[LV] Competition Authority Allows Merger of Commercial TV Broadcasters

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On 11 May 2012 the Latvian Competition Council (CC) adopted an eagerly awaited decision on the merger clearance application submitted by Latvia's two largest commercial television broadcasters, TV3 and LNT. The decision permitted the merger, but subject to strict conditions.

The merger proposal involves the full acquisition of the LNT group companies by the MTG group. MTG is a Swedish broadcasting group, represented in Latvia by TV3 Latvia, which owns the largest commercial free-to-air television channel TV3. MTG also owns Viasat, which is acting both on the wholesale level by offering Pay-TV channels, such as the general interest channels TV6 and 3+, and the special interest channels Viasat Explorer, Viasat Sport, TV1000 and others, as well as on the retail level offering a satellite reception facility directly to consumers. LNT is a locally-owned media group, comprised of the second-largest commercial free-to-air television channel LNT, a paid general interest channel TV5 and a specialist music channel LMK. The CC distinguished the following affected product markets in the territory of Latvia to be assessed as part of the merger evaluation procedure:

- Free-to-air television channels distribution market (TV3 and LNT channels);

- Pay-TV general interest channels wholesale distribution market (TV6, 3+, and TV5);

- Pay-TV specialist channels wholesale distribution market (Viasat channels and LMK);

- Advertising placement within the television channels market;

- Content purchasing market.

According to Competition Law, the CC prohibits a merger if it creates a dominant position or otherwise impedes free competition in any of the affected markets. Initially, the CC established that the merger would not significantly influence the situation in the pay-TV specialist channels wholesale distribution market and in the content purchasing market. However, in the other identified markets the situation might change after the merger. Turning to the analysis of the relevant

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markets, the CC established that there are significant barriers to entry in all of the identified television channels wholesale distribution markets. The financial barriers include the necessity of having the relevant technical means for broadcasting or the necessity to pay for the inclusion of programmes in the free-to-air package. Also, the purchase of high quality content requires substantial investment. Other barriers include administrative requirements, such as the obligation to obtain a broadcasting or retransmission license. Therefore it is unlikely that there could be new entrants to either the free-to-air or pay-TV general interest channels markets.

Furthermore, it was established that the TV3 and LNT channels are market leaders in the free-to-air television channels distribution markets. In fact, they are the only nationwide commercial free-to-air channels. The other two nationwide channels are the PSB channels. Thus, after the merger MTG would control more than 67% of the audience share of the free-to-air channels. A new entrant to this market is highly unlikely due to the huge financial barriers (payment for inclusion in the free-to-air package is close to EUR 1 million per year). Therefore, as a result of the merger media plurality would decrease, as the joint commercial channels would have less motivation to develop competing content and high quality plurality of opinions. Also, the merger might facilitate the new merged entity to leave the free-to-air market and become a pay channel.

As regards the pay-TV general interest channels wholesale distribution market, the CC established that the merger would bring about a situation in which one entity controlled most of the channels that are most in demand by the audience. Therefore there is a threat that this entity would be able to strengthen its position and perhaps apply unfair terms with respect to its customers, the pay-TV operations by cable television network providers. There is also a threat that MTG could refuse to supply other operators, as MTG itself is also offering its channels on a retail level through a satellite distribution platform.

Finally, as a result of the merger MTG would control more than 60% of the television advertising market, thus enabling it to raise prices and bundle channels.

After the analysis of the potential impediments to competition, the CC analysed the potential efficiency defence. It established that the failed firm argument may be partially applied, as LNT is performing poorly financially, it is in negative equity, and it is highly likely that it might leave the market if the merger does not take place. This would also be harmful to media plurality. In addition, there are several efficiency benefits from the merger, such as the potential to improve the quality of content and to reduce costs.

The merger participants offered commitments to remedy potential negative effects on competition, and as a result the CC decided to allow the merger subject

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to numerous binding behavioural commitments, including:

- Both the TV3 and LNT channels must remain in the free-to-air platform at least until the end of 2013;

- Pay-TV channels must not be offered in bundled form to pay-TV operators; any bundle discount may not exceed 20%; the channels must be offered to operators without intermediaries on fair and non-discriminatory terms;

- The existing advertising contracts must remain in force and any price increase may be applied only as of 2013 and not exceed the official inflation rate; this must be reported to the CC, based on independently audited accounts; no bundled advertising conditions;

- LNT and TV3 must maintain independent current affairs editorial boards and the amount of current affairs broadcasts must not be decreased; editorial independence from MTG must be ensured; original content produced in Latvia must be not less than 21%.

The binding commitments are in force until the end of 2017. Moreover, the CC retains the right to apply structural commitments until then. It is as yet unclear whether the merger participants will accept the decision and the imposed commitments. The merger clearance is in force until 31 December 2012. Alternatively, the merger participants may appeal the decision within one month.

Konkurences padome, Lēmums Nr. 42, Lieta Nr.90/12/03.01./2

http://www.kp.gov.lv/uploaded_files/2012/A042_1105.pdf

Decision of the CC No.42 of 11 May 2012 "On the merger of market participants", Case No.90/12/03.01./2 "On the notification of MTG Broadcasting AB on the merger of market participants"

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