### Chapter 4 Estonia

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A. Market definition in competition and media law in Estonia

I. Introduction

The history of Estonian competition policy begins in early 1990’s. Having re-established its independence\(^1\), Estonia started to take the necessary steps in order to set up the system of a free market economy in the country. Regarding the competition policy, the first Competition Act was adopted by the Riigikogu (the Parliament of Estonia) in June 1993\(^2\). This Act remained in force until 1998 when a new version of the Competition Act was adopted\(^3\). The adjustments to the first Competition Act, which already contained many valuable competition policy instruments, were brought about foremost due to the country’s political resolve to become a member of the European Union. In this respect, the so-called Europe Agreement between Estonia and the European Communities\(^4\), signed on 12 June 1995, represents the major benchmark on Estonia’s way towards accession to the European Communities. The Europe Agreement obliged Estonia to follow the EC pattern when dealing with the competition policy matters and to adjust its competition laws to the respective legislative enactments on the EC level\(^5\). Nevertheless, also this Competition Act of 1998 contained a number of deficiencies (e.g. efficient rules on merger control were missing) and consequently was replaced by a new law in 2001\(^6\). The Competition Act of 2001 is the main legislative act governing the competition policy in Estonia at the moment of conducting this study\(^7\).

On the pre-accession stage, Estonia constantly received positive evaluations from European institutions on its overall progress, and also on the improvements in the field of competition policy particularly\(^8\). The European Commission acknowledged the steady progress of Estonia in adopting competition legislation, in developing the administrative capacities of the

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\(^2\) Competition Act (Konkurentsiseadus), 16.06.1993, published in Riigi Teataja (State Gazette) RT I 1993, 47, 642.

\(^3\) Competition Act (Konkurentsiseadus), 11.03.1998, published in Riigi Teataja (State Gazette) RTI 31.03.1998, 30, 410.

\(^4\) Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Estonia, of the other part, OJ L 068, 09.03.1998, p. 3.

\(^5\) Articles 63–70 of the Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Estonia, of the other part, OJ L 068, 09.03.1998, p. 3.

\(^6\) Competition Act (Konkurentsiseadus), 05.06.2001, published in Riigi Teataja (State Gazette) RTI 27.06.2001, 56, 332.

\(^7\) The Consolidated version of the Competition Act can be accessed on the web-page of the Estonian Competition Board : www.konkurentsiamet.ee.

responsible authorities and in establishing a decent enforcement record. Nevertheless, the Commission has also emphasised that especially the enforcement of the adopted legislative enactments shall remain in the spotlight of the Estonian authorities for the time to come.

1. Relevant legislation

The Competition Act is the main piece of legislation currently governing the competition policy area in Estonia. This law was adopted on June 5, 2001, and came into force on October 1, 2001. The correspondence of the Competition Act to the main principles of the Community competition rules has been acknowledged by the European Commission. The Competition Act has been amended a number of times since adopted in 2001. The latest amendments of June 28, 2004, among others, adjusted the Competition Act to the changes introduced on the EC level, namely – the competition law reform brought about by the Council Regulation (EC) No. 1/2003 of 16.12.2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.

The general aim of the Act is to safeguard the competition and to preclude and eliminate restrictions herein (Article 1 Para. 1). The Act applies both to the business activities of private undertakings, as well as to the activities of public officials and bodies if these activities are of an economic character (Article 2 Paras. 1 and 2). The place where an act or omission directed at restriction of competition takes place is of no relevance in order for them to be caught by the provisions of the Competition Act, as long as they result in having effects within the territory of Estonia (Article 1 Para. 2). The Competition Act consists of 10 chapters, covering such competition law issues as prohibition of restrictive agreements (Chapters 2 and 3), abuse of a dominant position (Chapter 4), control of concentrations (Chapter 5), State aid (Chapter 6), and unfair competition (Chapter 7). Institutional arrangement of competition control, procedural and investigative rules are disclosed in Chapter 8, whereas liability issues are described in Chapter 9 of the Act.

The Competition Act is accompanied by a number of secondary legislation documents. Thus, various block exemption regulations have been adopted by the Estonian Government in accordance with Article 7 of the Competition Act: exemption regulation for horizontal agreements; exemption regulation for vertical agreements; exemption regulation for technology transfer agreements. Yet another regulation deals with procedural issues of

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11 Competition Act (Konkurentsiseadus), 05.06.2001, published in Riigi Teataja (State Gazette) RTI 27.06.2001, 56, 332. Consolidated version of the Competition Act can be accessed on the web-page of the Estonian Competition Board: www.konkurentsiamet.ee
13 OJ L 1, 04.01.2003, p.1.
14 Government of Republic Regulation No 196 ”Grant of Permission to Enter into Horizontal Agreements Which Restrict or May Restrict Free Competition (group exceptions)” (Vabariigi Valitsuse määrus nr 196 ”Konkurentsi kahjustavate või kahjustada võivate horisontaalsete kokkulepete sõlmimiseks loa andmine (grupierand)”), 18.06.2002, published in Riigi Teataja (State Gazette) RT I 2002, 52, 331. Regulation can be accessed on the web-page of the Estonian Competition Board: www.konkurentsiamet.ee.
granting of special and exclusive rights to particular undertakings\textsuperscript{17}. Additionally, three regulations of the Minister of Economics and Communications cover such aspects as procedural rules on how to apply for the exemptions\textsuperscript{18}; calculation of the turnovers for the purposes of the concentration control\textsuperscript{19}; and submission of notices of concentration\textsuperscript{20}. There are no acts of secondary legislation, however, relating to the subject matter of this study, namely – definition of the relevant markets.

A particular characteristic of Estonian competition policy is that certain violations of the Competition rules also constitute a criminal offence caught by the Penal Code of 2001\textsuperscript{21}. Thus, Articles 399 to 402 of the Penal Code prescribe criminal liability in the cases of an abuse of a dominant position, restrictive agreements or practices, failure to notify concentrations, and misuse of special or exclusive rights. This specific feature of Estonian legislation has particular consequences also with regard to the organisation of the work of the Competition Board in dealing with the competition law matters\textsuperscript{22}.

The European Commission has confirmed the correspondence of the Estonian legislation in the competition field to the Community’s \textit{acquis}\textsuperscript{23}. According to the Commission, now the

\begin{itemize}
\item \textsuperscript{15} Government of Republic Regulation No 195 “Grant of Permission to Enter into Vertical Agreements Which Restrict or May Restrict Free Competition (group exceptions)” (Vabariigi Valitsuse määrus nr 195 “Kõrvaldavate või kahjustavate vertikaalsete kokkulepete sõlmimiseks luba andmine (grupierand)”), 18.06.2002, published in Riigi Teataja (State Gazette) RT I 2002, 52, 330. Regulation can be accessed on the web-page of the Estonian Competition Board: www.konkurentsiamet.ee.
\item \textsuperscript{16} Government of Republic Regulation No 297 “Grant of Permission to Enter into Technology Transfer Agreements Which Restrict or May Restrict Free Competition” (Vabariigi Valitsuse määrus nr 297 “Kõrvaldavate tehnosiirde kokkulepete sõlmimiseks luba andmine”), 25.09.2001, published in Riigi Teataja (State Gazette) RT I 2001, 78, 463. Regulation can be accessed on the web-page of the Estonian Competition Board: www.konkurentsiamet.ee.
\item \textsuperscript{17} Government of Republic Regulation No 303 “Procedure for Arrangement of Public Competition for Granting Special or Exclusive Rights” (Vabariigi Valitsuse määrus nr 303 “Eri-või ainuõiguse sõlmimise avaliku konkursi korraldamise kord”), 25.09.2001, published in Riigi Teataja (State Gazette) RT I 2001, 78, 469. Regulation can be accessed on the web-page of the Estonian Competition Board: www.konkurentsiamet.ee.
\item \textsuperscript{18} Minister of Economic Affairs and Communications Regulation No 2 “Procedure for Submission of Application for Exemption” (Majandus- ja kommunikatsiooniministri määrus nr 2 “Eranditaotluse esitamise kord”), 06.11.2002, published in Riigi Teataja Lisa (Appendix to the State Gazette) RTL 2002, 128, 1866. Regulation can be accessed on the web-page of the Estonian Competition Board: www.konkurentsiamet.ee.
\item \textsuperscript{19} Minister of Economic Affairs and Communications Regulation No 1 “Guidelines for Calculation of Turnover of Parties to Concentration” (Majandus- ja kommunikatsiooniministri määrus nr 1 “Koondumise osaliste käibe arvutamise juhend”), 06.11.2002, published in Riigi Teataja Lisa (Appendix to the State Gazette) RTL 2002, 128, 1865. Regulation can be accessed on the web-page of the Estonian Competition Board: www.konkurentsiamet.ee.
\item \textsuperscript{20} Minister of Economic Affairs and Communications Regulation No 3 “Guidelines for Submission of Notices of Concentration” (Majandus- ja kommunikatsiooniministri määrus nr 3 "Koondumise teate esitamise juhend”), 06.11.2002, published in Riigi Teataja Lisa (Appendix to the State Gazette) RTL 2002, 128, 1867. Regulation can be accessed on the web-page of the Estonian Competition Board: www.konkurentsiamet.ee.
\item \textsuperscript{21} Penal Code (Karistusseadustik), 06.06.2001, published in Riigi Teataja (State Gazette) RT I 2001, 61, 364. The Penal Code, in force from 01.09.2002, replaced earlier Criminal Code of 1992. Initially a number of new articles dealing with competition matters were added to the then still in-force Criminal Code.
\item \textsuperscript{22} See Para. 4.12.
\end{itemize}
main emphasis shall be concentrated upon developing a considerable track record of proper application and enforcement of the adopted laws.

2. Relevant institutions

The responsible authority for the competition policy matters in Estonia is the Competition Board. The Board was initially created by the Competition Act of 1993 as a body within the structure of Ministry of Finance. This organisational structure remained in place until October 1, 2002, when the Competition Board was transferred under the supervisory authority of the Ministry of Economic Affairs and Communications. Despite this formal subordination, the Competition Board is regarded as being a fully independent authority with sufficient resources at its disposal to be able to fully utilise its powers in enforcing the competition rules in Estonia. Its internal structure, competences and work objectives are laid down in the Statutes of the Competition Board. According to the Statutes, the Competition Board has to implement state authority in the field of competition by adopting policy and regulatory documents, by monitoring developments in the markets and accordingly reacting to them, by ensuring international cooperation in the field in question. The Competition Board, according to the Statutes, consists of five departments:

- three supervisory departments (main tasks: case investigation, definition of the markets, analysis of the competitive environment on the markets, consulting undertakings, etc.),

- merger control department (main tasks: control of concentrations in all fields, market analysis, consulting undertakings, etc.),

- external and public relations department (main tasks: cooperation with other countries and dealing with issues of EU integration, collecting and preserving of information, organisation of public relations, education of officials, etc.).

The Competition Board exercises state supervision over the implementation of the Competition Act (Article 54). This means that the duties of the Competition Board comprise:

- dealing with agreements and practices having a restrictive effect on competition (Article 4 et seq.),

- granting exemptions to restrictive agreements (Articles 6 et seq.),

- handling the situations of the abuse of a dominant position (Article 16);

- examination of the competitive situation in different markets and suggesting improvements to the competitive situation in these markets (Article 55 Para. 2);

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- exercising control in respect of concentrations (Article 19 et seq.);

- adopting measures facilitating competition and drafting proposals for the adoption or amendment of legal acts (Article 55 Para. 2);

- imposing penalties for violations of the Competition Act (Article 62);

- cooperating and advising state agencies, local governments and natural or legal persons on the competition law matters (Article 61);

- cooperating with competition authorities of other countries and state associations (Article 55 Para. 2);

- cooperating with the competition authorities of other EU Member States and the European Commission (Article 56);

- organising training in the competition law matters and raising awareness of the competition rules in the public; etc.

The only areas which despite being covered by the Competition Act are excluded from the scope of the Board’s competence are those of the State aid and unfair competition (Chapters 6 and 7). The first of the two fields is subject to the control of the European Commission (Article 30 et seq.), whereas the second one is left in the competence of civil courts (Article 53).

Procedural rules and investigative powers of the Competition Board are disclosed in Articles 57 to 73 of the Competition Act. They include rights to request information or submission of materials, summoning, inspection of premises, issuing instructions and imposition of penalty payments, preservation of business secrets, filing and processing of applications, suspension and termination of proceedings, etc. Chapter 9, in its turn, is devoted to issues of penalty payments for the breach of substantial provisions of the law and compensation of damages.

Particular functions have been assigned to the Competition Board by the amendments which were brought about by the Competition Act to the Criminal Code (now Penal Code). As certain violations of the Competition Act are now also considered as criminal offences, the Competition Board has to perform the pre-investigative functions for the purposes of these criminal cases. In doing this, the Competition Board shall closely cooperate with the State Prosecutor’s Office and the State Police. However, the difficulties arising from such cooperation and handling of cases have been outlined by the Competition Board itself, and also the European Commission has pointed out to the necessity to ensure that the effectiveness of the competition law enforcement is not obstructed due to the criminal liability for the respective activities.

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29 See: Article 73 Parr. 2 of the Competition Act.


National courts can be involved into the competition law proceedings on various grounds. Firstly, Article 1 Para. 4 of the Competition Act states that the provisions of the Administrative Procedure Act\(^{32}\) apply to the administrative proceedings prescribed in the Act. Hence, all the decisions or any other measures allegedly infringing freedoms or violating rights of a person can be challenged before the administrative court (Tallinn Administrative Court)\(^{33}\). Secondly, the Tallinn Administrative Court is entrusted by the Competition Act to decide on granting the permission to the European Commission to carry out inspections:

- provided for in Articles 20 and 21 of the Council Regulation 1/2003\(^{34}\) (antitrust proceedings)\(^{35}\) (Article 63\(^5\)), or

- provided for in Article 22 (6) of the Council Regulation 659/1999\(^{36}\) (State aid proceedings).

Thirdly, national courts can be called upon to apply Articles 81 and 82 EC in civil law matters brought before them. In such a case, the Competition Act obliges the court to involve the Competition Board into the proceedings in order to provide its expert opinion (Article 56 Para. 3). Additionally, according to Article 53 of the Competition Act the courts (and not the Competition Board) are the responsible forum for the disputes of private parties concerning issues of unfair competition as provided for by Chapter 7 of the Competition Act. Last but not least, the national judiciary has to judge in the criminal law cases concerning those violations of the competition rules which are considered being criminal offences.

3. **EC competition rules**

The amendments of June 28, 2004 to the Competition Act introduced a number of provisions related to the competition rules of the Community\(^{37}\). Thus, Article 56 of the Act states that the Competition Board is an authority responsible for the application of Articles 81 and 82 of the EC Treaty within the meaning of Article 35 of Council Regulation 1/2003\(^{38}\). The Board shall also, if necessary, assist the European Commission in competition supervision and performance of on-site inspections, and shall cooperate with the competition authorities of other Member States. Additionally, the earlier amendments of March 24, 2004 added a set of new articles related to the State aid control in Estonia, whereby the whole regime of the State

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\(^{32}\) Administrative Procedure Act (Haldusmenetluse seadus), 06.06.2001, published in Riigi Teataja (State Gazette) RT I 2001, 58, 354.

\(^{33}\) The judgement of the administrative court can be appealed against to a circuit court, whose judgement, in its turn, can be appealed against in a cassation proceeding to the Supreme Court of Estonia.


\(^{35}\) No court approval is required for the inspections which are carried out by the officials of the Competition Board (Article 60 of the Competition Act).


II. The general approach to market definition in Estonian competition law

Article 3 of the Competition Act provides a definition of a relevant market. According to the first Paragraph of this Article:

The relevant market is an area covering, inter alia, the whole of the territory of Estonia or a part thereof where goods which are interchangeable or substitutable by the buyer by reason of price, quality, technical characteristics, conditions of sale and use, consumption or other characteristics are circulated.

As one can see from the above mentioned definition, both product dimension of the market as well as geographic dimension of the market are to be considered when defining particular relevant market for the purposes of a specific case. Article 3 clearly places the emphasis upon the consumers’ opinion with regard to the substitutability of products and is silent on the issues concerning possible substitutability of the products from the suppliers’ point of view. The case law of the Competition Board, however, shows that these are simply terminological shortcomings, and that in practice all aspects of relevant market definition, as applied also by the Community institutions, are being taken into account by the Estonian Competition Board.

The Competition Act does not contain an explicit obligation that the Competition Board has to define the relevant market when dealing with competition cases. However, numerous articles of the Competition Act use the term “relevant market” as a constitutive part of a particular activity or infringement and the resulting effects. Thus, Article 4, which prohibits restrictive agreements, practices and decisions, mentions sharing of the relevant market and restriction of an access for a third party to the relevant market as particular examples of such prohibited activities. Article 16, in its turn, states that any abuse of a dominant position in the relevant market is prohibited. Yet on another occasion, the Competition Act requires the Competition Board to carry out an appraisal of a proposed concentration, taking into account the structure of the relevant markets and the actual or potential competition in the relevant markets (Article 22). Article 57 then empowers the Competition Board to request any natural or legal person to submit information necessary for, among others, defining the relevant market. It thus becomes obvious that the definition of the relevant markets is identified by the Competition Act as a necessary prerequisite in order to properly deal with situations relating to various fields of competition law.


40 Although Estonian legislation and the Competition Board are employing the term “kaubaturg”, which essentially means ‘goods markets’ and has also been used this way in English language texts, there are no doubts that this term refers to the same legal concept as the term “relevant market” as being applied by the EC institutions. As this Estonian terminology could be misleading for the purposes of this study, namely – misunderstanding could arise in separating the term describing the general relevant market from the term describing the product dimension of the relevant market -, the term “relevant market” will be used in this study when referring to the Estonian equivalent of “kaubaturg”.

40a “Goods” comprises products and services, see Art. 1 (1) of the Competition Act.

41 See: Para. 4.20 et seq.
As already mentioned, there are no specific legislative or administrative documents in Estonia specifically dealing with the issues of relevant market definition and which thus would be comparable to the Commission Notice on the definition of the relevant market for the purposes of Community competition law. Hence the only way to assess the approach upheld in Estonia regarding this phenomenon of competition law is through analysis of the decisional practice of the country’s competition authority.

I. Relevant product market

a) Demand-side substitutability

The wording of Article 3 of the Competition Act clearly emphasises the demand-side substitutability as a decisive factor in delineating the relevant product market in the cases dealt with by the Estonian competition authority. In assessing this aspect, product characteristics, intended use of the product and price factors have been employed by the Competition Board in the vast majority of cases decided by it.

aa. Product characteristics and intended use

Product characteristics and intended use of the product have been relied upon by the Competition Board on the most occasions when defining the relevant product market. The reasoning of the Board, however, is not very extensive in the majority of its decisions. The following are just few examples of how the Competition Board has used the criteria of product characteristics and intended use in its decisions:

- The Board referred to the mobile character of the mobile phones as compared to the fixed-line phones as one of the reasons to distinguish the services of the mobile phone communications from the services of fixed phone telecommunications;

- The Competition Board relied, among others, on particular characteristics, quality and consumption particularities when distinguishing a market for the fast-food services from the market for restaurant food services;

- The Board acknowledged that from the consumers’ point of view, different types of turf products (the ones meant for plants as opposite to those used for burning) are not substitutable due to their technical and consumption characteristics and their intended use;

- The Competition Board relied on the particular characteristics of the retail market for daily consumer goods offered by the supermarkets and hypermarkets when separating it from the retail activity carried out by other retailers such as kiosks, petrol station stores, and small groceries. According to the Board, the super- and hypermarkets offer much bigger range of different products and services, a variety of additional

43 Case 24-L / 21.05.2001.
services (such as parking facilities) as well as special shopping atmosphere which make them not substitutable from the consumers’ point of view;

- Having considered such factors as quality, intended use, consumption aspects, the Board stated that from the consumer’s point of view and from the point of view of competing undertakings, soft-drinks, bottled water, long-drinks, cider belong to different product markets\textsuperscript{47};

- Similarly, from the consumers’ perspective, the different types of insurance (life insurance and its different sub-types, and indemnity insurance and its different sub-types) are not substitutable with each other due to their particular characteristics and intended use\textsuperscript{48};

- The Competition Board also decided that taking into account the characteristics of the products, the patterns of their selling and usage, the two products – chipboards and hardboards – belong, from the consumers’ point of view, to two separate markets\textsuperscript{49}.

There is also a number of the Board’s decisions where the criteria of product characteristics and intended use have been employed in media sector cases. Thus, in two cases regarding cable-TV services, the Competition Board stated that there are no alternatives to the cable television (for instance – individual reception system (individuaalantennisüsteem) or master antenna system (“ühisantennisüsteem”)) which can provide the consumers with services of the same quality and number of programs\textsuperscript{50}. An individual antenna system, according to the findings of the Board, is also much less handy if compared to the cable-TV and is less attractive due to necessity to have an antenna in each particular flat.

On another occasion, when separating two modes of retail acquisition of periodical publications – the one via subscription, the other via retail sale – the Competition Board referred to particular features of both acquisition methods\textsuperscript{51}. Thus, when subscribing to the periodical publications, the consumers shall pay for them in advance and consequently they get the ordered periodical publications delivered home. The Competition Board also stated that the two services in question are mutually exclusive from the point of view of the intended use, as subscribers to the product do not buy it the shops. In another case dealing with the information catalogues in paper format and information catalogues available online, the Board was of an opinion that despite the similarity in content, the markets for both information catalogues are separate from each other\textsuperscript{52}. The main reasons for this differentiation lies, according to the Competition Board, in the different accessibility of both information sources, in particular there is a need to have an Internet access to use the services of the online catalogues.

\textsuperscript{47} Case 38-KO / 11.11.2003.
\textsuperscript{48} Case 5-KO / 12.03.2004.
\textsuperscript{49} Case 16-KO / 07.06.2004.
\textsuperscript{50} Cases 13-L / 08.03.2001 and 37-L / 15.10.2001.
\textsuperscript{51} Case 17-L / 11.04.2002.
\textsuperscript{52} Case 38-KO / 30.10.2001.
**bb. Price**

The Competition Board has not relied in any of its decisions solely on the price factor in delineating relevant product markets. The price considerations have been employed by the Board as an additional argument, usually together with the already described aspects of product characteristics and intended use. Thus, for instance, in the cases concerning telecommunication services\(^{53}\), the fact that tariffs for the mobile phone conversations are considerably higher as those of the fixed phones was one of the reasons for the Competition Board to separate the market for the services of the mobile phone communications from the market for the services of fixed phone telecommunications\(^{54}\).

In the media sector, the Competition Board analysed, among others, the price differences for the books sold in the bookstores and the books sold via Internet and post before reaching the conclusion that there are no reasons to separate the different selling methods into separate relevant markets\(^{55}\). The price considerations were also at stake when the Board distinguished acquisition of periodic publications by means of buying them in a retail sale from the acquisition of the same periodical publications by subscribing to them: the average price of one peace of periodic publication is higher when a consumer buys it in a retail sale if compared to the equivalent price through subscription\(^{56}\). When dealing with the cable-TV issues, the Competition Board identified the considerable expenses associated with a setting-up of an individual reception system (“individuaalantennisüsteem”) as compared to the relatively low costs of subscribing to the cable-TV services when it delineated the market for the cable-TV services as the relevant market in the particular case\(^{57}\).

**cc. Other criteria**

The product characteristics, the intended use and price factors play the dominant role in the Competition Board’s reasoning when defining the relevant product markets. Nevertheless, in a couple of decisions, also other aspects have been relied upon by the Board in substantiating its approach. Thus, in the case concerning selling of books, the Board observed that the number of books sold via post or Internet is much less considerable as that of the books sold through conventional bookstores. According to the Board, this was a good additional indicator that these selling modes do not really constitute an alternative to each other\(^{58}\). From the point of view of Estonia’s integration into the EC, the decision of the Competition Board in the case 48-KO of July 30, 2002\(^{59}\) is of particular interest. In this case, the Competition Board explicitly referred to the reasoning of the Commission in two of the Commission’s decisions when distinguishing a retail market for daily consumer goods offered by the supermarkets and hypermarkets from retail activity carried out by other retailers such as kiosks, petrol station

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\(^{54}\) See also case 28-L / 06.06.2001.


\(^{56}\) Case 17-L / 11.04.2002.

\(^{57}\) Case 13-L / 08.03.2001.


\(^{59}\) Case 48-KO / 30.07.2002.
stores, or small grocers. Unfortunately, such practice of the Board has remained as an exceptional situation and has not been used by it on a regular basis.

b) Supply-side substitutability

Although wording of Article 3 of the Competition Act gives an impression that only demand-side substitutability considerations shall be taken into account when defining the relevant market for the purposes of competition law cases, the decisional practice of the Board shows that also the supply-side substitutability arguments have been used by the Board on several occasions. The number of such cases, however, is very negligible.

There are no media sector related decisions where the Competition Board has employed the supply-side substitutability test. In one of the non-media cases, the Competition Board had to deal with the markets for pharmaceutical products\(^\text{60}\). In this case, the Board stated that although from the consumers’ point of view different types of medicine are not substitutable due to their particular characteristics and intended use, from the producers’ perspective the manufacturing of different pharmaceutical products is the same, thus allowing different pharmacy companies to produce different medicine products. On another occasion, the Competition Board, without explicitly referring to it as a supply side substitutability, stated that although gasoline and diesel fuel are not substitutable from the consumers’ point of view, the retail sellers of the petrol usually sell both gasoline and diesel fuel at their petrol stations\(^\text{61}\). Therefore the Competition Board stated that the market for selling of petrol shall be considered as the relevant product market for the purposes of the case at hand.

2. Relevant geographic market

The Competition Board in most of its decisions puts the main emphasis on the product dimension in defining the relevant markets. Yet also the geographic dimension of the market has been considered by the Board in most of the cases, whereby a variety of criteria have been utilised in determining its scope.

a) Geographic location of the business

One of the factors considered by the Competition Board in the majority of its decisions relates to the particular features of the geographic location of the business in question. The following definitions of the relevant geographic market can serve as an illustration of how this criterion has been used by the Board:

- In the case concerning tobacco products, the relevant geographic market comprised the whole territory of the country as cigarettes are being sold on the whole territory of Estonia\(^\text{62}\);

- In the case concerning insurance services, the relevant geographic market comprised the whole territory of the country as the insurance companies in question were active on the whole territory of Estonia\(^\text{63}\);

\(^{60}\) Case 61-KO / 03.10.2002.

\(^{61}\) Case 68-KO / 05.11.2002.


\(^{63}\) Case 5-KO / 12.03.2004.
- In the case concerning wood procurement business, the Board referred to the small size of Estonia and the developed road infrastructure in the country, and defined the relevant geographic market in this case as comprising the whole Estonia, even despite the fact that the wood-procurement companies operate in different parts of the country⁶⁴;

- Similarly, in the case concerning selling of soft-drinks and mineral water in Estonia, the whole country was defined as constituting the relevant geographic market, mainly due to the small size of Estonia’s territory⁶⁵;

- The small size of the country was again referred to in the case concerning the hotel services: although the particular hotel was located in Tallinn, the Competition Board decided that for the particular case the whole territory of Estonia constitutes the relevant geographic market as due to the small size of Estonia, tourists can make their daily trips from Tallinn to every part of Estonia⁶⁶;

- Once again, the size of the country played a decisive role in the case concerning the market for concrete in Estonia: according to the Competition Board, notwithstanding the necessity to deliver the concrete to the consumers within limited space of time (because of characteristics of the product), it is possible, by adding specific components to the concrete, to keep it in a raw state for a longer period of time and thus to deliver it to the consumers in every point of Estonia. Consequently, the whole Estonia was regarded as constituting the relevant geographic market in this case⁶⁷;

- Last but not least, in the case concerning the retail market for the selling of daily consumer goods offered by the supermarkets and hypermarkets, the Competition Board relied on the decision of the Commission, according to which the geographic scope of this particular service market is limited to geographic territory in which consumers can reach the particular store within approximately 30 minutes driving time, and delineated the geographic dimension of the respective market to the territory of Tallinn city and its surroundings⁶⁸.

As far as media-sector cases are concerned, the Competition Board stated that because of the fact that the particular merging undertakings were active on the market for the wholesale and retail distribution of published newspapers and magazines on the whole territory of Estonia, the whole country comprises the geographic dimension of the market in question⁶⁹. When dealing with the markets for printed and online information catalogues, the Competition Board established that both products in question are available/accessible in the whole Estonia, and hence the whole Estonia constitutes a relevant geographic market in the case at hand⁷⁰.

⁶⁴ Case 3-KO / 17.01.2003.
⁶⁷ Case 26-KO / 07.08.2003.
⁶⁹ Case 30-KO / 30.05.2002.
b) Business environment

On some occasions, when defining the relevant geographic market, the Competition Board broadly referred to the particularities of the business environment in which respective undertakings were active. On all of these occasions, the Board said that the business conditions regarding the activity in question (for instance, retail sale of periodical publications) is the same in the whole of Estonia, and thus in these cases the whole country comprises the relevant geographic market.

c) Legislative and administrative stipulations

Factors of legislative and administrative nature have also come into play on few occasions when defining the relevant geographic market. Thus, the Competition Board referred to the requirements of the Broadcasting Act when defining the whole territory of Estonia as being the relevant geographic market in the case concerning transmission of TV and radio programmes by the Estonian Broadcasting Transmission Centre. According to this Act, the Centre had an obligation to ensure that the infrastructure necessary for the transmission of the programmes is in place on the whole territory of the country. In the cases concerning cable-TV services, in their turn, the Competition Board relied on the stipulations of the mandatory authorisations issued to the respective undertakings providing the services in question. According to these authorisations granted by the responsible authorities, the particular undertakings were allowed to provide cable-TV services in distinct parts of city Maardu and city Tallinn respectively. Consequently, also the scope of the relevant geographic markets covered those particular parts of the respective cities which were explicitly stated in the granted authorisations.

3. Concluding remarks on the definition of the relevant markets

The Competition Board generally seems to be employing a detailed and accurate reasoning regarding definition of the relevant product and geographic markets in its decisional practice. When assessing product dimension of the market, the prime emphasis is placed upon the demand substitutability considerations (product characteristics, price), although also the supply-side substitutability has been employed by the Competition Board on a number of occasions. When defining the relevant geographic market, the location of the companies’ business as well as certain legislative and administrative stipulations applicable to the activity in question (e.g. authorisations) play a major role in the Board’s conclusions. The fact that the Board has also referred to the reasoning contained in the decisions of the European Commission shows the desire of the Estonian competition authority to keep its decisional practice in line with that of the European institutions.

Very obvious, though, is the more limited elaboration with regard to the relevant markets in those cases which deal with a merger of undertakings. The Board constrains itself in these cases to a very broad definition of the markets affected by the concentration, usually simply stating that the undertakings involved are active on particular markets. Typically, however, broad definition of the relevant market is favoured by the undertakings involved into the merger rather than the competition authority supervising the existence of a competitive

72 Case 6-L / 30.01.2002.
environment on the market. Such a lenient approach of the Estonian competition authority seems to be very questionable especially from the point of view of the relatively new and fragile market structures of the country’s business environment that could require a particular attention and safeguarding. An evaluation of this issue, however, does not fall within the ambit of the present study.

**B. Repertoire of relevant product and geographic market in the media sector in Estonia**

This part of the study provides an overview of the relevant markets in the media sector as defined by the Competition Board. Although the number of such decisions is not very large and also the reasoning with regard to some of the markets defined is not very extensive, it nevertheless provides some overview of particular sectors and will also allow to perform some general comparative evaluation in the Part C of this work.

**I. Publishing**

*1. Newspapers, magazines and related services*

Publishing related markets have been at stake in a number of decisions taken by the Competition Board. Most of them, however, do not provide any detailed reasoning with regard to the particular definition made by the Competition Board. Thus, in the merger decision 30-KO of May 30, 2002\(^74\), the Board defined the relevant market as two separate markets: *markets for the wholesale and market for the retail distribution of published newspapers and magazines in Estonia*. When making this definition, the Board simply referred to the business areas in which the merging undertakings were active, and stated that these activities take place on the whole territory of the country. In a similar vain, in its decision 7-KO of January 28, 2005\(^75\), the Competition Board broadly stated that the two merging undertakings Shibsted ASA and Alma Media Corporation are active, among others\(^75a\), on the following markets:

- *market for newspapers and journals,*
- *market for printing services,*
- *market for subscription to newspapers and journals,*
- *market for news-photos,*

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\(^{74}\) Case 30-KO / 30.05.2002.

\(^{75}\) Case 7-KO / 28.01.2005.

\(^{75a}\) Further markets defined:

- *market for transmission TV programs*, see para. 4.46;
- *market for internet advertising of immovable property*, see para. 4.49
- *market for additional services of mobile phones*
- *market of advertising.*
Another case where the periodical publications were at stake is the case 17-L of April 11, 2002. The Competition Board was called upon to investigate possible illegality of agreement which AS Lehepunkt, a company engaged into distribution of periodical publications, had concluded with a number of publishers of periodical press. The Board defined the relevant market for the purposes of the case as being the market for the retail sale of periodical publications in the whole territory of Estonia. In doing so, the Competition Board also identified the market for distribution of periodical publications through subscription, and analysed the differences between the two modes of acquiring the periodical publications. The Board outlined a number of particular features which characterise acquisition of periodical publications by means of subscription and by means of buying. Thus, a consumer who subscribes to a newspapers is supposed to pay in advance for the particular items, whereas in the case of individual purchase the price shall be paid at the moment of transaction. Additionally, the price of a single copy of a particular periodical publication is lower when it is acquired by means of subscription as compared to the price paid at the moment of an individual buy. The Board also concluded that both types of acquisition are mutually exclusive, i.e. those consumers who have subscribed to particular periodical publication do not normally buy an additional copy in a store. Thus, notwithstanding the same goal of both types of the retail sale – to provide a consumer with periodical publications – from the point of view of the consumers they are not substitutable.

2. Books and other printed materials

In the case 25-L of July 28, 2003, the Competition Board dealt with a complaint addressed against undertaking AS Astro Raamatud concerning allegedly misleading advertising. When dealing with issues of market definition, the Competition Board first stated that the company in question was active on markets for wholesale sale and retail sale of books. However, for the purposes of the case at hand, the Board confined the affected relevant market to the market for retail sale of books in Estonia. It then went on analysing differences between different modes of retail sale of books, comparing retail sale of books in bookstores with the sale of books per post and per Internet. The Competition Board concluded that the sale of books via post or Internet does not match the amount of books sold via conventional way of selling, and also the assessment of prices does not reveal any significant disparities for different selling methods. Consequently, the Competition Board decided not to subdivide the general market for retail sale of books in Estonia into submarkets according to the particular modes of selling.

The differences between virtual and real marketplaces, however, were decisive for the Competition Board in the case 38-KO of October 30, 2001. In this case, the Board dealt with a merger between two undertakings engaged into publishing of information catalogues containing information about private persons, public institutions and undertakings located in Tallinn and Harjumaa. The Competition Board undertook a comparison of catalogues issued in a printed format with the ones accessible on the Internet web-site (www.infopluss.ee).
Competition Board found out that as far as the content of the both formats is concerned, it is perfectly substitutable from the point of view of the consumers. However, the way how the two modes of information carriers can be accessed was a factor important enough for the Competition Board to separate the two modes of information catalogues into different relevant markets: market for the information catalogues in paper format and market for the information catalogues accessible on the Internet. Taking into account that both the printed catalogues as well as the Internet-based catalogues can be accessed in the whole Estonia, the territory of the whole country was determined as the relevant geographic dimension of the case.

II. Film sector

There has been only one decision of the Competition Board related to the markets in the film sector. The Board, when conducting preliminary investigation in the case involving criminal proceedings against the company VK Holding (alleged abuse of a dominant position and entering into restrictive agreements)\textsuperscript{79}, identified the \textit{market for the wholesale sale of rentable home videos in Estonia} as being the market affected by the activities of the VK Holding. However, more detailed reasoning concerning this statement was not provided by the authority.

III. Music

There are no decisions taken by the Competition Board in the music sector. Nonetheless, the Board has dealt with the sector in question on one occasion, although no final decision was taken because of withdrawal of the complaint\textsuperscript{80}. Still, when dealing with the mentioned case, the Competition Board had to carry out an analysis of certain competition law aspects regarding the activities of authors’ collective management organisation imposing fees for using musical compositions, choreographic works and works of art for the purposes of production of television broadcasts and programmes. In doing so, the Competition Board delineated the \textit{market for services of providing authorisation to use musical compositions, choreographic works and works of art in the territory of Estonia} as being the relevant market affected by the activities of the Estonian Authors’ Society (Eesti Autorite Ühing). No more detailed reasoning, though, was given on this definition.

IV. Broadcasting: TV

On few occasions, the Competition Board had to deal with issues related to the provision of cable-TV services in two Estonian cities – Tallinn and Maardu\textsuperscript{81}. Thus, in the case 13-L of

\textsuperscript{79} Criminal case Nr. 03921000003 (initiated on 07.04.03, closed on 09.11.04). In this case, the VK Holding reached an agreement with the prosecutors office concerning the amount of fines and therefore no formal decision was adopted in the case (the court merely accepted the reached agreement). The Competition Board, however, provided the author of this Chapter with the draft version of the respective decision.

\textsuperscript{80} N/N. Proceedings of the complaint took place from May 2003 until January 2004. The Competition Board provided the author of this Chapter with the draft version of the respective decision.

\textsuperscript{81} In addition to the decisions of the Competition Board presented in this section, the issues related to the cable-TV sector have been also addressed by two Board’s prescripts: Nr. 19 / 30.07.2004 and Nr. 20 / 30.07.2004. However, the reasoning of the two documents with regard to the relevant markets is not
March 8, 2001\textsuperscript{82}, the Board, without, however, explicitly defining them as the relevant markets, distinguished between the provision of cable-TV services and the provision of services for individual reception system (individuaalantennisüsteem) or master antenna system (ühisantennisüsteem) in the city of Maardu. In doing so, the authority stated that particularly in those cases where the blockhouses (multi-storeyed houses) are at stake, the aspects like different characteristics of the two systems (bigger variety of TV programmes and better quality in the case of cable television), price differences (installation of the individual reception system is more expensive to the consumers), as well as convenience in use result in separation of the two modes of TV broadcasting.

The Competition Board considered similar issues to those of the above mentioned case when it took a decision in the case 37-L of October 15, 2001\textsuperscript{83}. The proceeding was initiated upon two complaints received by the Competition Board concerning cable-TV services in the city of Tallinn. In its analysis, the Competition Board first outlined the differences between cable television and individual reception system (individuaalantennisüsteem) or master antenna system (ühisantennisüsteem) and, just like in the case described in the previous paragraph, concluded that due to particular characteristics, price differences and certain other aspects the three modes of TV broadcasting are not substitutable. More interesting reasoning, however, was provided with regard to the geographic scope of the market in question. According to the Competition Board, such factors as particular terms of authorisations received by the cable-TV undertakings authorising them to provide their services only in the specified part(s) of Tallinn, fragmentation of the cable networks resulting from such practice, as well as impossibility for the consumer to receive cable-TV services from an undertaking other than the one possessing the cable network in the particular area and/or building have lead to a market split into small parts according to the territorial presence of the cable networks. Consequently, the relevant market delineated by the Competition Board in this case was the market for the provision of cable-TV services in different network areas within the city of Tallinn.

Apart from the two above mentioned decisions, the Competition Board has touched upon TV related markets only on one more occasion. When dealing with the case 7-KO of January 28, 2005\textsuperscript{84}, the Board stated that the TV market in Estonia, along with a number of publishing sector markets, is a market on which one of the two undertakings participating in the merger was active. However, no reasoning and no further explanation has been provided by the Competition Board in this regard.

\textsuperscript{82} Case 13-L / 08.03.2001.
\textsuperscript{83} Case 37-L / 15.10.2001.
\textsuperscript{84} Case 7-KO / 28.01.2005. See also Para. 4.37.
V. Broadcasting: Radio

There have been no decisions of the Competition Board dealing with the media specific issues in the field of radio broadcasting. The only decision of the Competition Board relating to the radio sector is the one in the case 6-L of January 30, 2002\(^{85}\), which deals with issues of infrastructure necessary to transmit radio signals rather than radio content markets. The subject matter of the case was the complaint received from the undertaking Estonian Radio concerning the pricing system applied by the Estonian Broadcasting Transmission Centre (Eesti Ringhäälingu Saatekeskuse AS). In deciding this case, the Board identified the relevant market on which the Estonian Broadcasting Transmission Centre held a dominant position – the market for telecommunications services necessary for the transmission of radio programmes in the terrestrial transmission network in the territory of Estonia. The Board broadly stated that there are no substitutable networks present in Estonia which would provide the same quality and amount of services at the same dimension as the undertaking in question.

VI. Internet

In its decision in the already described\(^\text{86}\) case 38-KO of October 30, 2001\(^{87}\), the Competition Board identified the market for the information catalogues accessible on the Internet as one of the two markets affected by the proposed merger of two undertakings. During its analysis, the Competition Board undertook a comparison of catalogues issued in a printed format with the ones accessible on the Internet web-site (www.infopluss.ee). The Board found out that as far as the content of the both formats is concerned, from the point of view of the consumers it is perfectly substitutable. However, the way how the two modes of information carriers can be accessed was the decisive factor for the Competition Board to separate the two modes of information catalogues into different relevant markets: market for the information catalogues in paper format and market for the information catalogues accessible on the Internet. Taking into account that both the printed catalogues as well as the Internet-based catalogues can be accessed in the whole Estonia, the territory of the whole country was determined as the relevant geographic dimension of the case.

Apart from the decision discussed above, the Competition Board has touched upon Internet related markets only on one more occasion. When dealing with the case 7-KO of January 28, 2005\(^{88}\), the Board stated that the market for Internet advertising of immovable property in Estonia, along with a number of publishing sector markets, is a market on which one of the two undertakings participating in the merger was active. However, no reasoning and no further explanation has been provided by the Competition Board in this decision.

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\(^{85}\) Case 6-L / 30.01.2002.

\(^{86}\) See: Para. 4.41.

\(^{87}\) Case 38-KO / 30.10.2001.

\(^{88}\) Case 7-KO / 28.01.2005. See also Para. 4.37.
<table>
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<th>Market Category</th>
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<td>Market for services of providing authorisation to use musical compositions, choreographic works and works of art</td>
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<td><strong>Network markets</strong></td>
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<td><strong>Internet</strong></td>
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<td>Market for the information catalogues accessible on the Internet</td>
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<td>Market for the online advertising of immovable property</td>
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C. Comparative analysis of media market definitions adopted by the European Commission and those adopted under Estonian national competition law

The previous two parts of this study have outlined the main elements of the contemporary competition policy in Estonia and provided an analysis of the decisional practice of the Estonian Competition Board with regard to the relevant market definitions in the media sector. This part compares the relevant market definitions as made by the Board with the approach followed in the respective fields by the European Commission. The overall conclusions and evaluation are presented in the final subsection of this part.

I. General remarks

Estonia, together with other two Baltic states and Slovenia, was among the first countries to provisionally close the negotiation process on the competition chapter at the pre-accession stage. No transitional arrangements were requested by Estonia at the moment of accession. The steady progress of Estonia in the competition field had been prised by the European Commission, though still with a precondition that further developments and adjustments are to be made. Among the main priorities, the Commission has identified the development of a proper enforcement and application record of the competition rules, raising awareness of anti-trust rules amongst market participants and building up a credible and transparent competition culture. The following analysis provides an insight of how the current praxis of the Competition Board corresponds to the EC pattern in the field of the media sector.

II. Comparative analysis

1. Publishing

a) Newspapers, magazines and related services

In its decision in case 17-L of April 11, 2002, the Board outlined a number of markets in the field of periodical publications. First of all, the Competition Board distinguished two markets according to the modes of acquisition of periodical publications: market for the retail sale of periodical publications in Estonia as opposed to the market for distribution of periodical publications.

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90 See: Para. 4.2.


publications through subscription. As far as practice of the European Commission is concerned, there are no decisions where the aspects of retail sale of periodical publications has been at stake. In a number of decisions the Commission has addressed questions related to the separation of different types of written press, such as daily newspapers as opposed to the non-daily magazines, but no issues of sales modalities have been touched upon.

Similarly, no corresponding decisions of the Commission could be identified which would be comparable with the approach of the Competition Board in the case 30-KO of May 30, 2002 where the markets for the wholesale and retail distribution of published newspapers and magazines in Estonia were defined. The Commission’s analysis in the book sector cases, where the wholesale and retail distribution of respective products indeed was at stake, does not seem to be appropriate comparative basis for the markets of periodic publications due to the strong differences in the characteristics of each sector (e.g. issues of rights, organisation of distribution, etc.).

In the case 7-KO / 28.01.2005, the Competition Board very broadly, without providing any reasoning for its approach, identified a variety of markets affected by the intended merger of two undertakings: market for newspapers and journals, market for printing services, market for subscription to newspapers and journals, market for news-photos, market for news agencies. As far as the market for printing services, market for news-photos and market for news agencies are concerned, no corresponding decisions of the European Commission could be detected. The reasoning with regard to the markets for retail sale of and distribution of periodic publications upon subscription, as described above, also applies towards the market for subscription to newspapers and journals as outlined in the given case. As far as the market for newspapers and journals is concerned, the Commission has taken the position that the two types of press – daily newspapers and non-daily (weekly, monthly) magazines – belong to separate product markets. However, as the market definition stated by the Competition Board is very vague and broad and does not disclose whether the Board considers the newspapers and magazines as belonging to one market or not, it is impossible to make a due comparative analysis of the relevant definitions adopted by the two authorities for the purposes of this study.

b) Books and other printed materials

The Competition Board has dealt with the book markets on a number of occasions. Thus, in the case concerning a complaint against company AS Astro Raamatud, the Competition Board defined the market for the retail sale of books in Estonia as the relevant market for the purposes of the case, although it also stated that the particular company is active on the market for the wholesale sale of books, as well. In its reasoning, the Board also analysed the

93 See R. Capito, in: EMR, Media Market Definitions – Comparative Legal Analysis, 2003, Chapter 1 EC (The study can be downloaded from http://europa.eu.int/comm/competition/publications/studies/media/chapter_1_ec.pdf), Para. 1.156.
94 Case 30-KO / 30.05.2002.
95 Case 7-KO / 28.01.2005.
96 See: Para. 4.53.
differences of different selling modes of retail sale of books (through bookstores, via post or via Internet) before making a conclusion that there are no grounds to further subdivide this retail market into submarkets according to the each mode of selling. As far as the Commission’s practice is concerned, there have been no definitions defining the relevant market as broadly as market for the retail sale of books\(^99\). Also in its later decisions the Commission has dealt with particular types of retail sale (sale in bookshops, specialised superstores, supermarkets and hypermarkets, newsagents and specialised shop)\(^100\), without identifying the overall retail market as a separate relevant market. Similarly, there are no decisions of the Commission defining the market for the wholesale sale of books. In the Lagardère/Natexis/VUP decision\(^101\), the Commission addressed different issues relating, among others, to sale of the books by publishers to dealers or, where the dealer is a wholesaler, by a wholesaler to a smaller dealer\(^102\). It also distinguished between the markets for the sale of books by publishers to bookshops, hypermarkets and wholesalers\(^103\). However, no definition of wholesale market for the sale of books which would be similar to the general and broad definition given by the Competition Board has been provided by the Commission.

As far as different selling modes of retail sale of books are concerned, the comparison of Estonian and the EC approach is more straight-forward. Thus, the Commission, contrary to the decision of the Competition Board, has taken a position that there could be an overall market for all forms of distant sales of consumer books (including books club sales, mail order and sale via Internet), within which narrower segment for the online sales of consumer books via the Internet could be identified\(^104\). This difference, nonetheless, is confined to the particularities of each country and respective cases, and cannot be considered as a conceptual discrepancy in the reasoning of the two competition authorities.

On another occasion, the Competition Board identified the relevant market as the market for the information catalogues in paper format as a distinct market from the market for the information catalogues accessible on the Internet\(^105\). The Commission’s approach in its decision in the Telia/Telenor merger case\(^106\) seems to correspond to the approach upheld by the Estonian Competition Board. Thus, the Commission identified the market for the sale of advertising space in local telephone directories as a distinct product market, and also indicated that publishing of and selling of advertising space in hard-copy telephone directories may constitute a separate market to the publishing and selling of advertising space in on-line telephone directories. However, despite the similar definitions adopted by the Competition Board and the Commission, the reasoning of the two authorities is distinct. While the Board has approached the subject matter from the point of view of end-consumers and their patterns regarding the catalogue (hard-copy and on-line) usage, the Commission, in its turn has clearly

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99 R. Capito, op. cit. (supra note 93), Para. 1.151.
101 Commission Decision, Case COMP/M.2978, 7 January 2004, Lagardère/Natexis/VUP.
102 Commission Decision, Case COMP/M.2978, 7 January 2004, Lagardère/Natexis/VUP, Para. 159. See also: Chapter 1 Paras. 1.64 et. seq.
104 Commission Decision, Case IV/M.1459, 6 May 1999, Bertelsmann/Havas/BOL, para.13. More on this: see R. Capito, op. cit. (supra note 93), Para. 1.153. See also Chapter 1, Para. 1.69.
approached the telephone directories as advertising media and analysed them from the perspective of the relationship between catalogue publishers and buyers of the advertising space. An evaluation of whether the approach of the Estonian Competition Board was correct in defining the relevant markets or not does not, however, fall within the ambit of the present study.

2. Film sector

In its only film sector related case, the Competition Board identified the market for the wholesale sale of rentable home videos in Estonia\(^\text{107}\). Although the Commission has not explicitly defined such a market, this approach, nevertheless, generally follows the EC pattern. In *Seagram/Polygram* decision\(^\text{108}\) the Commission identified a number of possible relevant product markets in the film entertainment sector, including those relating to the distribution of films. Thus, different distribution windows were considered, including the one for the *video rental and sell-through*. The Commission, however, left the question open whether the separate distribution windows constitute separate relevant product markets since it was not considered necessary for the case at hand. As far as geographic dimension of the market is concerned, the Commission pointed out to that there are variety of indicators suggesting that *national markets exist for the distribution of films*\(^\text{109}\). However, as already mentioned, the exact definition of the relevant market was left open by the Commission.

3. Music

The only decision of the Competition Board which touches upon issues of the music sector had to deal with the possible anticompetitive practice of the Estonian Authors’ Society\(^\text{110}\). In this case, the Board defined the market as the market for services of providing authorisation to use musical compositions, choreographic works and works of art in the territory of Estonia. Although the Commission has dealt in its decisional practice with the possible abusive behaviour of the collecting societies\(^\text{111}\), no decisions could be identified which have addressed the issues that were the subject matter of the Estonian case. Nevertheless, the substance of the Estonian definition seems to correspond to the Commission’s reasoning when defining the market for music publishing, i.e. acquisition by publishers of rights to musical works and their subsequent exploitation upon remuneration\(^\text{112}\). The Commission has also outlined a number of submarkets regarding different categories of rights used in the commercial exploitation of music works: mechanical rights, performance rights,

\(^{107}\) Criminal case Nr. 03921000003 (initiated on 07.04.03, closed on 09.11.04). In this case, the VK Holding reached an agreement with the prosecutors office concerning the amount of fines and therefore no formal decision was adopted in the case (the court merely accepted the reached agreement). The Competition Board, however, provided the author of this Chapter with the draft version of the respective decision.


\(^{110}\) N/N. Proceedings of the complaint took place from May 2003 untill January 2004. The Competition Board provided the author of this Chapter with the draft version of the respective decision. See also: Para. 4.43.


synchronisation rights and printing rights\textsuperscript{113}. The question whether these submarkets actually constitute separate relevant markets was left open by the Commission.

4. Broadcasting: TV

In the TV-broadcasting sector, the Competition Board has mainly dealt with issues related to the provision of cable-TV services in different cities of Estonia\textsuperscript{114}. In doing so, the Board separated three modes of TV broadcasting, namely the provision of cable-TV services, the provision of services for individual reception system (individuaalantennisüsteem) and the provision of services for master antenna system (ühisantennisüsteem), relying foremost on the limited substitutability of the two services from the consumers’ perspective. An explicit definition of the relevant market as the market for the provision of cable-TV services was given, however, only in the decision in the case 37-L of October 15, 2001\textsuperscript{115}.

As far as Community practice is concerned, there is no clear-cut approach upheld by the Commission in this regard. Thus, in the MSG Media Services case\textsuperscript{116}, the Commission stated that the operation of TV cable networks in Germany constitutes a separate relevant market. The Commission based its decision on the fact that the transmission of programmes by cable is not interchangeable with the satellite transmission neither from the demand side point of view of the TV suppliers, nor from the point of view of consumers (mainly due to the costs involved).

On the other hand, for instance in the case British Interactive Broadcasting\textsuperscript{117}, the Commission found that in the UK the pay television comprises the three methods of transmission (terrestrial, satellite and cable) and that there was no justification for distinguishing between pay-TV markets on the basis of their mode of transmission. One of the factors on which the Commission based its decision was the similarity in prices of different technologies.\textsuperscript{118} Thus, one can see that there is no straightforward approach with regard to the substitutability of cable-TV services with other methods of TV transmission, and the outcome of the market definition depends on the different characteristics of each particular country (e.g. the switching costs, the scale of cable penetration, etc.)\textsuperscript{119}. Consequently, the position taken by the Estonian Competition Board does not contradict the decisional practice of the Commission, and could even be found identical if compared to some particular decisions of the Commission.

When dealing with the merger case 7-KO of January 28, 2005\textsuperscript{120}, the Estonian Competition Board very generally identified the TV market in Estonia on which one of the merging undertakings was active. Although the European Commission has extensively dealt with

\textsuperscript{113} Commission Decision, Case COMP/M.2883, 2 September 2002, Bertelsmann/Zomba. See also: R. Capito, op. cit. (supra note 93), Paras. 1.131 et seq.

\textsuperscript{114} Cases 13-L / 08.03.2001 and 37-L / 15.10.2001.

\textsuperscript{115} Case 37-L / 15.10.2001.

\textsuperscript{116} Commission Decision, Case IV/M.469, 9 November 1994, MSG Media Service.

\textsuperscript{117} Commission Decision, Case IV/36.539, 15 September 1999, British Interactive Broadcasting/Open.

\textsuperscript{118} More on this issue, see: see R. Capito, op. cit. (supra note 93), Paras. 1.81. et seq.

\textsuperscript{119} This trend continues also in the later decisions of the European Commission. More on this, see: Chapter 1, Para. 1.31 et seq.

\textsuperscript{120} Case 7-KO / 28.01.2005.
different markets related to the TV-broadcasting, none of them has contained such a broad market definition. Therefore no reasoned comparative analysis of the decisional practice of the Competition Board with that of the Commission could be done with regard to the market in question.

5. Broadcasting: Radio

In its only decision dealing with the issues related to the sector of radio broadcasting\textsuperscript{121}, the Competition Board identified the market for telecommunications services necessary for the transmission of radio programmes in the terrestrial transmission network in the territory of Estonia. Taking into account that this decision covers merely the aspects of radio infrastructure without touching upon any issues related to the radio content, no comparative analysis of the market defined in this case with the Commission’s counterparts is considered being necessary for the purposes of the present study.

6. Internet

The Competition Board in its decision in the case 38-KO of October 30, 2001\textsuperscript{122} stated that the market for the information catalogues accessible on the Internet is to be separated – due to access and usage considerations – from the market for the information catalogues in paper format. The Commission, in its turn, has not so far taken any decision addressing the subject matter of online directory services. Nevertheless, the Commission has showed its readiness to uphold the division of “virtual” and “real” markets because of certain particularities distinctive to each of them. Thus, for instance, in the music sector, the Commission made a distinction between traditional and on-line distribution of music in its AOL / Time Warner decision\textsuperscript{123}. Consequently, the approach of the Competition Board does not reveal any tendencies contradicting the Commission’s standpoint.

In its decision in the case 7-KO of January 28, 2005\textsuperscript{124}, the Competition Board mentioned a market for Internet advertising of immovable property in Estonia. Taking into account that this market was simply stated by the Competition Board as one of the markets on which one of the merging undertakings was active, it cannot be clearly understood whether the market in question indeed concerned advertising on the Internet, or whether the services in question concerned online offer of immovable property. The Commission, however, has ruled on the existence of separate markets regardless of what constellation was actually in place in the Estonian case. Thus, as far as online advertising is concerned, the Commission has constantly defined it as being a separate relevant market\textsuperscript{125}. Similarly, the Commission has also stated that, for instance, narrow focus portals providing access to a particular content category devoted to specific consumer needs are also to be considered as markets on their own\textsuperscript{126}. Consequently, the market as identified by the Estonian Competition Board seems to be in line with the approach advocated by the decisional practice of the European Commission.

\textsuperscript{121} Case 6-L / 30.01.2002.

\textsuperscript{122} Case 38-KO / 30.10.2001.

\textsuperscript{123} Commission Decision, Case IV/M.1845, 11 October 2000, AOL/Time Warner.

\textsuperscript{124} Case 7-KO / 28.01.2005.

\textsuperscript{125} E.g. Commission Decision, Case IV/M.1439, 13 October 1999, Telia/Telenor, para. 107.

\textsuperscript{126} Commission Decision, Case IV/JV48, 20 July 2000, Vodafone/Vivendi/Canal+, para. 50.
III. Reasons for divergent results

The comparative analysis of the market definitions in the media sector as used by the Competition Board and the Commission has not revealed any major discrepancies in the approach of the two authorities. The small differences observed on few instances could have arisen on the following grounds:

- In some cases the Competition Board has defined the respective relevant market in very broad terms (for instance, the markets for the retail sale of books\textsuperscript{127}, or the TV-market\textsuperscript{128}), and therefore even if there are decisions of the Commission dealing with the markets of the same category, the definitions adopted by it in these cases are much narrower and more specific;

- On other occasions, there were no cases on the EC level in which the Commission would have dealt with the particular markets addressed by the Competition Board (for instance, market for the retail sale of periodical publications\textsuperscript{129}, or the market for the wholesale and retail distribution of published newspapers and magazines\textsuperscript{130}), and therefore a substantive comparative analysis could not be carried out.

Generally, however, the decisional practice of the Competition Board in the media sector cases seems to correspond to the approach upheld by the European Commission.

IV. Conclusions

No major discrepancies between the decisional practice of the Competition Board and the decisional practice of the European Commission were detected in the course of this work. A rather limited reasoning with regard to the relevant market definition in many of the decisions adopted by the Competition Board could be mentioned as the main factor probably requiring more consideration in the future decisions. Both dimensions of the relevant market – product and geographic – are sufficiently addressed by the Board in its decisions, and the methodology used covers most criteria applied by the Commission when defining the relevant markets. As far as media sector is concerned, the relevant market definitions adopted by the Competition Board are compatible with those of the Commission. All in all, the general approach of the Competition Board’s practice seems to be in line with the EC pattern.

\textsuperscript{127} See: Para. 4.55.
\textsuperscript{128} See: Para. 4.63.
\textsuperscript{129} See: Para. 4.52.
\textsuperscript{130} See: Para. 4.53.
D. Impact of different (media) regulatory frameworks on market definitions

I. Regulatory frameworks in the Republic of Estonia having an impact on the media sector.

1. Constitutional provisions


According to § 39 of the Constitution, an author has the inalienable right to his or her work. The state shall protect the rights of the author.

According to § 45 of the Constitution, everyone has the right to freely disseminate ideas, opinions, beliefs and other information by word, print, picture or other means. This right may be restricted by law to protect public order, morals, and the rights and freedoms, health, honour and good name of others. This right may also be restricted by law for state and local government public servants, to protect a state or business secret or information received in confidence, which has become known to them by reason of their office, and the family and private life of others, as well as in the interests of justice.

There is no censorship.

2. Sector-specific regulations

a) Legal framework

   aa. Electronic Communications Act\(^2\) (“Elektroonilise side seadus”) (entered into force 01 January 2005)\(^3\)

The abovementioned law defines the competence of the owners of private electronic communications networks, the merchants of public electronic networks, the users of electronic communications networks and public management institutions. The Electronic Communications Act contains rules, which are connected with the regulation of the electronic communication services, sets the procedure of providing electronic communication services as well as determines assignation, utilization and management of limited resources such as – spectrum of radio frequencies, Internet domains and numeration resources.


\(^3\) Before the adoption of this law, the area was regulated by Communications Act (“Eesti Vabariigi Sideseadus”, entered into force 02 February 1991. On November 1, 2001, it was replaced by Telecommunications Act (“Telekommunikatsiooniseadus”, entered into force 19 March 2000, available on the Internet at http://www.legaltext.ee/text/en/X30063K6.htm, which provider more detailed regulation of telecommunication services in the conditions of competence. Cable Distribution Act entered into force 1 June 1999 and was repealed by Law on Electronic Communications.
The law applies also to electronic communication networks necessary for the distribution of radio and television programmes. Electronic Communications Act however does not apply to the content of information that is being transmitted through these electronic communication networks.

**bb. Broadcasting Act**\(^\text{135}\) ("Ringhäälinguseadus") (entered into force 15 June 1994, amended the last time in 2004)

The Broadcasting Act provides for the procedure for broadcasting information and the principles of broadcasting activities; the conditions for possession and ownership of technical means (transmitters, transmitters networks) intended for broadcasting information; the bases for foundation and operation of, and the procedure for terminating the activities of legal persons in public law engaged in broadcasting; the procedure for the broadcasting activities of legal persons in private law on the basis of broadcasting licenses; this act establishes the legal bases for ensuring the compliance of television programs and program services transmitted by broadcasters operating in Estonia with the requirements of international agreements ratified by the parliament.\(^\text{136}\) The Broadcasting Act also regulates the work of the Broadcasting Council.

**cc. Public Information Act**\(^\text{137}\) ("Avaliku teabe seadus") (entered into force 01 January 2001, amended the last time in 2004)

The abovementioned law generally establishes an unified order on how natural and legal persons are entitled to get information from state and municipal authorities and to use it. The aim of this law is to provide the society access to information, which is in possession of state and municipal authorities to ensure fulfilment of their functions. The law generally guarantees the principle that information is accessible to society in all cases unless the law sets otherwise.

**dd. Information Society Services Act**\(^\text{138}\) ("Infoühiskonna teenuse seadus") (entered into force 01 May 2004, amended the last time in 2004)

This Information Society Services law was passed in order to implement EU Directive 2000/31/EC. The law deals with the regulation of information society services providers’ general organizational issues as well as defines their rights, obligations and responsibility. One of the important factors for adoption of Information Society Services law inter alia was the enactment of the prohibition to send unsolicited commercial offers ("spam") via electronic mail.

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\(^{134}\) The general principles of content of radio and television programmes however are regulated by Broadcasting Act.


\(^{136}\) According to Article 1 of the Broadcasting Act.


**ee. Copyright Act** \(^{139}\) ("Autoriõiguse seadus") (entered into force 12 December 1992, amended the last time in 2004)

The Copyright law provides the regulation of protection mechanism of author’s rights, neighbouring (related) rights as well as regulation for protection of databases.  


**ff. Language Act** \(^{140}\) ("Keeleseadus") (entered into force 12 December 1992, amended the last time in 2004).

This cannot be regarded as a common sector specific normative document; however it has a significant impact on media market definitions in Estonia. Due to historically political reasons, currently there are two rather separate communications in Estonia – Estonian-speaking society and Russian-speaking society. Each of them mostly uses its own sources of information; thus it is possible to identify two almost absolutely separate media markets in Estonia. Each of the group is targeted on specific information. Since most of the Russians as native language speaking population almost do not understand Estonian or understand it very poorly, the language issue is a highly sensitive and thus specifically regulated area. That inevitability affects also the field of media. For example, according to the Language Act, a certain amount and type of the information is to be reported in the official language. For example, article 25 addresses language requirements in media and article 26 addresses violation of article 25.

**gg. Compulsory Copy Act** \(^{141}\) ("Sundeksemplari seadus") (entered into force 16 March 1997, amended the last time in 2002).

Compulsory Copy Act determines certain formal requirements for publications, audiovisual works and other works on electronic media and how compulsory copies of publications and items of electronic media are to be submitted to the main libraries.

According to the Compulsory Copy Act all publications, audiovisual works and other works on electronic media must contain the following data:

- the name of the publisher;
- the locus of publishing;
- the name and address of the manufacturer;

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the year of publishing; in the case of journals also the month of publishing and ordinal number; in the case of newspapers also the date of publishing and serial number.

If the publication is made in Estonia, eight compulsory copies must be submitted to the libraries; the manufacturer (e.g. printing plant) is responsible for ceding of those copies.

hh. Act to Regulate Dissemination of Works which Contain Pornography or Promote Violence or Cruelty142 ("Pornograafilise sisuga ja vägivalda või jultmust propageerivate teoste leviku reguleerimise seadus") (entered into force 01 May 1998, amended the last time in 2002).

For the purposes of this Act, “pornography” means a manner of representation in which sexual acts are brought to the foreground in a vulgar and intrusive manner and other human relations are disregarded or relegated to the background; “promotion of violence or cruelty” means depiction of violence or cruelty which exceeds the limits of justified self-defence in an approving manner for the purpose of promoting violent or cruel behaviour among people.

Transmission of television or radio broadcasts which contain pornography or promote violence or cruelty, by persons who have the right to transmit television or radio broadcasts in Estonia, is prohibited. An undertaking shall determine the content of a work prior to dissemination or exhibition of the work. If the content of a work is ambiguous, the undertaking has the right to request a review of the work and determination of its content by the expert committee on works.


This cannot be regarded as common sector specific normative document; however it’s article 29 states duties of possessors of media upon informing of emergencies144.

b) Other provisions


This document has been officially approved by Estonian Newspaper Association and Association of Estonian Broadcasters, which assembles the great bulk of Estonian media organizations. The code provides a basis for assessing the cases at Estonian Press Council.

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144 Transmission of emergency announcements through broadcasters is regulated also in Broadcasting Act, Article 10; supra, footnote 135.
II. Regulatory authorities in the Republic of Estonia having an impact on the media sector.

1. Ministry of Culture (Kultuuriministeerium)\textsuperscript{146}

a) Legal basis

Ministry of Culture is formed according to article 45 subsection 5 of Government of the Republic Act. The area of government of the Ministry of Culture shall include\textsuperscript{147} inter alia participation in the planning of state media activities.

b) Functions / competencies

The primary competence of the Ministry of Culture in the planning of state media activities is regulated in Article 37 of Broadcasting Act that addresses issuing broadcasting licenses.

Broadcasting licenses are undersigned by Minister of Culture; standing advisory commission (Ringhäälingulubade väljaandmise komisjon\textsuperscript{148}) consists of experts representing different authorities, among others experts from Estonian National Communications Board, which is subordinated to the Ministry of Economic Affairs and Communications.

c) Linkage with general competition authorities

According to article 45 subsection (4) 7) the Ministry of Culture shall refuse to issue a broadcasting licence if the issue of the broadcasting licence would violate the requirements of free competition and of enterprise based on equal grounds in the territory planned for the broadcasting activity or a part of the territory of Estonia.

The Competition Board\textsuperscript{149} (“Konkurentsiamet”) exercises state supervision in respect of compliance with the Competition Act\textsuperscript{150} (“Konkurentsiseadus”). The Competition Board was established on October 21, 1993 and it is subordinated to the Ministry of Economic Affairs and Communications.

Article 49 (2) of Government of the Republic Act\textsuperscript{151} (“Vabariigi Valitsuse seadus”) states that if an issue within the area of government of a minister also pertains to areas of government of other ministries, or if matters are decided by agreement with other ministers, the minister shall concord the decision with other ministers. If agreement is not reached, the issue shall be submitted to the Government of the Republic for decision.

Thus, if discrepancies between Ministry of Culture and Competition Board arise, those must be resolved at the level of the Government of the Republic of Estonia.


\textsuperscript{147} Ibid, article 62.

\textsuperscript{148} Standing order is available on the Internet at http://www.kul.ee/index.php?path=40&DocID=24 (in Estonian only).

\textsuperscript{149} More information available on the Internet at http://www.konkurentsiamet.ee/eng/ (official homepage).


2. **Estonian Broadcasting Council** (Ringhäälingunõukogu)

Estonian Broadcasting Council (RHN) is an independent administrative authority that was created in 1994 in accordance with the provisions of the Broadcasting Act in order to guarantee broadcasting freedoms according to the Constitution of Estonia, the Broadcasting Act and other laws.

a) **Legal basis**

The RHN is established under the provisions of the Broadcasting Act.\(^{153}\) As stated in Article 31 of the Broadcasting Act, RHN is “The highest authority of Eesti Raadio and Eesti Televisioon is the Broadcasting Council, which consists of nine members.”\(^{154}\). In order to ensure the independence of RHN, the Riigikogu (parliament) shall appoint five members of the Broadcasting council from among the members of the Riigikogu on the basis of the principle of political balance.

b) **Functions / competencies**

The primary duties and competence of the RHN is regulated in Article 32 of Broadcasting Act. The most important of them are (i) exercising supervision over performance of the public broadcasting functions, (ii) deciding the number of programme services transmitted by Eesti Raadio and Eesti Televisioon, and, depending on the seriousness, (iii) approving the statutes of Eesti Raadio and the statutes of Eesti Televisioon.

c) **Linkage with general competition authorities**

There are no Linkages with general competition authorities.

3. **Estonian Film Foundation** (Eesti Filmi Sihtasutus)

a) **Legal basis**

Estonian Film Foundation (‘EFS’) was established in 1997 by the ordinance\(^{156}\) of Government of Estonia. It’s statutes\(^{157}\) were confirmed by the founding resolution of 25 June, 1997.

b) **functions/competencies**

Estonian Film Foundation (EFF) was established as a private legal institution with the task of

- financing Estonian film production
- establishing and developing international film contacts

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\(^{152}\) More information available on the Internet at http://www.rhn.ee/e_main.htm (official homepage)


\(^{154}\) Ibid

\(^{155}\) More information available on the Internet at http://www.efsa.ee/eng/about.html (official homepage)

\(^{156}\) Available on the Internet at http://trip.rk.ee/cgi-bin/thw?$\{BASE\}=akt&$\{OOHTML\}=rtd&TO=1&TA=1997&AN=608 (in Estonian only).

- promoting Estonian films at home and abroad
- supporting the training of Estonian filmmakers and audiovisual professionals
- creating and maintaining Estonian film databases.

EFF operates under the auspices of the Estonian Ministry of Culture.

c) Linkage with general competition authorities

There are no Linkages with general competition authorities.

4. Ministry of Economic Affairs and Communications

Ministry of Economic Affairs and Communications is formed according to article 45 subsection 6 of Government of the Republic Act. The area of government of the Ministry of Economic Affairs and Communications shall include: development and implementation of the national economic policy and state economic plans with regard to informatics, telecommunications and postal services; the co-ordination of the work of licensing, registration, supervision of competition, and the preparation of corresponding draft legislation.

The following relevant executive agencies and inspectorates shall be within the area of government of the Ministry of Economic Affairs and Communications:

1) the Competition Board;

6) the Communications Board;

7) the Consumer Protection Board;

10) the Technical Inspectorate.

5. Estonian National Communications Board

The National Communications Board ('ENCB') was established in 1991 as Telecommunication Inspectorate, since 1998 it has its present name. ENCB is formed according to article 45 (2) subsection 6 of Government of the Republic Act. ENCB is a governmental agency.

The main activities of ENCB proceed from different legislative acts: Electronic Communications Act, Postal Act, Broadcasting Act and Digital Signatures Act.

The most of ministerial regulations concerning telecommunications, published on the website of ENCB\(^{161}\), are not valid anymore. Supreme Court of Republic of Estonia has ruled in decision No 3-4-1-5-98\(^{162}\) that newly adopted law cannot sanction administrative acts, which were adopted prior the new law because delegation norms are aimed to the future, not backwards. In other words, those regulations that were based on Telecommunication Act and Cable Distribution Act, are not valid anymore because Telecommunication Act and Cable Distribution Act were repealed by Electronic Communications Act which entered into force in the beginning of year 2005.

b) functions / competencies

In the beginning the organization was created which administered the usage of frequency band and radio transmission equipment. In the next phase supervising in the sphere of air broadcasting (1994) and cable broadcasting (1999) were added. In 1998-2000 ENCB was transformed from mere technical regulatory organ to regulator of the whole branch of (telecommunication) industry. In 2002 were added functions of supervision of postal services.

The main tasks of ENCB include promotion of business competition in the fields of telecommunication and postal services; ensuring the quality of telecommunications and postal services through regulation; planning and ensuring the rational use of the limited resources (radio frequencies and numbering); performing surveillance of the companies operating in the fields of telecommunications and postal services.

The most important tasks are\(^{163}\):

- registration of telecommunications service provision and issuing of operating licences and performing surveillance;
- market regulation and surveillance in telecommunication area;
- surveillance of charges and cost accounting systems of operators with significant market power in telecommunications sector;
- fulfilment of conformity assessment procedures for telecommunications terminal equipment and performing surveillance of the supply and use;
- planning, organizing and fulfilment of the use of radio frequency spectrum, issuing licences for radio transmission equipment and performing surveillance over the use of radio transmission equipment and radio frequency spectrum;
- planning of the use of numbering, issuing numbering licences and performing surveillance;
- issuing of cable television network licences and registering of service provision;


\(^{162}\) Available on the Internet at http://www.nc.ee/klr/lahendid/tekst/RK/3-4-1-5-98.html (only in Estonian).

\(^{163}\) Cited from: http://www.sa.ee/atp/eng/.
- planning of broadcasting channels and frequencies and surveillance of their use;
- registration of companies providing services related to digital signature (certification and time stamp service);
- representing Estonia in the activities of international telecommunications organizations and relevant standards organizations;

c) Linkage with general competition authorities

There are no Linkages with general competition authorities.

III. Market definitions and/or criteria upheld for market perception in the relevant sector focused legislation.

Most Estonian sector specific legal acts do contain a definition part at the very beginning of the legal document. Therefore the legal acts provide a quite considerable number of definitions of terms relevant in the sector specific market.

For the purposes of Copyright Act\textsuperscript{164}, “works” means any original results in the literary, artistic or scientific domain, which are expressed in an objective form and can be perceived and reproduced in this form either directly or by means of technical devices. A work is original if it is the author's own intellectual creation.

1. Publishing

The printed press is not directly marked out among other means of mass media. No law does provide specific distinctive regulation to the printed press as compared to other forms of mass media\textsuperscript{165} and thus is not providing specific market definitions for the press.

Compulsory Copy Act\textsuperscript{166} determines publications: The term is defined as media that is made by polygraphic means, including any publication that contains Braille code.

Nevertheless this law only distinguishes field of polygraphic publications from other media sectors, but does not provide more detailed distinction among specific types of publications such as magazines and newspapers.

Compulsory Copy Act also defines the audiovisual publication which is defined as media that is audible or visible with the help of appropriate equipment; e.g. audio record, audiotape, audio cassette, diapositive, diafilm, video cassette, micro card and microfilm.

Compulsory Copy Act also defines the electronic publication that is defined as information recorded on magnetic or optic media; e.g. magnetic tape, magnetic disc, compact disc etc.

\textsuperscript{164} Copyright Act, Article 4 (2); supra, footnote 139.
\textsuperscript{165} The only difference is set in Compulsory Copy Act which stipulates the information that must be given in every issue of a press publication; supra, footnote No 141
\textsuperscript{166} Supra, footnote No 141.
Minister of Culture has decreed a regulation on standing order of National Library Of Estonia\textsuperscript{167} ("Rahvaraamatukogu töökorralduse juhend") (entered into force 23 July 2004). It defines periodical as a printed publication (or publication in other form, like electronic publication) that is issued at sequential parts at whatever regular intervals, that has a date or an ordinal number on it and that is being published continually. Same regulation defines newspaper as periodical that communicates news of public or special interest about current events; sequential parts of a newspaper contain a date or an ordinal number on it; a newspaper usually comes out at least once a week. Same regulation defines journal as a periodical that is published regularly (at least twice a year) in uniform design and format.

The information available for this study indicates that the only state supported newspaper is – the state gazette “Riigi Teataja”. The available information does not indicate that newspapers or journals would have been promoted or received any financial aid from institutions of Estonia\textsuperscript{168}.

2. Music – copyright

There is no specific definition for musical work as referred in Copyright Act.

a) Music – Publishing

Article 9 of the Copyright Act defines the term publication. According to it\textsuperscript{169}, a work is deemed published if the work or copies of the work, whatever may be the means of manufacture of the copies, are placed, with the consent of the author, at the disposal of the public provided that the availability of such copies has been such as to enable the public to examine or obtain the work. Publication of a work includes also publication of the work in print, offering original copies of the work for sale, distribution, lending and rental of the work and placing the work at the disposal of the public in any other manner for a charge or free of charge.

As specified in subsection (2) of Article 9 of the Copyright Act, the performance of a dramatic, dramatico-musical or a musical work, the presentation of audiovisual works, the public recitation of a literary work, the broadcasting or cable transmission of literary or artistic works, the exhibition of a work of art and the construction of a work of architecture shall not constitute publication.

b) Music recording and distribution

For the purposes of Copyright Act, “producer of phonograms (sound recordings)” means\textsuperscript{170} the natural or legal person who first lawfully records the sounds of a performance or other sounds.

\textsuperscript{167} Available on the Internet at http://lex.andmevara.ee/estlex/kehtivad/AktTekst.jsp?id=63602 (only in Estonian).

\textsuperscript{168} There of course can be exceptions, for example, cultural, educational and scientific publications. However no specific regulation for those activities is adopted. For example, cultural weekly “Sirp” is published through special fund that is established by Ministry of Culture. It gets financial aid through another fund – Cultural Endowment of Estonia (“Eesti Kultuurkapital”), which receives proceeds from state budget, see http://veeb.kulka.ee/index.php?lang=eng (official homepage).

\textsuperscript{169} Copyright Act, Article 9; supra, footnote 139.

\textsuperscript{170} Copyright Act, Article 69; supra, footnote 139.
3. **Film**

The concept of the term “film” unlike the term “music” is implicitly presented in Copyright Act. According to Article 33, subsection (1)\(^\text{171}\), **audiovisual works are all works which consist of series of related images whether or not accompanied by sound and which are intended to be demonstrated using corresponding technical means (cinematographic films, television films, video films, etc.).**

Subsection (3) of Article 33 of the Copyright Act defines also **producer**, stating that it is a natural or legal person who financed or managed the creation of the work and whose name is fixed in the audiovisual work.

Subsection (1) 2) of Article 13 of the Copyright Act defines **distribution** as the transfer of the right of ownership in a work or copies thereof or any other form of distribution to the public, including the rental and lending, except for the rental and lending of works of architecture and works of applied art.

The abovementioned regulation\(^\text{172}\) clearly states what is to be regarded as public demonstration, namely - **communication to the public by technical means** (record, cassette or CD player, etc.) in a place open to the public. “Place open to the public” means the territory, building or room which is public or granted for use by the public or to which its owner or holder allows individual access (a street, square, park, sports facility, festival grounds, market, recreation area, theatre, cinema, club, discotheque, shop, mass caterer, service enterprise, public means of transport, hotel, motel, etc.). Communication to the public takes place if a work communicated by means of radio, television, cable or satellite or by other technical means in a place open to the public or in such a way that persons may access the work from a place and at a time individually chosen by them.

The film market in Estonia is not a regulated area. There is no film register (like in neighbouring Latvia).

4. **Broadcasting**

For the purposes of Broadcasting Act\(^\text{173}\), “broadcasting” means **the transmission over the air** (including that by satellite) or via a cable network, in unencoded or encoded form, of radio or television programme services intended for reception by the public with commonly used receivers.

Article 4 (1) of Broadcasting Act\(^\text{174}\) defines “programme” as **information broadcast as a signal during a specified period of time in the form of sound, text, images or a collection thereof which can be received with commonly used receivers.**

For the purposes of Broadcasting Act\(^\text{175}\), “transmission” means **the emission, by means of telecommunications, of programmes or programme services of broadcasters for reception by the public.**

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\(^{171}\) Copyright Act, Article 33; supra, footnote 139.

\(^{172}\) Copyright Act, Article 13\(^1\); supra, footnote 139.

\(^{173}\) Broadcasting Act, Article 2; supra, footnote 135.

\(^{174}\) Broadcasting Act, Article 4; supra, footnote 135.

\(^{175}\) Broadcasting Act, Article 5\(^2\) (1); supra, footnote 135.
Any person may acquire, create or distribute broadcasting programmes or programme services. Programmes and programme services may be transmitted through a broadcaster, broadcasting transmitter or a broadcasting transmitters network by a person in private law who holds a broadcasting licence or by legal persons in public law operating on the basis of Broadcasting Act 176.

Eesti Raadio and Eesti Televisioon are legal persons in public law, which perform the functions of public radio and television organisations on the basis of the Broadcasting Act 177.

Six types of broadcasting licences are issued for the broadcast of programmes 178:

- a local broadcasting licence, for the operating area of one transmitter;
- a regional broadcasting licence, for radio networks, for one transmitter or a transmitters network in a part of the territory of Estonia;
- a national broadcasting licence, for a national transmitters network or for one transmitter which enables reception of programmes in up to 80 to 100 per cent of the territory of Estonia;
- an international broadcasting licence, for a transmitters network or one transmitter which enables reception of programmes in other states;
- a temporary broadcasting licence, for a specific region and period of time for a term of up to three months;
- a broadcasting licence, for cable networks.

Fees are charged for broadcasting licences for television networks. The amounts of fees range, based on the type of the license, from 15 Million EEK (~958'675 EUR) to 25 Million EEK (~1'597'791 EUR).

As to the cable television and cable radio transmission, they are implicitly defined in Electronic Communications Act 179. Article 2 of the law defines “cable distribution service” as publicly available electronic communications service which consists of transmission of television or radio broadcasts and television or radio programmes to end-users for an agreed charge; “cable distribution network” is an electronic communications network which is created for the provision of cable television services.

Notwithstanding that cable television and cable radio are regarded as broadcasted media, as far as telecommunications networks are concerned, cable television and cable radio (radio transmission) systems are formed, registered, exploited and protected in accordance with the provisions of the Electronic Communications Act, not Radio and Broadcasting Act. Article 90 of Electronic Communications Act sets special requirement for provision of cable television services:

176 Broadcasting Act, Article 23; supra, footnote 135.
177 Broadcasting Act, Article 24; supra, footnote 135.
178 Broadcasting Act, Article 37 (3); supra, footnote 135.
179 Electronic Communications Act; supra, footnote 132.
- A communications undertaking who provides cable television services shall guarantee the continuous retransmission of the following programmes:

- television programmes of the Estonian public service broadcaster;

- television programmes transmitted by terrestrial broadcasting transmitters within a cable television network area that are received at a signal strength compatible with the technical requirements and for the transmission of which the broadcaster requires no charge.

5. Internet

As to the Internet, the only relevant legislation is Information Society Services Act\(^\text{180}\). It draws framework of the information society services defining them as services provided in the form of economic or professional activities at the direct request of a recipient of the services, without the parties being simultaneously present at the same location, and such services involve the processing, storage or transmission of information by electronic means intended for the digital processing and storage of data. Information society services must be entirely transmitted, conveyed and received by electronic means of communication. Services provided by means of fax or telephone call, and broadcasting within the meaning of the Broadcasting Act.

The abovementioned law does not give any definition for established service provider within the meaning of Directive No. 2000/31/EC. But it defines commercial communication. It is defined as any form of communication designed to promote, directly or indirectly, the goods, services or image of a service provider. The commercial communication is not the information allowing direct access to the activity of a natural or legal person (in particular a domain name or an electronic-mail address), also communications relating to the image, goods or services of a service provider, compiled independently of the service provider.

There are no specific market definitions for the Internet. Also the access to Internet services is not specifically limited. As to the content, Article 45 of Põhiseadus (Constitution) on freedom of press is also applicable to Internet environment.\(^\text{181}\) The only collateral limitation regarding the freedom of information is that medicaments may not be advertised to the public or distributed using Internet networks\(^\text{182}\).

\(^{180}\) Information Society Services Act; supra, footnote 138.

\(^{181}\) Constitution of the Republic of Estonia; supra, footnote 131.

\(^{182}\) Articles 84 (9) and 25 (3) of Medicinal Products Act ("Ravimiseadus"); entered into force 01 March 2005. Available on the Internet at http://lex.andmevara.ee/estlex/kehtivad/AktTekst.jsp?id=65213 (in Estonian only).
IV. Market definitions and/or criteria for market perception in the media-sector, as upheld in sector specific practice of authorities and/or courts.

1. Publishing

As to the publishing sector, there are no relevant court decisions available for the current study.

Competition Board initiated on 21st September 2000 a proceeding of controlling the activities of PLC Lehepunkt. This company wholesales periodicals to the retailers and has dominant position on market (88%). Lehepunkt had imposed on some publishers exclusive sale terms, by which publisher committed himself of selling periodicals exclusively through Lehepunkt. Proceeding was terminated on the grounds that Lehepunkt was cooperative and ready to change exclusive sale terms in those particular contracts.

2. Music – copyright

As to the music sector, there also are no relevant authority / court decisions pertaining to competition law. Most judgements deal with unauthorized copying and distribution or performance of music works.

3. Film

As to the film sector, there also are no relevant authority / court decisions available for the current study.

4. Broadcasting (radio and television)

- In 1996 PLC Trio contested an administrative act of the Minister of Culture by which some frequency spectrum was allocated to Eesti Raadio (Estonian public radio). Trio claimed that such an act gives competitive advantage to Eesti Raadio over Radio Kuku (which is run by Trio) and thus violates Competition Act. Trio lost the case in Tallinn Administrative Court and appeal instances. Supreme Court rejected Trio’s claims on the ground that Eesti Raadio is public radio and thus obliged to fulfil many requirements put on it by Broadcasting Act. Therefore, Eesti Raadio needs larger spectrum of frequency than Radio Kuku, which mere commercial radio station. Courts found also that Minister of Culture did not violate competition law by letting Eesti Raadio decide himself, which particular frequencies were to be allocated to different programs.

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184 Dominant position is presumed if an undertaking or accounts for at least 40 per cent of the turnover in the market or several undertakings operating on the same market if it/they account for at least 40 per cent of the turnover in the market – Competition Act, § 13 (1). http://www.legaltext.ee/text/en/X50066K4.htm.

185 Supreme Court case No 3-3-1-14-99. More information available on the Internet at https://www.riigiteataja.ee/ert/ert.jsp?link=print&id=80885 (in Estonian only).
- Competition Board investigated[^186] in year 2000 Eesti Televisioon’s (Estonian public TV) activities on advertisements market. The goal of the investigation was to find out whether Eesti Televisioon has dominant position on goods market (like it had during previous investigation in 1996/97). Investigation was finished without any precept due to fact that Eesti Televisioon’s market share had fallen by that time to 10%.

- Competition Board has issued on 30 July 2004 mandatory precepts to PLC Telset[^187] and PLC STV[^188] by which obliged them to end abusing dominant position on the cabel distribution services market in Maardu city. According to precepts STV and Telset must to put into effect such prices for their services that cover at least effective costs of services. STV and Telset entered to the market with price level 30 EEK per month, while cost price was at least 65 EEK per month. Due to STV’s and Telset’s activities, smaller local provider NOM was been pushed out of market.

When calculating service suppliers share on goods market, Competition Board took into account the number of subscriptions and the number of alternatives each apartment has when choosing among suppliers. By those measures both Telset and STV were holding dominant position on cabel distribution services market in Maardu city.

Competition Board had investigated cabel distribution services providers activities in other Estonian cities already in year 2003. Although similar cases of abuse had been discovered in Narva and Kohtla-Järve cities, no proceedings had been undertaken prior to 2004 case in Maardu.

5. Internet

As to the Internet, there also are no relevant authority / court decisions available for the current study.

V. Common factors and differences between these market definitions and the market definitions used in application of the national competition rules.

In Estonia there are no instances of state aid granted to the entrepreneurs that publish daily newspapers - like the scheme laid down in Sweden since 1971. In West-European countries there are solid catalogues of possible and permissible cross-media-ownership schemes. In Estonian such definitions are virtually non-existent. Here granting of licenses has been left to completely the functionaries of Ministry of Culture. In the same time, Ministry of Culture is not listed in Competition Act among those state agencies that have the right and duty to monitor compliance with the Competition Act. This seems to be a rather wide and vague discretion, left to the officials. Although there exists seemingly modern competition law, in reality there are no effective mechanisms against accumulating of media ownership.

Some provisions of the Competition Act seems to not coherent. For example, according to § 40 (4) subsection 8 of Broadcasting Act, the Ministry of Culture shall refuse to issue a broadcasting licence if a person operating as a television and radio broadcaster or the responsible publisher of a daily or a weekly newspaper would become simultaneously a person operating as a television and radio broadcaster and the responsible publisher of a daily or a weekly newspaper in the territory planned for the broadcasting activity or a part of the territory of Estonia; this restriction shall not extend to the television guide published by a broadcaster itself. – Here the Broadcasting Act implicates implicitly on some kind of press law. As a matter of fact – there is no press act as such in Estonia. Therefore even term “responsible publisher” has no legal definition in Estonian law. As a conclusion – the whole § 40 (4) subsection 8 is hardly applicable.

VI. The impact of the non-competition framework and practice on the work of the competition regulator, in particular when defining the relevant markets.

In the making of the study there is no information publicly available on the possible closer collaboration plans between sector specific authorities and the competition regulator.

Nevertheless, the competition authority referred to media legislation in some of its decisions. In its decisions regarding cable TV services, the Competition Board, when defining relevant geographic markets, was guided by (then valid) Cable Distribution Act of 1999. § 12 (1) of Cable Distribution Act of 1999 stipulated, that the local government council should determine the cable television network areas to be constructed within the territory of the local government, and shall designate the entire territory of the local government as one cable television network area, or divide the territory into several cable television network areas based on the number of potential subscribers and with the aim to provide cable distribution services within the entire territory of the local government. This provision is not valid any more, because the Cable Distribution Act of 1999 was repealed by Cable Distribution Act of 2001, which in turn was repealed by Electronic Communications Act (entered into force 01 January 2005). Nor the Cable Distribution Act of 2001 neither the Electronic Communications Act which is valid now make any referral to 'mandatory authorisations' issued by local government councils.

In another case, the Competition Council relied on § 21 (1) of Broadcasting Act, that stipulates: the transmitters and transmitters networks necessary for the transmission of programme services of public service broadcasters are in the ownership of a public limited company which is founded according to subsections 45 (1) and (2) of this Act and one of whose functions according to its statutes is to ensure the quality reception of programme services of public service broadcasters within the entire territory of Estonia. This phrasing of § 21 (1) of Broadcasting Act was the main reason, why the whole territory of Estonia was defined as being the relevant geographic market in the case concerning transmission of TV and radio programmes by the Estonian Broadcasting Transmission Centre.

189 See para 4.33.