Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

16 April 2015*

(Reference for a preliminary ruling — Electronic communications networks and services — Directive 2002/21/EC — Articles 7 and 20 — Resolution of disputes between undertakings providing electronic communications networks or services — Obligation to implement the procedure laid down in Article 7(3) — Measure which may have an effect on trade between Member States — Directive 2002/19/EC — Article 5 — Powers and responsibilities of the national regulatory authorities with regard to access and interconnection — Directive 2002/22/EC — Article 28 — Non-geographic numbers)

In Case C-3/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Najwyższy (Poland), made by decision of 6 November 2013, received at the Court on 3 January 2014, in the proceedings

Prezes Urzędu Komunikacji Elektronicznej,

Telefonia Dialog sp. z o.o.

v

T-Mobile Polska SA, formerly Polska Telefonia Cyfrowa SA,

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: Y. Bot,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 7 January 2015,

after considering the observations submitted on behalf of:

— Prezes Urzędu Komunikacji Elektronicznej, by M. Kołtoński and M. Chmielewska, radcowie prawni,

— Telefonia Dialog sp. z o.o., by R. Duczek, radca prawny,

— T-Mobile Polska SA, by Ł. Dąbrowski, radca prawny,

— the Polish Government, by B. Majczyna and D. Lutostańska, acting as Agents,

* Language of the case: Polish.

— the European Commission, by J. Hottiaux, L. Nicolae and G. Braun, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 15 January 2015,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 6, 7(3) and 20 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) ('the Framework Directive') and of 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) (OJ 2002 L 108, p. 51).

2 The request has been made in proceedings between Prezes Urzędu Komunikacji Elektronicznej (President of the Office of Electronic Communications) ('the President of the UKE') and Telefonia Dialog sp. z o.o. ('Telefonia Dialog'), on the one hand, and T-Mobile Polska SA, formerly Polska Telefonia Cyfrowa SA ('T-Mobile Polska'), on the other, concerning a decision made by the President of the UKE in a dispute between those undertakings.

Legal context

EU law

3 Recitals 15, 32 and 38 in the preamble to the Framework Directive state:

'(15) It is important that national regulatory authorities consult all interested parties on proposed decisions and take account of their comments before adopting a final decision. In order to ensure that decisions at national level do not have an adverse effect on the single market or other Treaty objectives, national regulatory authorities should also notify certain draft decisions to the [European] Commission and other national regulatory authorities to give them the opportunity to comment. It is appropriate for national regulatory authorities to consult interested parties on all draft measures which have an effect on trade between Member States. The cases where the procedures referred to in Articles 6 and 7 apply are defined in this Directive and in the Specific Directives. …

…

(32) … The intervention of a national regulatory authority in the resolution of a dispute between undertakings providing electronic communications networks or services in a Member State should seek to ensure compliance with the obligations arising under this Directive or the Specific Directives.

…

(38) Measures that could affect trade between Member States are measures that may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States in a manner which might create a barrier to the single market. They comprise measures that have a significant impact on operators or users in other Member States, which include, inter alia: measures which affect prices for users in other Member States; measures which affect the ability of an undertaking established in another Member State to provide an electronic

communications service, and in particular measures which affect the ability to offer services on a transnational basis; and measures which affect market structure or access, leading to repercussions for undertakings in other Member States.'

4 Article 2 of the Framework Directive provides:

'For the purposes of this Directive:

…

(l) "Specific Directives" means 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)], 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) (OJ 2002 L 108, p. 7)], [the Universal Service Directive] and Directive 97/66/EC [of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector (OJ 1998 L 24, p. 1)];

…'

5 Article 6 of the Framework Directive, headed 'Consultation and transparency mechanism', provides for the establishment of national consultation procedures between the national regulatory authorities ('the NRAs') and interested parties where the NRAs intend to take measures in accordance with that directive or the Specific Directives which have a significant impact on the relevant market.

6 Article 7 of the Framework Directive, headed 'Consolidating the internal market for electronic communications', provides:

'1. In carrying out their tasks under this Directive and the Specific Directives, [NRAs] shall take the utmost account of the objectives set out in Article 8, including in so far as they relate to the functioning of the internal market.

…

3. In addition to the consultation referred to in Article 6, where a[n] [NRA] intends to take a measure which:

(a) falls within the scope of Articles 15 or 16 of this Directive, Articles 5 or 8 of [the Access Directive] or Article 16 of [the Universal Service Directive], and

(b) would affect trade between Member States,

it shall at the same time make the draft measure accessible to the Commission and the [NRAs] in other Member States, together with the reasoning on which the measure is based, in accordance with Article 5(3), and inform the Commission and other [NRAs] thereof. …

…'

7 Article 8 of the Framework Directive defines the policy objectives and regulatory principles with which the NRAs must ensure compliance. Paragraph 3 of that article is worded as follows:

‘The [NRAs] shall contribute to the development of the internal market by inter alia:

…

(d) cooperating with each other and with the Commission in a transparent manner to ensure the development of consistent regulatory practice and the consistent application of this Directive and the Specific Directives.’

8 Article 20 of the Framework Directive, headed ‘Dispute resolution between undertakings’, provides:

‘1. In the event of a dispute arising in connection with obligations arising under this Directive or the Specific Directives between undertakings providing electronic communications networks or services in a Member State, the [NRA] concerned shall, at the request of either party, and without prejudice to the provisions of paragraph 2, issue a binding decision to resolve the dispute in the shortest possible time frame and in any case within four months except in exceptional circumstances. …

…

3. In resolving a dispute, the [NRA] shall take decisions aimed at achieving the objectives set out in Article 8. Any obligations imposed on an undertaking by the [NRA] in resolving a dispute shall respect the provisions of this Directive or the Specific Directives.

…’

9 Article 5 of the Access Directive, headed ‘Powers and responsibilities of the [NRAs] with regard to access and interconnection’ states:

‘1. [NRAs] shall, acting in pursuit of the objectives set out in Article 8 of [the Framework Directive], encourage and where appropriate ensure, in accordance with the provisions of this Directive, adequate access and interconnection, and interoperability of services, exercising their responsibility in a way that promotes efficiency, sustainable competition, and gives the maximum benefit to end-users.

…

4. With regard to access and interconnection, Member States shall ensure that the [NRA] is empowered to intervene at its own initiative where justified or, in the absence of agreement between undertakings, at the request of either of the parties involved, in order to secure the policy objectives of Article 8 of [the Framework Directive], in accordance with the provisions of this Directive and the procedures referred to in Articles 6 and 7, 20 and 21 of [the Framework Directive].’

10 Article 2(f) of the Universal Service Directive contains the following definition:

‘“non-geographic numbers” means a number from the national numbering plan that is not a geographic number. It includes inter alia mobile, freephone and premium rate numbers.’

11 Article 28 of that directive, headed ‘Non-geographic numbers’, provides:

‘Member States shall ensure that end-users from other Member States are able to access non-geographic numbers within their territory where technically and economically feasible, except where a called subscriber has chosen for commercial reasons to limit access by calling parties located in specific geographical areas.’

Polish law

12 Article 15 of the Law on telecommunications (ustawa Prawo telekomunikacyjne) of 16 July 2004 (Dz. U. No 171, heading 1800), in the version applicable to the facts in the main proceedings ('the Law of 16 July 2004'), provides:

'Before the President of the UKE gives a decision on:

…

(2) the imposition, withdrawal, maintenance or amendment of regulatory obligations in relation to a telecommunications undertaking, whether or not it possesses significant market power,

(3) decisions on granting access to telecommunications referred to in Articles 28 to 30,

(4) other matters referred to in the Law,

he shall conduct a consultation procedure to enable interested parties to express in writing their position in relation to the draft decision within a specific time-limit.'

13 Article 18 of the Law of 16 July 2004 is worded as follows:

'If the decisions referred to in Article 15 may affect trade between the Member States, at the same time as he initiates the consultation procedure, the President of the UKE shall initiate a consolidation procedure and shall send the … Commission and the [NRAs] of the other Member States the draft decisions, together with the reasoning on which they are based.'

14 Article 27 of that Law provides:

'1. The President of the UKE may, of his own motion or on written request by each party to negotiations for the conclusion of an access agreement, by order, lay down a time-limit for closing the negotiations on the conclusion of the agreement, which must not exceed 90 days from the day of submission of the request for the conclusion of an access agreement.

2. If negotiations do not commence, if access to a telecommunications network is refused by the operator required to grant such access, or if the agreement is not concluded within the time-limit referred to in paragraph 1, any party may request the President of the UKE to adopt a decision regarding the points in dispute or to define the terms of cooperation.

…'

15 Article 28 of the Law of 16 July 2004 states:

'1. The President of the UKE shall make his decision on the grant of access within 90 days of the date of the submission of the request referred to in Article 27(2) …

…

4. The decision on granting access shall replace that part of the access agreement covered by the decision.

…

6. The decision on access may be altered by the President of the UKE at the request of any party concerned or of his own motion, where this is justified by the need to protect the interests of end-users, to ensure effective competition or to ensure interoperability of services.

7. In the event of financial claims for non-performance or inadequate performance of obligations which result from the decision on access, judicial proceedings are to be commenced.

…'

16 Article 79(1) of the Law of 16 July 2004 provides:

'The operator of the public telecommunications network shall ensure that end-users of its network and end-users from other Member States, where this is technically and economically feasible, are able to access non-geographic numbers within Polish territory, except where a called subscriber has placed restrictions on calls from end-users located in specific geographical areas.'

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

17 Telefonia Dialog and T-Mobile Polska are undertakings which own electronic communications networks that are accessible to the public and provide electronic communications services in Poland. On 4 April 2000, those undertakings concluded an agreement stipulating the rules governing cooperation and payments in respect of the access for users of T-Mobile Polska's network to 'intelligent network' services provided via Telefonia Dialog's network ('the cooperation agreement').

18 In 2006, Telefonia Dialog requested that T-Mobile Polska open negotiations with a view to concluding an amendment to the cooperation agreement. As those undertakings did not arrive at an agreement, Telefonia Dialog requested the President of the UKE to set a time-limit for closing further negotiations. The President of the UKE set that time-limit at 20 October 2006.

19 As the negotiations were not closed within the time-limit set by the President of the UKE, Telefonia Dialog, by letter of 9 November 2006, requested the President of the UKE to take a decision in order to resolve the dispute between it and T-Mobile Polska as regards any amendment to be made to the cooperation agreement.

20 By decision of 19 December 2008, taken on the basis of Articles 28 and 79 of the Law of 16 July 2004, which had transposed Article 5 of the Access Directive and Article 28 of the Universal Service Directive respectively, the President of the UKE resolved the dispute by imposing on Telefonia Dialog the obligation to provide call termination services on its network to users of T-Mobile Polska's network and on T-Mobile Polska the obligation to ensure that those users had access to the information services provided on Telefonia Dialog's network. In that decision, the President of the UKE also established the amounts of remuneration payable in return for those services.

21 T-Mobile Polska brought an action against the decision of the President of the UKE before the Sąd Okręgowy w Warszawie (Regional Court, Warsaw, Poland). By judgment of 21 March 2011, the Sąd Okręgowy w Warszawie annulled that decision on the ground that the President of the UKE had not complied with the consolidation procedure laid down in Article 18 of the Law of 16 July 2004.

22 The President of the UKE and Telefonia Dialog appealed against the judgment of the Sąd Okręgowy w Warszawie before the Sąd Apelacyjny w Warszawie (Court of Appeal, Warsaw), which dismissed those appeals by judgment of 1 February 2012. The President of the UKE and Telefonia Dialog each then lodged an appeal on a point of law against that judgment before the Sąd Najwyższy (Supreme Court).

23 The Sąd Najwyższy states that the dispute in the main proceedings relates to whether the President of the UKE should have followed the procedure laid down in Article 7(3) of the Framework Directive before taking a decision which altered the cooperation agreement.

24 In that regard, that court enquires, in the first place, whether Article 7(3) of the Framework Directive, is to be interpreted as meaning that a measure taken by an NRA pursuant to Article 28 of the Universal Service Directive, read in conjunction with Article 5 of the Access Directive, must always be regarded as affecting trade between Member States for the purposes of Article 7(3) of the Framework Directive.

25 The Sąd Najwyższy states that, in the case in the main proceedings, the decision of the President of the UKE of 19 December 2008 may appear to have no such effect because it does not relate to cross-border telecommunications services, does not differentiate between rates for calls to non-geographic numbers or the rules governing payments depending on whether the services are being used by a Polish end-user or a user from another Member State, does not determine the rates paid to T-Mobile Polska by end-users from other Member States making use of roaming arrangements on T-Mobile Polska's network for access to services provided to users of Telefonia Dialog's network, does not in addition determine the rates at which T-Mobile Polska pays the operators of users from other Member States in respect of calls made on T-Mobile Polska's network and, lastly, relates to services which in principle are provided in Polish. However, pointing out in essence that Article 28 of the Universal Service Directive requires Member States to ensure that end-users from other Member States are able to access non-geographic numbers within their territory, that court expresses doubt as to the answer to be given to the question referred to in paragraph 23 of the present judgment.

26 In the second place, the Sąd Najwyższy enquires whether Articles 6, 7(3) and 20 of the Framework Directive are to be interpreted as meaning that an NRA is always required to carry out the procedure laid down in Article 7(3) of that directive if, in order to resolve a dispute, it takes a measure which affects trade between Member States.

27 In the third place, the Sąd Najwyższy enquires whether, if the Court should decide that Articles 6, 7(3) and 20 of the Framework Directive must be interpreted as meaning that they preclude the application of a national provision requiring compliance with a procedure such as that laid down in Article 18 of the Law of 16 July 2004, the national court would be required to refuse to apply that provision.

28 In that regard, the Sąd Najwyższy observes that, if the answer were in the affirmative, it would then be impossible, in the case in the main proceedings, to interpret Article 18 of the Law of 16 July 2004 in a way which is consistent with EU law. Lastly, that court takes the view that Articles 6, 7(3) and 20 of the Framework Directive have no horizontal direct effect.

29 In those circumstances the Sąd Najwyższy decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 7(3) of [the Framework Directive], in conjunction with Article 28 of [the Universal Service Directive], be interpreted as meaning that every measure taken by [an NRA] in order to fulfil the obligation arising from Article 28 of [the Universal Service Directive] affects trade between Member States where that measure may ensure that end-users from other Member States are able to access non-geographic numbers within the territory of that Member State?

(2) Must Article 7(3) in conjunction with Articles 6 and 20 of [the Framework Directive] be interpreted as meaning that, in resolving disputes between undertakings providing electronic communications networks or services concerning the fulfilment by one of those undertakings of the obligation arising from Article 28 of [the Universal Service Directive], [an NRA] cannot

conduct consolidation proceedings even where the measure affects trade between Member States and national law requires the [NRA] to conduct consolidation proceedings in every case where a measure may affect that trade?

(3) If the answer to Question 2 is in the affirmative, must Article 7(3) in conjunction with Articles 6 and 20 of [the Framework Directive], read in conjunction with Article 288 TFEU and Article 4(3) TEU, be interpreted as meaning that a national court is obliged to refrain from applying provisions of national law which require the [NRA] to conduct consolidation proceedings in every case where a measure taken by that authority may affect trade between Member States?'

Consideration of the questions referred

The second question

30 It is apparent from the order for reference that, by its second question, which it is appropriate to examine first, the referring court asks, in essence, whether an NRA is required to implement the procedure laid down in Article 7(3) of the Framework Directive in circumstances such as those at issue in the main proceedings.

31 It must be pointed out at the outset that Article 6 of the Framework Directive is not relevant in answering that question. That article establishes the conditions and detailed rules for the implementation of a procedure which is separate from that set out in Article 7(3) of that directive and involves giving interested parties, where NRAs intend to take measures which have a significant impact on the relevant market, the opportunity to comment on the draft measure within a reasonable period.

32 Consequently, it must be held that, by its second question, the referring court asks, in essence, whether Articles 7(3) and 20 of the Framework Directive are to be interpreted as meaning that an NRA is required to implement the procedure laid down in the former of those provisions if, in resolving a dispute between undertakings providing electronic communications networks or services in a Member State, it intends to impose obligations designed to ensure access to non-geographic numbers in accordance with Article 28 of the Universal Service Directive and those obligations may affect trade between Member States.

33 Neither Article 7(3) of the Framework Directive nor Article 20 of that directive expressly states that an NRA is required to implement the procedure laid down in the former of those provisions if, in the context of the procedure for resolving disputes between undertakings laid down in the latter of those provisions, it intends to issue a binding decision to resolve a dispute.

34 However, in the first place, it is apparent from Article 7(3) of the Framework Directive that the obligation to implement the procedure laid down in that article is contingent not on the nature of the procedure in the context of which the NRA intends to take the measure at issue, but on the actual subject-matter of that measure and the effect that it may have on trade between Member States.

35 According to Article 7(3) of the Framework Directive, the NRA of a Member State is required to make the draft measure which it intends to take accessible to the Commission and the NRAs in other Member States if, first, that measure falls within the scope of Articles 15 or 16 of the Framework Directive, Articles 5 or 8 of the Access Directive or Article 16 of the Universal Service Directive and, secondly, that measure may affect trade between Member States.

36 In the second place, as is stated in recital 32 in the preamble to the Framework Directive, the intervention of an NRA in the resolution of a dispute between undertakings providing electronic communications networks or services in a Member State must seek to ensure compliance with the obligations arising under the Framework Directive or the Specific Directives.

37 As regards in particular the obligations arising under the Access Directive, Article 5(1) of that directive entrusts the NRAs with the task of ensuring adequate access and interconnection, and interoperability of services.

38 Article 5(4) of the Access Directive states that an NRA, where it intervenes, in the absence of agreement between undertakings, at the request of either of the parties involved, must comply with the provisions in that directive and with the procedures referred to, inter alia, in Articles 7 and 20 of the Framework Directive.

39 Measures falling within the scope of Article 5 of the Access Directive are, moreover, expressly referred to in Article 7(3)(a) of the Framework Directive.

40 It follows from all of those factors that the measures which an NRA envisages adopting, on the basis of the provisions of Article 20 of the Framework Directive in conjunction with Article 5 of the Access Directive, on access and interconnection in the context of a dispute between undertakings providing electronic communications networks or services in a Member State, must be made subject to the procedure laid down in Article 7(3) of the Framework Directive if they may affect trade between Member States.

41 A measure, such as that at issue in the main proceedings, which is adopted in the context of a dispute between undertakings and is designed to ensure access to non-geographic numbers in accordance with Article 28 of the Universal Service Directive, falls within the scope of the obligations which an NRA may impose, under Article 5 of the Access Directive, to ensure adequate access and interconnection, and interoperability of services. In the present case, as is apparent from the order for reference, it was, moreover, pursuant to Article 28 of the Law of 16 July 2004, which transposed Article 5 of the Access Directive, and Article 79 of that Law, which transposed Article 28 of the Universal Service Directive, that the decision at issue in the main proceedings was taken.

42 It follows that a draft measure such as that at issue in the main proceedings must be made subject to the procedure laid down in Article 7(3) of the Framework Directive if that measure may affect trade between Member States.

43 Such an interpretation is, furthermore, consistent with the objective pursued by the procedure referred to in Article 7(3) of the Framework Directive, an objective which consists, as is apparent from recital 15 in the preamble to that directive, in ensuring that decisions at national level do not have an adverse effect on the single market or other FEU Treaty objectives.

44 That same interpretation is also borne out by Article 7(1) of the Framework Directive, read in conjunction with Articles 8(3)(d) and 20(3) thereof and Article 5(1) and (4) of the Access Directive.

45 It must also be borne in mind (i) that Article 20(3) of the Framework Directive provides that, in resolving a dispute, the NRA is to take decisions aimed at achieving the objectives set out in Article 8 of that directive, (ii) that Article 7(1) of that directive provides that, in carrying out their tasks under that directive and the Specific Directives, NRAs are to take the utmost account of those objectives, including in so far as they relate to the functioning of the internal market, and (iii) that it is apparent from Article 5(1) and (4) of the Access Directive that, with regard to access and interconnection, the intervention of the NRAs also has the aim of pursuing and securing those same objectives. According to Article 8(3)(d) of the Framework Directive, the NRAs are to contribute to the development of the

internal market by, inter alia, cooperating with each other and with the Commission in a transparent manner to ensure the development of consistent regulatory practice and the consistent application of that directive and the Specific Directives.

46 In the light of all of the foregoing, the answer to the second question is that Articles 7(3) and 20 of the Framework Directive must be interpreted as meaning that an NRA is required to implement the procedure laid down in the former of those provisions if, in resolving a dispute between undertakings providing electronic communications networks or services in a Member State, it intends to impose obligations designed to ensure access to non-geographic numbers in accordance with Article 28 of the Universal Service Directive and those obligations may affect trade between Member States.

The first question

47 By its first question, the referring court, asks, in essence, whether Article 7(3) of the Framework Directive is to be interpreted as meaning that every measure adopted by an NRA in order to ensure that end-users have access to non-geographic numbers in accordance with Article 28 of the Universal Service Directive affects trade between Member States.

48 In that regard, the President of the UKE maintains that the decision at issue in the main proceedings does not have any significant effect on trade between Member States. The Polish Government takes the view that that decision does not 'necessarily' have an effect on trade between those States. By contrast, Telefonia Dialog, T-Mobile Polska and the Commission submit that that decision may have such an effect.

49 Neither the Framework Directive nor the Specific Directives contains any definition of the notion of 'affect[ing] trade between Member States' for the purpose of Article 7(3)(b) of the Framework Directive. However, recital 38 in the preamble to that directive states that measures that could affect trade between Member States are measures that may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States in a manner which might create a barrier to the single market.

50 As the Advocate General stated at points 61 to 64 of his Opinion, the definition of the notion of 'affect[ing] trade between Member States', for the purpose of Article 7(3)(b) of the Framework Directive is analogous to that of the notion of 'affect[ing] trade between Member States', for the purposes of Articles 101 TFEU and 102 TFEU, and must therefore have the same scope for the purpose of the application of Article 7(3) of that directive.

51 According to settled case-law concerning those articles, if an agreement, decision or practice is to be capable of affecting trade between Member States, it must be possible to foresee with a sufficient degree of probability, on the basis of a set of objective factors of law or of fact, that it may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States in such a way as to cause concern that it might hinder the attainment of a single market between Member States (judgments in *Asnef-Equifax and Administración del Estado*, C-238/05, EU:C:2006:734, paragraph 34 and the case-law cited; *Erste Group Bank and Others* v *Commission*, C-125/07 P, C-133/07 P and C-137/07 P, EU:C:2009:576, paragraph 36; and *Ordem dos Técnicos Oficiais de Contas*, C-1/12, EU:C:2013:127, paragraph 65).

52 In that respect, the Court has held that that effect must not, moreover, be insignificant (see inter alia, to that effect, judgments *in Béguelin Import*, 22/71, EU:C:1971:113, paragraph 16; *Manfredi and Others*, C-295/04 to C-298/04, EU:C:2006:461, paragraph 42; and *Erste Group Bank and Others* v *Commission*, C-125/07 P, C-133/07 P and C-137/07 P, EU:C:2009:576, paragraph 36 and the case-law cited).

53 The Court has stated that the influence which a decision, an agreement or a practice may have on the pattern of trade between Member States is normally the result of a combination of several factors which, taken separately, are not necessarily decisive (see, to that effect, judgment in *Manfredi and Others*, C-295/04 to C-298/04, EU:C:2006:461, paragraph 43) and that, in order to assess whether an arrangement has an appreciable effect on trade between Member States, it is necessary to examine it in its economic and legal context (judgment in *Asnef-Equifax and Administración del Estado*, C-238/05, EU:C:2006:734, paragraph 35), taking into account all the relevant factors of the individual case (judgment in *Ziegler* v *Commission*, C-439/11 P, EU:C:2013:513, paragraph 95). That effect is to be assessed in particular by reference to the nature of the agreement or practice at issue, the nature of the goods or services concerned and the position and the importance of the parties on the market (see, to that effect, judgment in *Javico*, C-306/96, EU:C:1998:173, paragraph 17 and the case-law cited). In that regard, the Court has already held that where the services concerned have a cross-border dimension, that is a relevant factor in determining whether trade between Member States is affected (judgment in *Ziegler* v *Commission*, C-439/11 P, EU:C:2013:513, paragraph 94).

54 In the field of electronic communications, recital 38 in the preamble to the Framework Directive states that measures that could affect trade between Member States comprise measures that have a significant impact on operators or users in other Member States, that is to say, inter alia, measures which affect prices for users in other Member States, measures which affect the ability of an undertaking established in another Member State to provide an electronic communications service, in particular measures which affect the ability to offer services on a transnational basis, and, lastly, measures which affect market structure or access, leading to repercussions for undertakings in other Member States.

55 As regards a measure which seeks to ensure that end-users from other Member States have access to non-geographic numbers in accordance with Article 28 of the Universal Service Directive, it must be pointed out that, in principle, having regard to the actual wording of that article, such a measure, by its very nature, has a cross-border effect within the European Union.

56 Moreover, as is apparent from the wording of the order for reference, the decision at issue in the main proceedings, on the one hand, enables, inter alia, an end-user from another Member State who is in Poland and makes use of roaming arrangements on a Polish operator's network to access non-geographic numbers and, on the other, establishes the charges for the services in question and the detailed rules for amending those charges.

57 It appears that such a decision, inasmuch as it has, on account of the roaming arrangements, a transnational dimension and may have an impact on the prices paid by end-users from other Member States, is capable of affecting trade between Member States for the purposes of Article 7(3) of the Framework Directive.

58 As regards an assessment of the facts, it is, however, for the referring court to determine whether the measure at issue in the main proceedings is capable of affecting, other than in an insignificant manner, trade between Member States by having an influence, direct or indirect, actual or potential, on the pattern of trade between those States. To that end, that court should take into account, in particular, the nature of that measure and of the services in question and the position and the importance of the undertakings concerned on the market.

59 In the light of all of the foregoing, the answer to the first question is that Article 7(3) of the Framework Directive must be interpreted as meaning that a measure adopted by an NRA in order to ensure that end-users have access to non-geographic numbers in accordance with Article 28 of the Universal Service Directive affects trade between Member States, within the meaning of that provision, if it may have, other than in an insignificant manner, an influence, direct or indirect, actual or potential, on that trade, this being a matter for the referring court to determine.

The third question

60 In view of the answers to the first and second questions, there is no need to reply to the third question.

Costs

61 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:

1. **Articles 7(3) and 20 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) must be interpreted as meaning that a national regulatory authority is required to implement the procedure laid down in the former of those provisions if, in resolving a dispute between undertakings providing electronic communications networks or services in a Member State, it intends to impose obligations designed to ensure access to non-geographic numbers in accordance with 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) and those obligations may affect trade between Member States.**

2. **Article 7(3) of Directive 2002/21 must be interpreted as meaning that a measure adopted by a national regulatory authority in order to ensure that end-users have access to non-geographic numbers in accordance with Article 28 of Directive 2002/22 affects trade between Member States, within the meaning of that provision, if it may have, other than in an insignificant manner, an influence, direct or indirect, actual or potential, on that trade, this being a matter for the referring court to determine.**

[Signatures]