

Motion for Preliminary Injunction against Unclear Awarding Conditions Dismissed; Court Does Not Confirm Agency's Argument of Scarcity

- **Cologne Administrative Court dismisses AIRDATA's motion for a preliminary injunction.**
- **Cologne Administrative Court does not confirm the German Federal Network Agency's argument of scarcity.**
- **Medium-sized companies will be pushed out of the German telecommunications market at the cost of consumers.**

The administrative court's decision to dismiss the motion for a preliminary injunction is an anti-competitive and anti-consumer move that manifests the lack of transparency in the Federal Network Agency's reviewing process.

Stuttgart, 26 May 2015: The Cologne Administrative Court's decision to dismiss the motion for a preliminary injunction against the German Federal Network Agency's awarding conditions for the upcoming frequency auction process has met with a lack of comprehension from the affected companies.

"It's alarming that a court is not interested in a transparent admission policy for the Federal Network Agency's auction process and is putting off making a decision until the main proceedings", said Christian Irmler, CEO of AIRDATA.

In an objective examination, Irmler said, the involved parties would be able to clearly understand the catalogue of review criteria before the frequencies were awarded. Failing to offer potential new competitors clarity as to the concrete qualifications and documents required does not indicate equal opportunities or non-discriminatory access to the market.

Irmler added that, throughout the entire process, the agency has never explained how it calculated the minimum bidding amounts. This creates the impression that the agency deliberately set "prohibitive prices".

In Irmler's opinion, a governmental agency that has the clear public duty to ensure effective competition and non-discriminatory access to the market must act transparently and not leave involved parties in the dark. After all, Irmler continued, the market – and not a governmental authority – should decide whether a company has a viable business model.

Today, the Cologne Administrative Court dismissed AIRDATA's motion for a preliminary injunction against the award conditions in the admission process for the upcoming auction on 27 May 2015.

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The court's stated reason for its decision was that the Federal Network Agency has certain discretionary freedoms in its decisions on awarding the frequencies, which a court can only review to a limited extent.

"But when a court cannot fully review the actions of a governmental agency, the political authorities have to take action and force the Federal Network Agency to act transparently", said the AIRDATA CEO.

He added that the legal status of the upcoming auction process remains unclear because the court did not confirm the agency's argument that frequencies were a scarce resource.

"If the agency's argument of scarcity doesn't hold up in the main proceedings and it becomes apparent that we were unfairly excluded from the awarding, the transactions will have to be reversed."

AIRDATA had brought action against the organisation of the auction process and the defined conditions, alleging that they violate the company's existing rights and block its access to the market. In late April, AIRDATA was excluded from participating in the auction process for new mobile telecommunications frequencies. The auction is scheduled for 27 May.

Once again, only the three established mobile telecommunications providers were admitted to the auction. "This move has now demonstrated that the current oligopoly on the mobile telecommunications market will persist in the years to come, and has further sealed off the market to keep out small and medium-sized businesses. This will ultimately disadvantage consumers by preventing innovative competition by new market players."

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