[BG] Taking advantage of a stronger position during negotiations for the distribution of ‘bTV Media Group’ Ltd. programmes

IRIS 2017-5:1/8

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The Bulgarian Commission for the Protection of Competition (CPC) found in a decision of 28 February 2017 infringements under Article 37A of the Law on Protection of Competition that ‘bTV Media Group’ Ltd had taken advantage of a stronger position during negotiations. It imposed a pecuniary penalty of BGN 2.915.514 (approximately EUR 1.500.000). The law prohibits any action or inaction of a commercial entity with a stronger negotiation position that contradicts conscientious commercial practice and that damages or can damage the interests of the weaker party during negotiations for potential clients. Unconscientious actions or inaction are those without objective economic grounds, such as the unfounded refusal for the provision or purchase of goods or services; the imposing of difficult or discriminatory conditions without reason; or the unfounded termination of commercial relations. A stronger negotiation position is identified based on the peculiarities of the structure of the applicable market and on the specific legal relations among the affected commercial entities. Factors taken into consideration are: the dependency level among them; the nature of their activity and the difference in its scope; and the probability of finding alternative commercial partners, including the existence of alternative sources for provision, and of alternative distribution channels and/or clients.

The proceedings were initiated at the request of ‘Virginia-R N’ Ltd., Bourgas, ‘Vital-I’ Ltd., Sandanski, ‘Digital cable television’ Ltd., Plovdiv and ‘Cable Sat-West’ Ltd., Blagoevgrad who reported on infringements related to Article 37A on the part of ‘bTV’ and ‘Nova Broadcasting Group’ JSC. While examining the case, the Commission found that certain provisions of the General terms and conditions of ‘bTV Media Group’ Ltd. relating to the right to the wireless distribution of ‘bTV Media Group’ Ltd television programmes. in satellite (DHT) electronic communication networks, as well as their distribution in cable and IPTV electronic communication networks, were considered to be taking advantage of the company’s stronger position. The General terms and conditions apply with respect to the cable (platform) operators who are clients of the media and obtain rights for the broadcasting of their television programmes.

Firstly, the Competition Protection Commission found that through its General Conditions, ‘bTV Media Group’ Ltd., in its capacity as a premise with a stronger

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negotiation position in its legal relations with the cable operators ‘Vital-I’ Ltd., Sandanski, ‘Digit cable television’ Ltd., Plovdiv and ‘Cable Sat-West’ Ltd., Blagoevgrad established the remuneration due by these operators based on a guaranteed minimum number of subscribers, which could not be decreased, even in the case of an established real number of subscribers which was lower than the agreed guaranteed minimum number.

Secondly, data brought to light during the proceedings showed that ‘bTV’ did not apply a clear and single criterion to identify the real number of subscribers for each of the operators. Instead, it used different sources of information and different methods to establish this number for each of them.

By the above-stated actions, the defendant-company imposed unreasonably heavy conditions on the cable operators ‘Vital-I’ Ltd., Sandanski, ‘Digit cable television’ Ltd., Plovdiv and ‘Cable Sat-West’ Ltd., Blagoevgrad, and thus took advantage of its stronger negotiation position as specified by Article 37A of the Law on Protection of Competition. By its resolution, the Commission imposed three separate sanctions of BGN 971.838 (approximately EUR 500.000) for each of the legal relations of bTV with the three cable operators, and it suspended the infringing actions, subject to immediate execution. As to ‘Nova Broadcasting Group’ JSC, the Commission established that there were no infringements.

Решение на Комисията за защита на конкуренцията, Решение № АКТ-220-28.02.2017

http://reg.cpc.bg/Decision.aspx?DecID=300048110

Decision of the Competition Protection Commission, № АКТ-220-28.02.2017

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