



Press and Information

Court of Justice of the European Union

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Judgment in Case C-410/09

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

Commission guidelines on market analysis and the assessment of significant market power do not impose obligations on individuals

Consequently, the fact that those guidelines have not been published in the Official Journal of the European Union in the language of a Member State does not preclude the national regulatory authority of that Member State from referring to them in a decision addressed to an individual

Under the 2003 Act of Accession¹, the acts of the institutions and of the European Central Bank adopted before accession of the new Member States to the European Union and drawn up by the Council, the Commission or the European Central Bank in the languages of those Member States are, from the date of accession, to be authentic under the same conditions as the texts drawn up in the 11 languages of the existing Member States. They are to be published in the *Official Journal of the European Union* if the texts in the 11 languages were so published.

Under the directive establishing a common regulatory framework for electronic communications networks and services ('Framework Directive')², the Commission is to publish guidelines, concerning market analysis and the assessment of significant market power³, of which national regulatory authorities ('NRAs') are to take the utmost account for the definition of relevant markets appropriate to national circumstances and, in particular, of relevant geographic markets within their territory, in accordance with the principles of competition law.

Polska Telefonia Cyfrowa sp. z o.o. ('PTC') is one of the principal telecommunications operators in Poland. In 2006, the Prezes Urzędu Komunikacji Elektronicznej (President of the Office for Electronic Communications, Poland) identified PTC as having significant market power in the market for the provision of voice call termination services and, by a decision, imposed certain regulatory requirements on PTC.

On the view that the 2002 Guidelines, on which that decision was based, cannot be relied upon against it since they had not been published in Polish in the *Official Journal of the European Union*, PTC brought an action against the NRA.

In the appeal on a point of law, the Sąd Najwyższy (Supreme Court, Poland) asks the Court of Justice whether the 2003 Act of Accession precludes a Polish NRA from referring to the 2002 Guidelines in a decision by which it imposes certain regulatory obligations on an operator of electronic communications services, where those guidelines have not been published in the *Official Journal of the European Union* in the language of the Member State in question, but that language is an official language of the European Union.

¹ Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union and the adjustments to the Treaties on which the European Union is founded (OJ 2003 L 236, p. 33).

² 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).

³ Guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services (OJ 2002 C 165, p 6).

First, the Court reiterates that, in accordance with a fundamental principle of the EU's legal order, a measure adopted by the public authorities must not be enforceable against the persons concerned before they have had an opportunity to acquaint themselves with it.

Next, the Court points out that the 2003 Act of Accession precludes the obligations contained in EU legislation which has not been published in the *Official Journal of the European Union* in the language of a new Member State, where that language is an official language of the European Union, from being imposed on individuals in that State, even though those persons could have acquainted themselves with that legislation by other means.

In that respect, the Court determines whether, owing to their content, the 2002 Guidelines impose obligations on individuals. The Court accordingly notes that the guidelines set out the principles for use by NRAs in the analysis of markets and effective competition under the regulatory framework for electronic communications.

The Court therefore concludes that the 2002 Guidelines do not contain any obligation capable of being imposed, directly or indirectly, on individuals. In consequence, the fact that those guidelines have not been published in the *Official Journal of the European Union* in Polish does not prevent the Polish NRA from referring to them in a decision addressed to an individual.

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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