# [SK] “Media Partnership” as Remuneration for Advertising

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In recent months the Council for Broadcasting and Retransmission of the Slovak Republic (Council) has received complaints about an excessive amount of advertising within certain programmes of the major commercial TV broadcaster in Slovakia.

In the case at hand an examination carried out by the monitoring department of the Council revealed two advertising breaks that together lasted exactly 12 minutes within the examined hour. However, another announcement of 20 seconds about a forthcoming musical at the state theatre was broadcast within this period.

Although placed outside the commercial break among other trailers this announcement contained short extracts of the musical along with phrases such as “full of fun and emotion”, “musical that was long waited for” etc. Due to the promotional nature of this announcement the Council started a legal investigation in view of a possible violation of the legal maximum of 12 minutes of advertising during one hour of broadcasting.

In its response the broadcaster claimed that the announcement merely informed the audience about the forthcoming musical. The state-owned theatre cannot be treated as a regular commercial enterprise and the promotion therefore cannot be qualified as advertising. The purpose of this announcement was solely to promote Slovak culture, carried out free of charge. Hence, it should be considered as “a message broadcast in the public interest”.

On 21 February 2012, the Council disagreed and imposed a fine of EUR 3,319. It stated that the announcement fulfilled the definition of advertising and thus had to be taken into account for the total time of advertising. Besides merely informing about the premiere, the announcement was worded clearly in a promotional manner. Furthermore, in cases where it is clear that the purpose of the announcement is to promote the supply of goods or services there is no other logical reason for a broadcaster to air such announcements than to gain profit of some kind.

The Council also stated that even though the theatre is state-owned the revenues of its plays form a considerable part of its income. In this context, the

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remuneration for broadcasting the advertising does not necessarily have to be provided in cash payment. Similar consideration also includes any form of bartering deals or partnerships. These may never appear in the account books of the broadcaster and thus are untraceable but find expression in any kind of “media partnership” whatsoever.

The broadcaster repeated its argument in its Supreme Court appeal. The Court, however, fully upheld the Council’s decision and its conclusions in its ruling of 11 September 2012 and followed the opinion that the remuneration for advertising is not limited to cash payment. Hence, the Court also confirmed that “media partnership” fully qualifies as a form of “similar consideration” for TV advertising.

*Council’s decision of 21 February 2012*

*Supreme Court’s decision of 11 September 2012*

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