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COMPETITION ISSUES IN TELEVISION AND BROADCASTING

Contribution from the Russian Federation

-- Session II --

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-- Russian Federation --

1. Introduction

1. In the period of creation of information society by developed countries television broadcasting became the major mass media effecting the spiritual development of the society, economic growth, social stability and the development of civil society institutions.

2. The Russian Federation has implemented the Federal Target Program "Development of Broadcasting in the Russian Federation for 2009 - 2015" (approved by the resolution of the Government of the Russian Federation № 985 on 03.12.2009). The major objectives of the Program are development of the information space of the Russian Federation, provision of multi-channel broadcasting to citizens guaranteeing provision of mandatory TV and radio channels with given quality and increase of efficiency of broadcasting.

1.1 Television

3. State of national television occupies a key position in the country's media system, and plays an important role in political communication and in the system of cultural institutions in Russia. Thus, despite of national specifics, development of Russian television in whole was broadly in line with global trends such as the increasing influence of modern technology on the structure of the industry, increase in segmentation of the audience, clearly exposed generational differences to the media; search by modern TV its identity as a public institution.

4. These trends, of course, disclose themselves differently in the national contexts depending on the technological and economic state of the television industry. Thus abroad they say more actively about appearance of post network television where the channel (broadcaster) and content (program) are not connected solidly, but co-exist separately. With the increase in the number of programs available to the audience, the expansion of viewers' freedom due to new platforms of access to the TV content (including user interfaces such as "cloud platform"), new interactive ways of TV watching are widely distributed (destroying the old ones). The media power is gradually shifting from channels as hierarchical structures towards self-organizing networks in non-mass auditorium, which creates a new infrastructure of the Internet interactions and new user communities. As a result, traditional models of the television industry are changing, not only blurring the traditional brands of broadcasters, but also challenging the principle of mass television, based on a passive TV watching.

5. Analysis of universal trends in the development of television in the Russian context gives a slightly different picture. However, their impact on the Russian TV landscape is already evident. No doubt that the most evident feature of the domestic media space is the digital inequality, which reduces the possibility of equal access to the Internet throughout the country. The problem is obvious when comparing the small towns and villages with the capitals and megacities, where modern information and communication infrastructure provides viewers a large number of digital programs available through both paid TV and broadband connections to the Internet. As a result, deeper beak-up within the Russian viewers

is expected, reflecting not only different levels of technological equipment of households, but also generated new media different types of media consumption and - more broadly - the types of communication culture. Presently the question of existence of multiple clusters among Russian viewers is not accidental:

- the most numerous segment, which includes the middle-aged and older, who have enough free time and are committed to traditional forms of TV consumption;
- the most attractive for the modern advertiser, consisting of highly educated and well-paid professionals, with clear information and artistic requirements to TV programs;
- new segment, taking its roots from Internet comprising young citizens (so-called "born digital", "digital natives"), whose media behavior is unique and based on authority, views of their online friends or online communities.

6. Establishment of different (from each other) or even opposing media cultures in contemporary society is an important consequence of the digital revolution in the mass media, which is manifested in the process of digitalization of television and spreading of the Internet. For society it also means "splitting" of a single information agenda that in the twentieth century in all states the national broadcasters formed. This fact forces many countries to take a fresh look at the situation of public broadcasting. For example, the EU countries that have already completed the transition to digital television, the debate on the nature, mission, functions and journalistic standards of public television became more active in recent years.

7. Under the influence of the digital revolution and the market demands a lot of public service broadcasters in Western Europe are cutting investment in program production, narrow subject and genre features of the TV content, losing its positions to commercial broadcasters particularly in post-crisis conditions. Public television, according to researchers and policy makers loses the integrity of program strategies and attractiveness for the audience. And this is what makes to revise media policies of individual countries and the European Union as a whole – as towards the broadcasters themselves, so to the idea of public service broadcasting as an important social service of a democratic society. The last formulates its request for a socially significant and time adequate television content not to the individual broadcasters, but to the full range of television programs produced in the community, highlighting the challenge of achieving diversity and pluralism.

8. Debate on public television and general problems of global media sphere raise issues actual in our country. The most important issues among them are: understanding of television as a public good, the need to expand discussion in live broadcasting, and generally the need for development of principles of television accountability to the society as television broadcasting time due to technological and cultural reasons remains the core of Mass Communications System in Russia and an essential tool in the process of the national identity keeping.

1.2 Radio

9. In 2015 Russia should switch to digital broadcasting and this transition is radical breaking established ideas on the organization of broadcasters. The largest issues appear in the area of radio broadcasting, where traditional business models are based primarily on the basis of advertising.

10. The previous period of radio industry development was characterized by active growth of radio broadcasting in the band FM-2. Demand for broadcasting in this band was stipulated by the possibility of good quality stereo broadcast and the fact that subscriber radios are widely used by the population.

11. Quality stereo broadcasting coverage in the bands FM-1 and FM-2 of the FM range is not more than 70% of the urban population in Russia.

12. Powerful broadcasting is a strategic tool to inform not only the urban and rural population, but also migratory settlements, marine, scientific and exploration missions, etc. It is an exceptional means of notification and the only means of communication in case of technological or natural disasters, war, when the existing electricity, communications and mass communications infrastructure is destroyed.

13. The radio broadcasting industry needs to be modernized and transition to modern technologies and methods of broadcasting is absolutely necessary. The DRM format was chosen (digital broadcasting standard developed by Digital Radio Mondiale) as a national standard for Russia due to the conditions of radio broadcasting in Russia and the fact that it is the only digital standard developed for the bands below 30 MHz, i.e. for a range of long, medium and short waves.

14. The attractiveness of the transition to digital systems primarily is associated with the possibility of significant increase in the number of transmitted radio, video, multimedia and other information. For example in digital standard DRM+ (designed for Ultra short waves) one radio channel with a bandwidth of 250 kHz can transmit from 6 to 25 CD-quality stereo programs (depending on the parameters of coding and modulation).

15. It is advisably to carry out a step-by-step implementation of DRM network standard within the frameworks of the modernization program of powerful radio networks. It is necessary to conduct large-scale studies of the reception quality of digital broadcast signal, the size of the service areas and features of the broadcasting organization and construction of such networks.

16. The transition to digital format will result in a new ideology of broadcasting, avoiding stereotypes and technological schemes of analog broadcasting organizations, introduction of new principles of broadcast programming, creation of new formats.

17. A broad information campaign is necessary among the population about the transition to digital broadcasting, as only 44% of Russians are aware of the upcoming transition to digital broadcasting, and only 6% of Russians are aware of the issue and monitor the implementation of the program.

18. Russian radio stations use a wide range of sources of income. At the moment, more than forty of these sources are known which can be subdivided into "subsidized / non subsidized sources", "consumers / business sources" and "specialized / non-core sources". In contemporary Russian situation only five of the indicated sources of income are really important for most radio stations and provides the main inflow of funds. It is revenue from advertising (broadcast of commercials), sponsorship, advertising thematic programs, as well as subsidized funding in the form of direct revenues from the budget (subsidies) for public stations and subsidies from the holdings, if stations are in their structure.

2. The state of competition in broadcasting sector

2.1 Restrictions on competition

19. A number of companies (hereinafter - the provider) operates in the territory of the Russian Federation, which offers both cable and satellite access to the World Wide Web, as well as to packages of TV channels freely available as well as to private (own production and formation) with technologies of access limitation.

20. Providers often offer potential users of services prepared complete sets of necessary equipment, which do not require any independent action on resupply, equipment selection and their parts depending on the technology restrict unauthorized access used by providers.

21. Equipment sets (deliberately selected and formed by the Provider) is a complete product that is sold by the Provider. Thus, along with the formation of price data service provider is able to set the price of the equipment set as one of the types of sold goods.

22. In this connection, a question arises on description of the provider's activity in pricing of completed equipment sets in relation to guaranteeing balance of consumers interests in the view of competition rules.

23. Besides, at present, the provider practices an approach in which the user is offered a choice of different value and completeness of equipment sets for the connection to the services of the Provider. These types of sets are sets of fully equipped with all necessary devices and to minimum required sets to gain access to services, namely the access card. In the latter case, the question arises for the user of services on the need to find equipment compatible in the technology of limitation of access and broadcasting signal with the technologies used by the Provider. In order to facilitate the search for compatible equipment, the Provider informs users in different ways on the using technologies of access restrictions and the list of equipment models for which compatibility has been verified by the Provider and they work correctly for receiving and processing signals - recommended models, which can also be purchased at the Provider or organization (s) with whom this provider cooperates.

24. Thus, this approach in its meaning is intended to indicate for the implementation of alternative freedom of possible selection of Connection Kit and models of equipment, however, may affect the interests of the manufacturers of the equipment by distinction between proven and recommended equipment and respectively equipment, which correctness of operation was not tested and verified, the potential user of the services of the Provider will acquire, relying on his knowledge and opportunities.

25. When considering this approach, the issue of determining the factors of the possible impact of the Provider (formation of consumer's interest in the equipment, including specific models of a particular manufacturer, the price for realized compatible equipment, etc.) in the model of relationships involving not only the providers and consumers of services but also the manufacturer of the equipment.

3. Challenges for competition policy in television broadcasting

3.1 *Barriers to entry*

26. Among the factors (can be defined as a barrier to entry) which have a significant impact on the broadcasting market, it should be noted operators access to the infrastructure, which are using in the communication services, including location of the equipment issues, installation and operation of communication networks in residential buildings and premises. However, the solution of this problem does not only appeal to a competition law, because it affects questions of property and it is also regulated by the rules of civil and housing legislation, which requires the legislative and executive branches to increase cooperation on the issue.

27. Since 2010 with the new provisions of Article 14 of the Federal Law "On Advertising", which established the definition of the federal TV channels, a privileged position in the distribution of television advertising, as well as features of the contracts formation for provision of TV advertising for people occupying a privileged position in the distribution of television advertising, and federal TV channels, including state-owned (prohibiting federal TV channels to conclude agreements for distribution of television advertising with companies> occupying a privileged position - more than 35% in the distribution

of television advertising) competition authority on the basis of information received from , [Federal Service for Supervision in the Sphere of Telecom, Information Technologies and Mass Communications](#) generates a list of federal TV channels and counts the share of federal television channels at national and regional advertising levels on the basis of information received from the CJSC "Group of Companies" Video International ", LLC RA "Alcazar ", LLC" Gazprom-Media "and federal channels. The list of federal TV channels and federal TV channels' advertising share calculation are available on the official website of the FAS of Russia in the "Internet".

28. Calculations, carried out by competition authorities, allow federal TV channels to orient on the market while the service contract for the dissemination of advertising formation, which is designed to prevent the domination of one person in this area, and violations of the law on advertising.

29. With the entry into force of the Federal Law dated 29.04.2008 № 57-FL "On Foreign Investments in Business Entities of Strategic Importance for National Defense and State Security" (hereinafter - the Law on Foreign Investments), which includes limits to foreign investors in contract formation to purchase shares of strategic business entities operating in the field of broadcasting, or to establish control over such companies. In handling the transactions which require prior approval in accordance with the Law on Protection of Competition, Antitrust authority has been working out qualification transactions involving companies which carry out business activities in the field of broadcasting (in accordance with Article 6 of the Law on Foreign Investment attributed to strategic activities) in accordance with the Law on Foreign Investment.

30. As a part of its activity the competition authority, with the participation of the federal executive authorities, is responsible for policy development and implementation of control and oversight in these areas - the Ministry of Communications of Russia, [Federal Service for Supervision in the Sphere of Telecom, Information Technologies and Mass Communications](#) actively work to improve the legislation in the sphere of mass media in order to ensure the country's defense and state security.

3.2 *New technologies and future challenges*

31. Recently, market of pay-TC is one of the fastest growing telecommunications markets in Russia. In future it will play the role of one of the main drivers of communication market growth.

32. In this connection, the competition in this market will increase through the development of new technologies and the provision of new TV services, such as satellite television and IPTV, convergence of networks and services, enhanced television infrastructure, and increase of public demand of these communication services.

3.3 *Access to content*

33. In Russia TV broadcasters and operators, who distribute these TV programs, mostly separated from each other and they are independent business entities that interact with each other in the framework of the contractual relationship.

34. In addition, broadcasters are not always the owners and producers of the content included in the broadcasting network. Often they acquire such a content from relevant producers, including the foreign ones.

35. It is no doubt that the content itself is not exclusive and it is not the object of the exclusive rights of intellectual activity. It means that its implementation does not fall under the Article 10 of The Law on Competition Protection in accordance with which actions (omissions) of a dominant entity, the result of which is or can be prevention, restriction or elimination of competition, are prohibited.

3.4 *Efficient spectrum allocation*

36. In recent years in Russia measures are implemented to increase the efficiency of use of the radio spectrum and the transparency of its release, including by expanding the practice of making generalized decisions and phase-out of personalized spectrum allocation, and move towards the distribution of radio spectrum on the results of tenders.

4. **Competition law enforcement relating to television and broadcasting**

37. In 2012 the FAS Russia considers a question about publication of Technical requirements for the main classes of set-top boxes, televisions, SAM-modules DVB-T/T2 standard, supporting an address management systems, defense and warning systems of ES and e-government by the Ministry of Communications of Russia and the Federal State Unitary Enterprise (FSUE) "RTRS" dated 12/30/2011. It was found out that set-top boxes, TVs, SAM-modules should maintain a unique set of keys from a specific producer. After that FSUE "RTRS" posted information that the only digital console GeneralSatellite TE-8714 is corresponding to the specified requirements.

38. The FAS Russia considered that the implementation of the requirements could lead to a restriction of competition in production and sales of digital set-top boxes and TV sets markets in Russia, which, undoubtedly, affects the availability of digital television for users.

39. Therefore, the FAS Russia considered the application of antitrust measures, in particular Articles 15 and 16 of the Law on Protection of Competition, to the Ministry of Communications of Russia and the FSUE "RTRS".

40. However, in the framework of cooperation with the Ministry of Communications of Russia, this issue was resolved by removal of these requirements from the official websites of the Ministry of Communications of Russia and the FSUE "RTRS", recommendatory requirements as well as the lack of access restrictions to watching TV through FSUE "RTRS" broadcast uncoded signal that can be received by any DVB-T2 standard TV receiver.

41. Recently, a large amount of transactions of assets is made in the field of the provision of television and radio programs (in 2010 - 15%, 2011 - 13%, 1 quarter of 2012 - 22%). It is partly due to the fact of high interest of major players in the expansion of the regional markets. However, the FAS Russia and its regional offices are monitoring the level of economic concentration in the television broadcasting market and are ready to take appropriate antitrust measures if it is necessary.

4.1 *Russian offices of «NBCU» Group transaction*

42. In 2011, the FAS Russia decided to satisfy the application of a private company with limited liability "Universal Studios International BV," about the acquisition of rights, allowing them to determine the conditions of doing business LLC "Universal Pictures Rus" LLC, "UPI" and LLC "Universal Pictures International Germany GmbH", which has an office in Russia.

43. As a result of this transaction "Comcast Corporation", as an ultimate parent company of the group, providing rights to Russian broadcasters to use the television program on channels «G4» and "E!», planned to establish control over Russian companies, belonging to the group of companies "NBC", an international group operating in the field of media and entertainment. Channels of "NBC" ("SayFay", "Universal Chanel") are broadcasting in Russian by satellite broadcasting systems and cable distribution.

44. The analysis of this transaction on the presence (absence) of features of restricted competition on the wholesale market of the technical data carriers and movies rent, the FAS Russia found out no evidence

of restriction of competition (the share was acquired by the Company: LLC "Universal Pictures International" (movie rent) by mid-2010 year - 8% of the box office takings, the share of LLC "Universal Pictures Rus" (wholesale trade of technical data carriers) - 12%).

45. It concerns the fact that as a result of this transaction "Comcast Corporation" established control over the Russian companies (LLC "NBC Universal" and LLC "NBC Universal - 2" carry cable broadcasting) which have a strategic importance for the national defense and security. This transaction was approved by the Government Commission on Monitoring of Foreign Investment in the Russian Federation.

4.2 *European Media Group transaction*

46. In the first half of 2012, FAS Russia decided to satisfy applications of LLC "SDS Mediaholding" to acquire shares in the amount of 97.28% of the share capital of "European Media Group" and 99.6429% of the voting shares of JSC "Media Plus."

47. Acquirer - LLC "SDS Mediaholding" Media Holding is the parent company to a group of companies which includes the following radio stations: "Russian Radio in Kemerovo», «DFM Kemerovo", "HIT FM in Kuzbass", "Retro FM Kemerovo," "Russian Radio Kuzbass" "Radio Chanson" ("Russian Radio two Novokuznetsk ") and "Radio Sport" (Moscow).

48. "European Media Group LLC " indirectly controls "Europe Plus CJSC ", "Radio Retro CJSC ", "SAC CJSC ", "RTS-Inform LLC ", "Ekbi LLC ", "Europe Plus St. Petersburg CJSC ", "MMT C JSC ", "Europe Plus Vyborg CJSC ", "Radio wave LLC", "Retro-Novosibirsk LLC ", "Radio Katyusha CJSC " and "Radio Region LLC ", which operate on the radio and have a license. Among these companies CJSC "Europe Plus", C JSC "Radio Retro", CJSC "SAC", LLC "RTS-Inform", LLC "Ekbi", CJSC "Europe Plus St. Petersburg", LLC "Retro-Novosibirsk", CJSC " Radio Katyusha "and LLC" Radio Region "are strategic companies.

49. As a result of this transaction CJSC HC "Siberian Business Union" took control over one of the largest radio holdings - European Media Group (Radio Europe Plus, Retro FM, Radio 7, Cake FM, Fresh Radio, Eldorado, Radio Record, the area of broadcasting is almost the whole country, including Moscow and St. Petersburg), and the sales House Media Plus, providing advertising on radio stations of holdings "European Media Group" and "Media Holding" and the Internet. In this case, as a result of the transaction, merger of the assets of two radio broadcast media holdings had place.

5. Conclusion

50. The FAS Russia actively promotes introduction of technologic neutrality principle of using the radio spectrum, which affects positively on the development of the communicational service market as a whole and on the television and radio broadcasting market in particular.