



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

22 January 2015*

(Reference for a preliminary ruling — Electronic communications networks and services — Directive 2002/20/EC — Article 5(6) — Rights of use for radio frequencies and numbers — Directive 2002/21/EC — Article 4(1) — Right of appeal against a decision of a national regulatory authority — Meaning of ‘undertaking affected by a decision of a national regulatory authority’ — Article 9b — Transfer of individual rights to use radio frequencies — Reallocation of rights to use radio frequencies following the merger of two undertakings)

In Case C-282/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgerichtshof (Austria), made by decision of 24 April 2013, received at the Court on 24 May 2013, in the proceedings

T-Mobile Austria GmbH

v

Telekom-Control-Kommission,

intervening parties:

Hutchison Drei Austria Holdings GmbH, formerly Hutchison 3G Austria Holdings GmbH,

Hutchison Drei Austria GmbH, formerly Hutchison 3G Austria GmbH and Orange Austria Telecommunication GmbH,

Stubai SCA,

Orange Belgium SA,

A1 Telekom Austria AG,

Bundesministerin für Verkehr, Innovation und Technologie,

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, A. Ó Caoimh, C. Toader, E. Jarašiūnas (Rapporteur) and C.G. Fernlund, Judges,

Advocate General: M. Szpunar,

Registrar: I. Illéssy, Administrator,

* Language of the case: German.

having regard to the written procedure and further to the hearing on 15 May 2014,

after considering the observations submitted on behalf of:

- T-Mobile Austria GmbH, by E. Lichtenberger, Rechtsanwalt,
- the Telekom-Control-Kommission, by W. Feiel, Rechtsanwalt,
- Hutchison Drei Austria Holdings GmbH and Hutchison Drei Austria GmbH, by B. Burtscher, Rechtsanwalt,
- A1 Telekom Austria AG, by H. Kristoferitsch and S. Huber, Rechtsanwältin,
- the Austrian Government, by A. Posch, acting as Agent,
- the European Commission, by G. Braun and L. Nicolae, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 9 September 2014,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 4 and 9b of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ 2002 L 108, p. 33), as amended by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 (OJ 2009 L 337, p. 37) ('the Framework Directive'), and Article 5(6) of Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) (OJ 2002 L 108, p. 21), as amended by Directive 2009/140 ('the Authorisation Directive').
- 2 The request has been made in proceedings between T-Mobile Austria GmbH ('T-Mobile Austria') and the Telekom-Control-Kommission (Telecommunications Control Commission; 'the TCK') concerning the TCK's refusal to grant T-Mobile Austria status as a 'party' to a procedure for the authorisation of the modification of the ownership structure resulting from the takeover of Orange Austria Telecommunication GmbH ('Orange') by Hutchison 3G Austria GmbH, now Hutchison Drei Austria GmbH ('Hutchison Drei Austria'), and the possibility of bringing an appeal against the decision adopted by the TCK at the end of that procedure.

Legal context

EU law

- 3 Paragraph 1 of Article 4 of the Framework Directive, entitled 'Right of appeal', provides:

'Member States shall ensure that effective mechanisms exist at national level under which any user or undertaking providing electronic communications networks and/or services who is affected by a decision of a national regulatory authority ["NRA" or "NRAs", as appropriate] has the right of appeal against the decision to an appeal body that is independent of the parties involved. This body, which

may be a court, shall have the appropriate expertise to enable it to carry out its functions effectively. Member States shall ensure that the merits of the case are duly taken into account and that there is an effective appeal mechanism.

...'

- 4 Paragraph 2 of Article 8 of the Framework Directive, entitled 'Policy objectives and regulatory principles', states:

'The [NRAs] shall promote competition in the provision of electronic communications networks, electronic communications services and associated facilities and services by inter alia:

...

(b) ensuring that there is no distortion or restriction of competition in the electronic communications sector, including the transmission of content;

...

(d) encouraging efficient use and ensuring the effective management of radio frequencies and numbering resources.'

- 5 Under Article 9b of the Framework Directive, entitled 'Transfer or lease of individual rights to use radio frequencies':

'1. Member States shall ensure that undertakings may transfer or lease to other undertakings in accordance with conditions attached to the rights of use of radio frequencies and in accordance with national procedures individual rights to use radio frequencies in the bands for which this is provided in the implementing measures adopted pursuant to paragraph 3.

In other bands, Member States may also make provision for undertakings to transfer or lease individual rights to use radio frequencies to other undertakings in accordance with national procedures.

...

2. Member States shall ensure that an undertaking's intention to transfer rights to use radio frequencies, as well as the effective transfer thereof is notified in accordance with national procedures to the competent national authority responsible for granting individual rights of use and is made public. ...

...'

- 6 Paragraphs 2 and 6 of Article 5 of the Authorisation Directive, entitled 'Rights of use for radio frequencies and numbers', provide:

'2. ...

Without prejudice to specific criteria and procedures adopted by Member States to grant rights of use of radio frequencies to providers of radio or television broadcast content services with a view to pursuing general interest objectives in conformity with Community law, the rights of use for radio frequencies and numbers shall be granted through open, objective, transparent, non-discriminatory and proportionate procedures, and, in the case of radio frequencies, in accordance with the provisions of Article 9 of [the Framework Directive]. An exception to the requirement of open procedures may

apply in cases where the granting of individual rights of use of radio frequencies to the providers of radio or television broadcast content services is necessary to achieve a general interest objective as defined by Member States in conformity with Community law.

When granting rights of use, Member States shall specify whether those rights can be transferred by the holder of the rights, and under which conditions. In the case of radio frequencies, such provision shall be in accordance with Articles 9 and 9b of [the Framework Directive].

...

6. Competent national authorities shall ensure that radio frequencies are efficiently and effectively used in accordance with Articles 8(2) and 9(2) of [the Framework Directive]. They shall ensure competition is not distorted by any transfer or accumulation of rights of use of radio frequencies. For such purposes, Member States may take appropriate measures such as mandating the sale or the lease of rights to use radio frequencies.'

Austrian law

- 7 Paragraph 8 of the General Law on Administrative Procedure (Allgemeines Verwaltungsverfahrensgesetz) states:

'Persons who avail themselves of an activity of the authority or to whom the activity of the authority relates shall be interested parties and, in so far as they are interested by virtue of a legal entitlement or a legal interest, they shall be parties to the proceedings.'

- 8 Subparagraph 1 of Paragraph 54 of the 2003 Law on Telecommunications (Telekommunikationsgesetz 2003, BGBl. I, 70/2003; 'the TKG 2003'), entitled 'Allocation of frequencies', provides:

'Frequencies shall be allocated in accordance with the frequency usage and allocation plan according to objective, transparent, non-discriminatory and proportionate criteria, on the basis of transparent and objective procedures and in compliance with technological and services neutrality.'

- 9 Paragraph 55 of the TKG 2003, entitled 'Allocation of frequencies by the regulatory authority', is worded as follows:

'(1) The [NRA] shall allocate the frequencies that have been assigned to it to the applicant who satisfies the general conditions set out in point 2 of Paragraph 55(2) and guarantees the most efficient use of the frequencies. ...

(2) The [NRA] shall carry out the allocation of frequencies in accordance with the principles of open, fair and non-discriminatory procedures and of economic efficiency. The intended allocation shall be put out to public tender

1. if a need has been identified of the NRA's own motion or
2. on application and if the [NRA] considers that the applicant is in a position to satisfy the conditions relating to the right of use of frequencies. ...

...

(8) The applicants constitute a group as regards the allocation procedure. ...

...'

- 10 Paragraph 56 of the TKG 2003, entitled ‘Transfer of frequencies, modification of ownership structure’, provides:

‘(1) The transfer of rights to use frequencies allocated by the [NRA] shall require prior authorisation by the [NRA]. The [NRA] shall publish the application for, and its decision on, authorisation to transfer the rights to use frequencies. In its decision, the [NRA] shall, on an individual basis, assess the impact — in particular, the technical impact — of a transfer on competition. Obligations may be attached to the authorisation, to the extent this is necessary to avoid any adverse effect on competition. Authorisation shall be refused in any case where, despite the imposition of obligations, the transfer is likely adversely to affect competition.

(1a) If it becomes apparent, in the context of the transfer of the rights to use frequencies, that a modification of the nature and extent of use of the frequencies is required in order to avoid any adverse technical impact on competition, that modification shall be made in accordance with the provisions of Paragraph 57.

(2) Fundamental modifications of the ownership structure of undertakings to which rights to use frequencies have been allocated in a procedure under Article 55 shall require prior authorisation by the [NRA]. The third to last sentences of subparagraph 1 shall apply *mutatis mutandis*.

...’

- 11 Subparagraph 4 of Paragraph 57 of the TKG 2003, entitled ‘Modification of the allocation of frequencies’, provides:

‘Upon application by the holder of the rights, the [NRA] may (Paragraph 54(3)) modify the prescribed usage of the frequencies. ...’

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

- 12 It emerges from the documents before the Court that the dispute in the main proceedings has arisen in the context of the takeover of Orange, owned by Stubai SCA and Orange Belgium SA, by Hutchison Drei Austria. A1 Telekom Austria AG (‘A1 Telekom Austria’) was involved in that transaction as transferee of certain rights to use radio frequencies held by the new entity that resulted from that takeover.
- 13 On 7 May 2012, the transaction between Hutchison Drei Austria and Orange, which constituted a concentration within the meaning of Article 3(1)(b) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ 2004 L 24, p. 1), was notified to the European Commission.
- 14 On 23 May 2012, in accordance with Paragraph 56(2) of the TKG 2003, Hutchison Drei Austria and Orange applied to the TCK for authorisation of the modification of their ownership structure that was to be brought about by that concentration.
- 15 On 9 July 2012, A1 Telekom Austria, Hutchison Drei Austria and Orange applied to the TCK for authorisation of the transfer of certain frequencies in accordance with Paragraph 56(1) of the TKG 2003.

- 16 On 10 July 2012, in the context of the procedure initiated on 23 May 2012 by Hutchison Drei Austria and Orange, T-Mobile Austria submitted observations to the TCK in which it expressed its doubts about the takeover of Orange by Hutchison Drei Austria and the modification of their ownership structure. It requested that obligations be imposed on those companies in order to avoid any adverse effect on competition.
- 17 On 10 December 2012, T-Mobile Austria applied to the TCK to be granted status as a ‘party’ to that procedure, within the meaning of Paragraph 8 of the General Law on Administrative Procedure. In this connection, it sought the right to be formally heard in that procedure and to receive notification of the applicants’ pleadings, expert opinions, minutes of hearings and the final decision, on the one hand, and to be able to bring an appeal against that decision, on the other.
- 18 By decision of 12 December 2012, the Commission authorised the concentration planned by the undertakings and made that authorisation subject to certain commitments. In that procedure, T-Mobile Austria was permitted to attend the oral hearing as an interested third party and participated in the market testing carried out in respect of the commitments of Hutchison Drei Austria.
- 19 On 13 December 2012, the TCK also authorised the modification of the ownership structure sought by Hutchison Drei Austria and Orange, provided that, inter alia, the conditions laid down in the Commission’s decision were satisfied and the undertakings transferred certain rights to use radio frequencies to A1 Telekom Austria. The TCK thus authorised the transfer of rights to use radio frequencies from Hutchison Drei Austria and Orange to A1 Telekom Austria. In addition, it rejected T-Mobile Austria’s application to be granted status as a party to the procedure for authorisation of the modification of the ownership structure of Hutchison Drei Austria and Orange.
- 20 In its decision rejecting T-Mobile Austria’s latter application, the TCK took the view that neither national legislation nor EU law require that party status be granted to an undertaking providing electronic communications networks or services which fears that the modification of the ownership structure of competing undertakings may adversely affect its economic situation, in the procedure concerning the authorisation of that modification.
- 21 T-Mobile Austria brought an appeal against that decision of the TCK before the Verwaltungsgerichtshof (Administrative Court; or ‘the referring court’). In support of that appeal, T-Mobile Austria argues that, in a procedure for authorisation, by the NRA, of the modification of the ownership structure of undertakings or of the transfer of rights to use radio frequencies, a competitor, which itself holds rights to use radio frequencies, must be regarded as ‘affected’ for the purposes of Article 4(1) of the Framework Directive. T-Mobile Austria relies, in that regard, on the judgment in *Tele2 Telecommunication* (C-426/05, EU:C:2008:103).
- 22 The referring court is uncertain whether T-Mobile Austria, holder of rights to use radio frequencies, is to be regarded as ‘affected’, for the purposes of Article 4(1) of the Framework Directive, by a decision adopted in the context of a procedure for the authorisation of the modification of the ownership structure resulting from the merger-acquisition of other undertakings providing electronic communications networks or services. It explains that, in accordance with its judgment delivered on 26 March 2008, status as a party to that procedure, within the meaning of Paragraph 8 of the General Law on Administrative Procedure, ought to be granted to T-Mobile Austria if the latter is to be regarded as ‘affected’ under the terms of that provision.
- 23 The referring court observes that, prima facie, the procedure does not directly confer rights on a third party undertaking whose legal situation remains unchanged in so far as it may continue to use, in the same manner, the radio frequencies already allocated to it. However, it is conceivable, according to that court, that T-Mobile Austria, as a holder of rights to use radio frequencies, is to be regarded as ‘affected’ for the purposes of Article 4(1) of the Framework Directive.

24 The referring court observes that, in a procedure concerning modification of the ownership structure of undertakings that are holders of rights to use radio frequencies, appropriate accompanying measures may be required in order to avoid any distortion of competition owing to the allocation of those rights, Article 5(6) of the Authorisation Directive referring expressly to ‘sale ... of rights to use radio frequencies’. The referring court observes that that is precisely what occurred in the present case: since the takeover of Orange by Hutchison Drei Austria raised fears of such a distortion of competition, the TCK took the view that it was necessary for Hutchison Drei Austria to transfer a part of its rights to use radio frequencies to another undertaking. According to the referring court, such an obligation affects not only the legal position of the undertaking holding the rights of use that are to be transferred and that of the acquirer of those rights, but also the legal position of other undertakings that already have rights to use radio frequencies, such as T-Mobile Austria, who are potential acquirers or whose respective share of radio frequencies is modified as a result of the merger and the transfer of part of the rights to use radio frequencies to another undertaking required in order to mitigate the negative impact of that merger on competition.

25 The referring court adds that, when radio frequencies are initially allocated by the NRA, the applicants constitute a group as regards the procedure and that allocation of radio frequencies has to be carried out in accordance with the principles of open, fair and non-discriminatory procedures specified in Article 5(2) of the Authorisation Directive. Any subsequent transfer of rights to use radio frequencies that alters that allocation, whether contractual or mandated by the NRA pursuant to Article 5(6) of that directive, ought, therefore, also to be subject to those principles.

26 In those circumstances, the Verwaltungsgerichtshof decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

‘Are Articles 4 and 9b of the Framework Directive and Article 5(6) of the Authorisation Directive to be interpreted as meaning that they confer on a competitor the status, in a national procedure under Article 5(6) of the Authorisation Directive, of an undertaking which is “affected” for the purposes of Article 4(1) of the Framework Directive?’

27 By order of the President of the Court of 30 September 2013, the referring court’s request that the present reference for a preliminary ruling be dealt with under the expedited procedure provided for in Article 23a of the Statute of the Court of Justice of the European Union and Article 105 of the Rules of Procedure of the Court was refused.

Consideration of the question referred

28 By its question, the referring court asks, in essence, whether Articles 4(1) and 9b of the Framework Directive and Article 5(6) of the Authorisation Directive must be interpreted as meaning that an undertaking, holding rights to use radio frequencies and competing with the parties to a procedure for the authorisation of a transfer of rights to use radio frequencies provided for in Article 5(6), may be regarded as a person ‘affected’ by a decision adopted by an NRA in that procedure, for the purposes of Article 4(1) of the Framework Directive, and, consequently, may be recognised as having the right to participate in that procedure.

29 T-Mobile Austria and the Commission submit that that question falls to be answered in the affirmative. Hutchison Drei Austria, Hutchison Drei Austria Holdings GmbH, A1 Telekom Austria and the Austrian Government, on the other hand, contend that it falls to be answered in the negative. They contend, inter alia, that Article 5(6) of the Authorisation Directive does not create for the benefit of an undertaking that is not a party to the procedure for the transfer of rights to use radio frequencies provided for in that provision, any right to participate in that procedure.

- 30 Article 4(1) of the Framework Directive provides that the ‘Member States shall ensure that effective mechanisms exist at national level under which any user or undertaking providing electronic communications networks and/or services who is affected by a decision of a [NRA] has the right of appeal against the decision to an appeal body that is independent of the parties involved’.
- 31 The term ‘user or undertaking affected by a decision of an NRA’ is not, however, defined in the Framework Directive.
- 32 According to settled case-law, in interpreting a provision of EU law, it is necessary to consider not only the wording of that provision, but also its context and the objectives pursued by the rules of which it is part (see, to that effect, judgments in *Tele2 Telecommunication*, EU:C:2008:103, paragraph 27, and *The Number (UK) and Conduit Enterprises*, C-16/10, EU:C:2011:92, paragraph 28 and the case-law cited).
- 33 In this connection, it should be recalled that the Court has held that Article 4 of the Framework Directive follows from the principle of effective judicial protection, pursuant to which it is for the courts of the Member States to ensure judicial protection of an individual’s rights under EU law (see, to that effect, judgment in *Tele2 Telecommunication*, EU:C:2008:103, paragraph 30 and the case-law cited).
- 34 In the situation contemplated in Article 4 of the Framework Directive, the Member States are therefore required to provide for a right of appeal before an appellate body in order to protect the rights which users and undertakings derive from the EU legal order. It follows that the requirement to provide effective judicial protection, which is at the origin of Article 4 of the Framework Directive, must also apply to users and undertakings which may derive rights from the EU legal order, in particular from the directives on electronic communications, and whose rights are affected by a decision taken by an NRA (judgment in *Tele2 Telecommunication*, EU:C:2008:103, paragraphs 31 and 31).
- 35 Having regard to those considerations, the Court has held, in a case concerning the market analysis procedure provided for in Article 16 of the Framework Directive, that undertakings competing with an undertaking with significant power on the relevant market, as potential beneficiaries of the rights corresponding to the specific regulatory obligations imposed by an NRA on that undertaking with significant market power, may be regarded as being ‘affected’, for the purposes of Article 4(1) of the Framework Directive, by decisions of that authority which amend or withdraw those obligations (see, to that effect, judgment in *Tele2 Telecommunication*, EU:C:2008:103, paragraph 36).
- 36 Moreover, the Court has held that, since the NRAs are obliged, under Article 8(2) of the Framework Directive, to promote competition in the provision of electronic communications networks, electronic communications services and associated facilities and services by, inter alia, ensuring that there is no distortion or restriction of competition in the electronic communications sector, a strict interpretation of Article 4(1) of the Framework Directive to the effect that that provision confers a right of appeal only on persons to whom the decisions of the NRAs are addressed would be difficult to reconcile with the general objectives and regulatory principles resulting, for the NRAs, from Article 8 of that directive, and, in particular, with the objective of promoting competition (see, to that effect, judgment in *Tele2 Telecommunication*, EU:C:2008:103, paragraphs 37 and 38).
- 37 As the Advocate General observed in point 74 of his Opinion, Article 4(1) of the Framework Directive refers, inter alia, to any undertaking providing electronic communications networks or services. That provision must therefore be regarded as covering the addressee of the decision in question as well as the other undertakings providing electronic communications networks or services and which may be competitors of that addressee, in so far as the decision in question is likely to have an impact on their position on the market.

- 38 It should also be observed that Article 8(2) of the Framework Directive places on Member States the obligation to ensure that the NRAs take all reasonable measures for the promotion of competition in the provision of electronic communications services, ensuring that there is no distortion or restriction of competition in the electronic communications sector and removing remaining obstacles to the provision of those services (see, to that effect, judgments in *Centro Europa 7*, C-380/05, EU:C:2008:59, paragraph 81, and *Commission v Poland*, C-227/07, EU:C:2008:620, paragraphs 62 and 63).
- 39 It must therefore be held that an undertaking such as T-Mobile Austria must be regarded as being ‘affected’, for the purposes of Article 4(1) of the Framework Directive, by a decision of an NRA adopted in the context of a procedure provided for by the directives on electronic communications where that undertaking, which provides electronic communications networks or services, is a competitor of the undertaking or undertakings to whom the NRA’s decision is addressed, where the NRA’s decision is adopted in the context of a procedure intended to safeguard competition and where the decision in question is likely to have an impact on the position on the market of that first undertaking.
- 40 In the present case, the question asked by the referring court concerns the rights of a competitor in the context of a procedure for the authorisation of the modification of the ownership structure of competing undertakings, which entails a transfer of radio frequencies of the undertakings participating therein and, consequently, a modification of the distribution of radio frequencies between the undertakings active on the market. It is common ground that the procedure in question is a procedure conducted by the TCK pursuant to Paragraph 56(2) of the TKG 2003, which transposes into Austrian law Article 5(6) of the Authorisation Directive on the transfer of rights of use of radio frequencies.
- 41 It is therefore necessary to determine whether the aim of decisions that an NRA adopts pursuant to Article 5(6) of the Authorisation Directive is to safeguard competition and whether such decisions are likely to have an impact on the position on the market of an undertaking which provides electronic communications networks or services and which is a competitor of the addressee or addressees of those decisions.
- 42 As regards procedures relating to the transfer of rights to use radio frequencies, Article 9b(1) of the Framework Directive requires Member States to ensure that undertakings may transfer to other undertakings, in accordance with conditions attached to the rights of use of radio frequencies and in accordance with national procedures, their individual rights to use radio frequencies.
- 43 Under the second subparagraph of Article 5(2) of the Authorisation Directive, when rights of use of radio frequencies are initially allocated, Member States have to ensure that those rights are granted through open, objective, transparent, non-discriminatory and proportionate procedures and in accordance with Article 9 of the Framework Directive.
- 44 Furthermore, Article 5(6) of the Authorisation Directive requires NRAs, inter alia, to ensure that competition is not distorted by any transfer or accumulation of rights of use of radio frequencies.
- 45 In particular, as was recalled in paragraph 38 above, Article 8(2) of the Framework Directive places on Member States the obligation to ensure that the NRAs take all reasonable measures for the promotion of competition in the provision of electronic communications services, by ensuring that there is no distortion or restriction of competition in the electronic communications sector and by removing remaining obstacles to the provision of those services.
- 46 It follows that the aim of the procedure for the transfer of rights to use radio frequencies pursuant, in particular, to Article 5(6) of the Authorisation Directive, and therefore the procedure before the TCK that is the subject-matter of the dispute in the main proceedings, is to safeguard competition.

- 47 Moreover, as can be seen from the order for reference, the appellant in the main proceedings, namely, T-Mobile Austria, is in direct competition on the electronic communications services market with the parties to the transaction for the transfer of the frequencies, namely, Orange, Hutchison Drei Austria and A1 Telekom Austria. T-Mobile Austria must therefore be regarded as being 'affected' by a decision of an NRA, such as that at issue in the main proceedings, since the transfer of rights to use radio frequencies from Orange and from Hutchison Drei Austria to A1 Telekom Austria modifies the respective shares of radio frequencies granted to those undertakings and, consequently, has an impact on T-Mobile Austria's position on that market.
- 48 In the light of all the foregoing considerations, the answer to the question referred is that Articles 4(1) and 9b of the Framework Directive and Article 5(6) of the Authorisation Directive must be interpreted as meaning that an undertaking, in circumstances such as those of the case before the referring court, may be regarded as a person 'affected', for the purposes of Article 4(1) of the Framework Directive, where that undertaking, which provides electronic communications networks or services, is a competitor of the undertaking or undertakings party to a procedure for the authorisation of a transfer of rights to use radio frequencies provided for in Article 5(6) and the addressees of the decision of the NRA, and where that decision is likely to have an impact on that first undertaking's position on the market.

Costs

- 49 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (Third Chamber) hereby rules:

Articles 4(1) and 9b of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), as amended by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009, and Article 5(6) of Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive), as amended by Directive 2009/140, must be interpreted as meaning that an undertaking, in circumstances such as those of the case before the referring court, may be regarded as a person 'affected', for the purposes of Article 4(1) of Directive 2002/21, as amended by Directive 2009/140, where that undertaking, which provides electronic communications networks or services, is a competitor of the undertaking or undertakings party to a procedure for the authorisation of a transfer of rights to use radio frequencies provided for in Article 5(6) and the addressees of the decision of the national regulatory authority, and where that decision is likely to have an impact on that first undertaking's position on the market.

[Signatures]