# [LV] Supreme Court Senate Discusses the Definition of Relevant Market for Films

**IRIS 2008-10:1/23**

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On 10 April 2008 *Latvijas Republikas Augstākās tiesas Senāta Administratīvo lietu departaments* (the Administrative Department of the Supreme Court Senate of Latvia) adopted an interesting judgment regarding the definition of relevant market for films. The judgment may contribute to careful application of competition law to the audio-visual sector.

The judgment was adopted in a dispute between a film distributor SIA Rimaida and the Competition Council of Latvia. The Competition Council had recognised in its decision that Rimaida holds a dominant position with respect to the retail market of renting and selling VHS and DVD format records of the film *Terminator 3: Rise of the Machines* . Moreover, the Competition Council found that Rimaida had abused its dominant position by applying unfair selling prices. Rimaida appealed the said decision, and, although the first instance court rejected the appeal, the second instance court upheld the claim and revoked the decision of the Competition Council. The judgment of the second instance was appealed, too, thus the case was reviewed by the Supreme Court Senate as the third and final instance.

The second instance court held that the Competition Council had defined the relevant market too narrowly, i.e., the court disagreed that a single film might constitute a separate relevant market. The court indicated that a film of certain genre may be substituted by other films of the same genre. Also, the specific film *Terminator 3* could have been available for viewing also in cinema, not only by renting or purchasing a DVD or VHS record. Thus, the second instance court considered that the relevant market in the case should be the market of audio-visual products in total. In such a broadly defined market the market share of Rimaida was no more than 10 %, so it could not be considered as being in a dominant position.

The Supreme Court Senate rejected the findings of the second instance court and revoked its judgment. The Senate agreed with the Competition Council that a single film may constitute a relevant market for the purposes of the competition law. In particular, the Senate indicated that a new film, especially a new blockbuster, cannot be substituted with other films of the same genre. The Senate mentioned the example of Harry Potter films: when a new Harry Potter film sequel

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comes out, the audience wants to see exactly this movie, not some other film of the same genre, such as any of the previous Harry Potter films. The Senate also referred to the case law of the European Court of Justice, which in its judgment in case 298/83 Comité des industries cinématographiques des Communautés européennes (CICCE) v Commission of the European Communities had recognised that abuse of dominant position is possible with respect to individual films.

In addition, the Senate also rejected the opinion of the second instance court that the film *Terminator 3* could have been available for viewing in cinema and thus the market should be broader. The Senate pointed out that the distribution of films in cinema or in any other way (rental, pay television, free to air television, etc.) constitute separate relevant markets. These types of distribution are not substitutable either from the demand side (different experience) or the supply side (different economic value of goods). By reaching this conclusion the Senate referred to the decision of the European Commission of 13 October 2000 declaring a concentration to be compatible with the common market (Case No IV/M.2050 - 3* VIVENDI / CANAL+ / SEAGRAM).

The case will have to be reviewed once again in the second instance court, for which the findings of the Senate will be binding. The case reflects a positive development in the Latvian courts, namely, that the courts try to adopt a broader view when applying laws, which are largely influenced by the European Community law, the competition law being a prime example. In this case, the Senate tried to adopt an interpretation, which would be consistent with the approach of the European Court of Justice and the European Commission. It remains to be seen if and how far the lower instance courts will follow this trend.

***Latvijas Republikas Augstākās tiesas Senāta Administratīvo lietu departaments, 10/04/2008, Latvijas Vēstnesis, Jurista Vārds 02/09/2008***

*Decision of the Administrative Department of the Supreme Court Senate of Latvia, 10 April 2008, published on the official newspaper Latvijas Vēstnesis, appendix Jurista Vārds of 2 September 2008*

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