[BG] Changes to the Electronics Communications Act

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In March 2009 important amendments to the Electronic Communications Act (ECA) became effective. Some of the changes concern the process of digitalisation, while the remainder concern the licensing of analogue television.

As a result of the changes the Council for Electronic Media (CEM) is no longer responsible for granting permits for analogue TV broadcasting and its powers have been transferred to the telecommunications regulator, Communications Regulation Commission (CRC), which is a political state body.

Para 5 item 2 of the Transitional and Final Provisions of ECA states that: “Until new permits for the utilisation of the individual scarce resource - radio frequency spectrum, for the provision of electronic communications by electronic communications networks for terrestrial digital radio broadcasting with a national coverage under the terms and conditions of this act are issued, the CRC may grant to TV operators registered under the Radio and Television Act permits for the use of available free scarce resource - radio frequency spectrum, which is not allocated according to para. 9a of the Transitional and Final Provisions of the Radio and Television Act”.

Most practitioners and commentators are of the opinion that the above-cited provision may lead to an unequal treatment of operators competing on the same market, namely: those who have been granted licenses for TV activity and the others who can be given the right to operate within the free scarce resource, which is exclusively owned by the State. The main difference between these two groups is that the first one is obliged to meet certain programme requirements, which are included in their licenses, while the second one is not expected to meet any pre-determined criteria concerning their programme content. Therefore, para 5 item 2 of the Transitional and Final Provisions of the ECA may be considered as contradicting to the Law on Limiting Administrative Regulation and Administrative Control over Economic Activity and the Law on Protection of Competition.

Pursuant to para 5 item 3 of the Transitional and Final Provisions of the ECA the permits mentioned above shall be issued in compliance with the rules and procedures adopted by the CRC. Thus, the CRC is granted powers to legislate by creating secondary legislation in areas, which shall be exclusively regulated by

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the National Assembly on a primary level in the form of legislative acts. Article 18, para 5 of the Bulgarian Constitution explicitly stipulates that the conditions and procedure by which the state shall grant licences for the activities related to the radio frequency spectrum shall be established by law as adopted by the National Assembly, which is the only competent authority to legislate on the issues concerning the radio frequency spectrum.

Para 5 item 4 of the Transitional and Final Provisions of the ECA stipulates that the permits shall be issued after the CEM has given its positive consent. It is unclear what the legal consequences would be if the CEM refused to grant such consent. According to the Administrative Procedure Code granting of a positive consent is not considered an administrative Act and it is unclear why such a requirement has been adopted in the ECA.

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Amendments to the Electronic Communications Act, State Gazette, issue 17 of 6 March 2009

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