Open Letter on the Proceedings initiated by the Antimonopoly Office of the Slovak Republic against LITA, Society of Authors

To all parties concerned in the relevant proceedings:

The Society of Audiovisual Authors and its 33 members in 25 countries, representing 167,000 film and TV screenwriters and directors from all over Europe, have been informed by our Slovak member LITA, Society of Authors, about proceedings initiated by the Antimonopoly Office of the Slovak Republic against LITA.

In the mentioned proceedings (Decision No. 2022/DOZ/POK/2/12 of the Antimonopoly Office of the Slovak Republic dated 23 February 2022 confirmed by the Decision No. 2023/DOZ/POK/R/30 of the Council of the Antimonopoly Office of the Slovak Republic dated 19 October 2023), the Antimonopoly Office of the Slovak Republic reached the conclusion that LITA abused its dominant position by setting excessive license tariffs for the communication to the public and public performance of audiovisual works in hotel rooms.

While we acknowledge that our members' license fees and business practices might fall under the scrutiny of relevant national authorities, based on relevant national legislation, we would like to remind that collective management organisations have been regulated by Directive 2014/26/EU of 26 February 2014, which harmonised basic principles on the functioning of CMOs, their transparency and accountability. Article 16 of the Directive addresses the licensing by CMOs, requiring that licensing terms shall be based on objective and

non-discriminatory criteria and that rightholders shall receive appropriate remuneration for the use of their rights. Tariffs for exclusive rights and rights to remuneration shall be reasonable in relation to, inter alia, the economic value of the use of the rights in trade, taking into account the nature and scope of the use of the work, as well as in relation to the economic value of the service provided by the CMO.

In this context, we would like to bring attention to **several basic principles arising out of the EU law that competition authorities should follow in cases of their intervention in tariffs of collective management organisations**, principles that have been consistently acknowledged by the Court of Justice of the European Union (CJEU) in its rulings.

First and foremost, due to the special property of copyright as an intangible asset, any intervention in its pricing must be based on complex and robust economic analyses. Desirable and preferable approach would certainly be to **employ as wide range of analytical methods and data as possible**, so that the findings of such different analyses may be compared against each other and therefore any risk of highly erroneous result is reduced.

One of the acceptable methods to evaluate the license fees of collective management organisations is certainly geographical benchmarking, albeit it should not be automatically considered as the one and only viable option, and a wider range of analyses should be the preferred route. However, **when applying the benchmarking method, it is of vital importance that comparison of prices is carried out on the basis of a broad number of EU Member States** so as to reduce irregularities in benchmarking and ensure the comparison is made on a consistent basis. If this basic rule is not adhered to, then any consequent findings might be highly irregular, misleading, or grossly inaccurate.

We are concerned that the Antimonopoly Office of the Slovak Republic did not follow these basic principles in the proceedings against LITA. **By grounding its findings on a comparison with only one EU Member State, the Czech Republic, the competition authority's approach was definitely not in line with the EU competition law standards and applicable rulings of the CJEU**. The above is especially evident in this case, since the compared prices in the Czech Republic were regulated either by statutory price cap or the tariff setting was subject to proceedings carried out by the Ministry of Culture of the Czech Republic, while in the Slovak Republic there is no direct statutory price regulation, nor is the tariff setting subject to administrative proceedings.

We are therefore highly concerned that such an approach might unduly affect the authors' appropriate and proportionate remuneration for the use of their works, while this right has been reinforced by Directive 2019/790 of 17 April 2019 on copyright and related rights in the digital single market. If this approach is not corrected in the future course of the proceedings, it could ultimately lead to a dangerous situation in which the tariffs of collective management organisations could be benchmarked against arbitrarily selected markets and thus falsely considered as excessive.

We therefore urge all the parties involved in the future course of the proceedings, especially the administrative courts dealing with the lawsuit of LITA against the decision of the Antimonopoly Office of the Slovak Republic, to consider the abovementioned EU competition law standards.

In the case at hand, **it would be especially considerate to refer the case for a preliminary ruling before the CJEU to ensure that the entire proceedings and notably the benchmarking method used respect the relevant EU law standards**.

We believe that in this way the right of rightsholders represented by LITA, and in a broader context of authors across Europe, to a fair trial will be fully guaranteed and enforced. Moreover, their economic rights, as the core of copyright, would be upheld since any intervention in their license fees would be exercised lawfully and in accordance with EU law.

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