



Press and Information

General Court of the European Union

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Judgment in Cases T-827/14 and T-851/14
Deutsche Telekom AG v Commission and Slovak Telekom a.s. v
Commission

The General Court partially annuls the Commission decision relating to anticompetitive practices on the Slovakian telecommunications market

The fine imposed jointly on Slovak Telekom and Deutsche Telekom and the fine imposed solely on Deutsche Telekom are reduced

Slovak Telekom is the incumbent telecommunications operator in Slovakia and the largest telecommunications operator and broadband provider in that Member State. Until the year 2000, Slovak Telekom enjoyed a legal monopoly on the Slovakian telecommunications market. Deutsche Telekom, a company governed by German law, holds more than 50% of the share capital of Slovak Telekom.

In the early 2000s, the Slovakian telecommunications market was opened to competition¹. Slovak Telekom was then required to grant alternative operators unbundled access to the local loop (subscriber lines for the supply of different telecommunications services) and to related services under transparent, fair and non-discriminatory conditions.

By decision of 15 October 2014², the Commission found that the undertaking formed by Slovak Telekom and Deutsche Telekom had committed a single and continuous infringement concerning broadband services in Slovakia between 12 August 2005 and 31 December 2010. In that regard, the Commission established that the practices at issue sought to refuse the grant of unbundled access to the local loops of Slovak Telekom and to impose unfair tariffs on alternative operators in the form of a margin squeeze between the prices for retail broadband access and the prices on the wholesale broadband access markets.

For that infringement, the Commission imposed a fine of €38 838 000 on Slovak Telekom and Deutsche Telekom, jointly. Furthermore, an additional fine of €31 070 000 was imposed on Deutsche Telekom as a result, first, of its status as a repeat infringer³ and, secondly, of the size of its turnover which warrants a more severe penalty.

Slovak Telekom and Deutsche Telekom contested the Commission decision before the General Court.

By today's two judgments, the General Court largely upholds the Commission's conclusion that the undertaking formed by Slovak Telekom and Deutsche Telekom had abused its dominant position. However, it partially annulled the Commission decision and reduced the amount of the fines imposed.

¹ By Regulation (EC) No 2887/2000 of the European Parliament and of the Council of 18 December 2000 on unbundled access to the local loop (OJ 2000 L 336, p. 4), Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (JO 2002 L 108, p. 33) and the Zákon z 3. decembra 2003 č. 610/2003 Z.z. o elektronických komunikáciách, v znení neskorších predpisov (Law No 610/2003, of 3 December 2003 on electronic communications).

² Commission Decision C(2014) 7465 final of 15 October 2014 relating to proceedings under Article 102 TFEU and Article 54 of the EEA Agreement (Case AT.39523 — Slovak Telekom), as rectified by Commission Decision C(2014) 10119 final of 16 December 2014 and by Commission Decision C(2015) 2484 final of 17 April 2015.

³ Case: [C-280/18 P](#) Deutsche Telekom AG v Commission, see also Press Release No. [104/10](#).

Firstly, the General Court notes that the relevant regulatory framework imposed on operators with significant market power, such as Slovak Telekom, an obligation to grant unbundled access to the local loop. In that case, the regulatory framework clearly acknowledged the need, for alternative operators, to access the local loop of Slovak Telekom in order to allow the emergence and development of effective competition in the Slovak market for high-speed internet services. Consequently, in order to establish the anti-competitive nature of Slovak Telekom's conduct, **the Commission was not required to demonstrate that access to that company's local loop was indispensable for potential competitors of that company.**

Secondly, as regards the question whether the Commission demonstrated the existence of a practice resulting in a margin squeeze, the Court notes that, where it applied a 'year-by-year' analysis for the period between 2005 and 2010, the Commission found that there was a positive margin during the last four months of 2005. **In those circumstances, during those four months, the Commission was subject to a specific obligation with regard to the proof of exclusionary effects of the practice of a margin squeeze.** The Court considers that, **in the present case, the Commission has failed to demonstrate that the contested pricing practice had led to those exclusionary effects before 1 January 2006 and annuls the contested decision in so far as it is vitiated by that failure.** As a result of that partial annulment of the contested decision, the Court reduces the amount of the fine imposed jointly on Slovak Telekom and Deutsche Telekom from €38 838 000 to €38 061 963.

Thirdly, the Court points out that, where the liability of the parent company is purely derivative of that of its subsidiary, the liability of that parent company can exceed that of the subsidiary only where there are factors which individually reflect the conduct for which the parent company is held liable. The Court considers that the status as a repeat infringer of the parent company, Deutsche Telekom, constitutes a factor which individually reflects its conduct which could justify an additional fine being imposed on it by the Commission. By contrast, the Court considers that **Deutsche Telekom's turnover is not capable of reflecting its individual conduct in the infringement at issue** and that it therefore could not serve as a basis for the calculation of an additional fine imposed on the latter.

For that reason, the Court reduces **the amount of the additional fine imposed on Deutsche Telekom from € 31 070 000 to €19 030 981.**

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The full text of the judgments [T-827/14](#) and [T-851/14](#) are published on the CURIA website on the day of delivery

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