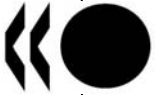


Unclassified

DAF/COMP/GF/WD(2005)17



Organisation de Coopération et de Développement Economiques
Organisation for Economic Co-operation and Development

14-Jan-2005

English - Or. English

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

DAF/COMP/GF/WD(2005)17
Unclassified

Global Forum on Competition

ABUSE OF DOMINANCE IN REGULATED SECTORS

Case submitted by Latvia

-- Session III --

This case is submitted by Latvia in view of its discussion in Sub-Session 1 on Friday 18 February 2005 (from 9.30 am).

JT00176939

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**ABUSE OF DOMINANT POSITION IN ACTIVITIES OF UNDERTAKING
“LATTELEKOM SIA”**

*By Mr. Ilze Lasmane
(Latvia)*

1. The Competition Council of Latvia received a complaint in year 2003 that indications of abuse of dominant position have been noticed in the activities of the undertaking “Lattelekom SIA” (henceforth called “Lattelekom”) – historical monopoly of fixed telecommunications. In November 2002, “Lattelekom” started to provide a combined service “Komforta ISDN” (henceforth called K-ISDN), which is based on the lease of ISDN telephone lines and the rental of a digital bureau telephone exchange (henceforth called BTC). A discount is applied to the subscription price for K-ISDN. The amount of this discount depends on the quantity of conversations over the public fixed-line telecommunications network. Besides, in the framework of the above-mentioned combined service, the lease payment for connection to an ISDN line is fixed at half the level of the lease payment for connection to a separate ISDN line, without any BTC rental. A plaintiff considers that in such a way “Lattelekom” uses its dominant position in a market of telecommunication services and thus forecloses the market of the rental of BTC, in which other market players would like to participate. These market players now only sell and install BTC and provide service for BTC. The market for the rental of BTC in Latvia seems to be profitable, because clients prefer to rent BTC, not to obtain them in their property.

2. According to the Law on Telecommunications (which was in force at that time) the sector is regulated by the Public Utilities Commission (PUC). It regulates the following activities:

- local, national and international voice telephony services over public fixed-line telecommunications network;
- public taxophone services;
- leased line services;
- data transmission and internet services.

3. Article 8 of the Law provides that PUC protects the interests of telecommunications service users and telecommunications companies and settle disputes between telecommunications companies, when the dispute is related to interconnection, special access and leased lines, as well as between telecommunications companies and telecommunications service users, when the dispute is related to the complaints by service users.

4. Providers of BTC selling and installing services in this case are neither telecommunications companies nor users of telecommunications services. Therefore the Law on Telecommunications cannot be applied and the Competition Council initiated proceedings under the Article 13 of the Competition Law which prohibits abuse of dominant position.

5. Until 1st January 2003, “Lattelekom” had legal, determined by law, monopoly rights to provide services of voice telephony over the public fixed-line telecommunications network, services of lease of lines and taxophone services. During year 2003, “Lattelekom” lost only approximately 3 per cent of its market share in providing voice telephony services and preserved its monopoly position in the market of leased lines. Thus, “Lattelekom” has a dominant position in two regulated markets – in the market for

voice telephony over the public fixed-line electronic communications network and the market for leased line service. Already one month before losing its monopoly position "Lattelekom" begun to provide a combined service K-ISDN, which included such services, which "Lattelekom" provides or could provide separately:

- lease of connection to two ISDN lines;
- rental service for BTC;
- allocation service of rights to use numbers of public telephony network from the national numeration plan;
- local, national, and international voice telephony services over public fixed-line telecommunications market.

6. In the frameworks of the combined service K-ISDN, discounts are offered, i.e. if the quantity of telephone conversations over the public fixed-line telecommunications network reaches a certain threshold, a discount for rental of BTC is applied. The analysis of information obtained by the Competition Council allowed the conclusion to be drawn that "Lattelekom", by gaining income from services of public fixed-line voice telephony, possibly subsidizes the provision of the service K-ISDN because, under certain circumstances, the monthly subscription price for the service K-ISDN becomes lower than the cost of providing this service for one month.

7. Other companies who want to enter the market of rental services of BTC, but who are not providers of voice telephony services over public fixed-line telecommunications network and are not providers of leased ISDN telephone lines, do not have the possibility to offer discounts to their clients, to be able to compete successfully with "Lattelekom". Thus, unequal competition conditions are created. By combining three services in one package (two of them provided by "Lattelekom" as the dominant undertaking) and by applying discounts which cannot be offered by other market participants, "Lattelekom" practically closes the market of BTC rental services, not allowing new market participants to enter this market. For clients the offer by "Lattelekom" is favourable, and in such a way "Lattelekom" keeps its existing clients and attracts new clients. The present consequences of such activities of "Lattelekom" are the foreclosing of the market, which has negative effects for competition in this market, and a possible consequence of this is a possible rising of prices for clients. Taking into account the above-mentioned considerations, the Competition Council made a decision that "Lattelekom" abuses its dominant position in the market for voice telephony services over public fixed-line telecommunications network and in the market of leasing ISDN telephone lines, and thus "Lattelekom" violates the prohibition provided by a general clause included in Article 13 of the Competition Law of Latvia.

8. With its decision, the Competition Council established the violation of the prohibition of abuse of a dominant position provided by Section 13 of the Competition Law, imposed on "Lattelekom" a legal obligation to cease such a practice and imposed a fine on "Lattelekom" in the amount of 500 000 lats (750 000 Euro).

9. "Lattelekom" appealed this decision. The court overturned the part of the Competition Council decision's imposing a legal obligation to cease the practice and the part imposing the fine but the court accepted the validity of the part of the decision establishing the violation. The reason for overturning the legal obligation was a procedural mistake made by the Competition Council. The reason for overturning the fine was the fact that the amount of the fine was calculated on the basis of "Lattelekom's" overall turnover in the previous financial year but not on the basis of its turnover in the relevant market, which is

less than 10 % of the overall turnover. “Lattelekom” could not indicate this turnover to the Competition Council until the start of court proceedings.

10. At the present moment, “Lattelekom” has appealed this court decision to a higher court.