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Margin Squeezes in Telecoms

Recent Cases and Economic Issues

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EC Commission's persecutions?



Decision	Date	Fine (Eur)	Appeal
Deutsche Telecom	2004	12.6	Affirmed
Wanadoo	2004	10.4	Affirmed/ ECJ?
Telefonica	2007	152	Pending

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Definition

A margin squeeze is anti-competitive when a vertically integrated operator supplying the essential input leverages its upstream market power by raising its wholesale price (and/or drops its retail prices) to squeeze downstream competitors' margins to foreclose the retail/downstream market to equally efficient competitors.

Margin squeeze conditions

- super-dominant/SMP on upstream market
- vertically integrated - leveraging
- downstream market not effectively competitive - 'double dominance'?
- upstream input essential – to downstream rivals **and** downstream competition
- unprofitable downstream margins to 'efficient' rival
- sufficient duration
- forecloses downstream market/harms consumers

EC Access Notice two imputation tests

- **Test 1:** The downstream division of the vertically integrated firm could not trade profitably if it were to buy the upstream input at the price charged to its downstream competitors (= US *A/coa* 'transfer price test')
- **Test 2:** A reasonably efficient downstream operator paying the wholesale input price cannot earn a normal profit.

Imputation test ideally should use

- the operator's retail price, the lowest input price, and the lowest of the operator's or the rival's downstream avoidable costs
- incremental or avoidable costs which exclude all common and joint (whether fixed or variable) downstream costs.
- applied at a level of product aggregation identical to the downstream relevant market definition

Deutsche Telekom says

- regulated dominant/SMP operator subject also to Article 82EC
- regulatory compliance is not a defence
- use SMP operator's costs/prices
- test is that of an equally efficient downstream rival

Wider Issues raised by DT

- double jeopardy/double regulation
- role of competition law – 3 criteria test – to correct regulatory errors?
- antitrust as price regulation, or to guarantee competitors' profits?
- imputation test as test of abuse?

Should it be applied to low retail prices

- no the central concern of vertical leveraging
- test more stringent than for predatory pricing – insufficient margin v price below AVC
- Welfare effects very different – more costly to operator and benefits consumers v cheap to operator and harms consumers if rivals raise retail prices
- what is our benchmark – competitor or consumer welfare
'It is not possible to advance consumer welfare with an antitrust rule that punishes a firm for failing to ensure its competitors' profitability' Greg Sidak

Further reading

- C. Veljanovski, Margin Squeezes in Telecoms, *Intermedia* (2008) <http://www.casecon.com/data/pdfs/MSIntermedia2008.pdf>
- C. Veljanovski (& P. Crocioni), Price Squeezes, Foreclosure and Competition Law - Principles and guidelines, *Journal of Network Industries* (2003) <http://www.casecon.com/data/pdfs/pricesqueeze.pdf>
- Casenote, *Testing for Price Squeezes – A critical review of recent competition law decisions*, May 2004 <http://www.casecon.com/data/pdfs/casenote36.pdf>
- Casenote, *Price Squeezes – Some guidelines to identify an exclusionary abuse*, July 2002, <http://www.casecon.com/data/pdfs/casenote36.pdf>
- G. Sidak, Abolishing the Price Squeeze as a Theory of Antitrust Liability, *Journal of Competition Law and Economics* (2008) http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1119308



About the Speaker

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Dr Veljanovski is Managing Partner of Case Associates, Associate Research Fellow, Institute of Advanced Legal Studies, University of London, IEA Fellow in Law & Economics, and Member of the Economic Advisors' Panel, Infocomm Development Authority of Singapore (IDA). He is a well-known economist with over thirty years' experience as an adviser to companies on competition, regulatory and communications economics. Dr Veljanovski has assisted a large number of fixed, mobile, internet and other communications operators in regulatory proceedings, merger investigations and on competition issues. He has been selected as one of the '*most highly regarded*' competition economists globally and one of the top five in Europe by the 2006 Global Competition Review survey. He regularly acts as an Expert Witness in competition law, commercial and damage litigation, and on the communications and media sectors most recently in the English High Court, Irish High Court, Federal Court of Australia, Dutch District Court, Finnish Higher Administrative Court, the UK Competition Appeals Tribunal, and the International Court of Arbitration.

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