



Reports of Cases

Case C-295/12 P

Telefónica SA

and

Telefónica de España SAU

v

European Commission

(Article 102 TFEU — Abuse of dominant position — Spanish markets for access to broadband internet — Margin squeeze — Article 263 TFEU — Review of legality — Article 261 TFEU — Unlimited jurisdiction — Article 47 of the Charter — Principle of effective judicial protection — Review exercising powers of unlimited jurisdiction — Amount of the fine — Principle of proportionality — Principle of non-discrimination)

Summary — Judgment of the Court (Fifth Chamber), 10 July 2014

1. *Appeals — Grounds — Error of law relied on not identified — Ground lacking precision — Inadmissibility*

(Art. 256 TFEU; Statute of the Court of Justice, Art. 58; Rules of Procedure of the Court of Justice, Art. 112(1)(c))

2. *EU law — Principles — Right to effective judicial protection — Enshrined in the Charter of Fundamental Rights of the European Union — Judicial review of decisions adopted by the Commission in competition matters — Review of legality and review exercising the Court's powers of unlimited jurisdiction in respect of both the law and the facts — Infringement — None*

(Arts 101 TFEU, 102 TFEU, 261 TFEU and 263 TFEU; Charter of Fundamental Rights of the European Union, Art. 47; Council Regulations No 17, Arts 15(2) and 17, and No 1/2003, Arts 23(2) and 31)

3. *Fundamental rights — European Convention on Human Rights — Instrument not formally incorporated into EU law*

(Art. 6(3) TEU; Charter of Fundamental Rights of the European Union, Art. 52(3))

4. *Judicial proceedings — Duration of the proceedings before the General Court — Reasonable time — Dispute concerning whether there has been infringement of the competition rules — Failure to adjudicate within a reasonable time — Consequences*

(Arts 263 TFEU and 340 TFEU; Charter of Fundamental Rights of the European Union, Art. 47, second para.)

5. *Appeals — Grounds — Incorrect assessment of the facts and evidence — Review by the Court of the findings of fact — Possible only where the clear sense of the evidence has been distorted*
(Art. 256(1), second para., TFEU; Statute of the Court of Justice, Art. 58, first para.)
6. *Appeals — Grounds — Plea submitted for the first time in the appeal — Inadmissibility*
(Art. 256(1), second para., TFEU; Statute of the Court of Justice, Art. 58, first para.)
7. *Dominant position — Abuse — Concept — Conduct having a restrictive effect on competition — Potential effect*
(Art. 102 TFEU)
8. *EU law — Principles — Non-retroactivity of criminal law provisions — Scope — Commission decision finding an anti-competitive practice — Included — Retroactive application of a new interpretation of a rule establishing an offence — Whether the new interpretation is foreseeable — Principle that penalties must be clearly defined by law and the principle of legal certainty — No infringement*
(Arts 101 TFEU and 102 TFEU)
9. *Dominant position — Relevant geographical market — Delimitation — Criteria — Limited to a single Member State — No effect on the gravity of the infringement*
(Art. 102 TFEU)
10. *Competition — Fines — Decision imposing fines — Obligation to state reasons — Scope — Indication of the factors which led the Commission to assess the gravity and the duration of the infringement — Sufficient indication — Whether the Commission is required to indicate the figures relating to the method of calculating the fine — No such requirement*
(Arts 101 TFEU, 102 TFEU and 296 TFEU; Council Regulation No 1/2003, Art. 23(2))
11. *Competition — Fines — Amount — Determination — Whether the Commission is obliged to abide by its previous decision-making practice — No such obligation — Raising of the general level of fines — Lawfulness*
(Arts 101 TFEU and 102 TFEU; Council Regulation No 1/2003, Art. 23(2))
12. *Appeals — Jurisdiction of the Court — Whether it may review, on grounds of fairness, the assessment by the General Court in regard to the amount of the fines imposed on undertakings which have infringed the competition rules of the Treaty — Excluded — Whether it may review that assessment on grounds based on infringement of the principle of proportionality — Lawfulness*
(Arts 101 TFEU, 102 TFEU, 256 TFEU and 261 TFEU; (Statute of the Court of Justice, Art. 58, first para.; Council Regulation No 1/2003, Art. 31)
1. See the text of the decision.

(see paras 29, 30, 72, 78, 79, 82, 105, 122, 129, 131, 135, 138, 142, 174, 187, 232)

2. The principle of effective judicial protection is a general principle of EU law to which expression is now given by Article 47 of the Charter of Fundamental Rights of the European Union and which corresponds, in EU law, to Article 6(1) of the European Convention on Human Rights.

EU law provides for a system of judicial review of Commission decisions relating to proceedings under Article 102 TFEU which affords all the safeguards required by Article 47 of the Charter of Fundamental Rights of the European Union. That system of judicial review consists in a review of the legality of the acts of the institutions for which provision is made in Article 263 TFEU, which may be supplemented, pursuant to Article 261 TFEU, by the Court's unlimited jurisdiction with regard to the penalties provided for in regulations.

The scope of judicial review extends to all Commission decisions relating to a proceeding under Article 102 TFEU, whereas the scope of the unlimited jurisdiction conferred by Article 31 of Regulation No 1/2003 is confined to the parts of such decisions imposing a fine or a periodic penalty payment.

Such review of legality involves review by the European Union judicature, in respect of both the law and the facts, of the arguments relied on by applicants against the contested decision, which means that it has the power to assess the evidence, annul the decision and to alter the amount of the fine. The EU judicature must, among other things, not only establish whether the evidence put forward is factually accurate, reliable and consistent, but must also determine whether that evidence contains all the relevant data that must be taken into consideration in appraising a complex situation and whether it is capable of substantiating the conclusions drawn from it. Compliance with the principle of effective judicial protection does not require that the General Court should be obliged to undertake of its own motion a new and comprehensive investigation of the file.

In order to satisfy the requirements of conducting a review exercising its powers of unlimited jurisdiction for the purpose of Article 47 of the Charter of Fundamental Rights of the European Union with regard to the fine, the EU judicature is bound, in the exercise of the powers conferred by Articles 261 TFEU and 263 TFEU, to examine all complaints based on issues of fact and law which seek to show that the amount of the fine is not commensurate with the gravity or the duration of the infringement.

(see paras 39, 40, 42, 45, 53-55, 200)

3. See the text of the decision.

(see para. 41)

4. In the absence of any evidence that the excessive duration of the proceedings before the General Court had an effect on the outcome of the dispute, failure on the part of the General Court to adjudicate within a reasonable time cannot lead to a judgment being set aside. Indeed, where failure to adjudicate within a reasonable time has no effect on the outcome of the dispute, the setting aside of the judgment would not provide a remedy for any infringement by the General Court of the principle of effective judicial protection.

The sanction for a breach, by a court of the European Union, of its obligation under the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union to adjudicate on the cases before it within a reasonable time must be an action for damages brought before the General Court, since such an action constitutes an effective remedy. Accordingly, a claim for compensation for

the damage caused by the failure on the part of the General Court to adjudicate within a reasonable time may not be made directly to the Court of Justice in the context of an appeal, but must be brought before the General Court itself.

(see paras 64, 66)

5. See the text of the decision.

(see paras 84, 89, 93, 107, 114, 153, 159, 163, 165, 176, 219, 225, 227)

6. See the text of the decision.

(see paras 99, 121, 144)

7. See the text of the decision.

(see para. 124)

8. See the text of the decision.

(see paras 147-149)

9. In an assessment of abuse of a dominant position infringing the EU's competition rules, the fact that the relevant geographic market is restricted to the territory of a single Member State does not mean that the infringement cannot be classified as very serious. The mere fact that, in the other decisions, the Commission classified the infringements in question as serious, even though the relevant geographic markets were larger than that in the case under consideration, does not affect that assessment, as the classification of an infringement as serious or very serious does not depend only on the size of the relevant geographic market but also other criteria characterising the infringement.

(see para. 178)

10. In the determination of the amount of the fine in a case of infringement of the competition rules, the Commission fulfils its obligation to state reasons when it indicates in its decision the factors which enabled it to determine the gravity of the infringement and its duration, and it is not required to indicate the figures relating to the method of calculating the fine. Moreover, the Commission does not fail to fulfil that obligation by not taking into account the varying degree of seriousness of the infringement and by failing to distinguish two separate infringement periods

(see paras 181-183, 195)

11. See the text of the decision.

(see paras 189, 190)

12. See the text of the decision.

(see para. 205)