



Press and Information

Court of Justice of the European Union

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Judgment in Case C-295/12 P
Telefónica S.A. and Telefónica de España S:A:U: v Commission

The Court dismisses the appeal lodged by Telefónica and Telefónica de España concerning its abuse of a dominant position on the Spanish broadband market

The fine of almost €152 million imposed by the Commission and upheld by the General Court remains unchanged

EU law prohibits any abuse by undertakings of a dominant position on the internal market or on a substantial part of it, in so far as trade between Member States is liable to be affected by such abuse.

After receiving a complaint, the Commission declared, by decision of 4 July 2007,¹ that Telefónica and Telefónica de España ('Telefónica') had abused their dominant position by imposing unfair prices on their competitors in the form of a margin squeeze between the prices for retail broadband access on the Spanish 'mass market' and the prices on the regional and national wholesale broadband access markets throughout the period from September 2001 to December 2006. The Commission considered that there was clear-cut abuse on the part of an undertaking holding a virtual monopoly and that the abuse was to be classified as 'very serious'. A fine of €151 875 000 was therefore imposed on Telefónica, the starting amount of the calculation being set at €90 million.

Telefónica brought proceedings against the Commission's decision before the General Court.

By judgment of 29 March 2012,² the General Court dismissed the action.

Telefónica then lodged an appeal against the General Court's decision before the Court of Justice.

In today's judgment, **the Court dismisses Telefónica's appeal in its entirety.**

The fine of €151 875 000 imposed by the Commission and upheld by the General Court therefore remains unchanged.

The Court observes, first of all, that **the General Court did in fact carry out an in-depth review** of the Commission's decision in the light of the pleas in law put forward by Telefónica, which satisfied the requirements of a review exercising its powers of unlimited jurisdiction.

The Court points out that, according to the findings of the General Court, **the Commission demonstrated that there were potential anti-competitive effects** that may have excluded competitors who were at least as efficient as Telefónica, **which is sufficient to establish that the practice of squeezing margins was abusive.**

As regards Telefónica's argument that it could not reasonably have foreseen the Commission's interpretation of EU law regarding the conditions for the application of that law to the practice of squeezing margins, the Court observes that **that interpretation was reasonably foreseeable at the time the infringement was committed.**

¹ Commission Decision C(2007) 3196 final of 4 July 2007 relating to a proceeding pursuant to 82 [EC] (Case COMP/38.784 – Wanadoo España vs. Telefónica).

² Case [T-336/07 Telefónica and Telefónica de España v Commission](#); see also Press Release [No 40/12](#)

Lastly, the Court points out that the General Court did not err in law in finding that **the restriction of the relevant geographic market to Spain does not mean that the infringement cannot be classified as ‘very serious’**. The classification of an infringement as ‘serious’ or ‘very serious’ does not depend only on the size of the relevant geographic market but also on other criteria characterising the infringement.

The Court also considers that the Commission gave adequate reasons for its decision, that there was no breach of the principle of equal treatment and that **Telefónica has failed to show in what way the starting amount of €90 million imposed by the Commission in its decision was excessive to the point of being disproportionate**.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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