

EXAM

JUS5641 - Electronic Communications Law - Autumn 2017

Date: 27. november

Time: 09:00

MA: The language of the examination for this course is English: students may answer in English ONLY, answers in any other language than English will be given an F (for Fail).

MobCom is one of three mobile operators that owns a 4G mobile network with national coverage in an EU member state. It is by far the largest provider in the end-user market and was recently considered to hold a dominant position by the National Regulatory Authority.

In September 2017 MobCom launched a zero-rating offer for on-line music as an optional add-on service to its mobile subscription. The “Surf Listen Free” (SLF) offer entitles the subscriber to stream all included music applications and services without affecting the volume of data included in the mobile subscription. However, the zero rated services are blocked when the monthly data cap is reached. The “Surf Listen Free” costs EUR 5 per month, but may be used with all the three mobile subscriptions offered by MobCom – both the small usage (1 GB mobile data), medium usage (5 GB) and the large usage (30 GB) subscriptions.

The applications included in the Free Surf Listen offer are the three streaming services Spooify, Tilad and Pineapple Music ("the Included Streaming Services"). For the purposes of this case study, it can be assumed that these three hold 95 % of the music steaming market. MobCom has stated that any other music streaming service in the same market as these players may request to be zero rated. In order to be included they must offer an on-demand music streaming service, support the technical zero rating platform of MobCom and enter into a Service Level Agreement. MobCom has publicly stated that, as a matter of policy, video-on-demand services such as YouTube will not be included in the zero rating offer.

The second and third largest mobile operators, Phone2 and Vodathree, have both lodged a complaint with the National Regulatory Authority stating that "Surf Listen Free" infringes the rules on net neutrality in Regulation (EU) 2015/2120, because MobCom uses its market power to dictate which music services subscribers can use their data on.

Please answer all the following questions:

Question 1:

What kind of regulatory issues does zero rating raise, and how is it regulated?

Question 2:

Assess whether MobCom's "Surf Listen Free" offer complies with the net neutrality rules in Regulation (EU) 2015/2120 article 3 (2) and 3 (3) based on paragraph 30 -56 of the BEREC Guidelines.

Question 3:

In December Phone2, which does not hold a dominant position, launches an identical zero-rating offer for music streaming services. Discuss if and how this could affect your assessment under 1).

Question 4:

MobCom has decided to block all other applications than the music streaming services included in "Surf Listen Free" once the data cap has been reached. Discuss if and how this could affect your assessment under question 2.

