[BG] European Commission Commences Infringement Procedure against Bulgaria

IRIS 2011-7:1/11

Rayna Nikolova
New Bulgarian University

The European Commission has launched an infringement procedure against Bulgaria over irregularities in the selection procedures for the companies to build the platforms for digital distribution of radio and television programmes (multiplexes, see IRIS 2011-4/12). Reportedly, in the Commission's view, the selection method includes some discriminatory conditions, such as the requirement that bidders shall not perform television activities abroad. Applying the latter condition, the Austrian company ORS was disqualified from the selection process.

In 2009 the Bulgarian Constitutional Court decided on the constitutionality of some provisions of the Electronic Communications Act (ECA) and the Radio and Television Act (RtvA): the claimants had alleged a non-compliance of Art. 47a, Art. 48, para 3 and 4 ECA and Art. 116i RTvA with Art. 19, para 1, 2 and 3 of the Constitution. The latter deals with the free economic initiative and equal legal conditions for businesses with the aim to prevent abuse of monopoly and unfair competition and to protect consumers. It also provides for the protection of investments and of the businesses of Bulgarian and foreign individuals and legal entities. The Court ruled that such non-discrimination conditions are not absolute and therefore do not preclude neither the existence of restrictions nor the possibility to set requirements on economic activities by law and hence they do not infringe free economic initiative (see IRIS 2009-8/8).

The amendments to the ECA and the RTvA aim at putting in place a new legal framework on digital terrestrial broadcasting that will ensure the successful transition from analogue to digital broadcasting. The claimants think the provision of Art. 47a ECA curtails the constitutional right of individuals and legal entities in the country to free economic initiative. In their view investments are not protected nor are the businesses of Bulgarian/foreign individuals and legal entities. Against this it is argued that although radio/TV activities comprise the production of radio/TV programmes and having the productions broadcast by terrestrial dissemination (analogue and digital) in a way to reach a unlimited audience, there would be no need for the productions of a radio/TV operator to be broadcast by the operator's own network. The limitation of Art. 47a ECA on the licenses to radio/TV operators and related parties to use radio frequency spectrum and the ban of Art. 48, para 3 ECA on a multiplex operator and related parties to

© European Audiovisual Observatory (Council of Europe) 2026

be radio/TV operators and to produce radio/TV programmes were the lawmakers' efficient tools to enforce the principles of free economic initiative, prevent unfair competition and to protect the rights of Bulgarian and/or foreign individuals and legal entities. It is to protect public interest that a differentiation is made in Art. 47a and Art. 48, para 3 and 4 ECA, that a multiplex operator and a radio/TV operator shall be separate persons. The placement of the two types of activities into one entity would lead to a monopolistic position and thus infringe consumer rights.

Another violation mentioned by the Commission is that the Bulgarian State was not entitled to reserve the Sofia air only for the Bulgarian National Television since the latter had no regional programming license for this very territory at that time. By doing so, the private broadcaster Evropa was not able to participate in the selection procedure.

The third Commission's remark refers to the requirement that there are some mandatory "must carry" programmes to be broadcast by the multiplexes. In 2009 the mandatory status was granted to bTV and Nova TV (see IRIS 2009-4/7) and in 2010-2011 such a status was given to bTV Action, TV7, MSAT, Darik and BBT. According to the European rules such an obligation can be applied only in exceptional cases.

Now, Bulgaria has two months to reply to the Commission's remarks. The tender for four out of the total six multiplexes, including the public multiplex, which would broadcast the programmes of the Bulgarian National Radio and the Bulgarian National Television, was won by the Latvian company Hannu Pro. Two of the frequencies have been granted to Towercom, which was subsequently acquired by NURTS Bulgaria - a joint-venture between the Bulgarian Telecommunications Company EAD and the offshore Cypriot company Mancelord Limited (see IRIS 2011-4/12) represented by the majority shareholder of the Corporate Commercial Bank.

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026