

Abuse cases

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By way of introduction

- The Telecom sector is described as a « priority sector »
- Always a case in the pipeline of the College of Prosecutors...
- Close cooperation between the regulators (BIPT/IBPT) and the Belgian Competition Authority.
- Close cooperation between the DG competition and other DG's dealing with the “Information society”.

“Abuse cases” are not the only ones...

- Merger cases:
 - Tecteo / Brutélé (Voo) – Tecteo / BeTV;
 - Belgacom /scarlet;
- Litigation between operators (Art.4 Telecomact 17/01/03):
 - Mobistar / Belgacom (ADSL2+)
 - Mobistar / Belgacom (Discovery Line)

Corporate Mobile: the parties and allegations

- Parties:
 - Complainant: Base, the smallest mobile operator and the latest entrant on the Belgian market.
 - Proximus: Subsidiary of the incumbent (Belgacom) and the first entrant on the Belgian market.
- The allegations:
 - According to Base, Proximus has committed several abuses on the corporate segment of the Belgian mobile Market: Price squeeze, predatory pricing, discrimination between on-net and off-net calls, exclusionary rebates, ...

Corporate Mobile: markets, dominance and abuse (1)

- Conclusions of the Competition Prosecutor:
 - The relevant markets are the market for termination on the Proximus network and the Mobile telephony for professional users market.
 - Proximus is dominant on both markets
 - According to the prosecutor, Proximus has committed five different abuses:
 - Exclusionary rebates;
 - Excessive pricing (termination rate);
 - Discrimination (termination rate);
 - Price squeeze (between MTR and on-net calls);
 - Discrimination between on-net and off-net calls;

Corporate mobile: markets, dominance (2)

- Conclusions of the Competition Council:
 - The relevant markets are the market for termination on the Proximus network and the Mobile telephony market as a whole.
 - Proximus is dominant on both markets.
 - Proximus has abused its dominant position by achieving a Price squeeze between its termination rate and its on-net retail tariffs on the corporate segment of the market.
 - The Council has rejected the four others allegations raised by the Prosecutor.

Corporate Mobile: Analysis of the rebate (1)

- Conclusions of the prosecutor, a classical analysis (Michelin, British Airways, ...):
 - Proximus is dominant on the retail market;
 - Rebates granted by Proximus have a fidelity-building character;
 - Proximus was unable to economically justify its rebates scheme;
 - Proximus has committed an abuse of dominant position.

Corporate Mobile: Analysis of the rebate (2)

- Defense of Proximus
 - Rebates may only be abusive if between a producer and a an intermediate customer; not between a producer and a retail customer.
 - “Meeting competition defense”: Rebates were only offer to counter Mobistar aggressive offers.

Corporate Mobile: Analysis of the rebate (3)

- Conclusions of the Council:
 - Rejection of Proximus argument
 - A rebate scheme may be abusive even between a producer and a retail customer
 - Rejection of the Prosecutor's argument:
 - The fidelity character of the rebates is not sufficiently demonstrated by the report

Corporate Mobile : Analysis of the Price squeeze (1)

- Conclusions of the Prosecutor:
 - The starting point to achieve a price squeeze analysis is the wholesale market; in this case, the termination on the Proximus Network.
 - The evaluation should be made with the retail service derived from the wholesale market; in this case, the on-net calls.
 - No need to demonstrate a dominant position on the retail market.

Corporate Mobile : Analysis of the Price squeeze (2)

- Proximus arguments
 - The exact opposite: the starting point of the evaluation of a margin squeeze is the retail market; in this case all the services offered by Proximus: on-net calls, off-net calls, international calls, on-net SMS, off-net SMS, etc...
 - The evaluation should be made with all the wholesale markets permitting the delivery of the retail services.
 - It is mandatory to prove the exclusionary effects of a margin squeeze to find it abusive.

Corporate Mobile : Analysis of the Price squeeze (3)

- The Council has rejected the Proximus arguments:
 - A price squeeze analysis may only be made between the wholesale service and the retail service(s) derived from this wholesale service; The Wholesale market is the starting point.
 - The fact that the retail service is only a part of the relevant retail market is not an argument once it represents a significant part of it.
 - Once demonstrated, a margin squeeze is in itself exclusionary and thus abusive.

What's next?

- The « Happy Time » case: Soon... (Spring 2010 ?)
- The DG Competition has a special interest in the current trends: “triple-play”, “quadruple-play”, etc..
- When a competition authority deals with the telecom sector, it's usually under Art. 82 (Art. 3)... But Art.81§1 (Art. 2§1) still remain on the radar screen...

■ **THANK YOU!**