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COMPETITION ISSUES IN TELEVISION AND BROADCASTING

Contribution from Lithuania

-- Session II --

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-- Lithuania --

1. What is the state of competition in the television broadcasting sector in your jurisdiction?

1.1 General market overview

1. On 29 October, 2012 the analogue terrestrial broadcasting of television programs was completely replaced by digital broadcasting. The users, who previously watched free-of-charge analogue terrestrial television, wishing to keep the possibility to view television programs, had to purchase a digital signal coding television set-top box or a television set with an integrated digital signal coding box and, if necessary, the antenna or to become a subscriber of pay-TV services. A significant number of the television subscribers, who had prepared for the aforementioned market changes, chose pay-TV services thus the number of subscribers of pay-TV services increased.

2. In Lithuania the pay-TV services are provided over analogue and digital cable television (CTV), multichannel multipoint distribution system (MMDS), digital Internet Protocol Television (IPTV), digital terrestrial television (DVB-T) and digital satellite television networks.

1.2 Pay-Television and free-of-charge television

3. In Lithuania there are both free-of-charge television and pay-TV. At the end of the third quarter of 2012, 681,4 thousand subscribers (i. e. 54,8% of all households) used pay television (pay-TV) services (including the services provided through cable TV and MMDS networks, TV services based on IP technologies (IPTV), digital terrestrial television (DVB-T) services and satellite TV).

4. At the moment there are 12 free-of-charge (not coded) digital television programs: 10 of them are broadcasted by Lithuanian broadcasters and 2 of them are re-broadcasted by foreign broadcasters.

1.3 Broadcasters

5. In 2011 the television broadcasting activities were carried out by 45 television broadcasters, and 50 re-broadcasters. There is a tendency that the number of cable television re-broadcasters is decreasing. The main reasons are mergers and reorganizations of the re-broadcasters, decrease of the number of subscribers, etc.

1.4 Barriers to entry and expansion

6. Assessing the barriers to entry into the television broadcasting sector in the Republic of Lithuania, it should be pointed out that television programme broadcasting or re-broadcasting activities are licensed.

7. According to the Law on the Provision of Information to the Public, persons who wish to engage in television programme broadcasting or re-broadcasting activities must obtain broadcasting or re-

broadcasting licences. Broadcasting and re-broadcasting licences granting the right to set up and operate own electronic communications networks, the right to use own electronic communications networks for broadcasting or re-broadcasting television programmes or the right to use the transmission service provided by a third party are issued by the Radio and Television Commission of Lithuania.

8. Broadcasting and re-broadcasting licences are issued by tender, except the following cases: 1) to research and higher education institutions or educational establishments – for broadcasting educational and cultural television programmes by terrestrial television stations with a power level ranging up to 20 W; 2) for broadcasting or re-broadcasting television programmes by cable television and radio networks; 3) for broadcasting or re-broadcasting television programmes by electronic communications networks the main purpose of which is not the broadcasting or re-broadcasting of radio or television programmes; 4) for broadcasting or re-broadcasting programmes by an artificial Earth satellite (satellites); 5) for broadcasting television programmes pursued by the National Radio and Television of Lithuania; 6) and in other cases.

9. When issuing broadcasting and re-broadcasting licences, priority is given to persons who undertake to produce original cultural, informational and educational programmes, ensure accurate and impartial presentation of information, respect a person's dignity and right to privacy, protect minors from public information which might have a detrimental effect on their physical, mental and moral development as well as to persons who have undertaken to broadcast television programmes that are not yet broadcast by other broadcasters of television programmes within the designated reception zone.

10. Taking into account the above mentioned legal framework for obtaining broadcasting or re-broadcasting licences, it could be concluded that the regulatory barriers to entry in the television broadcasting sector exist, however, they are not too high.

11. The other factors that could be considered as the barriers to entry in the television broadcasting sector and which could influence the number of broadcasters are 1) capital requirements for entry and operations; 2) the behaviour of the audience and the necessity for entrants to overcome long-established uses of television and set patterns of viewing and channel choice; 3) consumer costs for hardware and service to receive the entrants' channels; 4) exclusive rights and others.

1.5 Regulatory institutions

12. The main principles of fair competition in the television broadcasting sector is stated in the Law on the Provision of Information to the Public. According to the above mentioned act, it is forbidden for the state and municipal agencies as well as all types of other enterprises, agencies and organizations or natural persons to monopolize the media. It is stated as well, that the state shall create legal and economic conditions for fair competition among producers and disseminators of public information and that the state and municipal institutions shall exercise control with a view to upholding pluralism in the provision of information to the public and fair competition, avoiding the abuse of a dominant position by producers and/or disseminators of public information or in any separate segment of the media market.

13. In Lithuania *The Radio and Television Commission of Lithuania* (the Commission) is with powers of regulation and supervision of activities of radio and television broadcasters. Main functions of the Commission are related to the issuance of licenses to broadcasters and re-broadcasters. The Commission also participates in the formation of national audiovisual policy and it is an expert body for the Seimas and the Government on the issues of broadcasting and re-broadcasting television programmes and on-demand audiovisual media services.

14. Under the Law on Electronic Communications, one of the objectives of *The Communications Regulatory Authority of the Republic of Lithuania* (the Regulatory Authority) is to develop effective

competition in the field of electronic communications. As an ex-ante electronic communications regulator, the Regulatory Authority shall seek to create conditions for effective competition and its development in the field of electronic communications as well as conditions to prevent the abuse of market power by undertakings. The Regulatory Authority implementing ex-ante regulation is within the right to determine the obligations to the undertakings which are designated having significant power in the field of electronic communication sector.

15. *The Competition Council of the Republic of Lithuania* has responsibility for the implementation of competition law and policy in Lithuania. As it is related to electronic communications activities, the Competition Council shall exchange with the Regulatory Authority any information required for the performance of functions of the Competition Council and the Regulatory Authority, including confidential information, ensuring the protection of the information received, provide consultation to the Regulatory Authority on matters concerning the performance of its functions related to the supervision of competition in the field of electronic communications and cooperate with and consult the Regulatory Authority when exercising supervision of competition in the field of electronic communications in accordance with the Law on Competition. It should be noted that the Competition Council cooperates with the Regulatory Authority when it analyses cases related to the electronic communications sector, however, there is no particular mechanism of co-operation between these two institutions. Even though the problem of competences between the Competition Council and the Regulatory Authority sometimes arises, there were no cases where these two authorities reached or planned to reach inconsistent decisions.

2. What do you consider to be the most significant current and future challenges for competition policy in television broadcasting?

16. The Competition Council has not conducted any market study relevant to the most significant current and future challenges for competition policy in the television broadcasting sector. However, the formal investigation into the issue has indicated that the necessity to harmonize the legal framework, which is currently sector-specific, and adjust the market definitions to the latest developments of new technologies and their integration, as well as the necessity to assess the treats made by the converged operators, usually offering a wide range of bundled services (telephony, television, internet) are the most significant challenges that the competition authorities may be facing in the near future.

3. What has been your relevant experience in competition law enforcement relating to television and broadcasting?

3.1 Abuse of dominance actions

3.1.1

17. In 2009, the Competition Council, having regard to the information supporting the suspicion of the existence of restrictive agreements and abuse of dominant position, initiated the investigation concerning the compliance of actions of the companies providing multichannel subscriber television and related services with the requirements of Article 101 of the Treaty and Article 5 of the Law on Competition (prohibiting restrictive agreements), and the compliance of actions of *Viasat AS* and *Viasat World Limited* with the requirements of Article 102 of the Treaty and Article 7 of the Law on Competition (prohibiting abuse of dominant position).

18. The investigation of possible restrictive agreements of undertakings providing multichannel subscriber television and related services was terminated in June 2011, based on the fact that no factual data that could prove the existence of restrictive agreements was found. The investigation concerning the compliance of actions of *Viasat AS* and *Viasat World Limited* with the requirements of Article 102 of the

Treaty and Article 7 (prohibiting abuse of dominant position) of the Law on Competition was returned back for additional investigation.

19. It was established that *Viasat* company Group, holding exclusive rights to broadcast premium sport events in the Baltic States and Scandinavia, launched a new sports channel – *Viasat Sport Baltic* – in January 2009. Since then, *Viasat World Limited*, which distributes television channels produced by *Viasat* company Group in the Central and Eastern Europe, had been offering different *Viasat Sport Baltic* channel distribution terms to several television services providers: *TEO LT, AB* and *UAB “Kavamedia”*, as compared to the other providers. *TEO LT, AB* and *UAB “Kavamedia”* were offered *Viasat Sport Baltic* channel only within the *Viasat* channel package “*Auksinis*”, while other television service providers were offered a possibility to rebroadcast either different *Viasat* channel packages (including *Viasat Sport Baltic* channel), or *Viasat Sport Baltic* channel individually.

20. In its preliminary assessment the Competition Council has assessed that by establishing different *Viasat Sport Baltic* channel distribution terms to *TEO LT, AB* and *UAB “Kavamedia”* *Viasat World Limited* may have been abusing its dominant position.

21. Taking into account that the undertaking concerned has offered commitments to meet the concerns expressed by the Competition Council in its preliminary assessment, i. e. to offer non-discriminatory *Viasat Sport Baltic* channel acquisition terms to all undertakings providing television services, the Competition Council concluded that the investigation regarding possible infringement of Article 7 of the Law on Competition (prohibiting abuse of dominant position) should be terminated subject to these commitments. The Competition Council also concluded that these commitments should be made binding according to Article 9 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 101 and 102 of the Treaty.

3.1.2

22. In response to the complaint of the Lithuanian Cable Television Association (LCTA) received in 2010, the Competition Council initiated an investigation concerning compliance with the requirements of Article 7 of the Law on Competition (prohibiting abuse of dominant position) of the actions of *TEO LT, AB*. The LCTA indicated that *TEO LT, AB*, in the attempt to attract new clients, had placed a special offer whereby it was offering to new clients to use the services of digital television *GALA* and high-speed internet *ZEBRA* for the entire year without payment, provided that the clients undertook to use these services for a minimum period of three years and pay standard tariffs for services for two years of the three-year period.

23. It was established that the prices of services valid during the special offer of *TEO LT, AB*, which were lower than the usual tariffs, did cover the costs incurred in relation to provision of these services, and therefore those prices could not be considered to be too low (“predatory”) and such pricing applied by *TEO LT, AB* did not infringe the requirements of the Law on Competition. Having assessed the circumstances established during the investigation, the Competition Council terminated the investigation concerning an alleged abuse of the dominant position by *TEO LT, AB* in applying “predatory” prices.

3.2 *Merger assessments*

24. Having examined the notification on the intended concentration filed in 2007 by the incumbent telecom operator *TEO LT, AB* by acquiring a 100 holding in the digital TV company *UAB Nacionalinė skaitmeninė televizija*, the Competition Council resolved to authorise the concentration subject to certain obligation. *TEO LT, AB* was obligated within one month to introduce and ensure the separate accounting of the digital television services.

25. Having assessed that the anticipated concentration deal in the first place is related to the intention of *TEO LT, AB* to develop the digital ground TV rebroadcasting business, the Competition Council assessed the deal as the vertical and horizontal concentration in the relevant Lithuanian market for the retail pay-TV services. In terms of the nature of the services provided this market is closely related to the wholesale TV signal transmission market in Lithuania. Although the degree of concentration in the relevant retail pay-TV services market is being changed to just a negligent extent, the Competition Council took into account the outlook of the development of the TV services. Having considered that *TEO LT, AB* is currently operating a well developed fixed telephone network and the fixed data transmission infrastructure with the Lithuania-wide coverage, that the company is dominant in the broad band access and the leased line service market and that *TEO LT, AB*, in cooperation with other associated undertakings is developing the alternative internet access and data transmission technologies, it was concluded that following the concentration the company will potentially cover a more significant share of the relevant market for the retail pay-TV services market. Furthermore, while developing the new digital television services and networks, *TEO LT, AB* with associated undertakings has a potential to strengthen its position in certain telecommunications and information technologies services markets.

26. Seeking to prevent cross-subsidising of services and abuse in fixing the price for the services, including the digital television services to be provided, and considering that after the concentration *TEO LT, AB* will avail itself to the potential to strengthen its position in certain markets, also that the company will be operating as both the TV signal transmitter and the TV program re-broadcaster the Competition Council established that the operations related to the digital television service provision need to be strictly separated. With that in view the retail terrestrial television services need to be retained managing its segregated revenue and cost accounts. Furthermore, the company was obliged to ensure a segregated revenue and cost accounting of all other digital television services including the wholesale terrestrial television broadcasting and the IPTV services.

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