

**REPORT**  
**THE MEDIA COUNCIL'S TENDER PROCEDURES FOR BROADCASTING**  
**FREQUENCIES**

Executive Summary in English

The Standards Media Monitor's report on the Media Council's (*MT*) – the Hungarian Media Authority – tender procedures for frequencies was completed in February, 2012. The object of the analysis was to describe in utmost detail the fate of the 35 local radio frequencies the tendering of which had been initiated by the former media authority, the National Radio and Television Commission (ORTT), but their evaluation was completed by the Media Council.

**I. SUMMARY STATEMENTS DERIVING FROM THE EVALUATION OF TENDERS**

In the completed process, a few preferred applicants were awarded nearly half of the announced frequencies.

Although local content was a preeminent evaluation criterion during the evaluation process, certain decisions by the Media Council overruled the previously represented media policy considerations. The purity of the tendering process, the equality of treatment and of competitive conditions are threatened when a contract is amended within a short period and, as a result, the commitment that initially made it a winning tender can no longer be fulfilled.

The three applicants who were successful in the processes endeavor national coverage and place life of faith in the center of their broadcast; the underlying media political aspects were omitted from the justification of the Media Council's decisions.

The situation has worsened for those participants who endeavor national coverage and operate on the basis of former market conditions. They were unable to win tenders where there was a competition. There was only one music radio (*Rádió1*) winning two tenders, but only on those frequencies where it was the only bidder. The marginalization of former market participants also means less economical danger from the major national radio stations (Class Fm, Neo Fm), and other broadcasters on the radio market with different profiles and ever-expanding coverage areas become the leading participants.

Due to deficiencies in the justification of decisions and, primarily, deficiencies in the publicity of decisions made during such processes, the requirement of transparent and controllable decision-making was not fully satisfied.

The voting on the final results was unanimous in each case, which indicates that the Media Council has established those media political objectives that were realized in the decisions as a uniform approach.

## **II. NARROWING FREQUENCY TENDERING ACTIVITIES, INCREASING VALUE OF LOCAL RADIO MARKETS**

Pursuant to the media regulations in force, the surface analogue radio market remains the only area where entering the market continues to be carried out through tendering, in all other cases the media service right can be granted by way of registration. The tendering of television stations has essentially ceased, due to transition to digital broadcasting<sup>1</sup>, thus the media authority's tendering activities are limited to the radio market. This is the only market where the authority, within the framework of market entry processes, is able to enforce media political objectives and actively influence media supply and the scope of radio market participants. Moreover, the tenders will only affect the local and regional markets for a short time, since the media service contracts with the two radio stations (Class Fm, Neo Fm) obtaining national broadcasting rights in 2009 will expire in 2016.

This scope of duties, however, cannot be downplayed, for local radios can play a significant part in the activities of the local public. It makes a difference what programs the radio stations have to offer, to what extent they are involved in the shaping of the local public life, which local communities they address, how they contribute to the diversity of the local media market and to the provision of information. Consequently, the decisions of the media authority have a major role in the development of local publicity; its definition of the tender criteria, as well as the evaluation and the selection of the winner substantially determine the availability of local radios.

Furthermore, the local services are not the only ones who can use these frequencies. The organization of local frequencies into greater units, so called networks, spans beyond the local public, laying the grounds for regional radio stations as well, which are economically more viable, have greater coverage and better ability to form opinions. Additionally, those radios that endeavor national coverage will also appear, the ones that are not (were not) able to obtain national broadcasting rights through tendering but essentially might be able to reach a national audience by way of combining local licenses. The tendencies and opportunities described herein can also determine the underlying media political objectives.

## **III. 35 FREQUENCIES**

Out of the announced 35 frequencies, 10 licenses were announced on the authority's own initiative and the other 25 were so-called "found" frequencies, the applicants themselves had the technical parameters engineered and the calls for tender were also initiated by the applicants themselves. Pursuant to prior regulations, the media authority was required to announce the frequency that the applicant had engineered. The initial bidder had the right of

---

<sup>1</sup> With the date for final transition to digital having been pushed back to 2014, it is still possible, at least in theory, to announce tenders on analogue television licenses; however, this is barely realistic from the market viewpoint.

pre-emption in the tender process; provided that they offered the highest fee, they were to be awarded the frequency.

43% of the frequencies were announced as exclusive public service (not for profit), 17% as commercial and public license, and 40% as commercial service. In the case of frequencies announced as commercial service, since the public radios do not pay fees, the right of pre-emption is not included in the process, and the authority selects the winner primarily based on the features of the program contents.

The frequencies can be announced not only as stand-alone licenses but also for coverage area expansion under an existing license or for the operation of a network<sup>2</sup>.

#### **IV. MEDIA POLITICAL CONSIDERATIONS APPARENT FROM THE EVALUATION OF TENDERS**

##### **1. Preference given to independent local content during the evaluation process**

The majority of the winning bids were awarded frequency for independent radio broadcasting rights. According to the decisions, the Media Council in each case gave lower scores to those applying for network operations; in the subjective part of the evaluation process (program plan) the non-network bids were given higher scores.

In the justifications of tenders, the quantity of local content clearly appeared to have been a primary aspect; that is, how well the program structure of the future radio would serve the needs of the local communities. In each of the public license tenders – where the scores decided among several valid bids –, the winners were awarded the frequency because they committed to a high-ratio local content.

##### **2. Three preferred participants**

The evaluation of results clearly demonstrates that there were a few preferred participants in the tender process. A total of 109 tender proposals were received for the 35 frequencies. Three applicants won 43% of the frequencies: *Mária* Radio 7, *Lánchíd* Radio 5, and *Európa* Radio 3 frequencies.

One of the most important findings of the evaluation of tenders is that the three preferred bidders are not true market participants, in the economic sense. Although they do get their piece of the advertising pie –to a lesser extent, at least in theory–, they are not required to pay the broadcasting fee that the market participants pay. Moreover, pursuant to the law and in practice as well, the MTVA (Hungary's public service media fund) continues to provide financial support to the public service and the service providers' day-to-day operation.

---

<sup>2</sup> Coverage area expansion: the bid on the frequency is aimed at expanding the coverage area under the existing license. No new rights derive from winning; the original contract pertaining to the existing rights is amended. Network operations: the new frequency operates at least four hours a day as independent broadcast, offering individual content, and in the remaining airtime the network service provider's program is played on the frequency.

## 2.1. Lánchíd Radio

*Lánchíd* Radio has been available to listeners since 2006 on the Budapest 100.3 frequency; it is owned by Infocenter Zrt., which can be tied to the political right-wing (Fidesz); with national weekly *Heti válasz* and Class FM national commercial radio also under its umbrella.

At the start of the tendering process, *Lánchíd* Radio possessed Budapest regional radio broadcast right, and the obvious intent to expand is apparent from the fact that they bid on one third of the announced licenses. Where ever they bid, they won. Where they did not win, they did not lose against the other candidates but either withdrew their proposal or the Media Council did not consider their bid because in the event of winning they would have exceeded the ownership limitations set forth by the rules under the media act.

According to the justification of the decision, the radio was awarded the three frequencies based on its intent to provide local content, as part of the local community, as per its undertaking – where this can be determined from the decisions – in 50% of the weekly airtime. The Media Council awarded the submitted program-structure with the maximum score in each case. The texts of the arguments in three out of the four decisions are identical.

There was no competition for the other two acquired frequencies, because the other applicants were either disqualified for formal errors or they withdrew their proposals, thus the scoring and content evaluation were omitted.

What makes the tendering process truly interesting is that the Media Council, a few months after selecting *Lánchíd* Radio as the winner, approved the amendment of the contracts pertaining to the four newly-acquired frequencies. In each case, these amendments resulted in the expansion of the Budapest broadcast coverage area and, consequently, what is broadcast on the new frequencies is not the local content committed in the proposals but the Budapest central program. Whether the local commitment is fulfilled, even in part, cannot be determined from the available information. The program of *Lánchíd* Radio with the expanded frequencies essentially covers most of Western Hungary; moreover, *Lánchíd* Radio reaches this region with one single license. This clearly serves the circumvention of regulations in force pertaining to the restriction of media concentration, because it allows for obtaining further licenses due to those merged into one coverage area.

Formal and contextual concerns also arise in regards to decisions that allow the expansion of the coverage area, since the Media Council – according to the information available on the home page – made its decision not in the form of an administrative decision. Therefore, it is difficult to perform the content evaluation of the decisions, since the authority did not disclose the justification of the decisions.

In addition to all of the above, the radio operates as a public service provider, without paying media service fee. They entered the market with the expressed political objective to bring local content to the local market; however, by amending the contract, this objective is obviously not achieved.

## **2.2. *Mária* Radio**

*Mária* Radio has been operating on the radio services market for several years; its operating base is the Budapest 94.2 MHz frequency, with ten more frequencies connected to it through coverage area expansion. The license is owned by *FM-4 Kft.* Additionally, also with religious topics, *Mária Rádió Frekvencia Kft.* (Maria Radio Frequency Ltd) and *Magyarországi Mária Rádió Alapítvány* (Maria Radio Fund of Hungary) also participated in the 2010 tenders under the name, *Mária Rádió*. The registered address of all three participants is the same address in (the city of) Veszprém.

The applicants in each proposal agreed to produce individual programs and, according to the information on the Media Council's home page, neither coverage area expansion, nor network connection has taken place since the conclusion of the contracts. Given the ownership connections of the winners, it is hard to imagine that independent local content is being produced, presumably with own staffs and own studios, for all eight frequencies. It seems much more probable that very similar or nearly identical programs are broadcast on the new frequencies. The Media Council has the jurisdiction to investigate this; the same way it is the Media Council's duty to inspect the programs undertaken in the contracts, to audit the service providers, and enforce the performance of contractual obligations.

Pursuant to rights acquired now as well as before, *Mária* Radio is on one regional and seven local frequencies. In theory, this number is over the ownership limits allowed by the law. This analysis does not provide thorough examination of the ownership structure of the three participants or the compliance of the ownership structure behind the content aired under the name *Mária Radio* with the rules of the media law. According to the documents available on the home page, the Media Council did not conduct a separate review of the ownership background.

## **2.3. *Európa* Radio**

*Európa* Radio, which has been operating for about ten years, with ties to the Reform church, has so far been available in (the city of) Miskolc and its vicinity, and in (the city of) Nyíregyháza. Due to the three additional frequencies acquired through the tenders, today it is present in nearly every major city of Hungary, broadcasting its programs of religious topics.

Besides the successful participation of the previously mentioned *Mária* Radio and *Európa* Radio, the fact that *Katolikus* Radio (Catholic radio) has also acquired two frequencies suggests that strong preference is given to religious topics. Thus, one third of the total frequencies were awarded to radios with religious topics.

## **3. Marginalization of former market participants**

The list of losers can also be produced, based on the results: the list includes *Radio 1*, *Klub* Radio, and *Juventus* Radio, who, similarly to applicants on the list of winners, were bidding on numerous frequencies for the purpose of expansion. All three are major participants in several local and regional radio markets, with network operations built on the Budapest frequency. Typically, they submitted their bids not as independent frequency but for network

operations, and in many cases they were left behind in the fee competition; the new market participants made higher fee offers than the participants who have long been operating in the market and have more experience in the radio market as a whole. *Radio 1* acquired two frequencies in total; all tender proposals from *Klub Radio* and *Juventus Radio* finished without success. Overall, we can conclude that the former market participants were marginalized in the tenders examined here.

#### **4. New market participants**

On more than one third of the frequencies a new participant in the media market started their broadcast. This ratio can be partially attributed to the fact that these participants - with two exceptions - appeared in the tenders as original applicants, therefore their chances of winning were higher. With one exception, all of them entered the market as commercial service providers.

### **V. PROCEDURAL FRAMEWORK IN PRACTICE**

At the media authority's home page, only the substantive decisions and their justifications that closed the tenders are available in full length. Decisions made in the course of the process, such as resolutions on disqualification, are not available; thus, the requirement of transparent and controllable decision-making was not satisfied.

In more than one half of the examined tenders, the review of evaluation criteria and, therefore, their substantive justification, was also omitted; for the frequency was either automatically awarded to the business initiating the tender announcement, or there was no longer any competition in the substantive phase of the evaluation process. In the other half of the tenders, however, the final result was subject to the media authority's scoring. It was apparent from the decisions that the justifications were often created using very similar, at times identical, text panels; they lack specific elements of the bids; formally they can be construed as justifications, but they show contextual deficiencies; they fail to properly substantiate why the realization of the tender's objective would be achieved with the given applicant's bid.