

## Competition - Hungary

### Competition Office Blocks Telecommunications Merger

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The Competition Office recently refused to clear the planned acquisition by Magyar Telekom Nyrt, the Deutsche Telekom-owned Hungarian incumbent, of regional competitor Vidanet Zrt. Both companies are active in the electronic communications markets, including asymmetric digital subscriber line (ADSL), cable television and voice telephony retail and wholesale services.

The Competition Office found that the planned transaction was likely to result in the creation of a dominant position that would hinder the development of effective competition in all horizontally affected markets. Magyar Telekom had noted in its original clearance application that it was prepared to offer commitments if the planned acquisition raised competition concerns, but it had argued that the transaction would have no adverse effect. In particular, it had claimed that the rapid growth of third-generation and high-speed downlink packet access retail services and the significant expansion of satellite television broadcasting put significant competitive pressure on the parties, which counterbalanced any potential anti-competitive effects. However, these arguments did not persuade the Competition Office, which ordered a full-scale investigation.

The Competition Office's most significant concern was that the two companies had installed and continued to operate the only broadband network infrastructure available in a horizontally affected geographical market covering the 20 largest towns and cities in western Hungary. Both companies' existing parallel networks served as common servicing infrastructure for ADSL, cable television and voice telephony services, which Magyar Telekom and Vidanet offered as separate and bundled services. The Competition Office concluded that cost constraints made building a competing network in the area impractical. Therefore, it found that bringing the two competing parallel infrastructures under common control would create a *de facto* monopoly, eliminating existing and potential competition.

Magyar Telekom submitted a commitment to offer ADSL services to Vidanet's subscribers on the same terms and conditions as those enjoyed by Magyar Telekom's subscribers elsewhere in Hungary. However, the Competition Office found this commitment insufficient to allay its concerns. Magyar Telekom supplemented its commitment in respect of the entire Vidanet area, offering to:

- allow third parties full and non-discriminatory access to its network infrastructure;
- retain the lower of the retail fees offered to Magyar Telekom and Vidanet subscribers; and
- develop its network to ensure data transfer speeds of up to 20 million bits a second within three years.

However, the Competition Office decided that the new commitments were insufficient to negate the potential foreclosure effects resulting from Magyar Telekom's control of all existing network infrastructure in the Vidanet area. Since Magyar Telekom was unwilling to offer further commitments, the Competition Office was forced to prohibit the transaction. Magyar Telekom has 30 days to challenge the decision before the competent court.

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