

Press and Information Division

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Judgment of the Court in Joined Cases C-292/01 and C-293/01

Albacom SpA and Infostrada SpA v Ministero del Tesoro and Ministero delle Comunicazioni

**COMMUNITY RULES IN THE TELECOMMUNICATIONS SECTOR PROHIBIT
MEMBER STATES FROM IMPOSING FINANCIAL CHARGES ON LICENCE
HOLDERS WHICH ARE CALCULATED ON THE BASIS OF THEIR TURNOVER**

*In order to be allowed, charges must comply with the objective of completely opening the
market to competition.*

Albacom and Infostrada, both Italian companies, are holders of licences to operate public telecommunications networks. They were required by the Italian State to pay an annual charge proportional to their turnover, under a law of and an implementing decree of 2000 adopted by the Ministry of the Treasury (3% in 1999, 2.7% in 2000, 2.5% in 2001, 2% in 2002 and 1.5% in 2003). For Albacom, that amounted to EUR 2 740 000 (ITL 5 300 000 000).

Since they considered that the Italian law in practice re-established the fee which applied when telecommunications services were subject to a monopoly, the companies submitted an extraordinary petition to the President of the Republic seeking annulment of the decree. The Treasury then requested an opinion concerning the validity of that decree from the Consiglio di Stato.

The Consiglio di Stato asked the Court of Justice of the European Communities for a preliminary ruling on the interpretation of the Directive on a common framework for general authorisations and individual licences in the field of telecommunications .

In essence, it asked whether the Directive allows Member States to impose financial charges proportional to their turnover on holders of telecommunications licences.

1 Law No 448 of 23 December 1998.

2 Directive 97/13/EC of the European Parliament and of the Council of 10 April 1997 (OJ 1997 L 117, p. 15).

The Court first points out that the Community directive is among the measures for the complete liberalisation of telecommunications services and infrastructure. It establishes a common framework which also lays down rules for the financial charges which Member States may impose.

Those charges must be based on objective, non-discriminatory and transparent criteria. They must not be contrary to the objective of complete liberalisation of the market and its full opening to competition.

The Court finds that the only financial charges envisaged by the Directive are: (1) those intended to cover administration costs generated by the implementation of licences, (2) those relating to the use of scarce resources, and (3) financial contributions to the provision of universal service.

The contested charge does not correspond to any of those three types of charges.

The Court observes that the common framework for telecommunications services would be rendered redundant if Member States were free to establish the financial charges to be borne by undertakings in the sector.

Moreover, in the first phase of implementing Community directives intended to liberalise the national telecommunications market, the Italian Republic had discontinued the charge on turnover which telecommunications service franchisees were previously required to pay. The Court finds that the charge re-introduces a financial obstacle to the liberalisation process.

The Court holds that such a charge considerably increases the fees and charges which Member States are expressly authorised to impose under the Directive and creates a significant obstacle to the freedom to provide telecommunications services.

The Directive therefore prohibits Member States from imposing such charges.

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Available in English, French and Italian.

*The full text of the judgment can be found on the internet (www.curia.eu.int).
In principle it will be available from midday CET on the day of delivery.*

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