



Court of Justice of the European Union

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Judgment in Joined Cases C-55/11, C-57/11 and C-58/11
Vodafone España SA v Ayuntamiento de Santa Amalia and Ayuntamiento
de Tudela

Press and Information

France Telecom España SA v Ayuntamiento de Torremayor

Only the owners of mobile telephone infrastructure may be subject to a fee for the installation of that infrastructure on public land

Therefore, operators who merely use that infrastructure are not subject to that fee

The directive on the authorisation of electronic telecommunications networks and services, the Authorisation Directive¹, allows Member States to impose a fee inter alia on the rights to install the infrastructure necessary for the provision of telecommunications services on, over or under public or private property.

Several Spanish municipalities imposed fees on mobile telephone companies for the installation, on municipal public land, of the infrastructure necessary for the provision of telecoms services. Those fees were imposed on undertakings whether or not they owned those facilities.

Vodafone España and France Telecom España, providers of mobile services in Spain, dispute, before the Spanish courts, the compatibility of the imposition of fees on operators which are mere users, and not proprietors of the electronic telecoms network, with the Authorisation Directive.

The Tribunal Supremo (Supreme Court, Spain) asks the Court of Justice whether the Authorisation Directive permits Member States to impose the fees at issue on telecoms network users.

In its judgment, the Court finds, first, that, within the framework of the Authorisation Directive, Member States may not levy any fees or charges in relation to the provision of networks and electronic communication services other than those provided for by that directive. In that respect, Member States are inter alia entitled to impose fees on rights to install facilities on, over or under public or private property.

In that respect, the Court points out that the Authorisation Directive does not define the concept of installation of facilities on, over or under public or private property or the person responsible for paying the fee for the rights relating to that installation. However, the Court notes that, according to the Framework Directive², the rights to install facilities on public or private property – that is to say physical infrastructure - **are granted to an undertaking authorised to provide public communications networks and entitled, for that purpose, to install the necessary facilities.**

Consequently, the fee for the rights relating to the installation of facilities can only be imposed on the holder of those rights, that is to say on the proprietor of the infrastructure installed on, over or under the public or private property concerned.

In those circumstances, the Court replies that **EU law prohibits Member States from imposing that fee on operators who, without owning that infrastructure, use it to provide mobile telephony services.**

¹ Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (OJ 2002 L 108, p. 21).

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 (OJ 2002 L 108, p. 33).

The Court also finds that, since the provision of the Authorisation Directive³ on the imposition of the fee is formulated in unconditional and precise terms, it may be directly relied upon by individuals before the national courts to dispute the application of a decision by a public authority that is incompatible with that provision.

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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³ Article 13.