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Universal service

For the time being, PostFinance remains free to refuse to enter into a contract

Par Teymour Brander le 3 March 2026

Can PostFinance refuse to open a bank account on the grounds that the relationship would entail disproportionately high costs ? In a brief ruling intended for publication, the Federal Court leaves the question wide open. However, it specifies that a customer wishing to take legal action to open a bank account cannot invoke the special consumer forum provided for in Art. 32 CPC (4A_115/2025 of 12 January 2026).

In 2022, a foreign politician domiciled in Geneva applied to open a bank account with PostFinance. The bank refused on the grounds that the business relationship presented increased risks and that compliance with AMLA obligations would entail disproportionately high costs.

It is true that the individual in question, a former minister, is involved in sensitive matters. He is accused in his country of origin of corruption and money laundering. Criminal proceedings have resulted in several of his bank accounts with other Swiss institutions being frozen. That said, he is not entirely without merit : there is no indication in the judgment that he is subject to sanctions.

Faced with PostFinance's refusal, the individual concerned and several members of his family took legal action against the bank to demand the opening of a bank account. It is noteworthy that, even though PostFinance's headquarters are located in Bern, the family decided to bring the action in Geneva, invoking the special consumer jurisdiction provided for in Article 32 CPC. The Geneva courts declared themselves incompetent.

The Federal Court confirmed that the family's action was inadmissible. Art. 32 CPC is reserved for actions arising from a contract concluded with a consumer. Even before examining the existence of a current consumer service, our High Court confirmed that there was no contractual relationship between the parties, not even a pre-contractual one. This finding alone was sufficient to exclude the application of the special jurisdiction of Art. 32 CPC.

The Federal Court adds that the family could not assume that a contract would necessarily be concluded, despite the universal service mandate. Admittedly, this mandate obliges PostFinance to open and maintain an account for persons domiciled in Switzerland for domestic payment transactions in Swiss francs (Art. 32 para. 1 LPO *cum* Art. 43 para. 1 OPO). However, this obligation is not absolute : Art. 32 para. 2 LPO allows the bank to be released from it 'due

to security problems or to protect legitimate interests'. Art. 45 para. 1 OPO specifies the circumstances in which PostFinance may refuse to enter into a contract. These include cases where the relationship 'entails disproportionately high costs' (letter a). Due to the existence of this right of refusal, no contractual relationship could be inferred *in casu* until the bank had expressed its willingness to enter into a contract.

The main lesson to be learned from this ruling is procedural. In substance, it leaves the reader wanting more : the question of PostFinance's right to refuse to open a bank account if this 'entails disproportionately high costs' remains open.

In the case against Viktor Vekselberg, PostFinance had invoked the same reason to justify the termination of the business relationship. The Federal Court ruled against it, because Art. 45 aOPO, in force at the time, did not allow the bank to refuse a customer in the event of disproportionate costs (see Caballero Cuevas, cdbf.ch/1225).

Since 2021, Art. 45 para. 1 let. a OPO, as revised, explicitly allows this justification in its new wording. Although the answer to our question may now seem obvious from reading the law, some legal scholars question the legality of the new provision, pointing out that it may not have a sufficient legal basis (Emmenegger/Thévenoz/Reber/Hirsch, RSDA 2021, p. 202). The question has already been submitted to the Bernese Handelsgericht, which ruled that Art. 45 para. 1 let. a OPO complies with the framework set out in Art. 32 LPO (HG 23 72 of 16 July 2025, summary in : Liégeois/Emmenegger/Buci/Bürgi, RSDA 2026, forthcoming). An appeal is pending before the Federal Court.

Our story may well not end there. The inadmissibility of the family's action in Geneva does not prevent them from filing a new action in Bern, where PostFinance is based. Ultimately, the Federal Court may have to rule on the merits of the case. However, the former minister will have his work cut out to convince the judges at Mon-Repos to intervene in the face of the risks of erosion of PostFinance's universal service.

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