

CLIENT ALERT

Belgian Competition Council shows its teeth and levies a 66,3 million Euro fine

May.29.2009

On May 26, 2009, the Belgian competition Council fined Proximus, the incumbent Belgian wireless communications provider, a record 66,3 million Euro for abuse of dominance.

Closing an investigation that started in 2005 following a complaint by competitor Base and a dawn raid of the Proximus headquarters in 2006, the Council ruled that between 2004 and 2005 Proximus had abused its dominant position on the Belgian wireless communication markets. The abuse consisted in a so-called margin-squeeze.

More particularly, the Council decided that Proximus had abused its dominant position because during the relevant period, the prices for on-net calls charged to Proximus' professional customers were lower than the mobile termination rates charged to its competitors¹. The Council stated that "*Since the mobile termination charges of Proximus were higher than the charges for its own on-net communications, its competitors were unable to propose prices to their clients for communications towards the Proximus network that were more interesting or even similar to the prices that Proximus could offer to its clients.*"

Belgacom has in the meantime announced that it will appeal the Council decision. It challenges *inter alia* the fact that in its analysis, the Council isolated one type of calls (i.e. on net calls) from other types of calls.

With this decision, the Belgian Competition Council clearly demonstrates its intention to aggressively pursue and sanction anticompetitive behavior and impose fines that have a truly deterrent effect.

The Belgian approach, while consistent with other EU Member State decisions, that price or margin squeeze can be an abuse of dominance, is out of step with the US position, as set forth in the U.S. Supreme Court's recent *linkLine* decision, which quite sharply limited the obligation of a dominant company with respect to liability for price squeeze conduct. The Belgian decision therefore serves as a reminder to US based multinationals that they must be cognizant of differences between US and EU standards relating to abuse of dominance.

¹On-net calls are calls made by one Proximus customer to another. Hence they are initiated and terminated on the Proximus network. The mobile termination rates are the prices charged by Proximus to its competitors for terminating calls made by those competitors' customers to Proximus customers. Hence, these are calls that are initiated on another network but terminated on the Proximus network.

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