Netherlands. Also the enforcement instruments of the CvdM have become more comprehensive by the expansion of the legal possibilities to impose an order subject to a penalty. Commencing 1 January 2014 the CvdM inter alia has the power to impose an order subject to a penalty for non-compliance with the must-carry rules. Violations of that provision are detected either by examination by the CvdM of its own motion or in response to a complaint, or following a request for temporary exemptions by network-operators. Recently, in July 2014 the CvdM imposed an order subject to a penalty for non-compliance with the must-carry rules for the first time. In the near future it might be necessary to impose more orders of that kind to network-operators seeing that as of August 2014 the CvdM will have a comprehensive view of the network-operators complying or non-complying to the must-carry rules concerning the Dutch public channels.