



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-568/15  
Zentrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main e.V. v  
comtech GmbH

### **According to Advocate General Szpunar, the cost of a call to an after-sales telephone number must not exceed the cost of a standard call**

The German company comtech GmbH markets electrical and electronic equipment. On its website, it displays the telephone number of an after-sales service containing the prefix 0180, which is used in Germany for support services at a single national rate. The cost of a call to that special (non-geographic)<sup>1</sup> number exceeds the amount that the consumer would incur at normal connection rates for calling a standard (geographic) fixed or mobile number.

A German association promoting the commercial interests of associations and undertakings (Zentrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main e.V.) has brought an action against comtech before the Landgericht Stuttgart (Regional Court, Stuttgart, Germany), seeking an injunction prohibiting that commercial practice, which it claims is unfair. The Landgericht has referred a question to the Court of Justice seeking a preliminary ruling as to whether the Directive on consumer rights<sup>2</sup> precludes the charging of such a rate.

In today's opinion, Advocate General Maciej Szpunar proposes that the Court should answer that question in the affirmative.

Mr Szpunar points out that, under the Directive, the Member States must ensure that, where the trader operates a telephone line for the purpose of contacting him by telephone in relation to the contract concluded, the consumer, when contacting the trader, is not bound to pay more than 'the basic rate'.

That means, according to the Advocate General, that the charge to the consumer cannot be higher than that for a standard call at normal market prices. Thus the consumer must not incur charges higher than the normal costs which he would incur for calling a standard (geographic) fixed or mobile number.

A higher rate than that for a normal telephone line would be likely to deter consumers from contacting the trader concerning matters such as the date of delivery, invoicing or the guarantee, because of the additional costs which that would entail. According to the Advocate General, there is an irrebuttable presumption that the telephone assistance service is included in the price already paid by the consumer, such that the use of a premium rate number would amount to making the consumer pay additional costs for the same service.

The Advocate General adds that it is irrelevant to the answer he proposes whether or not the trader receives a share of the price paid by the consumer for the call.

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**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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<sup>1</sup> €0.14 per minute from the German fixed network and €0.42 per minute from a mobile network.

<sup>2</sup> Directive of the European Parliament and of the Council of 25 October 2011 on consumer rights (OJ 2011 L 304, p.64).

**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 Opinion is published on the CURIA website on the day of delivery.

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