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Enforcement of exclusive broadcasting licences in Slovakia

There has been little news regarding vertical cases from the Antimonopoly Office of the Slovak Republic ('AMO') for about three years. The last decision was issued in 2021, which concluded a case with commitments, and the most recent fine was imposed in 2019. However, there may be a change on the horizon, as the AMO recently concluded its investigation into Czech television broadcasts in Slovakia.

The case

The AMO completed an investigation into the distribution of content for which Slovak broadcasters hold exclusive licences granted by Czech broadcasters. The Slovak broadcasters requested the operators to limit the retransmission of such content broadcasted by Czech TV channels, as it conflicted with their exclusive rights. The AMO took the investigation seriously, having received many complaints regarding this issue in 2023.

As part of the investigation, the AMO conducted a market analysis, examining the market structure and conditions for distributing TV programmes in other EU Member States. The investigation concluded that the Slovak broadcasters' requests may have been justified from a licensing rights perspective. However, only a competent court has the authority to make a legally binding decision. As a result, the AMO did not initiate official proceedings and ended its investigation.

The AMO also emphasised that a complete shutdown of foreign TV content (in this case, the transmission of Czech TV channels) within Slovakia would negatively affect consumer choice, particularly for content not subject to exclusive territorial licensing. Consequently, the AMO recommended that operators and broadcasters explore alternative solutions to respect intellectual property rights while continuing to offer non-exclusive content to Slovak viewers.

Commentary

This case highlights the AMO's careful consideration of distribution and exclusive licensing rights. A key issue was that the Slovak broadcasters requested the cessation of retransmission only for content over which they held exclusive rights in Slovakia, and did not request the cessation of entire TV channels or Czech broadcasts in general. Nevertheless, their requests led to the termination of retransmission for some Czech TV channels,

including non-exclusive content.

According to publicly available information, the case began when Slovak broadcasters requested the termination of retransmission. Their requests were allegedly very similar and sent to operators within a short timeframe, raising concerns of possible collusion. However, the AMO did not address this aspect in its press release.

Finally, it is reassuring to see that the AMO's recommendations are not merely theoretical. In line with the AMO's recommendation to seek alternative solutions for broadcasting non-exclusive content, a Czech broadcaster launched a separate TV channel dedicated to broadcasting its non-exclusive content in Slovakia in March 2024.