



Slovak Telekom, found liable by the Commission for abuse of a dominant position on the market for certain telecommunications services, could also be subject to sanctions imposed by the Slovak authorities for such abuse on the market for other telecommunications services

Where the Commission initiates proceedings examining infringements which are identical to those for which proceedings have been brought by the national authorities, those authorities lose their competence in that matter

On 21 December 2007, the Slovak competition authority, pursuant to the competition rules of EU law, adopted a decision finding that Slovak Telekom had abused its dominant position on the Slovak telecommunications market.

On 8 April 2009, the Commission initiated proceedings against Slovak Telekom for alleged abuses of a dominant position on the Slovak market for wholesale broadband access services. The allegedly abusive practices to be examined related, first, to Slovak Telekom's refusal to supply with respect to unbundled access to its local loops and, second, to margin squeezes as regards wholesale access to its unbundled local loops and to other broadband access services and corresponding retail access services in Slovakia.

At the conclusion of those proceedings, the Commission adopted, on 15 October 2014, a decision finding that, by resorting to the abovementioned practices, the undertaking comprising Slovak Telekom and Deutsche Telekom, Slovak Telekom's majority shareholder, had abused its dominant position on the Slovak telecommunications market. For those infringements, the Commission imposed, jointly and severally, a fine of € 38 838 000 on Slovak Telekom and Deutsche Telekom.¹

On 9 April 2009, the Rada Protimonopolného úradu Slovenskej republiky (Board of the Antimonopoly Office of the Slovak Republic) amended the decision of the Slovak competition authority and imposed on Slovak Telekom a fine of 525 800 000 Slovak koruna (SKK) (€ 17 453 362.54) for abuse of a dominant position resulting from the adoption of a margin squeeze strategy as regards its margins between the prices for retail telecommunications services and those for wholesale interconnection services.

Having doubts as to the compatibility with the principle of prohibition of prosecution and punishment for the same cause of action (*ne bis in idem*) of the finding made by both the Slovak authorities and the Commission that Slovak Telekom was liable for abuse of a dominant position consisting in a margin squeeze, the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic), called on to rule on the dispute between Slovak Telekom and those authorities, submitted questions to the Court of Justice in that regard.

¹ That decision was contested before the General Court of the European Union, which delivered two judgments on 13 December 2018, *Deutsche Telekom v Commission* and *Slovak Telekom v Commission* (T-827/14 and T-851/14); see also PR No 196/18. Appeals were lodged against the judgments of the General Court and the resulting cases (C-152/19 P and C-165/19 P) are pending before the Court of Justice.

By its judgment delivered today, the Court of Justice recalls, first, that, pursuant to the regulation relating to the implementation of the rules on competition,² the competition authorities of the Member States lose their competence to apply the provisions of the FEU Treaty relating to competition in cases where the Commission initiates proceedings for the purpose of adopting, in particular, a decision aimed at finding an infringement of those provisions.

The Court emphasises that the phrase 'initiation by the Commission of proceedings' delimits, from a substantive point of view, the extent to which the Commission relieves the competition authorities of the Member States of their competence. **Those authorities being relieved of their competence relates solely to the facts which are the subject of the proceedings initiated by the Commission.** Consequently, where **the Commission initiates such proceedings, the competition authorities of the Member States are relieved of their competence to bring proceedings against the same undertakings for the same, allegedly anti-competitive, practices occurring on the same product and geographical market or markets during the same period or periods.** Thus, in the present case, the Commission's decision of 8 April 2009 to initiate proceedings against Slovak Telekom relieved the Slovak competition authority of its competence to apply the EU competition rules only in so far as the investigation conducted by that authority and the investigation started by the Commission concerned, in the light of the abovementioned elements, the same infringements.

However, it appears from the file submitted to the Court that, whereas the Commission initiated proceedings against Slovak Telekom for alleged abuses of a dominant position on the market for wholesale broadband access services, the proceedings before the Slovak competition authority concerned abuses of a dominant position allegedly committed by that undertaking on the wholesale and retail markets for telephone services and low-speed (dial-up) internet access services.

In those circumstances, the Court finds that, subject to verification by the Najvyšší súd Slovenskej republiky, **it appears that the proceedings conducted by the Commission and by the Slovak competition authority against Slovak Telekom had as their subject alleged abuses of a dominant position on the part of Slovak Telekom on separate product markets.** Thus, the fact that the Commission initiated the abovementioned proceedings against that company does not appear to have resulted in the Slovak competition authority losing its competence as regards the infringements concerned by the proceedings which it conducted.

Finally, the Court states that the principle *ne bis in idem* does not apply to the present situation, where the product markets in question are not identical. In that regard, the Court notes that, even if it were to be shown that the product markets in question are identical, that principle would still not apply since, as a result of the initiation by the Commission of its proceedings, the Slovak competition authority would have been relieved of its competence to apply the EU competition rules to the facts of the present case.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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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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² Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 and 102 TFEU] (OJ 2003 L 1, p. 1).