[BG] Supreme Administrative Court sets aside Competition Commission's decision

IRIS 2015-1:1/43

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The Supreme Administrative Court of the Republic of Bulgaria has set aside the decision of the Competition Commission (Решение № 898 от 10.07.2014 г.) and the decision of the Director-General of Bulgarian National Television (BNT) in favour of issuing a public invitation to tender for the establishment of BNT's audience share (Решение № ЗОП-01-10/20.05.2014 г.).

After its Director-General had taken his decision, BNT issued the public invitation to tender for the following: "Establishment of audience shares and monitoring of television advertising, as well as the initialisation and maintenance of data processing software". It was only in the full text, in paragraph 3, that the scope of the invitation to tender was expanded and additional requirements to be met by the participants were laid down. For example, not only the audience shares but also the radio and print market usage data were to be ascertained.

Mediaresearch Bulgaria EAD ("Mediaresearch"), a part of the Nielsen group, lodged a complaint with the Competition Commission concerning this public invitation to tender as it regarded its conditions as discriminatory. The Commission dismissed the complaint as unfounded (see IRIS 2014-9:1/11).

Mediaresearch successfully appealed against this decision of the Commission to the Supreme Administrative Court, which considered the Commission's conclusions unlawful and ill-founded. Although it confirmed that it is basically within BNT's discretion to decide what actual services are to be put out to tender and what conditions and requirements are to be met by tenderers, this discretion is, according to the reasons given for the decision, not unlimited but linked to compliance with certain legal principles. According to the Supreme Administrative Court, BNT gave no reasons for expanding the scope of the invitation to tender. It was not until the proceedings before the Competition Commission that it explained why the additional data were needed. BNT had, the court said, breached section 25(5) of the Public Tenders Act as "requirements were imposed that were not adjusted to take account of the subject of the invitation to tender, thus unjustifiably limiting the possible number of participants in the tendering procedure".

Furthermore, BNT had also failed to comply with section 1 of the Public Tenders Act, which, as the main purpose of the Act, laid down the requirement to ensure

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the efficient use of public funds. Giving these reasons for its judgment, the court set aside the two decisions and ordered BNT to initiate a new procedure, taking these reasons into consideration.

РЕШЕНИЕ № 14186 на Върховния административен съд на Република България София, 27.11.2014

http://www.sac.government.bg/court22.nsf/d038edcf49190344c2256b7600367606/f22ffdd564a3304ac2257d93003543b5?OpenDocument

Judgment no. 14186 of the Supreme Administrative Court of the Republic of Bulgaria of 27 November 2014

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