ABUSE OF DOMINANT POSITION (MOBILE PHONES): THE KPN CASE

Subject: Abuse of dominant position
Price differentials

Industry: Telecommunications; mobile phone networks

Parties: Koninklijke KPN NV
KPN Mobile
KPN Telecom
MCI WorldCom (complainant)

Source: Commission Statement IP/02/483, dated 27 March 2002

(Note. Quite apart from commercial considerations, consumers are likely to welcome the Commission's initiative in the field of mobile phone costs. There are clearly price differentials: if they stem from the operators' dominant position on the market, as the Commission believes, they may well be the result of an abuse. The problem has to some extent been resolved in other countries following a settlement. There is still a possibility that the present case may end in the same way.)

Commission's Statement of Objections

The Commission has sent to Dutch incumbent telecommunications operator Koninklijke KPN NV a statement of objections alleging that KPN, through its subsidiaries KPN Mobile (mobile traffic) and KPN Telecom (fixed traffic), has violated the competition rules of the EC Treaty. Specifically, the Commission suspects KPN of abusing its dominant position regarding the termination of telephone calls on the KPN mobile network through discriminatory or otherwise unfair behaviour. The case stems from a complaint by MCI WorldCom, a United States based fixed telecommunications network operator who is a new entrant in the European Union market. Studies show that fixed to mobile termination rates in Europe can be ten times higher than the average charge for fixed to fixed interconnection. This results in undue barriers for newcomers to the market and high prices for consumers. Originally, WorldCom's complaint also concerned mobile operators in other European Union countries, namely Sweden and Germany; but the complaint against Germany was withdrawn after the German operators reduced their termination rates by 50%, while in Sweden the national competition authority is dealing with the issue.

Call termination in mobile networks

There is a general concern in the European Union regarding the competitiveness of mobile call termination markets. Already in May 2000, an OECD report on pricing structures in the mobile sector queried: "Why....is it more expensive to call from a fixed to a mobile network in off-peak times than to make a call in the opposite direction?" and also noted that users making calls from fixed to mobile networks during business hours appear to be "meeting a very steep additional cost".

More recently, in its annual report on the state of the telecommunications sector, the Commission identified the mobile call termination market as a source of concern.

Despite a decrease of around 10% over 2001, average peak time rates charged by mobile operators in the European Union for terminating telephone calls on their respective networks remain approximately ten times higher than the average charge for fixed to fixed interconnection.

The mobile market in The Netherlands

In The Netherlands, unlike in all otherMember States of the European Union, all telecommunication traffic to all mobile network operators, not just to KPN Mobile, must at present pass through the fixed network of KPN Telecom. This is because so far only KPN Telecom appears to have direct interconnection with the mobile networks in The Netherlands. Despite requests from WorldCom and other telecoms operators over the last few years, KPN Mobile has not, until now, entered into any kind of direct interconnection agreement with other network operators than KPN Telecom. An offer for direct interconnection that was made at the end of 2000 contained terms which were unacceptable for the other market parties, and was subsequently withdrawn by KPN. This absence of direct interconnection significantly reduces the scope of services that WorldCom and other operators can offer to their customers. WorldCom complained to the Commission at the end of 1999.

After a thorough analysis, the Commission has come to the preliminary conclusion that the provision of terminating access services on KPN Mobile's public mobile telecommunications network constitutes a separate product/services market. At retail level (demand side), users who wish to call a subscriber A of mobile network operator A, cannot at present choose an alternative mobile operator for terminating their calls to subscriber A. At wholesale level (demand side), all public network operators are under a regulatory obligation to offer calls to other networks. To do so, they must purchase wholesale terminating access services on each network, for which there are no substitutes: for a call to reach a subscriber of network A, the originating or transit operator must purchase terminating access services from network operator A.

On the supply side, only the individual mobile network operator can offer terminating access on its own network, so that there is no substitution between network operators. Furthermore, mobile network operators are found not to compete for termination services. In general, price elasticity is found to be very low and there appears to be no competitive responses to significant price changes.
For these reasons the Commission has concluded in its preliminary assessment that there is a separate market for the termination of calls on each mobile network; and that) given the absence of countervailing market power, KPN

Mobile holds a dominant position on the market for the termination of calls on its network.

In its statement of objections, the Commission states that it believes KPN abused its dominant position through:
- discrimination by KPN Mobile on the terms for direct termination in favour of KPN Telecom;
- unfair pricing practices amounting to a margin squeeze between KPN Mobile's wholesale terminating services offered to other network operators and the retail prices of KPN Mobile/Telecom for certain mobile/fixed services offered to business customers in The Netherlands;
- (constructive) refusal by KPN Mobile to provide direct interconnection for call termination on its network.

The Commission can use Article 82 of the EC Treaty to prohibit abuses of a dominant position. KPN now has two months to present arguments contesting this preliminary analysis and may also expand on those arguments at an oral hearing. It is only after this has happened that the Commission will form a final position.

Technical background information

Terminating access_is the wholesale network service that consists of the termination by a network operator of traffic that originates on another network, that is, completing a call for another network operator, which allows users of the respective networks to communicate with each other. Both mobile and fixed operators provide these services each on their individual network.

Based on comparative data collected by the Commission, the average rates charged by mobile operators in the European Union is ten times as high as the rates charged on all fixed networks. There is no technical explanation for such a large difference.

Transit is_the wholesale service that consists of the conveyance (transport) by a transit operator over its network of traffic that neither originates nor terminates on its network. ■

The Austrian Banks Case

The Commission has written to the Austrian Government stating its view that the current guarantees given by the Federal, provincial and local authorities for certain publicly owned credit institutions (notably the provincial mortgage banks and some savings banks) in as far as they affect their competitiveness and trade between the Member States constitute state aid that is incompatible with the common market. It has asked the Austrian Government to respond to the Commission's provisional finding within one month. *(See also the Berlin Bank Case on page 100 of this issue.)*

Source: Commission Statement IP/02/505, dated 5 April 2002