IRIS 2011-2/32

LV-Latvia:Competition Council Allows Merger of Two Largest Cable TV Operators

On 13 November 2010 the Latvian Competition Council (CC) adopted a decision allowing the merger of the two largest cable TV operators in Latvia, the Baltkom Group and the Izzi Group. The case is interesting in terms of the market definition provided, as well as taking into account that the merger was allowed despite the fact that it will result in the market power of the new merged cable operator.

In its market analysis the CC had to establish whether the pay-television market constitutes a single relevant product market, or whether it should be divided into separate relevant product markets according to the various technology platforms (terrestrial, satellite, cable or Internet protocol television). In this case the CC arrived to different conclusions than in a similar analysis performed in 2005. In that case the CC decided that a separate technology-specific pay-television market should be taken as the relevant product market.

In the present case the CC performed again an analysis of supply and demand substitution. As regards the supply side, the CC concluded that there exist significant barriers to supply substitution from the perspective of suppliers of various technologies for the transmission of television signals. By contrast, in relation to the demand side the merger participants argued that all pay-televisions are mutually replaceable irrespective of the technology platform used. The CC, after a detailed analysis of pay-television pricing, agreed to this argument, as it found a mutual competition among all pay-televisions. Thus, the whole pay-television market was established as the relevant product market, including all types of pay-television services irrespective of the technology used.

Further, the relevant geographic market was assessed as the cities and towns where the merger participants provided cable television operator services, instead of the whole territory of Latvia. This was based on the argument that cable television markets are localised within specific towns or cities. In addition, the CC identified a wholesale pay-television market, distinguishing it from the free-to-air-television market (in this conclusion it followed its earlier practice in 2009, assessing the abuse of the dominant position by VISAT and TV3 television channels).

In its analysis of the impact of the merger, the CC established that the operation in question amounted to a merger between close competitors and that as a result of the merger there would only remain two major competitors in the pay-television market in Latvia: the Baltkom/Izzi Group and SIA Lattelecom. In addition, the merged market participant would have a very large market share and the majority of subscribers. The only major competitor, SIA Lattelecom, would not create sufficient competition in the relevant markets and thus, as a result of the merger, the merged market participant would gain the possibility to act independently from consumers. There would also be negative consequences in the wholesale market of pay-television channels: the potential subscribers would have less freedom of choice. However, the CC also pointed to potentially positive consequences of the merger: the pooling of resources may promote new services.

An important argument for allowing the merger was the prognosis for the future development of the pay-television market in Latvia. The CC was of the opinion that IPTV will have a much more significant role in the future: "In the next five years the number of IPTV operators will increase and IPTV will offer such services as archives of television broadcasts, video rentals, recording of broadcasts and films, voting for favourites while watching television shows, ordering pizza, etc. In Latvia the IPTV service is in its developmental stage, and many of the named functions are not available yet." According to the CC, this argument would decrease the negative impact of the merger.

As a result, the CC allowed the merger but imposed several binding commitments on the merger participants. The commitments include both duties towards consumers (to improve the contents of the contracts) and towards competitors (to refrain from exclusionary pricing mechanisms), as well as special commitments towards the two largest Latvian commercial TV broadcasters.

The permission of the merger has already been criticized by a number of competitors and stakeholders. Currently, it is still unknown whether the decision will be appealed to the court by any of the affected actors. However, according to the Latvian Competition Law, the appeal of the decision does not suspend its enforcement.

• *Par tirgus dalībnieku apvienošanos Lieta Nr. 1492/10/03.01.-01./13 „Par Baltkom grupas, Izzi grupas un SIA „EST Risinājumi" apvienošanos"*
(Decision of the Competition Council No. 83 of 13 November 2010, in case No. 1492/10/03.01.-01./13)
http://merlin.obs.coe.int/redirect.php?id=12871
LV

Ieva Bērziņa-Andersone

Sorainen, Riga