



Press and Information

Court of Justice of the European Union  
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Judgments in Cases C-854/19, C-5/20 and C-34/20  
Vodafone and Telekom Deutschland

## **‘Zero tariff’ options are contrary to the regulation on open internet access**

*It follows that limitations on bandwidth, tethering or on use when roaming, on account of the activation of such an option, are also incompatible with EU law*

A ‘zero tariff’ option is a commercial practice whereby an internet access provider applies a ‘zero tariff’, or a tariff that is more advantageous, to all or part of the data traffic associated with an application or category of specific applications, offered by partners of that access provider. Those data are therefore not counted towards the data volume purchased as part of the basic package. Such an option, offered in the context of limited packages, thus allows internet access providers to increase the attractiveness of their offer.

Two German courts<sup>1</sup> put questions to the Court of Justice concerning the compatibility with EU law of the limitation, on the part of an internet access provider, on bandwidth, tethering or on use when roaming, where the customer chooses such a ‘zero tariff’ option. Those courts must rule on disputes relating to such limitations between, on the one hand, Vodafone<sup>2</sup> or Telekom Deutschland,<sup>3</sup> and, on the other, the Bundesnetzagentur (Federal Network Agency, Germany)<sup>4</sup> or the Bundesverband der Verbraucherzentralen,<sup>5</sup> a German consumer protection organisation.

As regards Vodafone, the ‘zero tariff’ options called ‘Vodafone Pass’ (‘Video Pass’, ‘Music Pass’, ‘Chat Pass’ and ‘Social Pass’) are valid only in the national territory, that is to say, in Germany. Abroad, the data volume consumed when using the services of the partner undertakings is offset against the data volume included in the basic package. In addition, when use is via tethering (hotspot), Vodafone counts the data consumption towards the data volume included in the package.

Telekom Deutschland offers its end customers, for some of its packages, an additional option (also referred to as ‘add-on option’) in the form of a free ‘zero tariff’ option called ‘Stream On’.<sup>6</sup> Activation of that option allows the data volume consumed by audio and video streamed by Telekom’s content partners not to be counted towards the data volume included in the basic package; once that data volume is used up, that generally leads to a reduction in transmission speed. However, by activating that option, the end customer accepts the bandwidth being limited to a maximum of 1.7 Mbit/s for video streaming, irrespective of whether the videos are streamed by content partners or other providers.

By today’s judgments, the Court of Justice notes that a ‘zero tariff’ option, such as those at issue in the main proceedings, draws a distinction within internet traffic, on the basis of commercial considerations, by not counting towards the basic package traffic to partner applications. Such a

<sup>1</sup> Namely, the Verwaltungsgericht Köln (Administrative Court, Cologne) (Cases C-854/19 and C-34/20) and the Oberlandesgericht Düsseldorf (Higher Regional Court, Düsseldorf) (Case C-5/20).

<sup>2</sup> Vodafone GmbH.

<sup>3</sup> Telekom Deutschland GmbH.

<sup>4</sup> Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen (Federal Agency for Electricity, Gas, Telecommunications, Post and Rail Networks, Germany).

<sup>5</sup> Bundesverband der Verbraucherzentralen und Verbraucherverbände – Verbraucherzentrale Bundesverband eV (Federal Union of Consumer Organisations and Associations).

<sup>6</sup> Option which existed initially in the versions ‘StreamOn Music’, ‘StreamOn Music&Video’, ‘MagentaEINS StreamOn Music’ and ‘MagentaEINS StreamOn Music&Video’.

commercial practice is contrary to the general obligation of equal treatment of traffic, without discrimination or interference, as required by the regulation on open internet access.<sup>7 8</sup>

Since those limitations on bandwidth, tethering or on use when roaming apply only on account of the activation of the 'zero tariff' option, which is contrary to the regulation on open internet access, they are also incompatible with EU law.

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**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 judgments ([C-854/19](#), [C-5/20](#) and [C-34/20](#)) is published on the CURIA website on the day of delivery.*

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*Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106*

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<sup>7</sup> Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union (OJ 2015 L 310, p. 1).

<sup>8</sup> See judgment of the Court of Justice of 15 September 2020, *Telenor Magyarország*, [C-807/18 and C-39/19](#); see also [PR No 106/20](#).