Request for a preliminary ruling from the Sąd Najwyższy (Poland) lodged on 20 August 2014 — Polkomtel Sp. z o.o. v Prezes Urzędu Komunikacji Elektronicznej

(Case C-397/14)

(2014/C 431/14)

Language of the case: Polish

Referring court

Sąd Najwyższy

Parties to the main proceedings

Applicant: Polkomtel Sp. z o.o.

Defendant: Prezes Urzędu Komunikacji Elektronicznej

Intervening party: Telekomunikacja Polska S.A. (now Orange Polska S.A.), whose seat is in Warsaw

Questions referred

1. Must Article 28 of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive), ([1]) in its initial version, be interpreted as meaning that it is necessary to ensure that not only end-users from other Member States, but also end-users from the Member State of a particular public communications network operator, have access to non-geographic numbers, with the result that the national regulatory authority's assessment of whether that obligation has been fulfilled is subject to the requirements arising from the principle of effectiveness of EU law and the principle of interpreting national law in conformity with EU law?

2. If the answer to Question 1 is in the affirmative, must Article 28 of Directive 2002/22, read in conjunction with Article 16 of the Charter of Fundamental Rights, be interpreted as meaning that, in order to fulfil the obligation referred to in the first of those provisions, it is possible to use the procedure laid down for national regulatory authorities in Article 5(1) of Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive)? ([2])

3. Must Article 8(3) of Directive 2002/19, read in conjunction with Article 28 of Directive 2002/22 and Article 16 of the Charter of Fundamental Rights, or Article 8(3) of Directive 2002/19, read in conjunction with Article 5(1) of Directive 2002/19 and Article 16 of the Charter of Fundamental Rights, be interpreted as meaning that, in order to ensure that the end-users of a national public communications network operator have access to services using non-geographic numbers supplied on the network of another national operator, the national regulatory authority may lay down rules governing the payment of operators for call origination by having recourse to the call termination rates set in respect of one of those operators which are cost orientated pursuant to Article 13 of Directive 2002/19, where the operator proposed that such a rate be applied during failed negotiations held to fulfil the obligation laid down in Article 4 of Directive 2002/19?

([1]) OJ 2002 L 108, p. 51.
([2]) OJ 2002 L 108, p. 7.

Appeal brought on 20 August 2014 by Basic AG Lebensmittelhandel against the judgment of the General Court (Sixth Chamber) delivered on 26 June 2014 in Case T-372/11: Basic AG Lebensmittelhandel v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-400/14 P)

(2014/C 431/15)

Language of the case: English

Parties

Appellant: Basic AG Lebensmittelhandel (represented by: D. Altenburg, T. Haug, Rechtsanwälte)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Repsol YPF, SA

Form of order sought

The appellant requests that:

— The decision of the Court of Justice of the European Union (General Court) of June 26, 2014 (Case T-372/11) shall be annulled and the case shall be referred to the General Court for reapplication;

— The defendant shall bear all costs of this proceeding.

Pleas in law and main arguments

The applicant contests the General Court's interpretation of the definition of '*distribution services*' which is — as a matter of law — a preliminary issue in the assessment of similarity of services. The applicant consequently claims that the General Court has taken an incorrect perception as the legal basis for its subsequent assessment concerning the likelihood of confusion between the trademarks at issue.

The applicant would point out that the ECJ's main function is to supply a uniform interpretation of the concept and scope of the respective services (C-418/02, paragraph 33 — Praktiker; joined cases C-414/99 to C-416/99 Zino Davidoff and Levi Strauss, paragraphs 42 and 43) and of the judgment 'IP-Translator' (C-307/10, June 19, 2012) whereby '*goods and services have to be definable in an objective manner in order to fulfil the trademark's function as an indication of origin*' and asks the ECJ for a '*sufficient precise and clear*' definition of '*distribution services*'.

In the opinion of the applicant, the service 'distribution' has a very narrow scope and comprises only the activities '*transport; packaging and storage of goods*' but not 'retail and wholesale' services. The applicant further points out that the Court of Justice clarified in the 'Praktiker' judgment that the objective of 'retail' (class 35) is — in contrast to the services in class 39 — the sale of goods to consumers, whereas these activities consist, '*inter alia, in selecting an assortment of goods offered for sale and in offering a variety of services aimed at inducing the consumer to conclude the transaction with the trader in question rather than with a competitor*'.

The general classification of 'distribution' in Nice Class 39 cannot be ignored in the view of the applicant since the ECJ expressly underlined its argumentation in its Praktiker decision in consideration of the Explanatory Note of Nice Class 35 (C-418/02, paragraph 36).

Therefore the decision of the General Court must be annulled and referred back for reapplication.

Request for a preliminary ruling from the Nejvyšší soud České republiky (Czech Republic) lodged on 25 August 2014 — Marie Matoušková, court commissioner in inheritance proceedings v Misha Martinus and Elisabeth Jekaterina Martinus, represented by David Sedlák as trustee; Beno Jeriël Eljada Martinus

(Case C-404/14)

(2014/C 431/16)

Language of the case: Czech

Referring court

Nejvyšší soud České republiky