

ACT COMMENTS on NEW GREEK LEGISLATION re DIGITAL TERRESTRIAL TV

“The ACT believes the contemplated Greek legislation on free-to-air content licensing and establishment of state-controlled ERT subsidiary to offer commercial multiplexing and DTT network services, will be fundamentally incompatible with EU legal framework.”

The ACT is closely monitoring the ongoing process of passing of a new law in Greece, dealing primarily with content licensing through free-to-air digital terrestrial networks, as well as with the establishment of a subsidiary of the state broadcaster to offer commercial multiplexing and DTT network services across the commercial broadcasting market.

If passed per the draft published, ACT strongly believes that this piece of legislation will contain serious incompatibilities with EU Law. Ross Biggam, Director General of the ACT, commented:

“We are very concerned with the recent developments in Greece, a country where the broadcasting industry has been hit hard by recession. The legislative proposal of the government will have a further adverse impact on the industry, will create more insecurity and is fundamentally flawed in its approach on content licensing.”

This is especially because:

- The bill provides for a bid (auction) process for content-only licensing over terrestrial networks (without any spectrum resource auctioned), a proposition altogether unusual and not relevant to content-only licensing across the EU;
- It attaches an array of mandatory conditions, limitations and obligations on the content licenses, ranging from staffing and equipment requirements to share capital conditions, which set highly disproportionate obstacles in the content market in Greece;
- The measures to be adopted will adversely affect and limit the freedom of content circulation, pluralism and access to information and news;
- The heavy set of restrictions proposed, coupled with extensive state intervention, are biased on the technological means of distribution of the content: all such restrictions and State interventions are provided for content offered only through digital terrestrial networks, but not for content on all other platforms (including all other forms of linear and non-linear means of broadcast). This bias materially infringes on the basic principle of technological neutrality that States must maintain when legislating.

- From this perspective, the proposed legislation materially discriminates between content sources only on the basis of how such content is being distributed, adversely impacting on fair competition among broadcast services.
- It takes licensing competence away from the independent regulator and transfers it to the hands of governmental administration, as the minister competent for media is endowed with a variety of decisive powers, including with the authority to unilaterally resolve, at a later stage, the number of content licenses to be issued, to determine the minimum price of the opening bid for the auction process, and even to determine the occupational categories (and minimum numbers of, per category) of the staff of each applicant as a condition of admissibility for the licensing process and on-going obligation carried by the content licensee. The extent of governmental involvement as proposed poses a threat to media freedom and pluralism in Greece – a country with an unusually pluralistic landscape of national free to air channels – and appears to run contrary to current EU thinking about independent media regulation;
- In addition, the contemplated legislation includes a section that provides for the establishment of a subsidiary of the state-owned and –controlled broadcaster (ERT), to be named ERT-Net, to be funded by the State and operate as the state owned and controlled multiplexing and network service provider, servicing on the spectrum, facilities and MUX's assigned to or owned by the state broadcaster. The bill further provides that ERT-Net is intended to offer services not just to the State broadcaster, but primarily towards commercial clients (DTT FTA content providers), thus competing with private multiplexing/network providers. ACT believes that this – in particular in the absence of rigorous functional separation and transparent cost accounting as between the public service and commercial units of ERT - will openly infringe the European state aid rules. The ACT is aware that the Commission sent a letter to the Greek State requiring more information on the ERT-Net concept, and intends to closely follow the developments in this connection.”

Note: the ACT represents the interests of the commercial broadcasting sector at the EU institutions. Its member companies are present in 37 European markets. For further details please contact Ross Biggam on +32 477 407 733.
