[HU] Amendment to the Broadcasting Act Found Unconstitutional

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On 30 June 2009 the Hungarian Constitutional Court declared a recent amendment to Act I of 1996 on Radio and Television Broadcasting (Broadcasting Act) incompatible with the Constitution.

The amendment was adopted by the Parliament on 8 December 2008. The new rules would have made possible the renewal of broadcasting licences without tendering in the case of analogue programme services, given that the broadcaster concerned undertakes obligations to contribute to the process of the digital switchover. The term of such renewal was determined to be a maximum of five years, but it may not exceed the date of analogue switch-off (as regards TV broadcasting on 31 December 2011, as regards radio, conditionally, on 31 December 2014). According to the amendment the decision on the renewal shall be made by the *Országos Rádió és Televízió Testület* (National Radio and Television Commission - ORTT). The adopted amendment was of crucial importance for the two national commercial radio broadcasters, Danubius Rádió Műsorszolgáltató Zrt. and Sláger Rádió Zrt., whose broadcasting licences will expire in November this year.

The adopted amendment was not signed by the President, who decided to invite the Constitutional Court to exercise its power of constitutional control prior to its promulgation. In his initiative the President noted that, if adopted, the rules would lead to the exclusion of new entrants from the radio market. This discrimination contradicts the rights to equality of freedom of expression and of freedom of competition on the market.

In its decision the Court shared the President’s constitutional concerns and expressed largely similar arguments. It recalled that in the case of radio there is no evident and pressing need for digitalisation from the side of the consumers. As a consequence analogue distribution is expected to remain the main platform for radio programme services. Against this background the adopted regulation would indeed pose unreasonable obstacles for new market entrants.

The Constitutional Court also established that the amendment actually does not formulate a general rule, but addresses a particular question (i.e., the utilisation of the two national terrestrial commercial analogue radio networks).

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It is also worth noting that the ORTT, in parallel with the procedure of the Constitutional Court, has already begun the tendering procedure relating to the rights to programme services via the two national commercial radio networks.

71/2009. (VI. 30.) AB határozat - Közzétéve a Magyar Közlöny 2009. évi 91. számában - AB közlöny: XVIII. évf. 6. szám

http://isz.mkab.hu/netacgi/ahawkere2009.pl?s1=71/2009&s2=&s3=&s4=&s5=&s6=&s7=&s8=&s9=&s10=&s11=Dr&r=1&SECT5=AHAWKERE&op9=and&op10=and&d=AHAW&op8=and&l=20&u=/netahtml/ahawuj/ahawkere.htm&p=1&op11=and&op7=and&f=G

Decision of the Constitutional Court 71/2009. (VI.30.) AB

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