



Reports of Cases

ORDER OF THE GENERAL COURT (Sixth Chamber)

15 April 2021 *

(Reference for a preliminary ruling – Article 99 of the Rules of Procedure of the Court of Justice – Directive 2011/83/EU – Consumer contracts – Article 21 – ‘Communication by telephone’ – Telephone line operated by a trader so that consumers may contact it for matters relating to a previously concluded contract – Provision by a company, as part of the after-sales service for previously concluded contracts, of two telephone lines, namely a premium-rate landline and a mobile telephone line that is free of charge – Media content targeted at customers – Acceptability of a helpline which charges customers at a rate exceeding the basic rate – Concept of ‘basic rate’)

In Case C-594/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Markkinaoikeus (Market Court, Finland), made by decision of 11 November 2020, received at the Court on 12 November 2020, in the proceedings

Kuluttaja-asiamies

v

MiGame Oy,

THE COURT (Sixth Chamber),

composed of L. Bay Larsen, President of the Chamber, C. Toader (Rapporteur) and N. Jääskinen, Judges,

Advocate General: G. Pitruzzella

Registrar: A. Calot Escobar,

having decided, after hearing the Advocate General, to give a decision by reasoned order, in accordance with Article 99 of the Rules of Procedure of the Court,

makes the following

* Language of the case: Finnish.

Order

- 1 This reference for a preliminary ruling concerns the interpretation of Article 21 of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ 2011 L 304, p. 64).
- 2 The reference was submitted in the course of proceedings between the Kuluttaja-asiamies (Consumer Ombudsman, Finland) ('the Consumer Ombudsman') and MiGame Oy, a company established in Finland, concerning media content targeted at that company's customers displaying a customer service telephone number at a rate exceeding the basic rate for consumers who had previously concluded contracts with it.

Legal context

European Union law

- 3 Article 1 of Directive 2011/83 defines its subject matter as follows:

'The purpose of this Directive is, through the achievement of a high level of consumer protection, to contribute to the proper functioning of the internal market by approximating certain aspects of the laws, regulations and administrative provisions of the Member States concerning contracts concluded between consumers and traders.'

- 4 Article 4 of that directive, entitled 'Level of harmonisation', states:

'Member States shall not maintain or introduce, in their national law, provisions diverging from those laid down in this Directive, including more or less stringent provisions to ensure a different level of consumer protection, unless otherwise provided for in this Directive.'

- 5 Article 21 of that directive, entitled 'Communication by telephone', provides:

'Member States shall 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.'

The first subparagraph shall be without prejudice to the right of telecommunication services providers to charge for such calls.'

Finnish law

- 6 Article 21 of Directive 2011/83 was transposed into Finnish law by Paragraph 14 of Chapter II of the kuluttajansuojalaki (38/1978) (Law on consumer protection (38/1978)) of 20 January 1978, as amended by the laki kuluttajansuojalain muuttamisesta (1211/2013) (Law amending the Law on consumer protection (1211/2013)) of 30 December 2013 ('Law 38/1978').

7 Paragraph 14 of Chapter II of Law 38/1978 provides:

‘In the case of a telephone communication concerning a consumer goods contract which the trader has concluded, the trader may not use a service the use of which incurs, for that consumer, costs that exceed the consumer’s telephone contract rate or costs that exceed a calculated normal rate, corresponding to the telephone contract rate.

The calculated normal rate shall be a rate based on the minimum price of the telecommunications undertakings and the market shares, plus 20%. The Viestintävirasto (Telecommunications Authority, Finland) shall calculate and publish the calculated normal rate annually. More detailed provisions on the method for calculating and publishing the normal rate shall be published in a decree of the Ministry of Justice.

Where the trader fails to comply with the provisions of the current paragraph, the consumer shall be entitled to receive compensation from the trader for telephone costs that exceed the maximum rate possible, in accordance with the first subparagraph.

...’

8 The first subparagraph of Paragraph 16 of Chapter II of Law 38/1978, entitled ‘Prohibition’, states:

‘Where necessary for reasons of consumer protection, a trader may be prohibited from continuing or employing a practice that is contrary to the provisions of the present Chapter or the provisions enacted pursuant thereto, or any comparable practice. The prohibition shall include a fine, unless that is not necessary for specific reasons.’

The dispute in the main proceedings and the questions referred for a preliminary ruling

9 MiGame is mainly active in the marketing of video games.

10 The referring court states that, for a certain period of time, that company provided an initial national customer service number, 0600-..., on the websites latauskoodit.fi, migame.fi and viihdema.fi, on its Facebook pages and in emails sent to consumers for matters relating to previously concluded contracts, for which it was made clear that, in most cases, calls to that number were charged at the rate of EUR 1.98 per minute.

11 Thereafter, in 2019 and 2020, in addition to that initial number, a second customer service number was also displayed in some cases, in particular, through the following statement: ‘Our customer service can be contacted as a matter of priority by telephone via our 24-hour telephone service: 0600-... (EUR 1.98 per minute). If your inquiry concerns an order that has already been placed, you can also contact our freephone customer service number 045-... (11 a.m. to 5 p.m. on weekdays).’ That court states, again by way of example, that the mobile telephone number, which is free of charge, is also found in the delivery terms and conditions on the website latauskoodit.fi, whereas only the chargeable customer service number was displayed on the homepage and in the contact details section of that website.

- 12 The Consumer Ombudsman brought an action before the Markkinaoikeus (Market Court, Finland) on 20 August 2019 with a view to prohibiting MiGame, subject to the payment of a fine pursuant to Paragraph 16 of Chapter II of Law 38/1978, from continuing or resuming the practice of providing its customers with a premium-rate telephone number in respect of previously concluded consumer-goods contracts.
- 13 In support of its action, the Consumer Ombudsman claims that Directive 2011/83 precludes a trader from providing customers with a telephone number charged at a rate exceeding the basic rate, even where that trader simultaneously provides those customers with another number at a rate that does not exceed the basic rate. Furthermore, the Consumer Ombudsman submits that the normal rate, laid down in Paragraph 14 of Chapter II of Law 38/1978, in practice, exceeds the actual costs for the consumer of a standard geographic landline or mobile telephone line. It adds that the concept of ‘basic rate’ in Article 21 of Directive 2011/83 precludes the cost of a call, relating to a previously concluded contract, to a helpline operated by the trader from exceeding the cost of a call to a standard geographic landline or mobile telephone line.
- 14 MiGame asks the referring court to dismiss the action on the ground that it has already implemented all the changes as requested by the Consumer Ombudsman and that it has ceased the practice described in the latter’s action.
- 15 With a view to resolving the dispute before it, the referring court seeks to establish whether a trader infringes consumer protection legislation by providing a chargeable national telephone number for making telephone calls in relation to a contract for the sale of consumer goods concluded previously, and, consequently, whether the continuation or resumption of that practice must be prohibited.
- 16 Under those circumstances, the Markkinaoikeus (Market Court) decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:
 - ‘(1) Is the first subparagraph of Article 21 of Directive [2011/83] to be interpreted as precluding a trader from providing, in addition to a telephone number charged at no more than the basic rate, a telephone number which the consumer may use for matters relating to a contract previously concluded and for the use of which a price exceeding the basic rate is charged, and, furthermore, in the event that the provision of a telephone number that charges a rate exceeding the basic rate is deemed to be compatible with Article 21 in certain circumstances, are the factors of, for example, whether it is easy to find the telephone number subject to the basic rate, whether the intended purpose of the telephone numbers is specified with sufficient clarity and whether there are significant differences in the availability or level of customer service relevant to the assessment?
 - (2) Must the concept of “basic rate” under Article 21 of Directive 2011/83 be interpreted as meaning that a trader may provide, as a customer service number for matters relating to a contract concluded previously, only a standard geographic landline or mobile telephone line or a number that is free of charge for consumers, and, furthermore, in the event that the trader is permitted to provide another telephone number, what is the maximum amount that a consumer can be charged for the use of that telephone number if he or she has concluded a telephone contract as a package deal?’

Questions for a preliminary ruling

- 17 Under Article 99 of its Rules of Procedure, where, inter alia, the reply to a question referred to the Court for a preliminary ruling may be clearly deduced from existing case-law or where the answer to the question referred admits of no reasonable doubt, the Court may at any time, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide to rule by reasoned order.
- 18 In the present case, that provision must be applied.
- 19 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether the first subparagraph of Article 21 of Directive 2011/83 must be interpreted as precluding a trader from providing its customers with, in addition to a telephone number charged at no more than the basic rate, a telephone number charged at a rate exceeding that rate which may be used by consumers who concluded a contract with that trader.
- 20 It must be borne in mind, in the first place, that, as is apparent from the wording of that provision, when the trader operates a telephone line for the purpose of being contacted by telephone for matters relating to a previously concluded contract, the consumer, when contacting that trader, does not have to pay more than the basic rate.
- 21 As regards the ‘basic rate’ for the purposes of the first subparagraph of Article 21 of Directive 2011/83, it must be pointed out that it refers to an ordinary rate for a telephone call at no additional cost for the consumer. The fact that, under the second subparagraph of Article 21 of that directive, telephone service providers are permitted to charge consumers for telephone calls is irrelevant, in that regard, to the previous considerations, provided that the amounts charged do not exceed the ordinary charges which consumers would incur for a standard call (see, to that effect, judgment of 2 March 2017, *Zentrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main*, C-568/15, EU:C:2017:154, paragraphs 27 and 30).
- 22 In the second place, it should be borne in mind that the Court held in paragraph 33 of the judgment of 13 September 2018, *Starman* (C-332/17, EU:C:2018:721), that the first subparagraph of Article 21 of Directive 2011/83 must be interpreted as precluding a situation in which, if a trader has provided to all its customers one or more speed-dial numbers at a rate exceeding the basic rate, consumers who have concluded a contract with the trader in question pay more than the basic rate when contacting that trader by telephone for matters relating to that contract.
- 23 In the present case, it follows from the information provided by the referring court that although the telephone number available at the basic rate was sometimes mentioned in certain media targeted at MiGame customers, it is common ground that that was not always the case and, at the very least, those media more often than not prioritised the display of the premium-rate customer service number.
- 24 Under the first subparagraph of Article 21 of Directive 2011/83, in the event that, first, a contract was concluded between the trader and the consumer and, secondly, the consumer’s call concerns that contract, that consumer does not have to pay more than the basic rate to clarify matters relating to the performance of that contract or exercise rights guaranteed by that directive (see, to that effect, judgment of 13 September 2018, *Starman*, C-332/17, EU:C:2018:721, paragraphs 29 and 30).

- 25 It follows from the context of Article 21 of Directive 2011/83 that, where a consumer exercises his or her rights under the directive by means of telephone calls, a trader may impose on that consumer only those costs that are no more than the basic rate (judgment of 13 September 2018, *Starman*, C-332/17, EU:C:2018:721, paragraph 25).
- 26 It is true that that provision does not preclude a trader from providing different telephone numbers to the public, depending on who is making those calls and their purpose and taking into account, in particular, the fact that the caller has previously concluded a contract with the trader. Nevertheless, a telephone number specifically provided for dealing with consumers who have concluded a contract with the trader and which is subject to a rate that is no more than the basic rate must be mentioned in media directed at that trader's customers and must be easily identifiable on those media.
- 27 In that respect, with a view to avoiding any potential confusion in the public mind, while the different telephone lines made available to its customers may simultaneously be mentioned in those media, the premium-rate telephone number cannot be given prominence and the uses for which those different telephone lines are intended must be specified in a sufficiently clear and comprehensible manner. Moreover, there should be no significant difference in terms of accessibility and the quality of service between a telephone number that complies with the basic rate and a premium-rate number, to the detriment of the customer service offered to consumers who have concluded a contract with that trader.
- 28 Those findings are consistent with the purpose pursued by Directive 2011/83, which, as follows from Article 1 thereof, is to provide a high level of consumer protection by ensuring that consumers are informed and secure in transactions with traders.
- 29 It is of fundamental importance in ensuring and effectively implementing consumer rights that the consumer is entitled, under the first subparagraph of Article 21 of Directive 2011/83, to communicate effectively with the trader once the contract is concluded, without incurring any additional costs.
- 30 It should also be pointed out that it follows from Article 4 of Directive 2011/83 that the level of consumer protection ensured by national provisions as provided for by Member States cannot diverge from the level laid down in that directive unless otherwise provided for by that directive. In that regard, the Court has held that Article 21 of that directive does not constitute an exception to the Member States' obligation not to deviate from the level of protection laid down by that directive (judgment of 13 September 2018, *Starman*, C-332/17, EU:C:2018:721, paragraph 28).
- 31 In the light of all of the foregoing considerations, the answer to the questions referred for a preliminary ruling is that the first subparagraph of Article 21 of Directive 2011/83 must be interpreted as precluding a trader from providing customers with, in addition to a telephone number charged at no more than the basic rate, a telephone number charged at a rate exceeding that rate which may be used by consumers who concluded a contract with that trader.

Costs

- 32 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Sixth Chamber) hereby orders:

The first subparagraph of Article 21 of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council must be interpreted as precluding a trader from providing customers with, in addition to a telephone number charged at no more than the basic rate, a telephone number charged at a rate exceeding that rate which may be used by consumers who concluded a contract with that trader.

[Signatures]