[BG] Imposing Fines for Unfair Competition in the Broadcasting Sector

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The dispute between Television MM and Radio Vaselina has came to an end after a final decision of the second instance of the Supreme Administrative Court ("SAC"). This dispute began in 2004 when the *Комисия за защита на конкуренцията* (Commission for Protection of Competition - CPC) opened proceedings against Radio Veselina upon the complaint of Television MM regarding a possible breach of Art. 30 and Art. 34, para. 7 of the Competition Protection Act.

Television MM (owned by Apace Media since August 2005) is a licensed national operator. Its channel "Television MM" is music-oriented and it is broadcast via cable and satellite in the territory of Bulgaria. Television MM grants some of the biggest cable operators in the country the right to transmit its channel in return for remuneration. Television MM claimed that, in November 2002, Radio Veselina started its own music programme advertising that the programme can be broadcast freely by cable operators. Soon after the launch of a wide advertising campaign, Radio Veselina sent draft agreements to cable operators offering them the opportunity to broadcast its musical programme freely in the period between November 2003 and December 2005. While Radio Veselina succeeded in signing agreements with more than 4/5 of the cable operators in the country, Television MM at the same time lost some of its long-term partners among the cable operators. Television MM claimed that the production of music programmes is a very expensive business and that it is impossible to offer such programmes freely without violating the rules of good will trade practices and causing damage to the competitors.

Radio Veselina (owned by SBS Broadcasting since December 2005) produces and broadcasts a television channel called "Veselina TV". The radio operator stated before the CPC that no paid television programmes were produced in Bulgaria. They also claimed that its programme was free for the end consumers - radio listeners and TV viewers. They also stated that the cable operators did not sell the free programmes to the end users because the customers pay telecommunication charges, and further claimed that 99% of its revenues were generated from radio and television advertising, that being a normal world wide practice for all free radio and television programmes.

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In its decision, no. 107 of 2005, the CPC held that Television MM had 153 effective agreements for broadcasting its channel and that only eleven cable operators refused to extend their agreements for broadcasting its channel in 2004. It concluded that the refusals of the cable operators could not be directly linked to the advertising campaign of Radio Veselina.

Television MM appealed the CPC's decision before the SAC, whereupon its first instance division repealed the decision of the CPC (Decision no. 2689 of 14 March 2006). The Court held that the activities of Radio Veselina should be considered, not only by taking into account the current effect on a particular competitor, but also the potential effect on the future competition as a whole on the respective market. The decision also notes that the activities of Radio Veselina (as new participant in the market of television operators broadcasting their music channels freely for a long period of time) may squeeze the competitors out of the market and may prevent future operators from entering the market because they would not be able to adopt similar market behaviour. This type of behaviour may endanger the normal competition in the market for television music channels and may harm the interests of the competitors in their mutual relations or their relations with the consumers. The good will trade practice requires the broadcasting of own channels to be performed against remuneration to be agreed between the parties. Upon appeal of Radio Veselina the second division of the SAC confirmed this decision on 19 December 2006.

After the final judgement of the second instance division of the SAC and upon application by Television MM (filed on 2 May 2007), the CPC imposed two fines of a total amount of BGN 30,000 (approximately EUR 15,300) on Radio Veselina for violating the rules of Art. 30 and Art. 34, para. 7 of the Competition Protection Act. The CPC decided that the activities of Radio Veselina may result in distorting the competition on the relevant market by creating conditions where the demand for music channels is formed on the basis of the free supply of such channels and not on their quality.

Закон за защита на конкуренцията

Competition Protection Act, published in the SG No 52/1998, as amended, SG Nos. 112/1998, 81/1999, 28/2002, 9/2003 and 107/2003

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