



## Reports of Cases

### JUDGMENT OF THE COURT (Second Chamber)

15 March 2017<sup>1</sup>

(Reference for a preliminary ruling — Electronic communications networks and services — Directive 2002/22/EC — Article 25(2) — Directory enquiry services and directories — Directive 2002/58/EC — Article 12 — Directories of subscribers — Making available personal data concerning subscribers for the purposes of the provision of publicly available directory enquiry services and directories — Subscriber's consent — Distinction on the basis of the Member State in which publicly available directory enquiry services and directories are provided — Principle of non-discrimination)

In Case C-536/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the College van Beroep voor het bedrijfsleven (Administrative Court of Appeal for Trade and Industry, Netherlands), made by decision of 3 July 2015, received at the Court on 13 October 2015, in the proceedings

**Tele2 (Netherlands) BV,**

**Ziggo BV,**

**Vodafone Libertel BV**

v

**Autoriteit Consument en Markt (ACM),**

intervening parties:

**European Directory Assistance NV,**

THE COURT (Second Chamber),

composed of M. Ilešič, President of the Chamber, A. Prechal, A. Rosas, C. Toader and E. Jarašiūnas (Rapporteur), Judges,

Advocate General: M. Y. Bot,

Registrar: M. R. Schiano, Administrator,

having regard to the written procedure and further to the hearing on 5 October 2016,

after considering the observations submitted on behalf of:

— Tele2 (Netherlands) BV, by Q.R. Kroes and M.P.F. Reker, advocaten,

<sup>1</sup> — Language of the case: Dutch.

— Ziggo BV, by W. Knibbeler and N. Lorjé, advocaten,  
— Vodafone Libertel BV, by H.P. Wiersema, advocaat,  
— the Netherlands Government, by M. de Ree and M. Bulterman and by J. Langer, acting as Agents,  
— the European Commission, by H. Kranenborg and G. Braun and by L. Nicolae, acting as Agents,  
after hearing the Opinion of the Advocate General at the sitting on 9 November 2016,  
gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 25(2) 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), as amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 (OJ 2009 L 337, p. 11) ('the Universal Service Directive').
- 2 The request has been made in proceedings between Tele2 (Netherlands) BV, Ziggo BV and Vodafone Libertel BV, companies established in the Netherlands, on the one hand, and the Autoriteit Consument en Markt (ACM) (Authority for Consumers and Markets), on the other hand, concerning a decision taken by that authority in the context of proceedings between those undertakings and the European Directory Assistance NV ('the EDA'), an undertaking established in another Member State, concerning the latter making data relating to their subscribers available, for the purposes of the provision of publicly available directory enquiry services and directories in the latter Member State and/or in other Member States.

### **Legal context**

#### ***European Union law***

##### *The Universal Service Directive*

- 3 Recitals 11 and 35 of the Universal Service Directive states:  
  
'(11) ... 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)] ensures the subscribers' right to privacy with regard to the inclusion of their personal information in a public directory.  
  
...  
  
(35) The provision of directory enquiry services and directories is already open to competition. The provisions of this Directive complement the provisions of Directive 97/66/EC by giving subscribers a right to have their personal data included in a printed or electronic directory. All service providers which assign telephone numbers to their subscribers are obliged to make relevant information available in a fair, cost-oriented and non-discriminatory manner.'

- 4 Article 1 of that directive, entitled ‘Subject-matter and scope’, provides in paragraph (1):

‘Within the framework 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)], this Directive concerns the provision of electronic communications networks and services to end-users. The aim is to ensure the availability throughout the [European Union] of good-quality publicly available services through effective competition and choice and to deal with circumstances in which the needs of end-users are not satisfactorily met by the market. ...’

- 5 Chapter II of the Universal Service Directive concerns universal service obligations. In that chapter, Article 5, entitled ‘Directory enquiry services and directories’, is worded as follows:

‘(1) Member States shall ensure that:

- (a) at least one comprehensive directory is available to end-users in a form approved by the relevant authority, whether printed or electronic, or both, and is updated on a regular basis, and at least once a year;
- (b) at least one comprehensive telephone directory enquiry service is available to all end-users, including users of public pay telephones.

(2) The directories referred to in paragraph 1 shall comprise, subject to the provisions of Article 12 of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) [(OJ 2002 L 201, p. 37)], all subscribers of publicly available telephone services.

...’

- 6 Chapter IV of the Universal Service Directive concerns end-user interests and rights. In that chapter, Article 25, entitled ‘Telephone directory enquiry services’, provides:

‘(1) Member States shall ensure that subscribers to publicly available telephone services have the right to have an entry in the publicly available directory referred to in Article 5(1)(a) and to have their information made available to providers of directory enquiry services and/or directories in accordance with paragraph 2’;

(2) Member States shall ensure that all undertakings which assign telephone numbers to subscribers meet all reasonable requests to make available, for the purposes of the provision of publicly available directory enquiry services and directories, the relevant information in an agreed format on terms which are fair, objective, cost oriented and non-discriminatory.

...

(5) Paragraphs 1 to 4 shall apply subject to the requirements of [Union] legislation on the protection of personal data and privacy and, in particular, Article 12 of Directive 2002/58 ...’

*The Directive on privacy and electronic communications*

- 7 According to recital 39 of Directive 2002/58, as amended by Directive 2009/136 (‘the Directive on privacy and electronic communications’):

‘(39) The obligation to inform subscribers of the purpose(s) of public directories in which their personal data are to be included should be imposed on the party collecting the data for such inclusion. Where the data may be transmitted to one or more third parties, the subscriber should be informed of this possibility and of the recipient or the categories of possible recipients. Any transmission should be subject to the condition that the data may not be used for other purposes than those for which they were collected. If the party collecting the data from the subscriber or any third party to whom the data have been transmitted wishes to use the data for an additional purpose, the renewed consent of the subscriber is to be obtained either by the initial party collecting the data or by the third party to whom the data have been transmitted.’

- 8 Article 1 of the Directive on privacy and electronic communications, entitled ‘Scope and aim’, provides in paragraph (1):

‘This Directive provides for the harmonisation of the national provisions required to ensure an equivalent level of protection of fundamental rights and freedoms, and in particular the right to privacy and confidentiality, with respect to the processing of personal data in the electronic communication sector and to ensure the free movement of such data and of electronic communication equipment and services in the [Union].’

- 9 Article 12 of that directive, entitled ‘Directories of subscribers’, provides:

‘(1) Member States shall ensure that subscribers are informed, free of charge and before they are included in the directory, about the purpose(s) of a printed or electronic directory of subscribers available to the public or obtainable through directory enquiry services, in which their personal data can be included and of any further usage possibilities based on search functions embedded in electronic versions of the directory.

(2) Member States shall ensure that subscribers are given the opportunity to determine whether their personal data are included in a public directory, and if so, which, to the extent that such data are relevant for the purpose of the directory as determined by the provider of the directory, and to verify, correct or withdraw such data. Not being included in a public subscriber directory, verifying, correcting or withdrawing personal data from it shall be free of charge.

(3) Member States may require that for any purpose of a public directory other than the search of contact details of persons on the basis of their name and, where necessary, a minimum of other identifiers, additional consent be asked of the subscribers.

...’

***Netherlands law***

- 10 Under Article 1.1(e) of the *Besluit universele dienstverlening en eindgebruikersbelangen* (Decree on universal service provision and end-user interests) of 7 May 2004 (Stb. 2004, No 203) (‘the Bude’):

‘A standard directory enquiry service means a publicly available directory enquiry service by means of which telephone numbers can be requested only on the basis of data relating to the name in conjunction with data relating to the address and house number, post code or town of the subscriber.’

11 Article 3.1 of the Bude is worded as follows:

‘Any provider which assigns telephone numbers shall meet all reasonable requests to make available, for the purposes of the provision of publicly available telephone directories and publicly available directory enquiry services, the relevant information in an agreed format on terms which are fair, objective, cost oriented and non-discriminatory.’

12 Under Article 3.2 of the Bude:

‘(1) Any provider of a publicly available telephone service which, before or when concluding a contract with a user, requests the latter’s name and address (street name and house number, post code and town), shall also seek his consent to that kind of personal data and the telephone numbers it has assigned appearing in any standard telephone directory and any directory of subscribers which is used for a standard directory enquiry service. The consent referred to in the preceding sentence shall be sought individually for every kind of personal data.

(2) The consent given shall constitute relevant information within the meaning of Article 3.1.

(3) Any provider of a publicly available telephone service which also seeks consent for inclusion in a telephone directory other than the standard telephone directory or in a directory of subscribers not exclusively used for a standard directory enquiry service shall ensure that the manner and form in which the consent referred to in paragraph 1 is sought is at least equivalent to the manner and form in which the original consent referred to in this paragraph is sought.’

13 Article 11.6 of the Telecommunicatiewet (Telecommunications Law) of 19 October 1998 (Stb. 1998, No 610) provides:

‘(1) Any person who publishes a publicly available directory or who supplies information services about subscribers available to the public shall, prior to entering private data relating to subscribers in the directory or in the directory of subscribers used for a standard directory enquiry service, provide information free of charge to subscribers concerning:

- (a) the purposes for which the directories and directory enquiry services at issue which concern subscribers are established and, with regard to electronic versions of the directory, the possibilities for use to be made of that information on the basis of search functions integrated into those versions, and
- (b) the types of personal data which can be included in the directories and directory enquiry services at issue which concern subscribers, in the light of the purposes for which they are established.

(2) A directory available to the public and the directory of subscribers used for directory enquiry services shall reproduce the personal data of a subscriber only if the latter has given his consent and shall be limited to data provided for that purpose by the subscriber. No fee shall be charged for not being included in a directory or in a directory of subscribers used for directory enquiry services.

(3) In so far as the processing of personal data included in a publicly available directory and in a directory of subscribers used for directory enquiry services pursues objectives other than the possibility of making a search for numbers in a database relating to a name associated with data such as the road, house number, postal code and town of the subscriber, the subscriber’s separate consent is required for each of those other objectives.

(4) The subscriber shall have the right to verify, correct and delete, free of charge, the personal data relating to him in a publicly available directive or in a directory of subscribers used for directory enquiry services.’

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

- 14 EDA is a company incorporated under Belgian law which offers directory enquiry services and directories accessible from Belgian territory. It requested the undertakings which assign telephone numbers to subscribers in the Netherlands ('the Dutch undertakings') to make available to it data relating to their subscribers. Since those undertakings refused to provide the data requested, on 18 January 2012, EDA submitted a dispute resolution request to ACM.
- 15 By decisions of 5 June 2013, ACM, as the national regulatory authority, took a decision on EDA's request by adopting the following measures. First, EDA can rely on Article 3.1 of the Bude to the extent that it uses the numbers made available to it and the related information in order to place a standard telephone directory enquiry service about the subscribers on the market. Secondly, the Dutch undertakings must make available to EDA basic data relating to their subscribers (names, addresses, telephone numbers) on fair, objective, cost oriented and non-discriminatory terms. Third, the Dutch undertakings must ensure within a reasonable period of time that the consent which they seek from their subscribers when entering into contracts, with a view to including the data concerning them in any standard directory and any directory of subscribers which is used for a standard telephone directory enquiry service is compatible with the provisions of Article 3.2 of the Bude.
- 16 The Dutch undertakings brought an action against those decisions of ACM before the College van Beroep voor het bedrijfsleven (Administrative Court of Appeal for Trade and Industry, Netherlands).
- 17 The referring court states, in the first place, that, given that Article 3.1 of the Bude transposed into Netherlands law Article 25(2) of the Universal Service Directive, it is necessary to establish the scope of the latter provision in order to answer the question, which is disputed by the parties to the main proceedings, whether that Article 3.1 requires Dutch undertakings to make available to EDA data relating to their subscribers despite the fact that EDA is not established in the Netherlands.
- 18 It notes, in that regard, that the interpretation of Article 25(2) of that directive given by the Court in the judgment of 5 May 2011, *Deutsche Telekom* (C-543/09, EU:C:2011:279), does not involve the cross-border provision of data relating to subscribers and does not, consequently, answer the question whether that provision must be interpreted as meaning that an undertaking is required to make its data relating to subscribers available to a provider of directory enquiry services and directories established in another Member State.
- 19 In the second place, the referring court notes, concerning obtaining the subscriber's consent, that Article 3.2 of the Bude provides that the provider is to obtain that consent to the inclusion of personal data and telephone numbers use of which it has assigned, in any standard directory and any directory of subscribers which is used for a standard telephone directory enquiry service. It points out that, according to the explanatory notes to Article 3.2 of the Bude, 'the reason for that is to avoid a situation where every provider of publicly available telephone directories and directory enquiry services would have to obtain the consent of every subscriber individually for a standard listing'.
- 20 The referring court notes that the parties to the main proceedings dispute whether, first, Article 3.2 of the Bude allows the consent of subscribers to the use of their personal data to be differentiated according to whether those data are intended for Dutch providers or for foreign providers of directory enquiry services and/or directories and, secondly, whether it is necessary to leave the subscribers with the choice whether or not to give their consent depending on the country in which the undertaking requesting information provides its services. In that regard, the referring court considers that the question arises, in essence, as to how to balance respect for the principle of non-discrimination and privacy in the context of that request for consent.



21 In those circumstances, the College van Beroep voor het bedrijfsleven (Administrative Court of Appeal for Trade and Industry) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- ‘(1) Must Article 25(2) of the Universal Service Directive be interpreted as meaning that requests should be understood to include a request from an undertaking established in another Member State, which requests information for the purposes of the provision of publicly available telephone directory enquiry services and directories which are provided in that Member State and/or in other Member States?
- (2) If question 1 is answered in the affirmative: may a provider who makes telephone numbers available, and who is obliged under national legislation to request a subscriber’s consent prior to inclusion [of his data] in standard telephone directories and standard directory enquiry services, differentiate in the request for consent on the basis of the non-discrimination principle according to the Member State in which the undertaking requesting the information as referred to in Article 25(2) of Directive 2002/22/EC provides the telephone directory and directory enquiry service?’

### **Consideration of the questions referred**

#### ***The first question***

- 22 By its first question, the referring court asks, in essence, whether Article 25(2) of the Universal Service Directive must be interpreted as meaning that the concept of ‘requests’, in that article, covers also requests made by an undertaking, established in a Member State other than that in which the undertakings which assign telephone numbers to subscribers are established, which requests the relevant information possessed by those undertakings in order to provide publicly available telephone directory enquiry services and directories in that Member State and/or in other Member States.
- 23 Article 25 of the Universal Service Directive is in Chapter IV of that directive, which concerns end-user interests and rights. According to Article 25(1) thereof, the Member States are to ensure that subscribers to publicly available telephone services have the right to have an entry in the publicly available directory referred to in Article 5(1)(a) of that directive, and to have their information made available to providers of directory enquiry services and/or directories in accordance with Article 25(2) of that directive.
- 24 Concerning the making of information relating to subscribers available to providers of directory services and/or directories, it is apparent from the wording itself of Article 25(2) of the Universal Service Directive that that provision covers all reasonable requests to make available data for the purposes of the provision of publicly available directory enquiry services and directories. Moreover, that provision requires that that information be made available in a non-discriminatory manner.
- 25 It follows therefore from that wording that that provision makes no distinction according to whether the request to make available data relating to subscribers is made by an undertaking established in the same Member State as that in which is established the undertaking to which the request is addressed or whether it is made by an undertaking established in a Member State other than that of the undertaking which received that request.
- 26 That lack of distinction is compatible with the objective pursued by the Universal Service Directive, which, according to Article 1(1) thereof, seeks, in particular, to ensure the availability, throughout the European Union, of good quality publicly available services through effective competition and choice and to deal with circumstances in which the needs of end-users are not satisfactorily met by the

market, and with the specific objective of Article 25(2) of the Universal Service Directive which seeks, in particular, to ensure compliance with the universal service obligation laid down in Article 5(1) of that directive (see, to that effect, judgment of 5 May 2011, *Deutsche Telekom*, C-543/09, EU:C:2011:279, paragraph 35).

- 27 In that regard, the Court has already held, in paragraph 36 of the judgment of 5 May 2011, *Deutsche Telekom* (C-543/09, EU:C:2011:279), referring to recital 35 of the Universal Service Directive, that, in a competitive market, the obligation under Article 25(2) of that directive for undertakings which assign telephone numbers to pass on data relating to their own subscribers in principle not only enables the designated undertaking to ensure compliance with the universal service obligation laid down in Article 5(1) of that directive, but also enables any provider of telephone services to establish an exhaustive data base and to become active in the market for telephone directory enquiry services and directories. In that connection, it is sufficient that the provider concerned ask each undertaking assigning telephone numbers for the relevant data relating to its subscribers.
- 28 An interpretation of Article 25(2) of the Universal Service Directive according to which that provision covers only reasonable requests made by undertakings established in the Member State in which the undertakings assigning telephone numbers to subscribers are established would be contrary to the objective of ensuring the availability, throughout the European Union, of good quality services to end-users thanks to effective competition and, in particular, to that of respecting the universal service obligation provided for in Article 5(1) of the Universal Service Directive, resulting, in particular, from the need to make at least one complete telephone directory available to end-users.
- 29 Moreover, as was stated in paragraph 24 of the present judgment, Article 25(2) of the Universal Service Directive requires undertakings assigning telephone numbers to subscribers to meet all reasonable requests to make available, for the purposes of the provision of publicly available directory enquiry services and directories, the relevant information in a non-discriminatory manner. The refusal of undertakings assigning telephone numbers to subscribers in the Netherlands to make data relating to their subscribers available to persons requesting that information on the sole ground that they are established in another Member State is incompatible with that requirement.
- 30 In the light of all the above considerations, the answer to the first question is that Article 25(2) of the Universal Service Directive must be interpreted as meaning that the concept of ‘requests’ in that article, covers also requests made by an undertaking, established in a Member State other than that in which the undertakings which assign telephone numbers to subscribers are established, which requests the relevant information possessed by those undertakings in order to provide publicly available telephone directory enquiry services and directories in that Member State and/or in other Member States.

### *The second question*

- 31 By its second question, the referring court asks, in essence, whether Article 25(2) of the Universal Service Directive must be interpreted as precluding an undertaking which assigns telephone numbers to subscribers, and which is obliged under national legislation to request those subscribers’ consent to the use of data relating to them for the purposes of supplying directory enquiry services and directories, from differentiating in the request for those subscribers’ consent to that use according to the Member State in which the undertakings requesting the information referred to in that provision provide those services.
- 32 Under Article 25(2) of the Universal Service Directive, the Member States are to ensure that all undertakings which assign telephone numbers to subscribers meet all reasonable requests for information to be made available, for the purposes of the provision of telephone directory enquiry services and telephone directories, on terms that must be fair, objective, cost oriented and



non-discriminatory. Moreover, it is apparent from Article 25(5) of that directive that Article 25(2) thereof is to apply ‘subject to the requirements of Union legislation on the protection of personal data and privacy and, in particular, Article 12 of [the Directive on privacy and electronic communications]’.

- 33 It follows that, in order to answer the second question, it is necessary to examine also whether Article 12(2) of that directive subjects the transfer, by an undertaking which assigns telephone numbers to its subscribers, of a subscriber’s personal data to a third-party undertaking whose activity consists in providing publicly available directory enquiry services and directories in a Member State other than that in which that subscriber resides, to the latter’s separate specific consent.
- 34 In that regard, it should be noted that the Court held, in paragraph 67 of the judgment of 5 May 2011, *Deutsche Telekom* (C-543/09, EU:C:2011:279), that Article 12 of that directive must be interpreted as not precluding national legislation under which an undertaking publishing public directories must pass personal data in its possession relating to subscribers of other telephone service providers to a third-party undertaking whose activity consists in publishing a printed or electronic public directory or making such directories obtainable through directory enquiry services and which does not make the passing on of those data conditional on renewed consent from the subscribers. However, first, those subscribers must be informed, before the first inclusion of their data in a public directory, of the purpose of that directory and of the fact that those data may be communicated to another telephone service provider and, secondly, it must be guaranteed that those data will not, once passed on, be used for purposes other than those for which they were collected with a view to their first publication.
- 35 For the purposes of reaching that conclusion, the Court held, in the light of recital 39 and of the wording of Article 12(2) and (3) of the Directive on privacy and electronic communications, that, where a subscriber has been informed by the undertaking which assigned him a telephone number of the possibility that his personal data may be passed to a third-party undertaking, with a view to being published in a public directory, and where he has consented to the publication of those data in such a directory, renewed consent is not needed from the subscriber for the passing of those same data to another undertaking which intends to publish a printed or electronic public directory, or to make such directories available for consultation through directory enquiry services, if it is guaranteed that the data in question will not be used for purposes other than those for which the data were collected with a view to their first publication. The consent given under Article 12(2) of that directive, by a subscriber who has been duly informed, to the publication of his personal data in a public directory relates to the purpose of that publication and thus extends to any subsequent processing of those data by third-party undertakings active in the market for publicly available directory enquiry services and directories, provided that such processing pursues that same purpose. The Court has stated in that regard that the wording of Article 12(2) of the Directive on privacy and electronic communications does not support the inference that the subscriber has a selective right to decide in favour of certain providers of publicly available directory enquiry services and directories (see, to that effect, judgment of 5 May 2011, *Deutsche Telekom*, C-543/09, EU:C:2011:279, paragraphs 62 to 65).
- 36 The Court has added that, where a subscriber has consented to the passing of his personal data to a given undertaking with a view to their publication in a public directory of that undertaking, the passing of the same data to another undertaking intending to publish a public directory without renewed consent having been obtained from that subscriber is not capable of substantively impairing the right to protection of personal data, as recognised by Article 8 of the Charter of Fundamental Rights of the European Union (see, to that effect, judgment of 5 May 2011, *Deutsche Telekom*, C-543/09, EU:C:2011:279, paragraph 66).
- 37 It follows from the foregoing that it is the purpose of the first publication of the subscriber’s personal data to which he gave his consent which is decisive for the purposes of determining the scope of that consent. It should be noted, in that regard, that Article 12(3) of the Directive on privacy and electronic communications provides that the Member States may require the consent of subscribers to be

obtained also in respect of any purpose of a public directory other than the simple search of contact details of persons on the basis of their name and, where necessary, a limited number of other identifiers.

- 38 Moreover, it should be noted that, regardless of where they are established in the European Union, undertakings which provide publicly available telephone directory enquiry services and directories operate within a highly harmonised regulatory framework making it possible to ensure throughout the European Union the same respect for requirements relating to the protection of subscribers' personal data, resulting in particular from Article 25(5) of the Universal Service Directive and Article 1(1) and Article 12 of the Directive on privacy and electronic communications.
- 39 In those circumstances, as the Advocate General stated in points 40 and 41 of his Opinion, there is no need to establish a difference in treatment according to whether the undertaking requesting the transfer of personal data relating to subscribers is established in the territory of those subscribers' Member State or in another Member State, since that undertaking collects that data for purposes identical to those for which it was collected with a view to its first publication and, consequently, that transfer is covered by the consent that was given by those subscribers.
- 40 Consequently, in the light of those considerations and those set out in paragraphs 23 to 30 of the present judgment, it is not necessary for the undertaking assigning telephone numbers to its subscribers to differentiate in the request for consent addressed to the subscriber according to the Member State to which the data concerning him could be sent.
- 41 In the light of all the above considerations, the answer to the second question is that Article 25(2) of the Universal Service Directive must be interpreted as precluding an undertaking which makes telephone numbers available to subscribers, and which is obliged under national legislation to request those subscribers' consent to the use of data relating to them for the purposes of supplying directory enquiry services and directories, from differentiating in the request for those subscribers' consent to that use according to the Member State in which the undertakings requesting the information referred to in that provision provide those services.

## Costs

- 42 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 (Second Chamber) hereby rules:

- 1. Article 25(2) 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), as amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009, must be interpreted as meaning that the concept of 'requests' in that article, covers also requests made by an undertaking, established in a Member State other than that in which the undertakings which assign telephone numbers to subscribers are established, which requests the relevant information possessed by those undertakings in order to provide publicly available telephone directory enquiry services and directories in that Member State and/or in other Member States.**
- 2. Article 25(2) of Directive 2002/22, as amended by Directive 2009/136, must be interpreted as precluding an undertaking which assigns telephone numbers to subscribers, and which is obliged under national legislation to request those subscribers' consent to the use of data**

**relating to them for the purposes of supplying directory enquiry services and directories, from differentiating in the request for those subscribers' consent to that use according to the Member State in which the undertakings requesting the information referred to in that provision provide those services.**

[Signatures]