

After the European Commission, by its decision of 15 October 2014,¹ punished the Slovak Telekom a.s. and Deutsche Telekom AG for the abuse of the dominant position in the market of broadband services in Slovakia in the amount of 38 million euros, Slovak Telekom is facing claims for compensation for damages submitted by mobile operators Orange Slovensko and SWAN. The aforementioned operators sued Slovak Telekom before a court in Bratislava for compensation for damages exceeding 280 million euros, based on a decision of the Commission, which found that Slovak Telekom had abused its dominant position.

By the same decision, the Commission penalized Deutsche Telekom for an additional EUR 31 million for the repeated abuse of a dominant position, and that company is responsible for almost 70 million euros (including about 39 million euros for which it is jointly and severally liable with Slovak Telekom). The rules on compensation for damages in Slovakia are in line with the "Directive of the European Parliament and of the Council on certain rules for compensation of damages under national law for violation of the competition rules of Member States and of the European Union" 2 (the "Directive"). As a behavior that violates competition rules can cause serious harm to consumers and other market participants, the national authorities are guided by the Directive with a view to adapting national rules to allow any natural or legal person - the consumer, the market participant or the public authority - "regardless of the existence of a contractual relationship" 3, to file a claim for compensation of damages before national courts against market participants who have infringed the competition rules. However, the Directive points out that national rules need not be formulated or applied in such a way that it is very difficult or practically impossible to exercise the right to compensation for damages guaranteed by the Treaty on the Functioning of the European Union, or that the exercise of that right is less favorable than the exercise of rights in similar domestic proceedings. Therefore, anyone who has suffered damage on the basis of a violation of EU competition law may file a claim for damages in the amount of actual damage and loss of profit, increased by the statutory default interest. In order for such a claim to be grounded, it is necessary to have a causal link between the breach of competition law and the damage that has arisen. Regarding the amount of damages that may be awarded in a lawsuit, the key principle under the Directive is proportionality. In this respect, the award of compensation for damages in



excess of the damage sustained is prohibited.

In spite of the fact that, as a country in the process of joining the European Union, Serbia in its legal system prescribed the possibility of compensation for damages by the Law on Protection of Competition (the "Law"), it appears that the injured market participants are not particularly willing to use this asset, that very few lawsuits for damages were submitted to the courts in Serbia, none of which has been successful so far.

Namely, according to Article 73 of the Law, compensation of damage caused by acts and actions that constitute a violation of competition, which is determined by the decision of the Commission for Protection of Competition, is realized in civil proceedings before the competent court. The decision of the Commission for Protection of Competition is the basis for filing a claim for compensation of damage caused by violation of the competition rules, while the fact that the prosecutor is damaged by a concrete violation of the competition rules of the participants on the market must prove in the proceedings before the court.

Since violation of the competition rules can cause serious harm to other market participants and in that regard affect their business, the recent case in Slovakia may be a reminder of all the advantages (but also the risks to market participants who are injured competition rules) the right to compensation for damages suffered by injured parties on the Serbian market. However, it remains to be seen whether companies in Serbia will start using this possibility and to what extent will it be supported by national courts.