[LU] ALIA rejects plans for new radio station

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On 27 February 2014, the Autorité luxembourgeoise indépendante de l'audiovisuel (Independent Audiovisual Authority of Luxembourg - ALIA), which was established in August 2013 (see IRIS 2013-10/32), issued its first major substantive decision in a case concerning a radio service. ALIA rejected the application of the Luxembourg radio service provider S.à.r.l. (Société de Radiodiffusion Luxembourgeoise) concerning several modifications of the cahier des charges (terms of reference) attached to the licence for its radio programme "DNR". In its decision, ALIA evaluated the Luxembourg media market by commenting on pluralism and diversity of media.

The applicant company wished to use the frequency it had held so far for its service "DNR" for a new radio service that would target the French-speaking population in Luxembourg, especially the Belgian and French cross-border commuters. To this effect, a change of the programme schedule was foreseen that would have resulted in broadcasts predominantly in the French language (compared to Luxembourgish as it was for "DNR"). Additionally, the name of the service was to be changed to "RTL 2", as the previous almost 100% ownership by the applicant company would in future be shared in a joint venture with the company S.A. CLT-UFA, which already offers a programme entitled "RTL Radio Lëtzbuerg". For this purpose not only the composition of the shareholders but also the governing bodies of the service provider were to be changed as indicated to ALIA.

ALIA considered that the suggested changes to the existing licence would decisively impact the current market situation as it has resulted from the allocation of frequencies in 1992 and subsequent amendments to the frequency assignments. More importantly, ALIA declared the modifications to be incompatible with the fundamental principles as stipulated in the Loi du 27 juillet 1991 sur les medias électroniques (the Act on Electronic Media, as last amended in August 2013 and rectified in November 2013). In this respect, ALIA referred to the objective of media pluralism as set out in Art. 2(2) of the Act on Electronic Media. It found that the strong position of the two future shareholders of the applicant, namely S.A. Saint-Paul Luxembourg on the Luxembourg press and S.A. CLT-UFA on the radio market would be further enhanced. Each of them already reaches almost 40 percent of the population with their most popular title or programme. This dominant position would be significantly increased, if CLT-UFA

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for instance, controlled three of the four main radio services in Luxembourg (RTL Radio Lëtzbuerg, Eldoradio and RTL 2) and there would be potential for cross-media cooperation between the two companies.

The refusal was also motivated by the fact that the frequencies granted to DNR were reserved for Luxembourgish radio services directed at a resident public. The Act on Electronic Media generally differentiates between services directed at a local public and those at an international audience. The new service RTL 2 would mainly be targeted at French and Belgian workers regularly travelling to Luxembourg and would therefore, according to ALIA, constitute a programme for the Greater Region and not only for residents. In addition, ALIA noted that the new programme schedule would devote less time to broadcasting information and current affairs programmes. The amount of information programmes had been an important determining factor in the granting of the initial licence in 1992.

Finally, ALIA discussed the change in language from Luxembourgish to French envisaged by the applicant. The use of the Luxembourgish language was a key element for the granting of the original licence. Throughout subsequent amendments of the licence, the language requirement had always been maintained. The applicant proposed to broadcast programmes in the Luxembourgish language between midnight and 6 o'clock in the morning. However, ALIA considered that this would not satisfy the language requirement for a generalist radio service broadcast in Luxembourgish. ALIA stressed that it did not per se oppose the creation of a radio service transmitting its programmes entirely in French and acknowledged a significant change in the composition of the audience in Luxembourg listening to radio with a much larger number of French commuters. Such a new service would however need to be granted based on a call for tender to allow competitors to apply, as well.

By refusing all four modifications (change of ownership, governing bodies, programme content, name), ALIA clarified that the substitution of one radio service for another with a fundamentally new concept cannot take place in the form of an application for modifications to the terms of reference, but instead requires a competitive process involving all stakeholders. Even the commitments the applicant offered e.g. concerning the discontinuation of the use of some frequencies, were regarded as irrelevant by ALIA in this instance.

The applicant refrained from contesting the decision by an action for annulment before the Tribunal administratif (Administrative Tribunal), so the decision of ALIA became final in June. Also, as the applicant had announced previously, the service "DNR" has in the meantime been terminated and the frequencies used so far are mute.

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Décision n° 4/2014 du 27 février 2014 du Conseil d'administration de l'Autorité luxembourgeoise indépendante de l'audiovisuel concernant une demande présentée par la s.à.r.l. Société de Radiodiffusion Luxembourgeoise

http://www.alia.lu/holding/ALIA-decision-DNR-RTL2-du-27.2.2014.pdf

Decision of 27 February 2014 of the Administrative Council of the Independent Audiovisual Authority of Luxembourg concerning a request presented by the Société de Radiodiffusion Luxembourgeoise

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