Court of Justice of the European Union: EUR 150 million fine upheld for anti-competitive broadband pricing by Spanish Telecoms Giant

IRIS 2014-9:1/6

Patrick Leerssen
Institute for Information Law (IViR), University of Amsterdam

On 4 July 2014, the Court of Justice of the European Union (CJEU) delivered its opinion in Case C-295/12 (Telefónica SA and Others v. European Commission). In this case, the Court considered a request on appeal for the revocation of a fine imposed by the European Commission for anti-competitive pricing in Spanish broadband access markets.

The case arose following a complaint to the Commission concerning the pricing policies of Telefónica SA and its subsidiaries submitted on 11 July 2003. The Commission subsequently examined whether the margin between the wholesale prices, which Telefónica charged their competitors for the supply of broadband access in Spain, and the retail prices they charged to end users, was enough to allow competitors of Telefónica to compete with it (an anti-competitive practice known as 'margin squeezing').

On 4 July 2006, having found evidence of such 'margin squeezing', the Commission adopted a decision to impose a fine of EUR 151,875,000 on Telefónica SA for the abuse of a dominant position in the Spanish broadband market – the second largest fine to ever be imposed for a breach of Article 102 of the Treaty on Functioning of the European Union (TFEU). On 1 October 2007, Telefónica SA brought an action for annulment of this decision, or, in the alternative, the revocation or reduction of the fine imposed. The General Court dismissed the action in full (Case T-336/07).

On 13 June 2012, Telefónica SA brought an appeal before the Court of Justice, seeking annulment of the General Court's ruling and revocation or reduction of the fine. Among other grounds, it was claimed that the General Court should have ascertained whether the Commission's ex post intervention was compatible with the objectives pursued by the Spanish Commission for the Telecommunications Markets through ex ante regulation. This claim was rejected as unfounded, as the CJEU found that 'the Commission's implementation of article 102 TFEU is not subject to any prior consideration of action taken by national authorities'.

Telefónica SA also submitted that the General Court failed to have regard to the principle of legal certainty by finding that the Commission was entitled to impose

© European Audiovisual Observatory (Council of Europe) 2026

a fine on them for ‘margin squeezing’, due to a lack of clear and foreseeable precedents. However, the CJEU agreed with the General Court that the Commission’s decision was reasonably foreseeable due to the anti-competitive effects of ‘margin squeezing’ practices and prior decisions of the Commission.

The size of fine imposed was also disputed as disproportionate, with the appellant drawing comparisons to other Commission decisions where fines were up to eleven times smaller, even though the relevant geographic markets were significantly larger. However, the CJEU held that the Commission´s practice in previous decisions cannot itself serve as a legal framework for the imposition of fines in competition matters. Furthermore, they found that the size of fines does not depend exclusively on the size of the relevant geographic market, but also on other criteria characterising the infringement. On these grounds, the fine was upheld in its entirety.

Judgment of the Court (Fifth Chamber) in Case C-295/12P Telefónica SA and Others v. European Commission, 10 July 2014

http://curia.europa.eu/juris/document/document.jsf?text=&docid=154824&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=78482

Judgment of the General Court (Eighth Chamber) in Case T-336/07 Telefónica SA and Others v. European Commission, 29 March 2012

http://curia.europa.eu/juris/document/document.jsf?text=&docid=121143&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=218716

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026