

Judgment of the General Court of 13 December 2018 — Slovak Telekom v Commission(Case T-851/14) ⁽¹⁾

(Competition — Abuse of dominant position — Slovakian market for broadband telecommunications services — Access by third-party undertakings to the ‘local loop’ of the incumbent operator on that market — Decision finding an infringement of Article 102 TFEU and Article 54 of the EEA Agreement — Single and continuous infringement — Definition of ‘abuse’ — Refusal to grant access — Margin squeeze — Calculation of margin squeeze — Equally efficient competitor test — Rights of defence — Imputation of an infringement committed by a subsidiary to its parent company — Decisive influence of the parent company over the subsidiary’s commercial policy — Actual exercise of such influence — Burden of proof — Calculation of the fine — 2006 Guidelines on the method of setting fines)

(2019/C 82/35)

Language of the case: English

Parties

Applicant: Slovak Telekom, a.s. (Bratislava, Slovakia) (represented by: D. Geradin, lawyer, and R. O’Donoghue QC)

Defendant: European Commission (represented initially by: M. Farley, L. Malferrari and G. Koleva, and subsequently by M. Farley, M. Kellerbauer, L. Malferrari and C. Vollrath, acting as Agents)

Intervener in support of the defendant: Slovanet, a.s. (Bratislava) (represented by: P. Tisaj, lawyer)

Re:

Action under Article 263 TFEU seeking, primarily, the annulment, insofar as it concerns the applicant, of Commission Decision C(2014) 7465 final of 15 October 2014 relating to proceedings under Article 102 TFEU and Article 54 of the EEA Agreement (Case AT.39523 — Slovak Telekom), as rectified by Commission Decision C(2014) 10119 final of 16 December 2014 and by Commission Decision C(20 15) 2484 final of 17 April 2015, and, in the alternative, the reduction of the fine imposed on the applicant.

Operative part of the judgment

The Court:

1. Annuls Article 1(2)(d) of Commission Decision C(2014) 7465 final of 15 October 2014 relating to proceedings under Article 102 TFEU and Article 54 of the EEA Agreement (Case AT.39523 — Slovak Telekom) in so far as it declares that, over the course of the period between 12 August and 31 December 2005, Slovak Telekom, a.s., imposed unfair tariffs which do not allow an equally efficient operator relying on wholesale access to its unbundled local loops to replicate the retail broadband services offered by it without incurring a loss;
2. Annuls Article 2 of Decision C(2014) 7465 final in so far as it fixes the amount of the fine imposed jointly and severally on Slovak Telekom at EUR 38 838 000;
3. Fixes the amount of the fine imposed jointly and severally on Slovak Telekom at EUR 38 061 963;
4. Dismisses the action as to the remainder;
5. Orders Slovak Telekom to bear four fifths of its own costs, four fifths of the costs of the European Commission and four-fifths of the costs of Slovanet, a.s.;

6. Orders the Commission to bear one fifth of its own costs and one fifth of the costs incurred by Slovak Telekom;

7. Orders Slovanet to bear one fifth of its own costs.

(¹) OJ C 127, 20.4.2015.

Judgment of the General Court of 13 December 2018 — Ryanair and Airport Marketing Services v Commission

(Case T-111/15) (¹)

(State aid — Agreements between the Syndicat mixte des aéroports de Charente and Ryanair and its subsidiary Airport Marketing Services — Airport services — Marketing services — Decision declaring the aid incompatible with the internal market and ordering its recovery — Notion of State aid — Imputability to the State — Chamber of Commerce and Industry — Advantage — Private investor test — Recovery — Article 41 of the Charter of Fundamental Rights — Right of access to the file — Right to be heard)

(2019/C 82/36)

Language of the case: English

Parties

Applicants: Ryanair DAC, formerly Ryanair Ltd (Dublin, Ireland), Airport Marketing Services Ltd (Dublin) (represented by: G. Berrisch, E. Vahida, I.-G. Metaxas-Maranghidis, lawyers, and B. Byrne, Solicitor)

Defendant: European Commission (represented by: L. Flynn and S. Noë, acting as Agents)

Re:

Application under Article 263 TFEU seeking the partial annulment of Commission Decision (EU) 2015/1226 of 23 July 2014 on State aid SA.33963 (2012/C) (ex 2012/NN) implemented by France in favour of Angoulême Chamber of Commerce and Industry, SNC-Lavalin, Ryanair and Airport Marketing Services (OJ 2015 L 201, p. 48).

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Ryanair DAC and Airport Marketing Services Ltd to bear their own costs and to pay those incurred by the European Commission.

(¹) OJ C 178, 1.6.2015.