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Judgments of the General Court in Cases T-58/20 | NetCologne v Commission, T-64/20 | Deutsche Telekom v Commission and T-69/20 | Tele Columbus v Commission

Merger control: the General Court upholds the Commission decision authorising Vodafone's acquisition of Liberty Global's telecommunications activities in Germany, the Czech Republic, Hungary and Romania

The Commission properly concluded that the merging parties were not competitors in the markets for the retail supply of TV signal transmission services in Germany

In October 2018, Vodafone, ¹ a British company specialising in mobile telecommunications, television and internet services informed the European Commission that it intended to acquire sole control of the telecommunications activities of Liberty Global in Germany, the Czech Republic, Hungary and Romania. ² In Germany, the transaction consisted of the acquisition of 100% of the shares in Unitymedia, a company providing television and broadband internet services. ³

After having initially raised serious doubts as to the compatibility of the transaction with the internal market, the Commission finally approved the transaction in July 2019. ⁴ That authorisation was granted on condition that Vodafone complies with its commitments intended to address the competition problems identified by the Commission.

Three German undertakings – Deutsche Telekom AG, Tele Columbus AG and NetCologne Gesellschaft für Telekommunikation AG – brought an action before the General Court of the European Union seeking to have that decision annulled. Fearing Vodafone's dominant position, in particular in the markets for the retail supply of TV signal transmission services in Germany, they took the view that the Commission made manifest errors of assessment regarding the competitive effects of the transaction in question.

The General Court **dismissed those actions** as being unfounded, thereby upholding the contested decision.

Indeed, the Commission did not make a manifest error of assessment in finding that the merging parties were not, prior to that transaction, either actual competitors (directly or indirectly) or potential competitors in the markets for the retail supply of TV signal transmission services to customers living in multi-dwelling units or in single-dwelling units in Germany. The Commission therefore could conclude that the transaction would not eliminate any competitive relationship between those parties and would not give rise to a significant impediment to effective competition on the relevant markets. ⁵

The Court also recalls that only concentrations which would significantly impede effective competition in the internal market or in a substantial part of it are to be declared incompatible with the internal market. However, the fact that a concentration would create or strengthen a dominant position is not, in itself, sufficient for that concentration to be regarded as incompatible with the internal market. Consequently, although Vodafone held a dominant position in those markets, the Commission could legitimately find that there was no significant impediment to effective competition as a direct and immediate effect of the concentration.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to EU 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.

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 and ten days of notification of the decision.

Unofficial document for media use, not binding on the General Court.

The full text and, as the case may be, an abstract of the judgments ([T-58/20](#), [T-64/20](#) and [T-69/20](#)) is published on the CURIA website on the day of delivery.

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Images of the delivery of the judgment are available on '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

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¹ Vodafone Group plc is active in twelve Member States, including the Czech Republic, Germany, Hungary and Romania. In Germany, that company operates in thirteen of the sixteen *Länder*, via its offer of television, broadband internet and mobile telecommunications services.

² Liberty Global plc, established in the United Kingdom, offers, inter alia, television, broadband internet and mobile services in different Member States. It is present in Germany through Unitymedia GmbH and in the Czech Republic, Hungary and Romania under the name UPC.

³ Unitymedia owns a co-axial cable network present in the three *Länder* not covered by Vodafone's cable network, namely North Rhine-Westphalia, Hesse and Baden-Württemberg.

⁴ [Commission Decision C\(2019\) 5187 final](#), of 18 July 2019 declaring the concentration involving the acquisition by Vodafone Group plc of certain assets of Liberty Global plc to be compatible with the internal market and the EEA Agreement (Case COMP/M.8864 – Vodafone/Certain Liberty Global Assets). See also [the Commission Press Release IP/19/4349](#), published on the same day.

⁵ Within the meaning of Article 2(2) and (3) of [Council Regulation \(EC\) No 139/2004](#) of 20 January 2004, on the control of concentrations between undertakings.