

Antitrust – National Courts

Kapitol S.A. v Magyar Telekom

Appeal Court (Belgium), Brussels

Summary

On 07 August 2012, the Commission issued an Opinion on request of the Brussels Court of Appeals. In the main proceedings, a publisher of telephone directories by the name of Capitol was seeking access to Magyar Telekom's electronic list of subscribers.

In its request, the Court asked the Commission's Opinion on whether Magyar Telekom's refusal to supply constituted an infringement of Article 102 TFEU. The Court also asked the Commission whether the refusal to supply was compatible with the Universal Service Directive (OJ 2002, L 108/51). Finally, the Court requested the Commission's views on a possible cause of excuse for the refusal on grounds of State compulsion.

In its Opinion, the Commission first provides guidance on the application of Article 102 TFEU. It gives a number of indications on the market definition and on the assessment of dominance in the main proceedings. The Opinion then finds that the case-law conditions for a finding of abusive refusal to supply seem satisfied in the case under consideration. Finally, the Opinion suggests that the objective justification advanced by Magyar Telekom seems dubious.

The Opinion then discusses the Universal Service Directive. It considers that this instrument creates no specific obligation on Magyar Telekom to supply an electronic list of subscribers to Capitol.

Finally, the Commission recalls that national legislation can only exonerate undertakings from Article 101 and 102 TFEU liability if it creates a legal framework which itself eliminates any possibility of competitive activity on their part. The Commission's Opinion takes the view that this was apparently not the case in the main proceedings.