[LV] Competition Council of Latvia Rejects Broadcasters' Complaint

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On 13 February 2008, the Competition Council of Latvia adopted a decision to reject the complaint submitted by the Latvian Broadcasters' Association (LBA) with respect to an alleged abuse of a dominant position on the part of the AKKA/LAA, the major copyright collective management society of Latvia.

LBA, a non-governmental body uniting the major TV and radio broadcasters of Latvia, complained that for several years it has had difficulties in concluding agreements with AKKA/LAA on the licence terms for the use of musical works in broadcasts. The ultimate source of the difficulties has been the disagreement with the tariffs offered by AKKA/LAA, which in the opinion of the LBA were excessively high. Thus, the LBA argued that AKKA/LAA is abusing its dominant position by imposing unfair selling prices and other unfair trading conditions, as well as applying dissimilar conditions to equivalent transactions (namely offering different tariffs for radio and TV broadcasters).

The Competition Council agreed that the AKKA/LAA is in a dominant position in the relevant market, which is characterised as the market for licences for the use of musical works of authors represented by AKKA/LAA within broadcasts in the territory of Latvia. As AKKA/LAA is the only copyright collective management society in Latvia authorised to issue licences for the broadcasting of musical works (legal monopoly), the Competition Council did not have much difficulty in establishing that it enjoys a dominant position. However, the Competition Council did not find that there was an abuse of this dominant position as alleged in the complaint.

After the analysis of the tariff documentation of the AKKA/LAA, the Competition Council established that the tariffs are clearly defined: the general rule being that the tariff is calculated as a certain percentage of the broadcaster's gross income. The tariffs are applied differently to different categories of broadcasters (in general, smaller tariffs to local broadcasters, higher tariffs to national broadcasters), and take into account the proportion of musical works within the broadcasts. For example, according to the latest AKKA/LAA tariffs, a TV broadcaster with a national or cross-border coverage, using musical works during 30-40% of its broadcasting time, would have to pay a licence fee in the amount of 2% of its gross income. It is claimed that the tariffs have been established

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following the recommendations of the International Confederation of Authors and Composers Societies.

The Competition Council made a comparison between the tariffs applied by AKKA/LAA and those applied by similar copyright collective management societies in other EU member states. It found out that the tariffs applied by AKKA/LAA are among the lowest within the EU. This fact, together with the general assessment of the tariff structure and application terms, led the Council to the conclusion that the tariffs were justified.

Furthermore, the Competition Council examined whether it is justified to apply different tariffs to radio and TV broadcasters. The LBA had argued that these are equivalent transactions, thus different tariffs would constitute a discrimination and create a competitive disadvantage. However, the Competition Council established that the TV and radio broadcasters operate in different relevant markets, as their products are not substitutes for each other. Accordingly, the issuing of licences for the use of musical works in TV and in radio broadcasts cannot be considered as equivalent transactions, and the different tariffs are justified.

It could be hoped that the decision of the Competition Council will contribute to a final reconciliation and the conclusion of a licence agreement between the AKKA/LAA and the LBA. However, the decision may be appealed to the Administrative Court within one month after it comes into force. As a result, it is currently still not clear whether the broadcasters will be ready to live with the decision, or whether they will attempt to argue their case further up the judicial hierarchy.

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http://www.kp.gov.lv/uploaded_files/2008/D20_1302.pdf

Decision of the Competition Council

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