[HU] Tender Process for the Two National Analogue Radio Networks

IRIS 2010-4:1/29

Mark Lengyel
Attorney at law

In October 2009 *Országos Rádió és Televízió Testület* (National Radio and Television Commission - ORTT) completed the tender process granting the right to broadcast two separate radio programme services on the two existing national analogue radio networks for the following seven years. In the previous twelve years these networks were used by the commercial radio broadcasters Danubius Rádió Műsorszolgáltató Zrt. (connected to the EBRD via the Accession Mezzanine Capital) and Sláger Rádió Zrt. (a subsidiary of the US-based Emmis Corporation). Their broadcasting licences expired in November 2009.

Earlier that year the parliament adopted an act that granted the opportunity for these commercial radio companies to have their licences extended. However, the Constitutional Court later found that this legislative solution posed unreasonable obstacles for new market entrants and therefore the adopted act was not compatible with the constitutional principles of freedom of expression and freedom of competition on the market (see IRIS 2009-8: 15). In line with the decision of the Constitutional Court the ORTT began the tender process (see IRIS 2009-7: Extra). This was a mixture of an auction and a beauty contest: the authority defined a number of content requirements but at the same time it also put great emphasis on the broadcasting fee to be proposed by the bidders.

By the end of September 2009 the ORTT had received eight bids from six bidders. Two of the bids (both submitted by Zene Rádió Zrt.) were found financially not viable by the authority and therefore excluded from further evaluation. As a consequence the ORTT chose the winning bids from the circle of five applicants (including the “incumbent” operators Danubius Rádió Műsorszolgáltató Zrt. and Sláger Rádió Zrt.) on the basis of six bids. As a result of the evaluation the ORTT declared Advenio Zrt. and FM1 Konzorcium winners of the tenders. This decision means that new entrants to the national market will appear on both of the two national networks available for commercial radio broadcasting.

The decision immediately became subject of fierce public debate. One of the critics of the decision was the chairman of the ORTT, who announced his resignation because of it shortly afterwards. In his concurring opinion, as attached to the decision, he expressed his view that Advenio Zrt. had omitted to provide a necessary statement related to its ownership structure. He also emphasised that

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both of the winners provided unfeasible business plans based on unrealistic expectations and, as a consequence, the ORTT should have excluded the two winning bids in a similar fashion to the ones submitted by Zene Rádió Zrt. The winning Advenio Zrt. and FM1 began to provide their programme services on 18 November 2009. Meanwhile the losing applicants (Danubius Rádió Zrt. and Sláger Rádió Zrt.) challenged the decision of the ORTT in the Budapest Metropolitan Court (*Fővárosi Bíróság*). They requested the court to declare the newly concluded broadcasting contracts null and void and to restore the status quo prior to the decision.

Shortly afterwards the Metropolitan Court issued its judgments in the respective cases. In its decisions, delivered on 5 and 19 January 2010, the court partially upheld the arguments of the losing applicants, and declared that, on the bases of the Broadcasting Act (Act I. of 1996 on radio and television broadcasting) and the calls for tender, the bids of the two winning companies had been inadmissible, therefore the two corresponding broadcasting contracts could not have been concluded.

However, the Metropolitan Court also declared that the broadcasting contracts, providing the legal bases of the operation of the two new radios, are still valid and applicable. It also refused to restore the status quo prior to the tenders.

The ORTT announced that it launched appeals against the unfavourable parts of the judgments, so the cases will continue before the Metropolitan Court of Appeal (*Fővárosi Ítélőtábla*).

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