

# In September 2020 zero rating and net neutrality made the news in the international telecoms press again.



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**Europe's top court says net neutrality rules bar 'zero rating'**  
Natasha Lomas @riptart / 12:22 pm CEST • September 15, 2020  
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**EU court's net neutrality ruling uproots zero-rating plans**  
By Harry Baldock, Total Telecom  
Tuesday 15 September 20  
The court's ruling suggested that by blocking or limiting non-zero-rated apps and services, zero ratings plans could threaten the existence of a neutral and open internet for all

**EU says zero rated deals can violate net neutrality**  
By Steve McCaskill 25 days ago  
Blocking or throttling some apps but not others contravenes rules  
f t p v

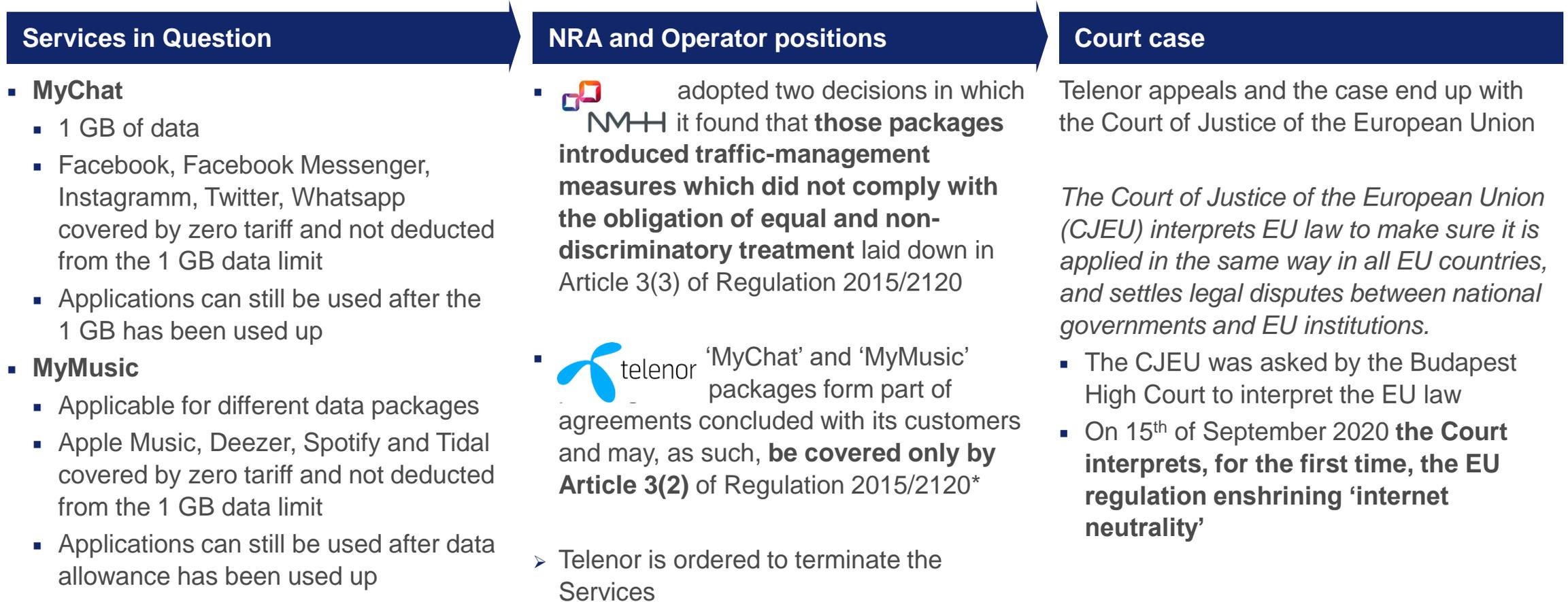
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**EU Court Ruling Challenges Mobile Operators Zero Rating Plans UPDATE**  
Tuesday, September 15th, 2020 (10:07 am) - Score 3,338

WIRELESS  
**Deutsche Telekom, Vodafone say tariffs comply with EU net neutrality rules**  
Wednesday 16 September 2020 | 10:40 CET | News  
Vodafone has designed its tariffs in accordance with the EU net neutrality guidelines, a spokesperson for the company told Teltarif.de. This reduces the risk of it infringing European net

TECH · NET NEUTRALITY  
**The EU's top court just closed a major loophole in Europe's net-neutrality rules**  
BY DAVID MEYER  
September 15, 2020 12:05 PM GMT-2



# NMHH has ordered the termination of two zero rated services in 2017, the operators appeal caused an interpretation of the law by the CJEU.



# The Court confirmed it is illegal to block or slow down traffic once the user's data cap is reached.

## Court of Justice of the EU (CJEU) ruling on the matter

- The concept of 'end user' **encompasses all legal entities or natural persons** using or requesting a publicly available electronic communications service. It also includes both natural or legal persons who use or request internet access services in order to access content, applications and services, as well as those who rely on internet access to provide content, applications and services.
- The Court found that the conclusion of agreements, by which given customers subscribe to **a package combining a 'zero tariff' and measures blocking or slowing down the traffic linked to the use of 'non-zero tariff' services and applications, is liable to limit the exercise of end users' rights**, within the meaning of Article 3(2) of Regulation 2015/2120
  - Such packages are liable to increase the use of the favoured applications and services and, accordingly, to reduce the use of the other applications and services available
  - The court underlined that the greater the number of customers concluding such agreements, the more likely it is that, given its scale, the cumulative effect of those agreements will result in a significant limitation of the exercise of end users' rights, or even undermine the very essence of those rights
- In addition the Court found that, in order to make a finding of incompatibility with that provision, **no assessment of the effect of measures blocking or slowing down traffic on the exercise of end users' rights is required**. Where measures blocking or slowing down traffic are based not on objectively different technical quality of service requirements for specific categories of traffic, but on commercial considerations, those measures must in themselves be regarded as incompatible with Article 3(3).
- The packages at review by the referring court are, generally, liable to infringe both paragraphs 2 and 3 of Article 3 of Regulation 2015/2120

# The ruling of the court has banned certain types of zero rating products, while the concept can itself can still be implemented.

## CJEU confirms rules on blocking or slowing down traffic

- In the first time being asked to interpret the EU's 2015 law on net neutrality the Court of Justice of the EU (CJEU), **confirmed it is illegal to block or slow down traffic once the user's data cap is reached**

## no need to assess the effects of the policy on customers' rights

- Adding to the ruling that it was illegal to block or slow down traffic just because it's not part of a zero-rating deal—the court ruled **there was no need to assess the effects of such a policy on end users' rights**. Where measures blocking or slowing down traffic are based on commercial considerations, those measures must in themselves be regarded as incompatible with the regulation

## Zero rating offerings still possible

- The **ruling does not stop operators from offering zero-rated services** that are exempted from the customers' data cap, as long as those services are also throttled like everything else when the general cap is reached

# Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015, Article 3

## Court of Justice of the EU (CJEU) ruling on the matter

### Safeguarding of open internet access

1. End-users shall have the right to access and distribute information and content, use and provide applications and services, and use terminal equipment of their choice, irrespective of the end-user's or provider's location or the location, origin or destination of the information, content, application or service, via their internet access service.  
This paragraph is without prejudice to Union law, or national law that complies with Union law, related to the lawfulness of the content, applications or services
2. Agreements between providers of internet access services and end-users on commercial and technical conditions and the characteristics of internet access services such as price, data volumes or speed, and any commercial practices conducted by providers of internet access services, shall not limit the exercise of the rights of end-users laid down in paragraph 1
3. Providers of internet access services shall treat all traffic equally, when providing internet access services, without discrimination, restriction or interference, and irrespective of the sender and receiver, the content accessed or distributed, the applications or services used or provided, or the terminal equipment used.  
The first subparagraph shall not prevent providers of internet access services from implementing reasonable traffic management measures. In order to be deemed to be reasonable, such measures shall be transparent, non-discriminatory and proportionate, and shall not be based on commercial considerations but on objectively different technical quality of service requirements of specific categories of traffic. Such measures shall not monitor the specific content and shall not be maintained for longer than necessary

Providers of internet access services shall not engage in traffic management measures going beyond those set out in the second subparagraph, and in particular shall not block, slow down, alter, restrict, interfere with, degrade or discriminate between specific content, applications or services, or specific categories thereof, except as necessary, and only for as long as necessary, in order to:

- a) comply with Union legislative acts, or national legislation that complies with Union law, to which the provider of internet access services is subject, or with measures that comply with Union law giving effect to such Union legislative acts or national legislation, including with orders by courts or public authorities vested with relevant powers;
- b) preserve the integrity and security of the network, of services provided via that network, and of the terminal equipment of end-users;