



Press and Information

Court of Justice of the European Union

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Judgment in Case C-99/09

Polska Telefonia Cyfrowa sp. z o.o. v Prezes Urzędu Komunikacji
Elektronicznej

The Court holds that, when assessing whether the direct charge relating to transferring a telephone number is a disincentive, account must be taken of the costs incurred by the operator in providing that service

However, to avoid dissuading consumers from making use of the portability facility, the national regulatory authority may fix the maximum amount of that charge at a level below the costs

By decision of 2006, the president of the Polish national regulatory authority (NRA) responsible for electronic communications imposed a fine of PLN 100 000 (approximately €24 350) on Polska Telefonia Cyfrowa sp. z o.o. (PTC) on the ground that the one-off fee of PLN 122 (approximately €29.70) which it charged in the event that the operator was changed, during the period from 28 March to 31 May 2006, constituted an infringement of the Law on Telecommunications since such an amount dissuaded its subscribers from making use of their right to port a number.

Taking the view that the amount of the one-off fee relating to porting a number – the facility that permits a telephone subscriber to retain the same number when changing operator – could not be calculated without taking account of the costs incurred by the operator in providing that facility, PTC brought an appeal against that decision.

The Sąd Najwyższy (Polish Supreme Court), before which an appeal on a point of law was brought, has asked the Court of Justice whether the competent national regulatory authority (NRA), when ensuring that the direct charge to consumers for using the number portability facility does not act as a disincentive for the use of the facility, is obliged to take account of the costs incurred by mobile telephone network operators.

The Court recalls, first of all, that number portability is intended to remove the obstacles to consumers' freedom of choice, particularly between mobile telephone operators, and thus to ensure development of effective competition on the telephone services market.

Next, the Court notes that, with a view to achieving those aims, the Universal Service Directive¹ provides that the NRAs are to ensure that pricing for interconnection related to the provision of number portability is cost oriented and that direct charges to subscribers, if any, do not act as a disincentive for the use of these facilities.

The Court draws the conclusion that **the costs for interconnection incurred by an operator and the amount of the direct charge to the subscriber are in principle connected**. That connection makes it possible to reach a compromise between the interests of subscribers and those of the operators.

The Court emphasises that the method chosen by the NRA to assess whether the direct charge has a dissuasive effect must be consistent with the principles governing the pricing for interconnection and thus serve to ensure the objectivity, full effectiveness and transparency of that pricing.

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

Therefore, **the NRA has the task**, using an objective and reliable method, **of determining both the costs incurred by operators** in providing the number portability service **and the level of the direct charge beyond which subscribers are liable not to use that service.**

Following that examination, the NRA must oppose, if necessary, the application of a direct charge which, although in line with those costs, would, in light of all the information at the disposal of the NRA, be a disincentive to the consumer.

In that event, **the NRA may be led to take the view that the amount of the direct charge** which may be claimed from the subscriber **must be less than that which would arise from a determination made on the basis solely of the costs**, evaluated in accordance with an objective and reliable method, which the operators have to incur to ensure number portability.

Consequently, **the Court rules that the NRA must take account of the costs incurred by mobile telephone network operators in implementing the number portability service** when it assesses whether the direct charge to subscribers for the use of that service is a disincentive. **However, it retains the power to fix the maximum amount of that charge** levied by operators **at a level below the costs incurred by them, when a charge calculated only on the basis of those costs is liable to dissuade users from making use of the portability facility.**

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.

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

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