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COMPETITION POLICY IN SMALL ECONOMIES

-- CONSUMERS INTERNATIONAL --

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CONSUMERS INTERNATIONAL

COMPETITION AND CONSUMER PROTECTION IN SLOVENIA - CASE STUDY

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1. Introduction

Zveza potrošnikov Slovenije- Slovene Consumers' Association (ZPS) was founded in June 1990 as an independent, non-profit, consumer Ngo. It was established to deal with consumer advice and information and lobbying on behalf of consumers. ZPS has been publishing an independent consumer magazine VIP for twelve years. It is a full member of Consumers International and is actively involved in international consumer movement.

ZPS and its partners International Consumer Research Institute and Institute for Economic Research, Ljubljana, Slovenia are part of the global project of Consumers International **Consumers and the global market (CGM)**. The aim of the three-year project is to encourage the development of a just and fair marketplace in each of the countries in the programme. It aims to achieve this through strengthening the capacity and influence of the consumer movement at the international, regional and national level in the setting and implementation of trade and economic policy. CGM focuses on three topics: competition policy, agriculture and services and works in 16 countries with consumer groups as the core partners.

For the purposes of this paper we have adapted a particular case study on cable television operators in Slovenia. We will use this study to analyse the role and effectiveness of competition in small economies from the perspective of a consumer organisation. It should be noted that the CI project is our first involvement in competition policy and budgetary constraints did not allow us to do a sufficiently in-depth study on competition. We thus focused on efforts to find evidence of problems in the particular sector.

1.1 *Competition in a "small" economy*

Slovenia has always tended to be seen as a small economy, even when it was a part of former Yugoslavia. It has, however, benefited from the fact that it is surrounded by larger and more dynamic neighbours such as Italy and Austria. This exposure to larger, more dynamic, neighbours have enabled it to deal reasonably well with the restructuring process that occurred after declaring independence in 1991.

As a matter of principle we would argue that simply because an economy is defined as being small, this does not imply any need for competition policy principles, laws nor institutions that are different from those of other "larger" economies. Small economies are as much in the need of adequate legislation and institutions as their larger neighbours. Indeed, if anything, a coherent competition policy with a significant role for regulators and regulations is even more important in small size economy. It is simply unacceptable that a small economy would have weak competition policy just because of its size.

1.2 Special attributes of firms in small economies

It is certainly true that the required Minimum Efficient Scale in small economies is a relevant factor for businesses operating there. However, it does not necessarily follow that competition policy should uncritically support big firms and anti-competitive market structure.

For example, based on our survey of banking fees for individual consumers, we found that the biggest bank is charging the highest fees for current accounts. According to an unofficial admission by the director of a much smaller bank in Slovenia his bank can expect decent profits by simply following the prices/fees of the dominant firm. This case clearly shows that big bank are not necessary more efficient, nor that their position in the market stimulates competition and innovation.

The case study of Cable Television outlined below is another interesting case of the impact of a monopoly on a small geographic market where consumers are paying a high price with almost no choice. The case study also indicates the problems caused by the inactivity of a weak regulatory body.

1.3 Short history of Cable TV in Slovenia

The beginning of Cable Television (CaTV) in Slovenia dates to the late eighties. The first CaTV networks were developed sporadically and also largely unprofessionally. Interested citizens-consumers of local communities financed them. The first CaTV networks were built in the area of Maribor (the second largest city in Slovenia): in 1985 and 1986. At the end of 1980s some 70,000 CaTV connections were available in Slovenia. By November 30, 2001 this figure had grown to 220,000 connections, with the penetration rate in cable television (CaTV) in Slovenia rising to nearly 40%. The main industry body, the Union of Cable Operators in Slovenia, has **82 members** (operators of CaTV) that distribute to their users between ten and 30 radio stations and between 35 and 50 television channels (as the full package of programmes). They provide mainly transmission services of voice, picture, data and other information by cable, and they also build and maintain networks. Some operators also produce their own TV programmes and provide cable Internet for interested users.

1.4 Legal framework for CaTV operators in Slovenia

There are a number of different laws that regulate CaTV in Slovenia. The most important ones include:

- Telecommunications Act (Ur. l. RS, no. 30, 2001);
- Copyright and Related Rights Act (Ur.l. 21/1995);
- Public Media Act (Ur. l. RS, no. 35/ 2001);
- Standardisation Act (Ur.l. 59/1999);
- Consumer Protection Act(Ur.l. 20/1998);
- Protection of Competition Act(Ur.l. 18/1993);
- Prevention of Restriction of Competition Act(Ur.l. 56/1999).

Adoption of much of this legislation is the result of the Slovene harmonisation process with the EU. The breadth of legal coverage gives the impression that the institutional and legal framework is in place to guarantee the effective protection of competition and consumers. However, we must analyse whether this really is the case.

1.5 *Household consumption expenditure for cable television*

The share of households with CaTV (based on data from the Survey of the Statistical Office for year 2000) varies from 8% for Dolenjska to 61% for the Podravska region. Differences are mainly historical as some local communities (not necessarily the most developed ones) were quite innovative in setting up CaTV. The situation in the year 2000 was therefore that there was not a uniform distribution of access. The situation is still fluid. In aggregate terms 44% of Slovenian households have CaTV connection¹.

1.6 *Consumer's situation*

During the last two years the situation has become pretty unfavourable for consumers. In the year 2000 prices for cable television subscription varied significantly between different Slovenian regions (the ratio of the largest to the smallest subscription rate for similar service was approx. 2) but in the year 2002 the situation worsened further. A telephone inquiry among operators has shown that connection fees for an individual house are between 164 EUR and 390 EUR and monthly subscription rates are between 8 EUR to 17 EUR for the full package (10-30 radio and 35-50 TV programs).

Let us shortly illustrate the cable operator's costs for program provision. For the basic set of 18 programs offered across cable operators, Slovenian CaTV operators have to pay only for small authors' rights. But recently the price for small authors' rights has increased from 0.5 Euro per month a couple of years ago to the foreseen 3 EUR per month in year 2006 for every subscriber. For example, a few years ago the price per subscriber of Eurosport was 0.09 Euro per month and in the year 2002 it increased to 0.32 Euro per month. The existing contract for the channel will expire this year and a further increase in the rate is foreseen. It should be noted that the data on tariffs are deemed confidential but we believe that the Agency for Telecommunications, Radio-diffusion and Post (ATRP) should have seen them. However, we are far from clear that they have.

Different empirical research on cross-section data have shown that there is a negative correlation between the concentration of companies that represent buyers (downstream companies) and the profitability of companies that sell programs (upstream companies). The more united buyers are the smaller is the profitability of sellers with which the prices are negotiated. Until this year the operators of CaTV in Slovenia have been negotiating collectively through their association ZKOS but it seems that in 2002 the largest operator Telemach has started to negotiate for itself (at least for some programs). The collapse of collective purchase and the splitting away by the bigger operators looks likely to trigger a wave of consolidation in the sector. Indeed, some acquisitions by the largest operator in Slovenia (Telemach) have already taken place.

Having a more consolidated sector could have positive consequences for consumers as larger firms bid down costs for programmes, generate scale economies and invest more in infrastructure. However, the consumer appears not to be doing well out of the process. The subscription fee for CaTV of

¹ According to the data of the ATRP for year 2002 37% of Slovenian households have a CaTV connection.

the largest operator in Slovenia (Telemach) is also the highest and has increased by 50% (in real terms 21%) during the years 2001 and 2002.

**Table: Subscription for CaTV on a location in Ljubljana
(for the full package of programs)**

Time	Monthly subscription (in SIT)	Consumer price index (December 1999=100)	Subscription rate (in prices per dec. 1999)	Index (December 1999=100)
12/1999	1,856	100	1,856	100
12/2000	2,065	109.05	1,894	102
12/2001	2,799	116.80	2,396	129
09/2002	3,449	124.11	2,779	150

We believe that the increase in the monthly subscription rate has been too high and that consumers need protection in this industry in Slovenia.

1.7 Competition and consumer protection in CaTV in Slovenia

Cable operators enjoy a local, geographically speaking, monopoly. Consumers are almost in the same position as to the contract with operator of fixed telephony. If consumers want more than a very basic programme line-up they have no choice but to sign a contract with the local CaTV operators because an individual antenna is not comparable alternative. Unfortunately, legislators have not taken this on board and there are not any regulations in place to protect consumers in the market.

One of the main problems for consumers in contracting with their local monopoly is the presence of unfair contract terms. The contract, which should have incorporated criteria for the price structure and for the price increase as well as for programmes and programme changes, has no such criteria. Therefore the cable operator performs programming and price changes unilaterally and without proper notification and possibility of redress by the consumer. The most frequent »excuse« for the price change is adding channels, which is of no or very little interest to the majority of the subscribers to CaTV. The state regulatory bodies are not active enough to suppress this situation. The example of such a monopoly and unilateral structure of a contract is a cable operator called Telemach Ltd. mentioned above.

The regulatory framework does provide for the so-called Programme Advisory Body to be established with each cable operator. Each cable operator is also responsible for notifying the Ministry that such a body has been established. In spite of the legal requirement, no such bodies have been established so far.

It has to be said that the problem lies most firmly within the Competition Act. The Slovene Office for Protection Against Monopoly has acted in the case of Telemach by initiating a special process investigation project. It is the usual procedure with which this office reacts to concentration attempts, however the process of investigation is in our opinion too long due to legal holes in the Competition Act.

In summary we argue that there is no consumer protection in this field.

The ATRP as the sector's regulator should also protect consumers interests. The ATRP was established approximately a year ago and many of its activities are still not yet defined. This uncertainty engenders the agency with an attitude of inactivity. They wait for legislators to determine what data should be collected, who can use these data etc.

The director in the Agency made a public statement that the creation of a local monopoly of cable operators was unavoidable. She also said that the operator duty is to inform the Agency about the beginning of the operation of the network and of providing services. She offered help to the subscribers to CaTV to change unfair contracts. However, this was seen as an act of good will and not as a legal obligation of the Agency.

Therefore the Agency, the Office for Consumer Protection and the Office for the Protection of Competition should have acted, but have not. Argumentation given by the Agency's sector manager is very worrying as the poorly regulated area of cable operators, the ownership of the network and complete absence of control measures leads to deliberate violation of consumer rights.

It is also simply unacceptable that basic statistical data like that on cable penetration collected by the Agency should be confidential. Such information is vital if consumers are to exercise any choice and regulators any oversight in this market.

2. Conclusions

Slovenia is not just a small economy but also an economy in transition. As a part of the enlargement process legislation, institutions and structures were established too often simply as a response to a "dictate" from Brussels and not as a response to a market need. Indeed in some cases responses to pressure from Brussels led to responses made without any proper understanding of the role and responsibilities of such regulators. Therefore it sometimes becomes difficult to clearly identify the reasons for weak enforcement, such as the lack of capacity and knowledge, imprecise legislation or just a plain reluctance on the part of regulators for any transparency in the process.

The Competition Protection Office and Consumer Protection Office were set up within the Ministry for Economy in what is an obvious conflict of interest. This conflict of interest has clear consequences, as the formal structures do not allow enough freedom in decision making. The proof of such a serious weakness was evidenced in the recent case of the Director of the Veterinary Inspectorate (the Veterinary Inspectorate is part of the Ministry of Agriculture) who lost his job not for making any professional mistake but because he announced in public that financial resources for proper consumer protection were insufficient to do the work according to their obligations.

What can we say about Consumer Protection and Competition Protection Office? In spite of the similar formal structure of both institutions their real position is completely different. The Competition Office is gaining importance and profile and is attempting to balance its responsibilities in an environment which is not in favour of transparency. It lacks resources for proper investigations and it is too much oriented towards industry and not as a tool to benefit consumers. It is also a pity that after adopting a new law on the Prevention of Restriction of Competition the consultative committee to the Competition office was crossed out from the Act. We believe that competition policy can only be effective if it is a counter point of effective consumer policy.

Unfortunately consumer policy is still a largely unknown term in Slovene government circles and seven years after setting up the Consumer Protection Office inside the Ministry of Economy the office itself is one of the main obstacles for the existence of a consumer policy within the government. The latest progress report from the European Commission was critical regarding consumer protection in Slovenia but no changes have been made yet.

A lack of understanding of the importance of consumer policy is at the same time a lost opportunity to strengthen the market economy. To achieve better results co-operation among regulators,

academics and consumer organisations is needed. This is even more important than the “dialogue” within larger economies because small economies lack all resources: financial and human.

International co-operation can help and is needed for all stakeholders. It can be justified not only to avoid re-inventing the wheel but to ensure investigations are more independent and transparent. Independence of regulators and supervisors and transparency of the process is needed and should be more supported to strengthen the economy in Slovenia.