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Press and Information

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Judgment of the Court of First Instance in Case T-271/03

Deutsche Telekom AG v Commission of the European Communities

THE COURT OF FIRST INSTANCE UPHOLDS THE FINE IMPOSED ON DEUTSCHE TELEKOM FOR ITS LOCAL NETWORK ACCESS CHARGES BETWEEN 1998 AND 2002

By charging its competitors prices higher than the retail prices which it charged its own end-users, Deutsche Telekom abused its dominant position

In a decision of 23 May 2003, the Commission of the European Communities concluded that, from 1998, Deutsche Telekom had been abusing its dominant position on the markets for direct access to its fixed telephone network. Such abuse consisted in charging competitors prices for access to the network ('wholesale access') that were higher than Deutsche Telekom's prices for retail access. Such pricing in the form of a 'margin squeeze' forced competitors to charge their end-users prices higher than those which Deutsche Telekom charged its own end-users. The Commission therefore imposed a **fine of EUR 12.6 million** on Deutsche Telekom. Deutsche Telekom applied to the Court of First Instance of the European Communities for annulment of the Commission's decision or at least for the reduction of the fine imposed.

In its judgment today, the Court of First Instance rejects all the pleas advanced by Deutsche Telekom.

First of all, the Court of First Instance observes that the Commission correctly found that, from the beginning of 1998 to the end of 2001, and from 2002 to the adoption of the decision, Deutsche Telekom had sufficient scope to end or reduce the margin squeeze, while complying with the price ceiling imposed by the regulatory authority (RegTP).

The Court of First Instance points out that the fact that Deutsche Telekom's charges had to be approved by RegTP does not absolve it from responsibility under competition law. As an undertaking in a dominant position, Deutsche Telekom was obliged to submit applications for adjustment of its charges at a time when those charges had the effect of impairing genuine undistorted competition on the common market.

However, **Deutsche Telekom did not use the discretion which it had** during the period from 1 January 1998 to 31 December 2001 **to reduce the margin squeeze or even to end it entirely.**

With regard to the method used by the Commission to establish a margin squeeze, **the Court of First Instance observes that** the abusive nature of Deutsche Telekom's conduct is connected with the spread between its prices for wholesale access and its retail prices. **The Commission was not therefore required to demonstrate that the retail prices were, as such, abusive.**

The Commission was also correct to analyse the abusive nature of the pricing practices solely on the basis of Deutsche Telekom's charges and costs, disregarding the particular situation of competitors on the market. In that respect, the Court of First Instance notes that, if the lawfulness of the pricing practices of a dominant undertaking depended on the particular situation of competing undertakings, particularly their cost structure – information which is generally not known to the dominant undertaking – the latter would not be in a position to assess the lawfulness of its own activities.

Nor can the assessment of the abusive nature of the pricing practices thus be influenced by any preferences which Deutsche Telekom's competitors may have for one or other market; therefore the Commission was entitled to take the view that, in order to calculate the margin squeeze, the price of wholesale access had to be compared to the weighted average of retail prices for all Deutsche Telekom's access services (analogue, ISDN and ADSL).

With regard to the effects of the conduct in question, the Court of First Instance notes that, at the time of the adoption of the decision, there was no infrastructure in Germany other than Deutsche Telekom's fixed network that would have enabled its competitors to make a viable entry onto the market in retail access services. Since Deutsche Telekom's services were thus indispensable, a margin squeeze between its wholesale and retail charges in principle hinders the growth of competition in that market. In those circumstances, a potential competitor who is just as efficient as Deutsche Telekom cannot enter the retail access services market without suffering losses. Furthermore, the small market shares acquired by Deutsche Telekom's competitors in that market are evidence of the restrictions which its pricing practices have imposed on the growth of competition.

Finally, the Court of First Instance observes that the decisions of national authorities in respect of Community telecommunications law do not in any way affect the Commission's power to find infringements of competition law. The Commission cannot therefore be accused of introducing double regulation of Deutsche Telekom's pricing practices by punishing Deutsche Telekom for having failed to use its discretion in order to end the margin squeeze.

REMINDER: An appeal, limited to points of law only, may be brought before the Court of Justice of the European Communities against a decision of the Court of First Instance, within two months of its notification.

Unofficial document for media use, not binding on the Court of First Instance.

Languages available: DE EN FR

The full text of the judgment may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=T-271/03>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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