[GR] Council of State decision on digital television licences

IRIS 2017-3:1/19

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The plenary session of the Council of State, Greece's supreme administrative court, published on 13 January 2017 its decision no. 95/2017 on the application by Antenna TV for the nullification of Ministerial Decision No. 4297/1.3.2016 of the Minister of the State by which the Minister transferred to the Secretariat General of Information and Communication the authority to licence four HD, nationwide, free to air, DTT providers. The announcement of the outcome of the internal deliberation of the court on 26 October 2016 had already resulted in the interruption of the licensing procedure, which had reached the point of the allocation of the four licences (see IRIS 2016-9/20).

According to the majority of the Plenary, the licensing procedure was flawed from the outset because it sidestepped the competent (under the Constitution and the law) independent authority - that is, the National Council for Radio and Television (ESR). The court confirmed well-established jurisprudence, adjudicating that the meaning of paragraph 2 of Article 15 of the Constitution (which stipulates that radio and television are under the direct supervision of the State and that the ESR is the competent authority for the supervision and imposition of administrative sanctions on radio and television) is that the Council has exclusive authority to licence such providers. According to the reasoning of the decision, the Government, when regulating the operation and licensing of radio and television service providers, must cooperate with the ESR and other competent (in relation to technical issues) authorities. On those grounds, the Council of State annulled the ministerial decision conferring the power of organising the licensing procedure on the Secretariat of Information and Communications.

The announcement of the Council of the State's ruling sparked a tense debate between Government and the Opposition regarding the next steps that should be taken. Finally, the Parliament passed, on 3 November 2016 two amendments to Law 4339/2015 by which the ESR was given the power to give its opinion regarding (a) the number and the kind of free-to-air DTT licenses to be allocated, and (b) the starting auction price. The opinion of the Authority is binding on the Minister who, in case of disagreement, can only abstain from taking a decision.

Changes in law facilitated the members of the Conference of the Presidents, a special Parliamentary body authorised to elect the members of the ESR, to reach

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an agreement and elect new members of the Authority after seven unsuccessful attempts (see IRIS 2016-5/20). In its session of 11 November 2016, this parliamentary body appointed (after a proposal by the opposition party Nea Dimokratia) as the new President of the ESR Mr Athanasios Koutromanos, former President of Arios Pagos (Greece's high civil court), together with seven other members.

The ESR has recently begun a public consultation with interested parties before determining its final decision on the number and the kind of licences to be granted. However, at the same time, applications for the annulment of other Ministerial Decisions that have a direct impact on the content of the upcoming tender (such as the one determining the number and the kind of employees in each licensed company) are still pending before the Council of the State.

ΑΡΙΘΜΟΣ 95/2017 - ΤΟ ΣΥΜΒΟΥΛΙΟ ΤΗΣ ΕΠΙΚΡΑΤΕΙΑΣ - ΟΛΟΜΕΛΕΙΑ

http://www.nomotelia.gr/photos/File/WWW.95.17.htm

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