[LV] Competition Authority Concludes an Investigation into Digital Terrestrial Television

IRIS 2011-10:1/33

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The Latvian Competition Authority has concluded an investigation into SIA Lattelecom, the company introducing digital terrestrial television into Latvia, without finding an abuse of its dominant position.

As previously reported (see IRIS 2010-4/33) the Competition Authority was investigating complaints that SIA Lattelecom (Lattelecom) had abused its dominant position in the implementation of digital terrestrial broadcasting. One complaint alleged that Lattelecom charged television broadcasters unfair prices for the inclusion of their channels in the free-to-air package. Another complaint argued that Lattelecom cross-subsided the transmission of its own fee-based programmes from the income earned from the transmission of free-to-air programmes (for which other television broadcasters have to pay Lattelecom). Also, cross-subsidy allegedly took place when offering package-deals, including pay-TV and voice telephony services.

On 25 August 2011 the Competition Authority came to a decision to conclude the case without finding an abuse of a dominant position in Lattelecom's activities. Nevertheless, the decision includes a criticism of the way in which digital terrestrial television was introduced and suggests improvements for the consideration of the legislators.

The Competition Authority initially established the relevant markets in which a potential abuse of a dominant position could take place. The two relevant markets in the audiovisual sector were: the service market for terrestrial transmission of free-to-air television programmes for public reception in the territory of Latvia (infrastructure market); and the service market for pay-TV in Latvia (content market). Lattelecom has a dominant position in the infrastructure market as, according to the law and to the decisions of the National Electronic Media Council, it is the only entity ensuring transmission of free-to-air television programmes in DVB-T technology. In addition, Lattelecom has a dominant position in the public fixed-telephony market in Latvia.

The Competition Authority proceeded with the analysis of the pricing policy of Lattelecom and pointed out that the pricing policy must be analysed in regard to the whole period in which Lattelecom has the legal monopoly in introducing digital

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terrestrial television: from 2009 to the end of 2013. Currently, this information is unavailable, thus it is impossible to perform a full expenditure and income analysis or to determine potential cross-subsidy and unfair pricing. The analysis of existing expenditure data and earnings forecast evidenced that Lattelecom would not profit from digital terrestrial television services before 2011 and the profit forecasted would not exceed 15 percent.

The Competition Authority indicated that unfortunately the decisions appointing Lattelecom as the only digital terrestrial television services provider did not specify the maximum profit margin. Furthermore, these decisions did not specify how the costs of the introduction of digital terrestrial television should be covered. Therefore all the costs of providing free-to-air television have to be met by the relevant television broadcasters whose channels are included in the free package.

Due to the lack of data the Competition Authority could not establish the existence of potentially predatory pricing in Lattelecom's offers on the pay-TV market, either. The relevant data would not be available before 2014, but the term for the adoption of the decision cannot be extended for such a long period of time.

The decision to conclude the case could be appealed within one month to the Administrative Court by the parties to the case, including the complainants.

Par lietas izpētes izbeigšanu - Lieta Nr.297/10/03.01.-01./6 - Par Konkurences likuma 13.panta pirmās daļas 4.punktā noteiktā aizlieguma pārkāpumu SIA „Lattelecom" darbībās

http://www.kp.gov.lv/uploaded_files/2011/D056_2508.pdf

Decision of the Competition Council No. 56 in case No. 297/10/03.01.-01./6 of 25 August 2011

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