**T-Mobile Poland – Decision of the Office of Competition and Consumer Protection**

**T-Mobile Poland has failed to obtain an express consent from its consumers for additional fees for the *Listen as You Wait, Jukebox* and *Subscription* services. The President of the Office of Competition and Consumer Protection imposed a fine in the amount of PLN 15 million for practices that violate collective consumer interests. The effective response of the company has led to the abolition of the fees in question, allowing the fine to be reduced by 30%.**

**[Warsaw, 5th January 2017] The proceedings against T-Mobile Poland have been** [initiated](https://uokik.gov.pl/aktualnosci.php?news_id=12545) **in August 2016, with the President of the Office of Competition and Consumer Protection alleging that the trader in question imposed upon consumers extra fees for the *Listen as You Wait, Jukebox* and *Subscription* services, with no express consent having been obtained from the customers with respect to such fees. Pursuant to the** [act on consumer rights](http://isap.sejm.gov.pl/Download?id=WDU20140000827&type=3)**, the trader is required, no later than the moment the consumer expresses their will to be bound by a contract, to obtain explicit consent of the consumer to any additional payment which exceeds the agreed remuneration for the trader’s core contractual obligations. The impugned practices pertained to the *Listen as You Wait, Jukebox* and *Subscription* services. The first two of the services listed above are ringback tone services, whereas the third service allows the consumer to access information and entertainment services. During the proceedings of the Office of Competition and Consumer Protection, it was shown that the company would activate these services by default upon conclusion of a contract as well as whenever the customer’s account was recharged. During the promotional period, the services were provided free of charge; later on, however, any consumer who has not cancelled these services (for example by sending a text message or by contacting Customer Service) had to pay additional fees despite the fact that, when concluding the contract, the company did not obtain the express consent of the consumer for such additional fees.**

**The President of the Competition Authority has therefore concluded that T-Mobile Poland was guilty of infringement of the collective interests of consumers. However, the impugned practices have subsequently been discontinued. From December 17, 2016 onwards, the service provider no longer charges consumers for the *Listen as You Wait, Jukebox* and *Subscription* services. In addition, a fine has also been imposed upon the trader. The ultimate amount of the fee was reduced due to the effective response of the company, which has discontinued the practice of charging additional fees. As a result, the fine was reduced by 30%, down to PLN 15 million. The President of the Competition Authority has also imposed upon the trader an obligation to have the decision published on the** [www.t-mobile.pl](http://www.t-mobile.pl) **website. The decision is not final and the service provider may appeal against it to the Court of Competition and Consumer Protection.**

We wish to remind you that, pursuant to article 10.1 of the [act on consumer rights](http://isap.sejm.gov.pl/Download?id=WDU20140000827&type=3), the trader is required, no later than the moment the consumer expresses their will to be bound by a contract, to obtain explicit consent of the consumer to any additional payment which exceeds the agreed remuneration for the trader’s core contractual obligations.

*– The consumer’s consent to additional fees should take the form of a specific response – “yes” or “no”, accompanied by information concerning the terms and conditions of service, the cost of the services in question and the time when the payment becomes due.* *In order to be considered explicit, the consent in question must be granted separately for each service* – says Marek Niechciał, President of the Office of Competition and Consumer Protection. – *The law provides consumers with protection against fees for which they have not expressed their prior consent. With respect to the telecommunication services market, this applies, in particular, to those services which are not covered by regular fees (such as subscription or bundle fees) and for which additional fees are being charged. T-Mobile Poland has failed to provide this protection to its consumers, falsely assuming that placing one’s signature on a general declaration pertaining to the terms and conditions of the concluded contract and the services rendered on the basis thereof was tantamount to the consent referred to above* – Mr Niechciał adds.

**The decision in the T-Mobile case forms part of the telecommunication services market analysis conducted by the President of the Office of Competition and Consumer Protection with regard to the application of the act on consumer rights by traders, including, in particular, insofar as the obligation to obtain the consumers’ explicit consent for the imposition of any additional fees is concerned. Within the framework of these activities, the President of the Office of Competition and Consumer Protection has recently initiated three explanatory proceedings with respect to the remaining telecommunications service providers, Orange Poland, Polkomtel and P4.**

**Additional information for the media:**

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