

[HU] IRISZ TV Loses Case against Hungarian National Radio and TV Board

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On 30 June 1997, the Hungarian National Radio and Television Board (NRTB) awarded two national terrestrial licenses to the Hungarian-Swedish MTM-SBS and the Luxembourg-based German-Hungarian-American company, CLT-Ufa's MAGYAR RTL (see IRIS 1997-9: 14). The IRISZ TV proposal, submitted by the First Hungarian Commercial Television Stock Co. (the company behind IRISZ TV), majority-owned by the US based Central European Media Enterprises, lost its bid. On 4 July 1997, IRISZ TV filed a law suit against NRTB asking the Economic Department of the Budapest Court to annul the Board's decision and to instruct the Board to duly complete the selection process for the television licence proposals. IRISZ TV claimed an amount of 17 billion Hungarian Forints - about 8.5 million USD - for damages. This is the very first court case in Hungary filed against an agency which is entitled to award terrestrial licenses.

IRISZ TV based its petition on three major arguments. First of all IRISZ TV claimed that MAGYAR RTL failed to keep the application deadline of the Invitation because it submitted its proposal three hours too late. As a result MAGYAR RTL's proposal should be deemed invalid.

Secondly, the petitioner also emphasized that the NRTB's decision considered IRISZ TV's bids for two national terrestrial licenses as one unified bid which was contrary to the Invitation.

Finally, referring to the Minutes of the NRTB meeting IRISZ TV argued that the Board ignored the selection process required by Paragraphs 45 and 46 of Act I of 1996 on Radio and Television Broadcasting and voted first about the winners and then evaluated the bids according to the preliminary decision. According to IRISZ sources, this illegal voting process was initiated by the Chairman of NRTB, who emphasized to the members of the Board that if a decision could not be reached by qualified majority, then according to Paragraph 45 section 1 point c) of Act I of 1996, the Board should be dismissed while he himself would remain in his post. Thereafter the chairman had named his candidates.

On 12 November 1997, at the request of the Board, the judge granted a closed hearing, quoting that the documents to be presented in the trial included business secrets and should not be disclosed. The court also asked the parties to submit

further evidence and set the date of the trial to 25 March 1998. On 25 March 1998, the Economic Department of Budapest Court decided in favour of the Hungarian National Radio and Television Board and IRISZ TV lost the legal battle on the first instance level.

The Court accepted that MAGYAR RTL failed to keep the application deadline of the Invitation. However the judge argued that NRTB, in accordance with 99. u section 3 of the Hungarian Act on Radio and Television Broadcasting, asked for the completion of deficiencies incurred in MAGYAR RTL' bid. Furthermore, the judge argued that there were no cogent rules governing the principles and guidelines for evaluating the bids. In the meantime, the Court did not find evidence of violation of the competition rules by NRTB. In the opinion of IRISZ TV the Court agreed with almost all claims of the petitioner, but came to different conclusions. As a result, IRISZ filed an appeal against the decision with the Hungarian Supreme Court. The decision of the highest court of Hungary is expected after the national elections which will be held in mid-May 1998.

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Budapest Court, Economic Department, 25 March 1998, IRISZ TV v. National Radio and Television Board (NRTB)

