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COMPETITION ISSUES IN TELEVISION AND BROADCASTING

Contribution from Latvia

-- Session II --

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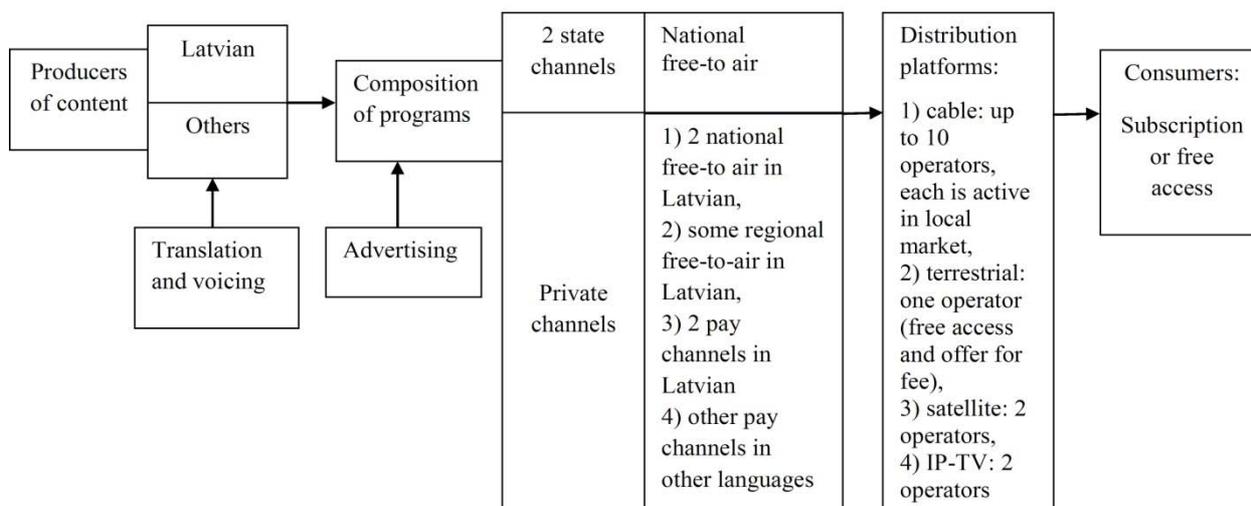
-- Latvia --

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

1.1 Supply chain

1. The market of television broadcasting in Latvia should be considered as highly regulated because of national specifics. The state policy for the support and protection of cultural values as language, traditions, often confronts with the competition policy. Small economy (market) does not allow many market participants to exist. Almost in all levels of the supply chain there is an oligopoly.

Supply chain in TV broadcasting sector



2. In 2009, Latvia switched from the analogue terrestrial broadcasting to digital. This event vastly affected the situation in industry, including competition issues. The positive effect was that viewers were offered additional pay TV platform, which did not exist before, therefore, competition in pay TV market had increased; but free access TV market was affected negatively: payments for services of terrestrial infrastructure had increased more than twice. Due to the financial burden one private free-to-air channel left free TV market, but the other two private free-to-air channels were close to make the same decision, and finally they merged in 2012.¹

¹ The decision to merge was the result of many unfavorable obstacles in industry, generally both companies were in very bad financial situation, due to the downfall in advertising market, must carry principle, state support of state channels, increased payments for terrestrial infrastructure.

3. In 2012, the amendments in sectoral law were initiated in order to correct the situation and provide more competition in the terrestrial pay TV market (now there is only one provider in Latvia). At the end of December, 2012, draft amendments were adopted in the second reading in the Parliament, but so far it is not clear how the situation will develop and when the amendments will be finally adopted. Therefore, the situation in the sector is not stable and risks for competition exist.

1.2 *Competition constraints*

4. Must carry principle, defined in sectoral law, will stay² in force till the end of March, 2013. It means that both state channels and both leading private channels are mandatory included in all TV packs and TV operators do not pay for these channels to their producers. So the demand-supply principle in this issue is deformed, nobody knows the real demand and the value of these products for consumers. The amendments in sectoral law will allow the national commercial channels to require a payment for transmission of their content in cable TV platforms from March 31, 2013.

5. Competition between platforms. The uneven density of population in the country is the reason of specific competition levels. The density of population in rural areas is much lower than in urban areas, therefore the cable TV operators are active only in towns. TV viewers in towns are offered four alternatives of pay TV platforms: cable³ (some operators), IP-TV (2 operators, one of which is the national telecom incumbent operator), satellite (2 operators, one of which is located abroad), terrestrial (1 operator – the national telecom incumbent operator). In rural areas, where it is economically unreasonable to build the cable infrastructure, there are only 2 alternatives: terrestrial and satellite.

6. Competition in cable TV platform. For many years the Competition Council of Latvia (CCL) has received indications that cable TV operators might have agreed on territorial division, because they were not active enough in the development of cable network in the areas where other cable operators have built the networks. But there were also economical explanations for this behavior – insufficient return of investments. In recent years, the two largest cable operators have become more active in this issue, but now they have an intension to merge. So the development of competition in the cable TV platform is questionable now. Another problem is related to the residential property management sector. Some years ago CCL received many complaints about residential property management companies (especially those which were also real estate developers): they determined which TV and internet provider may be allowed to build the infrastructure in houses and operate it. The consumers often disagreed with these choices, the competitors were also not satisfied with the situation.

7. State channels. There are two state owned channels in Latvia. They fulfill the basic demand of public and are designed as the main source of information of state significance. The system does not provide the possibility to fulfill the state order for private channels. The financing of state channels (from budget) is not enough, so state channels provide advertising also. The CCL has declared that this has negative effects on competition in the advertising market.

8. Concentration. High concentration⁴ in the market of TV channels and in the platforms means that both markets depend on each other, and very often they have long and difficult negotiations, trying also to involve the CCL in their private disputes.

² Part of above mentioned amendments

³ In towns parallel (i.e. when viewer in its home can choose between at least two operators) cable infrastructures some years before were quite rare

⁴ Almost in each relevant market there is dominant undertaking

9. Regional and local television. The switch to digital format in 2009 deprived the regional TV companies of the possibility to broadcast independently, as they had not enough financial resources to afford it. Now the content of regional channels is placed in state channels in special „windows”. The same situation is with the local channels. Their activity has been suspended. The amendments in sectoral law which probably will come in force in 2014 might give an incentive to independent broadcasting of regional and local TV.

10. Prices. In respect of pay TV the CCL considers that there is enough competition between TV platforms which provide differentiated offers (packs) and there are no indications that prices are excessive. An entrance of a new market participant in 2009 increased the competition pressure on the existing operators. There are no indications that private channels impose excessive price for their products to TV operators, although the negotiations may be very difficult. The TV operators tend to cooperate in common purchase for lower price. As to the fees charged to advertisers – prices reduced in the period of crisis (2008-2009) and, as market participants have indicated, in the beginning of 2012, the level of prices still did not achieve the level before the recession. The overall trend of the market suggests that prices for advertising in Latvia may continue to increase.

11. Quality and service. Quality of TV production directly depends on financing of the production. Worse financial situation of the Latvian channels affected the quality of original television and reflected on the amount of original content. Imported television products, which are produced for very large audience (as Viasat channels, NatGeo, russian ORT, RTR, NTV) obviously were not affected so much by financial crisis and they gradually acquire the shares, definitely starting to compete in advertising market. But still the Latvian original channels are the highest ranked by the viewers⁵.

12. Barriers to entry and expansion. Barriers to entry are different for different kinds of platforms. The free-to-air channels are broadcasted only in terrestrial platform. The fee for the services of free-to-air TV infrastructure is too high (free-to-air channels even considered the possibility to leave the free-to-air platform because of financial difficulties). The sectoral law does not provide the possibility for channels to broadcast, using their own technical resources and equipment in terrestrial platform: all the radio frequencies for terrestrial broadcasting were assigned to one operator until 31.12.2013. At the same time incomes from advertising are not enough. For pay TV channels barriers to entry are not so high. All the TV channels must obtain a permission of the National Electronic Mass Media Council. Specific requirements exist if a channel wants to operate as a *national* channel.

13. Existing legal and regulatory framework and competition. Existing legal framework does not support effective competition. The draft amendments were elaborated and now await for the final reading in Parliament. In the first reading the draft amendments provided that instead of one terrestrial operator the model of two or several operators is offered. However, in the second reading Parliament supported the model with one terrestrial operator, which will be selected in a tender. During the legislation process of the draft the CCL prepared an analytical report on level of competition in both variants, establishing that the model with several operators could be more effective from competition point of view, if some conditions are fulfilled.

14. Vertically integrated providers. The company Viasat is a provider for satellite TV (competes with other pay-TV platform operators) in Latvia and also is a holder of 6 important channels. But it has not raise competition concerns so far.

15. Cross-ownership. No competition problems have been established.

⁵ Data on spring 2012

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

16. Current and future challenges. Small market and its specific structure in Latvia require sometimes bizarre solutions in competition cases, related, for example, to relevant market definition and remedies for mergers. Also for the CCL the current and future challenge is that the CCL is involved in active work of drafting the amendments of the sectoral laws. After investigation of abuse of dominant position in the activity of terrestrial operator the CCL hardly has criticized the provisions of sectoral legal acts, therefore, the CCL was invited to participate in working groups that elaborates legal acts and provisions for public tender in broadcasting and electronic communication issues.

17. Looking at the tendencies in broadcasting it seems that the producers of channels will try to become more independent of the TV operators, i.e., more to use the internet for direct connection to the viewer, avoiding the services of TV retail operators. Also the producers of channels tie the advertising time in their channels. As advertising campaigns tend to be international, channels which operate in many countries may tie or bundle advertising time in different countries (for example, TV3, held by MTG, can provide advertising of L'Oreal in all the Baltic states within one agreement, but the channel which operates only in one state can offer advertising time only for auditory in one country). So the international channels are able to press small channels out of the advertising market. In this case competition concerns may arise (if the dominant position can be established) – the definition of relevant market of advertising time (channel, prime time/night/other, before/in time of/after relevant content and so on). In general, the CCL believes that competition concerns and challenges of competition policy will relate to dominant position issues.

18. The time frame in which these problems are expected are the nearest 3-6 years.

19. Market studies. The CCL conducted pay-TV market study in 2009-2010 (analyzed period 2008-2010). The full text of report is available in Latvian⁶. The main findings were on barriers for entry and expansion in pay TV market (frequencies for terrestrial platform are given to one operator, the residential property managers limit the number of infrastructures in houses, long term agreements with viewers/penalties for termination before the term, financial barriers), on market development (dynamic, triple play is decisive for competitiveness, no expansion but modernization), on structure, on competition between players (competition is between platforms, but not inside the platforms, exchange of information between the players take place).

20. Access to content. So far there were no problems with exclusive right to premium content.

21. Efficient spectrum allocation. Limit on transmission spectrum in Latvia still is technical barrier to entry or expansion in television broadcasting, in respect of terrestrial platform. This barrier is justified by economies –to avoid using different frequencies for broadcasting one channel. Since the law provisions came into force (switch on digital terrestrial television in 2009), the entire TV spectrum was assigned to one operator, and there were no technical possibilities for channels to broadcast in terrestrial platform using their own infrastructure. After 12.31.2013. a new platform for television may be available – television in mobile broadband internet (4G). The use of this platform will allow channels to acquire viewers directly with no cable infrastructure and with no pay-TV operators. So the viewers would be offered with additional option of TV services.

22. As to the spectrum licenses for 4G – there was a tender procedure. For the terrestrial platform – the system when spectrum for terrestrial platform is given to one infrastructure holder (undertaking Latvian

⁶ <http://www.kp.gov.lv/documents/4af7295a17c7cd27a17da42c10b9efa1da07f0a0>

State Radio and TV Center) will not be changed, but due to the new provisions in law competition situation will be improved.

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

3.1 Merger assessment

23. In 2009, a merger was proposed between two leading cable operators. The merger was cleared with conditions, but companies, however, did not merge. Competition concerns were found in the local markets of retail of pay TV. As 2009 was a period when new platform started to work (digital terrestrial) in pay TV market, the CCL, additionally to the analysis of market shares, analyzed dynamics of how the subscribers switched from the cable platform to the terrestrial to understand, if the terrestrial operator is able to compete with the cable operators. In the decision the CCL recognized for the first time that the pay TV market has to be defined as one for all the platforms (satellite, terrestrial, cable IP-TV) from the demand side.

24. In 2012, a merger between Latvian leading TV channel groups (both were the biggest competitors in the TV advertising market and the closest competitors in TV market) took place. Competition concerns were found in the market of TV advertising, free-to-air general interest television and some other markets. The CCL cleared the merger with many behavioral remedies, limiting, among other, freedom to raise advertising price, tying the channels, size of discounts. The reason for clearance of a merger between close competitors was that it can give more efficiency for consumers because of more effective purchasing, production of content and allocation of it in the programs. Other factors, important in the evaluation of the merger, were that both channels worked with losses for some years, because of recession in the advertising market, must carry principle, huge payments for terrestrial broadcasting services (the target company was close to insolvency). The conditions also provide for a possibility that after 5 years, if competition situation develops unfavorably, the CCL can take a decision on structural remedies (reversal of the merger). Now the CCL monitors compliance with the remedies.

25. In December 2012, the CCL received a merger notification between the same two leading cable operators (the second attempt), that did not complete the merger proposed in 2009.

3.2 Abuse of dominance actions

26. In 2007-2008 – a case on abuse of dominant position in the market of voice telephony and internet (double-play). A complaint was received on the national telecom incumbent operator Lattelecom. The essence of complaint – bundling of services and predatory price (offers included free call time). The CCL analyzed costs of bundled services and compared them with the same services offered unbundled. No predatory price was established. Lower prices were a likely result of lower costs due to the fact that Lattelecom operated with double-play offers in densely populated areas.

27. In 2008-2009 – a case on abuse of dominant position in the market of wholesale distribution of channel TV3 (tying with other channels). A complaint was received from the terrestrial operator Lattelecom. Relevant product was narrowly defined – channel TV3. Violation was established and a fine was imposed.

28. In 2010-2011 – a case on abuse in the market of distribution of TV channels in the terrestrial platform. The CCL received three complaints from the TV operators and one from a channel producer on the abuse of dominant position in the activity of terrestrial operator Lattelecom (cross-subsidization): excessive prices for free-to-air broadcasting and predatory pricing in the pay TV market. The CCL analyzed the financial flow and costs of both services. During the investigation indications were

established that predatory pricing has not taken place. The case was closed because during the investigation objective and well founded conclusions could not have been drawn unless the whole period of investments is analyzed, which would require future predictions on behalf the CCL without reliable information. The investigation should have covered a time period of 5 years, within which all amount of investments, financial flow should have to be taken into account. But the CCL had only two years (provision in the Competition Law) for investigation and adoption of the final decision. However, the discovered problems encouraged the development of legal acts in order to provide more competition and change the supply chain to make infrastructure services in the terrestrial platform more available and cheaper.

3.3 *Parallel application (NCA and NRA)*

29. The Latvian NRA does not take part in broadcasting content regulation. The authority responsible for broadcasting content issues is the National Electronic Mass Media Council. In the field of electronic communication the CCL and NRA cooperate well, consult each other and hold discussions. Each authority adopts decisions within its own competence; no inconsistent decisions have been adopted. There were only few cases with disputes between the NRA and CCL on which authority should deal with relevant competition concern. The provisions in the Law on Electronic Communications state (implemented the European Directive) that the NRA will consult with the CCL when regulated market analysis is conducted and ex-ante regulation measures are prescribed. Our cooperation is based on this provision.