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Press and Information

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Judgment of the Court of Justice in Case C-141/02 P

*Commission of the European Communities v. T-Mobile Austria GmbH, formerly max.mobil
Telekommunikation Service GmbH*

**THE EUROPEAN COMMISSION IS NOT OBLIGED TO ACT ON A COMPLAINT
BY AN INDIVIDUAL BY BRINGING PROCEEDINGS AGAINST A STATE
MEASURE RELATING TO PUBLIC UNDERTAKINGS OR UNDERTAKINGS
ENJOYING SPECIAL OR EXCLUSIVE RIGHTS**

*The Commission's refusal to bring an action against a Member State within the framework of
its monitoring of such State measures cannot be challenged by individuals in judicial
proceedings*

max.mobil was the second GSM network operator in Austria after Mobilkom Austria AG, shares in which are still held in part by the Austrian State through Post und Telekom Austria AG. The former State monopoly over the entire mobile telephony sector had been entrusted to Mobilkom some months before max.mobil entered that market in 1996.

In 1997 max.mobil requested the European Commission to find that the Republic of Austria had infringed the provisions of the EC Treaty concerning State measures for the benefit of public undertakings or undertakings enjoying special or exclusive rights and the prohibition of abuse of a dominant position. It submitted that the Austrian authorities had unlawfully conferred advantages on its competitor, Mobilkom, in the allocation of frequencies, in particular by not drawing any distinction between the amount of the concession fee charged to max.mobil itself and the amount of that charged to Mobilkom.

Following the Commission's rejection of that complaint in regard to the fees, max.mobil brought an action before the Court of First Instance of the European Communities in which it sought to have that rejection set aside. The Court of First Instance ruled that the action was admissible but dismissed it on the ground that it was unfounded.¹

¹ – Judgment of 30 January 2002 in Case T-54/99 *max.mobil v Commission* [2002] ECR II-313.

Although it was successful on the merits, the Commission brought an appeal before the Court of Justice of the European Communities on the ground that the judgment of the Court of First Instance had declared the action brought by max.mobil to be admissible. The Commission argued that its own decision not to pursue the alleged infringement of the rules on competition could not be the subject of judicial review.

The Court of Justice first ruled that the Commission's appeal was admissible. As the judgment of the Court of First Instance had expressly rejected the objection of inadmissibility which the Commission had raised against the action brought by max.mobil, it adversely affected the Commission notwithstanding the outcome on the merits.

The Court then went on to point out that the EC Treaty requires the Commission to ensure that Member States comply with the obligations imposed on them in regard to public undertakings or undertakings enjoying special or exclusive rights and expressly confers on it the power to take action for that purpose by way of directives and decisions. The Commission is empowered to determine that a given State measure is incompatible with the Treaty rules, particularly in the area of competition, and to indicate the measures which the addressee State must adopt in order to comply with its obligations under Community law.

The Court, however, ruled that the Commission is not under an obligation to bring proceedings in this context, inasmuch as individuals cannot require it to take a position in a specific sense. The fact that an applicant has a direct and individual interest in annulment of the Commission's refusal to act on its complaint is not such as to entitle it to challenge that decision. Such a refusal does not produce binding legal effects and accordingly does not constitute a challengeable measure that is capable of being the subject of an action for annulment. The Court stressed in that regard that there is no general principle of Community law which requires that an individual must be recognised as having standing before the Community courts to challenge a refusal by the Commission to bring proceedings against a Member State. The Court accordingly set aside the judgment of the Court of First Instance.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: EN, FR, DE

The full text of the judgment may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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