European Commission: Bulgaria Referred to Court over Assignment of Broadcasting Authorisations

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Manon Oostveen
Institute for Information Law (IViR), University of Amsterdam

On 24 January 2013 the European Commission (Commission) issued a press release stating that it would refer Bulgaria to the Court of Justice of the European Union (CJEU) over the assignment of digital terrestrial broadcasting authorisations. Bulgaria stands accused of hampering competition in the future digital terrestrial broadcasting infrastructure market.

Bulgaria is preparing a switchover from analogue to digital terrestrial television to create more radio spectrum for new wireless communications services as from 1 September 2013, to comply with the EU's policy objectives under the Digital Agenda. In 2009 Bulgaria held two contest procedures to assign five spectrum lots for digital terrestrial television. Applicants had to meet certain criteria: amongst others, the criterion of having no link with content providers (TV channels operators) or broadcasting network providers (see IRIS 2009-4/7). The Commission considers that the contest procedures and the applicable criteria unjustifiably limited the number of companies that can enter the Bulgarian digital terrestrial television infrastructure market (see IRIS 2011-4/12).

In May 2011 the Commission began infringement proceedings against Bulgaria (see IRIS 2011-7/11). The Commission concluded that Bulgaria did not comply with the requirements of the Competition Directive (Directive 2002/77/EC) by limiting the number of companies that could potentially enter the market for digital terrestrial broadcasting. The objective of the Competition Directive is to enhance competition in the electronic communications networks sector by preventing member states from excluding undertakings from providing such services or networks without proper justification. Two other Directives regarding the allocation of extra spectrum capacity, the Authorisation Directive (Directive 2002/20/EC) and the Framework Directive (Directive 2002/21/EC) were also adjudged to have been breached by Bulgaria due to the restrictive criteria that applicants in the competition for the spectrum lots for digital terrestrial television had to meet.

As a response to the complaints of the Commission the Bulgarian Government announced a new tender procedure for the allocation of extra spectrum capacity. Yet, regardless of the announced tender, the Commission has decided to take the final step in the EU infringement proceedings and refer Bulgaria to the CJEU, the reason for this being the fact that the spectrum allocated after the tender will only

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be available after the analogue switch-off, which is due on 1 September 2013. The Commission foresees that current TV channels will conclude agreements with broadcast network operators to be able to broadcast on the digital terrestrial broadcasting infrastructure when the switchover takes place, leading to the absence of operators willing to enter the digital terrestrial broadcasting infrastructure market after the switchover planned later this year. Bulgaria is not the only member state under scrutiny in the area of the digital broadcasting spectrum. The Commission has also sent a letter of formal notice to Italy (see IRIS 2006-8/5) and a “reasoned opinion” to France (in September 2011).

Press release by the European Commission of 24 January 2013

http://europa.eu/rapid/press-release_IP-13-46_en.htm

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