

Unclassified

DAF/COMP/GF/WD(2013)27

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

24-Jan-2013

English - Or. English

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE

## Global Forum on Competition

### COMPETITION ISSUES IN TELEVISION AND BROADCASTING

#### Contribution from Ukraine

-- Session II --

*This contribution is submitted by Ukraine under Session II of the Global Forum on Competition to be held on 28 February and 1 March 2013.*

JT03333588

Complete document available on OLIS in its original format

*This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.*

DAF/COMP/GF/WD(2013)27  
Unclassified

English - Or. English

## COMPETITION ISSUES IN TELEVISION AND BROADCASTING

### -- Ukraine --

1. Presently, the following kinds of broadcasting are spread in Ukraine: satellite, terrestrial, cable, wire, multichannel.
2. For Ukraine, the transition from the broadcast television (terrestrial television) to cable television was a huge challenge. The reason for this was that the telecommunication operators had to deploy their own cable networks, because community antennas that enabled the transmission of broadcast television were destroyed.
3. The Antimonopoly committee of Ukraine continuously monitors the market of program services provided through the use of multichannel cable television network. The most recent market research was done in 2011-2012.
4. Since cable television market is one of the most important ones, the Antimonopoly committee of Ukraine conducted relevant research in 27 regions of Ukraine.
5. Furthermore, in order to prevent the monopolization of the markets, the abuses of monopolistic (dominant) position, the limiting of competition, the Committee exercises state control over concentrations (mergers or acquisitions) of economic entities in accordance with the Law of Ukraine "On Protection of Competition".
6. Concentration (merger or acquisitions) can be done only after obtaining a permission of the Committee.
7. Permission for concentration (merger or acquisition) is granted if it does not monopolize or substantially restrict competition in the market or in a substantial part of it.
8. Ukraine does not have any vertically integrated telecom providers.
9. In Ukraine there is also no cross-ownership, because according to the Law of Ukraine "On Television and Radio" no person or legal entity has the right to control in any way (either by influencing the formation of management and / or by influencing the formation of the broadcasting organization's supervisory bodies) more than 35 percent of the total volume of the territorial television and radio market - national, regional or local.
10. During the last years the Committee has been receiving complaints against providers of program services, both from consumers and from industry associations. After having considered these complaints, the Committee opened proceedings against program service providers which provided their services through multichannel cable television network for an alleged violation of the legislation on economic competition protection.

11. Thus, the Committee examined 50 cases of violation of the legislation on protection of economic competition, gave 54 mandatory recommendations and fined the companies for about 4 million hryvnas (~\$0.5 million)
12. Program service providers (telecom operators) were trying to maximize their profits through the abuse of their monopolistic (dominant) position by setting excessive, unreasonable prices for their services.
13. Today there is also a problem of transitioning from cable television to digital television.
14. Firstly, it could lead to the closure of the local channels. The transition to digital TV may be financially impossible for many local and regional broadcasters.
15. Secondly, the financial means of the Ukrainian people should be considered. If analog broadcasting is disabled, millions of citizens will find themselves in a situation where they do not have the right to receive information. According to various sources, Ukraine has 17,5-19 million households, of which about 30% are poor. Since receiving the digital signal is impossible without the digital signal receiver - the decoder, which costs from \$50 to \$100, consumers will be forced to buy it. There is another way, but it is even more expensive than the previous one - buying a new TV that supports the «Digital Video Broadcasting Terrestrial» (DVB-T) format.
16. Thirdly, there's the lack of legislation in this area. The law does not clearly define how digital TV will be introduced and implemented. Another problem is the large territory of Ukraine, which creates difficulties for the technological process of digital television implementation.
17. There are certain entry barriers in the field of television and broadcasting at the legislative level in Ukraine. Telecommunications operators must obtain a license for broadcasting. Also, the economic entity must also obtain some other permits, such as the permit for the operation of radio electronic equipment and a conclusion on electromagnetic compatibility of radio electronic devices. All the permits for activities in the field of television and broadcasting are obtained on a paid basis.
18. Since the license fees are disproportionate and excessive for small and medium business operators, they are being discriminated against in comparison to big business. Thus, monopolization of the pay-TV market occurs due to the ousting of small forms of entrepreneurship. Meanwhile, telecommunication operators require resources for the general economic development of their own television network.
19. The bodies of the Committee constantly discover violations of the legislation on the protection of economic competition by the service providers (telecom operators) in the form of establishing the prices that would have been impossible to establish under the condition of a highly competitive market. As stated earlier, the Committee examined 50 cases of violation of the legislation on protection of economic competition and gave 54 mandatory recommendations.
20. The bodies of the Committee constantly receive complaints about the TV programs quality both from the citizens and from the telecommunications operators.
21. The main barriers of entry to the market of program services provided through the use of multichannel cable television networks are the contradictions between the three basic laws of Ukraine - "On the National Council of Ukraine on Television and Radio," "On Television and Radio", "On the radiofrequency resource of Ukraine ", which regulate the management of the radio frequency resource of Ukraine. These contradictions impede, and sometimes make it completely impossible to exercise effective control in the field of broadcasting.

22. In Ukraine, there is a single body of state regulation in the field of television and broadcasting, regardless of distribution and transmission methods - the National Council of Ukraine on Television and Radio Broadcasting (hereinafter - the National Council). According to Article 1 of the Law of Ukraine "On the National Council of Ukraine on Television and Radio Broadcasting" The National Council is a constitutional, permanent collegial body, and its mission is to oversee the compliance with the requirements of laws of Ukraine in the field of broadcasting and to exercise the regulatory powers provided by law.

23. The National Council develops the Plan for the development of the national television and radio space based on which the National Council decides on the establishment and development of broadcasting channels, broadcast networks and television networks that involve the use of radio frequency resource of Ukraine, determines the competition conditions and announces tenders for broadcasting licenses, determines the conditions of broadcasting licenses.

24. The National Council performs the typical functions of an executive authority: regulatory, supervisory, etc., therefore, as an independent body it should not feel the pressure of the executive branch.

25. Spectrum distribution may affect competition but one of the powers of the National Council is to promote competition in the broadcasting.

26. The same problem arises with the National Commission which provides state regulation in the field of communication and information (hereinafter - NCRC), a body of state regulation in the field of telecommunications, information, radio frequency resources and the provision of postal services.

27. One of the main functions of the regulatory bodies is the issuing of licenses.

28. The National Council of Ukraine on Television and Radio Broadcasting is the only government agency that is responsible for licensing of all the kinds of broadcasting: satellite, terrestrial, cable, wire, multi-channel.

29. In Ukraine, the procedure for issuing the broadcasting licenses is regulated by Articles 23, 25, 27, 32, 35 of the Law of Ukraine "On Television and Radio" and the provisions of the licensing that are established by the National Council. The right to set up a broadcasting entity in Ukraine belongs to legal entities of Ukraine and the citizens of Ukraine, who are not limited civil capacity.

30. The Committee actively cooperates with other authorities, including the National Council and NCRC, so fortunately there haven't been any cases of parallel application of two different legal regimes.

31. The cost of the broadcasting licenses and the license of a program service provider is determined in accordance with methods approved by the Cabinet of Ministers of Ukraine.

32. According to calculations, it is clear that preferences in obtaining the licenses are given to business entities that are using certain TV signal distribution technologies - the technology of satellite platform with DTH (Direct to Home), Mobile WiMAX technology, etc.

33. Disproportional and excessive license fees for operators of small and medium business promotes the monopolization of the pay-TV market by big business due to the ousting of small forms of entrepreneurship.

34. We believe that today, Ukraine's regulation of broadcasting sector is insufficiently effective, because the powers of the National Commission and the NCRC are not delineated on legislative level.

35. To improve the regulatory environment in the field of television and broadcasting, a number of measures and transformations should be implemented in Ukraine, including the following:

- Simplification of the broadcasting license renewal procedure;
- Development of a detailed plan for the introduction of digital TV in order to determine the ways of overcoming all of the problems in this area;
- Implementation of the provisions of the EU Directive "On audiovisual media" on the regulation of Video On Demand and Catch-up TV services and on the enablement of the provision of IPTV services via the Internet without the use of multichannel networks resource into the Ukrainian legislation, including the Law of Ukraine "On Television and Radio";
- Development of the changes to the Methodology for calculating the amount of the license fee for the issuance or renewal of licenses to address the issue of assessment of license fee for the providers IPTV services who offer these services via the Internet without the use of multichannel networks.
- Expansion of the powers of the NCRC by enabling it to perform the analysis of markets.

36. Cases of violation of the legislation on protection of economic competition were investigated by the Committee after having received numerous citizens' complaints about unjustified increase of tariffs for program services provided through the use of multichannel cable television networks (cable television).

37. During the investigation, the Committee researched the pricing of the tariffs, the costs and revenues of the program service providers (telecom operators). Following the proceedings the Committee established numerous instances of unreasonable costs that were included in the tariff, by which the offenders tried to explain their unreasonably high prices.

38. In 2012, the Committee conducted a research to check whether the actions of individual players of television programs market follow the requirements of the legislation on protection of economic competition, particularly in terms of distribution of TV channels of foreign producers in Ukraine.

39. The study revealed vertical restraints, which can lead to restriction of competition and abuse of dominant (monopolistic) position, as well as to the creation of barriers for market access of other entities.

40. The study found that Russian TV channels' rights holder (hereinafter -the holder) distribute it's channels in Ukraine by concluding agreements for the distribution of the appropriate channels.

41. Under the terms of the agreements, the distributor acquired exclusive rights for the distribution of some of the holder's TV channels in Ukraine. These channels are extremely interesting and are in great demand among consumers.

42. The other channels of the holder are distributed on the basis of non-exclusive rights.

43. As a result of these agreements on the basis of exclusive rights, the Distributor was able to single-handedly determine the terms of further distribution of these TV channels in Ukraine, which in turn enabled the Distributor to prevent, eliminate, and restrict competition.

44. The consequences of such actions for more than 300 cable operators could be the following:
1. imposition of unfavorable contract terms
  2. creation of unwarranted market barriers for the access of other market participants to the channels of the holder.
45. At present, the Committee continues the research.