

European Commission: Regulation of Lithuanian Broadcasting Transmission Markets

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In accordance with Art. 7(3) of Directive 2002/21/EC of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), the European Commission commented on the definition of terrestrial broadcasting transmission markets adopted by the *Ryšiu reguliavimo tarnyba* (Lithuanian regulatory authority - RRT) in a letter published at the end of February 2010.

In its second round market review, the RRT had identified a total of seven markets as being susceptible to ex ante regulation. It distinguished firstly between markets for the transmission of analogue and digital and between television and radio signals, and secondly between markets in which frequencies are assigned to the broadcaster and those where they are assigned to transmission service providers.

The Commission did not express any fundamental concerns about the market definitions or the use of the "three criteria test". Although the broadcasting transmission market was no longer listed in the Commission Recommendation, the situation in Lithuania described by the RRT warranted ex ante regulation.

However, while reviewing the regulatory authority's market definition, the Commission's attention was drawn to what it considered a problematic situation in Lithuania. As mentioned above, frequencies in Lithuania are assigned either to the broadcasters themselves or to transmission service providers. In both cases, the rightsholders have the exclusive right to broadcast via those frequencies. Where frequencies are assigned to transmission service providers, the licensing of broadcasters by the Lithuanian media regulator forces the broadcasters to use the services of the relevant service provider; the service provider is even specified in licences granted for digital terrestrial television. In the European Commission's opinion, the selection of a transmission service provider by the media regulator as part of the licensing process was particularly problematic because the broadcasters concerned were then tied to that particular provider. This constituted a strong legal barrier to market entry for potential terrestrial transmission service providers and considerably hindered the development of competition between the two already-existing broadcasting service providers (LRTC and TEO).

The Commission therefore reserved the right to examine whether this constituted a breach of Art. 2 of Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services. This provision prevents member states from granting exclusive or special rights for the establishment and/or the provision of electronic communications networks, or for the provision of publicly available electronic communications services, as well as obliging them to abolish such rights where they already exist.

Statement of the European Commission of 3 February 2010

