[SI] Pro Plus abused its dominant position in the television advertising market

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On 24 April 2013, the Agency for Protection of Competition (AVK) issued a decision, which found that the local company Pro Plus has abused its dominant position in the television advertising market on the territory of the Republic of Slovenia (and in the internal market). Since 1 January 2003, Pro Plus, which owns two commercial TV channels (Pop TV and Kanal A), required exclusivity from the advertisers (100% market share of advertising) or offered more favourable conditions for the loyalty of the advertisers discouraging them to advertise on other competitive TV channels, which restricted the access to the market and consequently reduced the growth of the market.

Pro Plus unsuccessfully challenged the decision before the Supreme Court, which confirmed the decision of the AVK in December 2013. The Supreme Court also dismissed the appeal against the decision on the fine of EUR 105,000.00 for the obstruction of the investigation.

On 21 July 2014, the Agency for Protection of Competition concluded the administrative procedure and issued a decision on a financial fine in the amount of EUR 4,994,491.00. In the setting of the fine, the Agency has taken into account the severity and the duration of the infringement of the prohibition of the abuse of a dominant position by Pro Plus, which lasted a total of 10 years and 3 months (i.e. from 1 January 2003). Taking into account the type of violation (misdemeanour), the impact on the market, and the geographic scope of the infringement, the Agency considered such an abuse of a dominant position as a very serious offence. Considering the severity of the violation, the Agency took into account the nature of the breach/violation, the economic power of the undertaking, the geographic scope of the infringement, the impact on the market, and the time dimension of the infringement.

The Agency also determined that there had been a violation of Article 102 of the Treaty on the Functioning of the European Union (TFEU), because such an abuse of a dominant position has an effect on trade between the EU Member States.

In the setting of the fine, the Agency has taken into account the fact that the legal entity Pro Plus did not cease to abuse its dominant position until the end of the administrative procedure, which began on 10 August 2011. The Agency also took

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into consideration the fact that Pro Plus has not yet been sanctioned for a violation of the competition law.

The proceedings against Pro Plus are the result of complaints by the competing broadcasters TV3 and RTVS. On 29 February 2012, the commercial TV channel TV3 left the Slovenian market and as a consequence, the operator of the second DTT multiplex (Norkring) lost the last TV channel, which was broadcast via its multiplex network. The other Slovenian stations are hosted by the public network (multiplex A), which is managed by the public service broadcaster, RTV Slovenia. Norkring dismantled the DTT network and left the Slovenian market in spring 2012.

Javna agencija Republike Slovenije za varstvo konkurence, 24/04/2013

http://www.varstvo-konkurence.si/si/zakonodaja_in_dokumenti/ostali_dokumenti/arhiv_odlocb/odlocba259/

Decision of the Agency for Protection of Competition (AVK), 24 April 2013

Vrhovno sodišče, Sodba G 7/2013

Ruling G 7/2013 of the Supreme Court on the appeal regarding the abuse of a dominant position, 3 December 2013

Vrhovno sodišče, Sodba G 7/2012

Ruling G 10/2012 of the Supreme Court on the appeal regarding the obstruction of the investigation, 26 November 2013

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