

# INFORMATION, COMMUNICATION & TECHNOLOGY

COURT DECLARES ZERO RATING  
PRACTICES ILLEGAL

VdA EXPERTISE



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## The Court of Justice of the European Union declares “zero tariff” options contrary to the European Union legislation.

On 2<sup>nd</sup> September, the Court of Justice of the European Union (“CJEU”) issued three judgements ([C-854/19](#), [C-5/20](#) and [C-34/20](#)) establishing the incompatibility of “zero tariff” ([zero rating](#)) practices with the obligations arising from [Regulation on Open Internet Access](#) (Regulation (EU) 2015/2120/EU of the European Parliament and of the Council of 25 November 2015).

- **“Zero Tariff” Option** – a commercial practice whereby an internet access provider applies a “zero tariff” or a tariff that is more advantageous to all or part of the data traffic associated with an application (e.g. Youtube, Whatsapp or Spotify) or category of specific applications – this way, the data used in that application or applications are not counted towards the data volume purchased as part of the basic package.

### I. Background

The three judgments stem from requests for a preliminary ruling by two German courts arising from different disputes between telecom operators and the German telecoms regulator and between a German consumer protection association, which took proceedings to prohibit telecom operators from making limitations on bandwidth, tethering or on use when roaming, when offering a “zero tariff” option to their customers.

### II. CJEU Position

The CJEU noted that, in order to rule on the specific situations at issue, it first needed to rule on the lawfulness of “zero tariff” practices.

In this context, the CJEU ruled that **“zero tariff” practices are incompatible with the Regulation on Open Internet Access**. The Court considered that **these practices draw a distinction within internet traffic on the basis of commercial considerations by not deducting the traffic of a particular application or applications from the basic package traffic**. Thus they do not comply with the general obligation of equal treatment of traffic without discrimination or interference.

Similarly, and taking into account that the limitations on bandwidth, tethering or roaming in question in the judgements are applied on account of the activation of “zero tariff” options, such practices were also considered, in these circumstances, contrary to the Regulation on Open Internet Access.

### III. Next Steps

The Body of the European Regulators for Electronic Communications (BEREC) has already pointed out that it will review its Guidelines on the Implementation of the Open Internet – whose conclusions are expected for 6 October – in light of the Court’s decision to reflect the interpretation of the CJEU ruling. In addition, taking into account that this type of tariffs is currently used in Portugal – mainly by young consumers – telecom operators may now have to act and make the necessary amendments in their commercial offers in order to comply with the CJEU’s decision.

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