



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 27/10

Luxembourg, 11 March 2010

Judgment in Case C-522/08

Telekomunikacja Polska SA w Warszawie v
Prezes Urzędu Komunikacji Elektronicznej

A Member State may prohibit the making of the conclusion of a contract for the provision of telecommunications services contingent on the conclusion, by the end-user, of a separate contract

National legislation which, subject to certain exceptions, and without taking account of the specific circumstances of the case in question, prohibits any combined offer is, however, incompatible with European Union law on consumer protection

A Polish law of 2004 on telecommunications provides that, for the purpose of protecting the end-user, the President of the Urząd Komunikacji Elektronicznej (the Polish Office for Electronic Communications; 'the UKE') may impose an obligation on a telecommunications operator with significant market power in the retail market not to oblige an end-user to subscribe to services which that end-user does not require.

By decision of 28 December 2006, the President of the UKE called on Telekomunikacja Polska S.A. w Warszawie ('TP') to put an end to irregularities which had been identified, consisting in making the conclusion of a contract for the provision of 'neotrada tp' broadband internet access services contingent on the conclusion of a contract for telephone services.

Following dismissal of the actions challenging that decision, TP appealed before the Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland). That court made a reference to the Court of Justice on the question whether national legislation which requires all operators to refrain from linking provision of their services, without an assessment of the degree of competition on the market and independently of their position on it, complies with the directives on the common regulatory framework for electronic communications¹.

The Court first of all points out that the objective of the Framework Directive is to establish a harmonised framework for the regulation of electronic communications services, electronic communications networks, associated facilities and associated services. It lays down, inter alia, the tasks of the national regulatory authorities ('NRAs'), which carry out an analysis of the relevant markets in the electronic communications sector and assess whether those markets are effectively competitive. If a market is not effectively competitive, the NRA concerned is required to impose regulatory obligations *ex ante* on undertakings with significant market power on that market.

The Court then goes on to note that the Universal Service Directive is designed to ensure the availability throughout the Union of good-quality publicly available services through effective competition and choice and to deal with circumstances in which the needs of end-users are not satisfactorily met by the market. To that end, the Directive establishes the rights of end-users and the corresponding obligations on undertakings providing publicly available electronic communications networks and services. Thus, Member States ensure that designated undertakings establish terms and conditions in such a way that the subscriber is not obliged to pay for facilities or services which are not necessary or not required for the service requested.

¹ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ 2002 L 108, p. 33) and Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ 2002 L 108, p. 51).

In that regard, the Court finds that legislation which, generally and without discrimination, prohibits linked sales does not affect the powers of the NRA concerned to define and analyse the different electronic communications markets. Nor does it affect the power of that NRA to impose, after carrying out an analysis of a market, regulatory obligations *ex ante* on undertakings with significant market power on that market.

Although the NRAs, in carrying out their tasks, are required to promote the interests of citizens of the Union by ensuring a high level of protection for consumers, the fact remains that the Framework Directive and the Universal Service Directive do not provide for full harmonisation of consumer-protection aspects.

Consequently, the Court rules that **the Framework Directive and the Universal Service Directive cannot preclude national legislation which, for the purpose of protecting end-users, prohibits an undertaking from making the conclusion of a contract for the provision of telecommunications services contingent on the conclusion, by the end-user, of a contract for the provision of other services.**

So far as concerns European Union legislation on consumer protection, that is, in particular, the Unfair Commercial Practices Directive², the Court points out that this precludes national legislation which, subject to certain exceptions, and without taking account of the specific circumstances of the case in question, imposes a general prohibition of combined offers made by a vendor to a consumer.

It points out, however, that, in view of the fact that the decisions under challenge in the main proceedings were adopted before the date on which the period for the transposition of the Unfair Commercial Practices Directive expired, that directive applies to the case in the main proceedings only with effect from that date, that is to say, from 12 December 2007.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Christopher Fretwell ☎ (+352) 4303 3355

² Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ 2005 L 149, p. 22).