



Press and Information

Court of Justice of the European Union

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Judgment in Case C-58/08

Vodafone and Others v Secretary of State for Business, Enterprise and
Regulatory Reform

The Roaming Regulation is valid

The Community had the right to impose caps on the prices charged by mobile telephone operators for roaming calls in the interest of the internal market

The Roaming Regulation¹ lays down maximum charges that mobile phone operators may charge for voice calls made and received by users outside their own network. The regulation also imposes a ceiling for wholesale roaming charges, in other words the price paid by the consumer's network to the foreign network which that consumer uses.

The regulation was adopted on the basis of Article 95 EC, which permits the Community to adopt legislative measures in order to approximate the laws of the Member States in case of disparity or potential disparity capable of obstructing the establishment and functioning of the internal market.

In its original version, it was envisaged that the regulation would expire on 30 June 2010. In June 2009, the regulation was amended by a new regulation² which extended the charge limits to cover SMS and data calls and also prolonged the validity of the regulation until 30 June 2012.

Four of the leading European mobile telephone operators, Vodafone, Telefónica O2, T-Mobile and Orange, challenged the validity of the Roaming Regulation before the High Court of Justice of England and Wales. That court asked the Court of Justice whether the Community was entitled to adopt the regulation on the basis of Article 95 EC and whether, by setting the maximum retail price, the Community legislature had infringed the principles of subsidiarity and/or proportionality.

First, the Court finds that the object of **the regulation** is indeed to improve the conditions for the functioning of the internal market and that it **could be adopted on the basis of Article 95 EC**.

In that context, the Court states that the level of retail charges for international roaming services, at the time of adoption of the regulation, was high and the relationship between costs and charges was not such as would prevail in fully competitive markets. That high level of retail charges had been regarded as a persistent problem by public authorities and consumer protection associations throughout the Community and attempts to solve the problem using the existing legal framework had not had the effect of lowering charges. In addition, there was pressure on Member States to take measures to address the problem. In those circumstances, the Community legislature was actually confronted with a situation in which it appeared likely that divergent national measures would be adopted with the aim of lowering retail charges, but without affecting wholesale charges. Such a development could however have caused significant distortions of competition and disrupted the orderly functioning of the Community-wide roaming market, which justified the adoption of a regulation on the basis of Article 95 EC in order to protect the proper functioning of the internal market.

¹ Regulation (EC) No 717/2007 of the European Parliament and of the Council of 27 June 2007 on roaming on public mobile telephone networks within the Community and amending Directive 2002/21/EC (OJ 2007 L 171, p. 32).

² Regulation (EC) No 544/2009 of the European Parliament and of the Council of 18 June 2009 amending Regulation (EC) No 717/2007 on roaming on public mobile telephone networks within the Community and Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (OJ 2009 L 167, p.12)

Second, as regards the **proportionality** of the regulation in so far as it does not only lay down ceilings for wholesale charges but also for retail charges, **the Court finds that maximum retail charges could be considered to be appropriate and necessary for the purpose of protecting consumers against high levels of charges.**

The Court points out that before the Commission proposed the regulation, it carried out an exhaustive study of alternatives and evaluated the economic impact of various types of regulation. The average retail charge for a roaming call in the Community at the time the regulation was adopted was high (EUR 1.15 per minute, which was more than five times higher than the actual cost of providing the wholesale service) and the relationship between costs and prices was not such as should have prevailed in fully competitive markets. The tariff provided for in the regulation is significantly below that average charge and is set in relation to the ceilings for the corresponding wholesale charges, so that the retail charges reflect more accurately the costs incurred by providers.

In addition, the Community legislature could legitimately take the view that regulation of the wholesale market alone would not have brought about the same result as the regulation at issue. A reduction in wholesale charges would not necessarily have ensured a reduction in retail charges; for most consumers, roaming does not play a decisive role in the choice of provider, so operators were not subject to any competitive pressure. Furthermore, regulation of the wholesale charge alone would not have produced direct and immediate effects for consumers. Finally, the Court notes that the measures adopted were exceptional and justified by the unique characteristics of the roaming markets.

In those circumstances, an intervention limited in time in a market that is subject to competition, which makes it possible, in the immediate future, to protect consumers against excessive prices, such as that at issue, is proportionate to the aim pursued, even if it might have negative economic consequences for certain operators.

Third, the Court examined the regulation in the light of the principle of **subsidiarity**, according to which the Community may not act unless the Member States are not in a position to achieve the same goal adequately. The Court concludes that, given the interdependence of retail and wholesale charges, **the Community legislature could legitimately take the view that a common approach at Community level was necessary** to ensure the smooth functioning of the internal market, thus allowing operators to act within a single coherent regulatory framework.

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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