

Greek TV stations licensing Odyssey

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It is undeniable that the relation of the Greek state with the television stations has always been turbulent, and the legal status regarding these stations has always been uncertain.

Law 1866/1989 regulated for the first time the grant of a license for the establishment and operation of non-state stations, but without a tender procedure. This Law also established the National Radio and Television Council (NRTC) which was assigned responsibilities such as the supervision of television stations. Thus, the first licenses were granted, but without signing the legally required agreement for the completion of the license and as a result the television stations have never operated with total legitimacy. In the following years new laws provided that for the issuance of licenses of private television stations an invitation to tender is necessary and that the existing licenses would still apply until the tender procedure. Laws followed that set deadlines for the issuance of the invitation to tender and for the grant of licenses, which were constantly extended by subsequent laws, with the latest date set for the grant of licenses being Dec. 31, 2015.

In view of the imminent approach of the last deadline for the completion of the process for granting television licenses and of the country's commitment to take structural budgetary measures with Law 4335/2015, including publishing an invitation to public international tender for the acquisition of television licenses and the payment of fees for the use of the relevant frequencies, which have been repeatedly declared by the Supreme Administrative Court as a precious public good, Law 4339/2015 was published, which would come into force on Oct. 29, 2015. It was regulated that the licensing of content providers of free-to-air terrestrial digital broadcasting would be allocated after a tender process, through an auction, the invitation for which would be issued by the NRTC. Furthermore, after the reasoned opinion of the NRTC and public consultation the following would be determined: a) the number of licenses per category, by decision of the competent Minister to whom the tasks of General Secretariat of Information and Communication were assigned, and b) the starting price of the auctioned licenses, by joint ministerial decision. In addition, the law set out the positive and negative conditions for the participation of candidates in the licensing process, such as their legal form, the minimum paid-up share capital, the incompatible properties, the manner of acquisition of the financial resources of the candidates and their shareholders, and even the technological equipment, the building infrastructure and the minimum number of employees, requirements which caused several debates in the legal and political world.

Even greater tension however, was caused by the amendments of Law 4339/2015 in February 2016, as, because of lack of political consensus to form the NRTC (note that according to the Constitution an increased majority and bipartisan consensus is required to appoint the members of the NRTC) and in order for the licensing process to be rapidly completed, the role of the NRTC was totally sidelined and super-competences were assigned to the, as above mentioned, competent Minister. In particular, the amending provisions set out that, at the initial application of the law, the number of tendered licenses would be determined by law and thus finally 4 licenses were set for general content high definition programs, following a much discussed study that was challenged by many, as the number 4 was described as particularly small for today's digital age. What is more, the amendments provided that the invitation to tender would be issued by the competent Minister, who would grant the licenses and take all the individual actions, also co-deciding with the Minister of Finance the starting price, which was set at 3,000,000 Euros.

On May 20, 2016 the invitation to tender was published, in the end of August 2016 the tender procedure took place in conditions of high tension and the 4 licenses were auctioned for a total price of 246 million Euros, despite the cancellation requests of television stations that were pending at the Supreme Administrative Court. Finally, the very recent Decision no. 95/2017 of the Plenary session of the Supreme Administrative Court, although it recognized, as did previous decisions, the need for licensing of stations, because the indefinite tolerance of the existing situation is contrary to the Constitution, it canceled the Ministerial Decision regarding the transfer of competence to the general secretariat of information and found that the collaboration of the NRTC in the exercise of competences for the determination of the terms of operation and licensing of television stations is mandatory. Also, in case a tender system is selected, it was ruled that this procedure would have to be conducted exclusively by the NRTC.

Today we find ourselves in the following situation: The NRTC was finally formed in November 2016, and will undertake the tender procedure, but has not yet taken steps to conduct it. Also, in compliance with the decision of the Plenary session of the Supreme Administrative Court, a procedure was established for the refund of the first installment of 85 million Euros, which had been paid by the successful bidders.

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