Competition Council Fines Incumbent Telecom Operator for Abuse of Dominant Position in Telecommunication Services Sector

On 13 November 2014, Luxembourg's competition authority fined the Entreprise des Postes et Télécommunications (EPT), the parent company of Post Telecom, the incumbent telecom operator, €2 520 000 for an abusive practice of exclusionary bundling combined with multi-product rebates restricting competition in the market of mobile telecommunication services and infringing Article 5 of the Luxembourgish Competition Act and Article 102 TFUE.

The case was opened in 2006, when three alternative telecom operators, which later merged into Tango S.A., the largest alternative telecom operator in Luxembourg, lodged a complaint before the competition authority against the incumbent telecom operator. The case has been reallocated to the reformed Competition Council (the Council) in May 2013. The complaint addressed a large number of possible restrictions of competition in the markets for retail and wholesale telecommunication services in Luxembourg. The enquiry led by the rapporteur to the Council identified nine separate claims.

The infringement concerns the rebate scheme applied by EPT since end 2005 to its retail customers who subscribe to its bundled "triple play" offer of fixed telephony, broadband and mobile services, which contains significant advantages for customers subscribing to all three offers.

EPT was during the infringement period and still is heavily dominant on the markets related to fixed communications networks (fixed telephony and broadband) and also has a considerable market share on the market for retail mobile telephone services.

As part of its investigation, the Council carried out an exclusionary bundling test originally devised by U.S. economist Barry Nalebuff and found that the rebates offered by EPT are such that a competitor mainly active in mobile services will be unable to compete with the incumbent in these services, because it cannot compensate for the rebates offered by EPT on all three types of services.
Thus the Council concludes that there has been foreclosure on the market for mobile services for a significant number of existing or potential customers and that the contestable demand has been significantly reduced.

The finding rests on the assumption that the underlying services in the bundle must be a substitute to the bundle as a whole, so that there is competition between bundles and individual communication services provided by one or several operators. If, however, competitors are not able to compete with the incumbent in one of the underlying services (for instance mobile services), then the competition between bundles and individual services has been restricted.

The alternative operators have brought to the market the same kind of bundled offers by relying on the wholesale offers of the incumbent for fixed communication services. A separate margin squeeze test has been applied in order to assess whether the incumbent's competitors are economically able to offer the same kind of mixed bundles with rebates to their retail clients by relying on the wholesale offers of the incumbent. This test did not show a margin squeeze effect.

As regards the infringement period the Council comes to the following conclusion: since their appearance in 2005, the bundled ("triple play") offers have been a big success and have almost entirely replaced the retail offers for individual retail services in electronic communications. Today, some 78% of households in Luxembourg have subscribed to a bundled offer. The Council has found that competition between bundles and individual services has been largely replaced by competition between bundles since the beginning of 2008. Therefore, the exclusionary bundling test is only relevant for the years 2006 and 2007, and the infringement period is limited to those two years.

Concerning the potential anticompetitive effects of EPT's abusive behaviour, the investigation of the Council shows that EPT's rebate policy in the bundled "triple play" services is one of the factors why the market shares of alternative operators on the mobile telephone services market in Luxembourg are stagnant and show a downward tendency since 2007, and why their combined market shares in Luxembourg are the lowest in the European Union except Cyprus.

See here for the press release in French.

See here for the full text of the decision in French.

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Entreprise des Postes et Télécommunications (EPT)
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