[BG] Changes in the Media Law on individual use of spectrum

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On 27 December 2016, Article 116j of the Radio and Television Act (RTA) was revoked. This amendment to the RTA was promulgated in issue 103 of the State Gazette. Article 116j was only introduced into the RTA in 2009; however, in 2015, the European Court of Justice decided that it violated European Union law. Therefore, in December 2016, the Council of Ministers introduced a bill which revoked Article 116j RTA.

Article 116j RTA:

(1) An undertaking, whereto the Communications Regulation Commission has granted an authorization for use of an individually assigned scarce resource in the radio spectrum, for provision of electronic communications over networks for digital terrestrial broadcasting, may not be a radio and television broadcaster;

(2) The restriction referred to in Paragraph (1) shall furthermore apply in respect of any parties related, within the meaning given by the Commerce Act, to the undertaking referred to in Paragraph (1).

The introduction of Article 116j RTA was very controversial. For example, the Austrian Broadcasting Corporation (ORF) wanted to participate in the digitalization in Bulgaria through its daughter company ORS (Austrian Broadcasting Services) and therefore planned to apply for a scarce resource in the radio spectrum. However, Article 116j RTA was introduced and restricted ORF’s possibility to be granted an authorization for the use of an individually assigned scarce resource in the radio spectrum.

As a result, the Parliamentary opposition filed a complaint with the Constitutional Court against the provision, requesting that this provision be declared unconstitutional due to its restrictions on free competition. On 4 June 2009, with decision no 3, the Constitutional Court dismissed the claim; the Court argued that if a radio and TV operator received permission to use an individually identified resource in the radio-frequency spectrum to send e-messages through networks for land digital broadcasting, it would result in restrictions on competition and be contrary to the interests of users (see IRIS 2009-8:8/8). The merger of a multiplex operator with a radio and TV operator and the establishment of a monopolistic position for this enterprise, which combines two functions, would result in a

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violation of the specific requirements. Similar deviations would have negative effects on the competition on the media market.

On 23 April 2015, the European Court of Justice came to a decision in the case C-376/13 (see IRIS 2015-6:1/2). The Court decided that by introducing Article 116j RTA, the Republic of Bulgaria had violated European Union telecommunications law. Following the Court's decision, the Council of Ministers revoked Article 116j RTA.

Закон за изменение на Закона за радиото и телевизията

http://lex.bg/bg/laws/ldoc/2134447616.

Act for Amendments of the Radio and Television Act

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