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Abuse of dominant position

Competition Office

*Česky Telecom—
telecommunications—refusal to
interconnect—infringement—penalties*

October 26, 2004
Case No.R 16/2003
available at www.compnet.cz

Josef Vejmelka and
Tomas Fiala-Vejmelka &
Wünsch

On October 26, 2004, the Chairman of the Competition Office confirmed the fine amounting to CZK 23 million (around €730,000) imposed on the company Česky Telecom (hereinafter: "ČT"), the largest provider of telecommunications services in the Czech Republic, for abusing its dominant position in the telecoms market. In particular, the Chairman found in his decision that ČT had prevented competitors from entering the market for internet and data transfers using ADSL technology between February 2002 and January 2003 by failing to provide key information on network interconnectivity. Additionally, the decision confirmed that ČT was able to provide the information necessary for network interconnection and had no legitimate reason for withholding this information. Accordingly, the duration of the infringement lasted for 11 months, during which other telecommunication network operators were precluded from entering the market to the detriment of final consumers.

The Competition Office's *Česky Telecom* decision does not mark a significant change in the interpretation and enforcement of the principal competition rules in the Czech Republic. However, precisely for that reason, it clearly illustrates that the Competition Office is particularly concerned to ensure that dominant operators in the newly liberalised sectors of economy make available to their competitors such infrastructure and facilities as are necessary to permit them to compete.

Germany

Mergers

Bundesgerichtshof (Federal High Court)

*German Melitta group/Belgian
Schultink group—vacuum cleaner
bags—relevant geographic market—
whether can be defined more widely
than Germany*

October 5, 2004
Case KVR 14/03

A recent decision of the German Federal High Court (Bundesgerichtshof) put an end to the debate of whether in merger control cases the relevant geographic market can be broader than Germany.

The origin of this debate was a 1995 decision of the Federal High Court in which it held that for legal reasons the relevant market had to be limited to Germany. Foreign competition should only be taken into consideration in the overall analysis of whether there is a dominant position. Some years later, in 1999, the German legislator included a clause in the German Act against Restraints of Competition which states that the assessment of a dominant position has to take into account competition from abroad. This provision was widely understood as indication that the relevant market can be wider than Germany. However, the German Federal Cartel Office (*Bundeskartellamt*) found this to be a mere affirmation of the Federal High Court's case law.

In its recent *Melitta* decision the Federal High Court explicitly overruled its previous case law and held that the relevant geographic market can be broader than Germany. Subject of the judgment was a decision of the Federal Cartel Office prohibiting the German Melitta group from taking over the vacuum cleaner bag business from the Belgian Schultink group. The Federal Cartel Office found that the relevant economic market was Western Europe, but concluded that from a legal perspective the market was limited to Germany. It assumed that Melitta had a dominant position on the market for vacuum cleaner bags both in Germany and in Western Europe and held that the increase of Melitta's market share from 59.1 per cent to 59.5 per cent in Germany and from 47.7 per cent to 56.8 per cent in Western Europe strengthened this dominant position.

The Duesseldorf Court of Appeals (Oberlandesgericht) annulled this prohibition decision arguing that a concentration can only be prohibited if a dominant position in Germany is strengthened. It held that the concentration at issue had no substantial effects in Germany.

The Federal High Court annulled the decision of the Court of Appeals and referred the case back to the latter. It held that the Court of Appeals did not