[EE] Amendment to the Electronic Communication Act: New Phase in the Must Carry Dispute

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On 7 November 2012, the Estonian Parliament adopted an amendment to the Electronic Communication Act. Amended Article 90 now states: 'Broadcasters offering free to air television services have the right to ask from cable operators a reasonable fee for retransmitting their television programs.'

Until the adoption of the amendment, the two parties involved - commercial broadcasters and cable operators - had a different interpretation of Article 90, which on one hand obliged cable operators to re-transmit all free-to-air channels, but on the other hand did not clearly state whether commercial broadcasters were prohibited to ask cable operators any payment for these programs. With the newly adopted amendment this issue has been clarified.

However the conflict is not fully resolved. The new Article 90 does not give a concrete number or formula for fee calculations. It only states that the fee should be reasonable. The threshold is left to stakeholders. Negotiations on this matter have so far ended without agreement. The biggest commercial broadcaster, Kanal2, and the second largest cable operator, STV, could not agree on the exact fee. STV declared itself not willing to pay EUR 0.15 per customer as asked by Kanal 2. Kanal 2 declared its desire to treat all operators on equal basis. As others accepted their offer, Kanal 2 did not see any reason to grant any special discount to STV. As a consequence, a week before Christmas, the Kanal2 schedule did not contain STV programs .

Kanal 2 has reached agreement with all other operators except STV. The second largest commercial broadcaster TV3 has reached an agreement with all operators. In total there are 557,000 TV-households in Estonia. Cable penetration in total is 73% (Analogue cable penetration is 51% and penetration of digital cable and IP-TV is 22%). STV has unofficially declared that they hold a 30% market share. The largest cable operator is telecommunication company Elion offering IP-television services for more than 146500 customers. The third largest player is the cable company Starman.

All cable networks are retransmitting four free-to-air programs: public service Estonian television ETV and ETV2, Tallinn municipal TTV and private commercial

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Kanal2.

Cable operators are collecting payments from the end users for viewing these channels, but were reluctant to share their revenues with broadcasters. Economically tough times for private broadcasters (TV-commercial market has decreased more than 30% compared to its peak in 2007) forced them to look into new business models and find ways to increase their profitability. Despite all attempts (cutting costs, new revenue sources etc.), their financial results are still poor. Kanal2 has had during last four years a very small profit and TV3 has reported a loss. At the same time cable operator's owners are pleased with 35% or even higher profit margin.

Elektroonilise side seaduse § 90 täiendamise seadus. RT I, 07.11.2012, 1

https://www.riigiteataja.ee/akt/107112012001

Amendment to the Electronic Communication Act § 90, RT I, 7 November 2012, 1

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