

Act LXXIV of 2007

on the rules of broadcasting and digital switchover

With a view to implementing the Digital Switchover Strategy, upgrading the electronic communications infrastructure of the information society, promoting the digitalisation of broadcasting, and further, in order to preserve, protect and support the national culture via broadcasting and also to ensure a higher level protection of subscribers to broadcasting services, having observed the provisions of Article 61 (4) of the Constitution, Parliament adopts the following Act:

PART ONE

GENERAL PROVISIONS

Chapter I

SCOPE, OBJECTIVE AND BASIC PRINCIPLES OF THE ACT

Article 1

(1) This Act shall apply to

(a) broadcasting performed by electronic communications devices installed – wholly or partially – in the territory of the Republic of Hungary,

(b) the technical activities of program providers related to broadcasting specified in subparagraph (a),

(c) the activities of supplementary digital service providers related to broadcasting specified in subparagraph (a),

(d) the activities of manufacturers, distributors and beneficiaries of patent rights over conditional access systems and application program interfaces, related to broadcasting specified in subparagraph (a).

(2) This Act shall apply to

(a) natural persons, legal entities and other organisations without a legal entity engaged in the activities described in paragraph (1) or an activity or service related thereto, as well as the senior executives thereof,

(b) users, consumers and subscribers.

Article 2

Objective and basic principles of the Act:

(a) to create a reliable, transparent, technology-neutral, pro-competition regulation, which promotes the implementation of the digital switchover and the development of the electronic communication infrastructure of the information society, and further, the take off of services and new technologies related to information society and public administration;

(b) to create digital switchover allowing efficient management of radio frequencies used for broadcasting and a flexible frequency management;

(c) to preserve, protect and support the national culture via broadcasting;

(d) to ensure that consumers and undertakings can take advantage of the benefits of digital switchover;

(e) to take into consideration the needs of disabled and low-income users in the course of digital switchover.

Article 3

(1) In the course of performing the activities falling within the scope of this Act, broadcasters, operators of a digital free-to-air broadcasting network or a free-to-air broadcasting station, program providers and supplementary digital service providers shall act to fulfil the requirements of good faith and fair dealing and mutually co-operate as stipulated herein.

(2) Broadcasters, operators of a digital free-to-air broadcasting network or a free-to-air broadcasting station, program providers and supplementary digital service providers shall harmonise the technical conditions of their electronic communications networks, electronic communication services, digital programs and supplementary digital services so that they constitute a uniform system, by themselves or by integrating the appropriate interfaces, network

parts, elements, equipment or services for establishing the necessary connection or providing the service, respectively.

Article 4

(1) Issues not regulated herein shall be governed by the provisions of Act C of 2003 on Electronic Communications (hereinafter: Electronic Communications Act).

(2) In the course of the procedures related to the market supervision and market regulation stipulated herein, the National Communications Authority (hereinafter: Authority) shall act in compliance with the provisions set forth in Act CXL of 2004 on the General rules of public administrative supervisory procedures and services (hereinafter: Public Supervisory Procedures Act), subject to the deviations specified herein and the Electronic Communications Act.

(3) In respect of the legal relationships contemplated herein, the provisions of the Act I of 1996 on Radio and Television Broadcasting (hereinafter: Media Act) shall not be applied unless expressly so provided by this Act.

(4) This Act and the legal regulation issued on the implementation hereof under the authorisation conferred in this Act constitute legislation pertaining to electronic communications.

Definitions

Article 5

(1) For the purposes of this Act:

1. *Application program interface (API)*: in respect of digital broadcasting, the software interfaces between applications in electronic communications devices made available by broadcasters or other electronic communication service providers, and the resources in digital television sets available for digital television and radio services.

2. *Transmission network*: the arrangement of technical procedures, electronic communication and other equipment used for analogue and digital broadcasting of television or radio program signals, which connects to the transmission media of broadcasting – thus, in particular, to air and radio frequency, vacuum, coax, twisted pair and fibre optic cables;

3. *Digital free-to-air broadcasting*: free-to-air broadcasting, whereby television and radio program signals are forwarded to the subscriber or user in the form of multiplexes arranged in compliance with a digital free-to-air broadcasting standard;

4. *Digital free-to-air broadcasting network or free-to-air broadcasting station*: the entirety of electronic communications devices and electronic communication structures using the frequencies allocated for digital free-to-air broadcasting according to the legal regulation stipulating the allocation of national frequency bands for that purpose;

5. *Operator of a digital free-to-air broadcasting network or a free-to-air broadcasting station*: the service provider determining the conditions of broadcasting service, supplementary digital services, multiplex service or other electronic communication services by way of digital free-to-air broadcasting to be applicable to users or other service providers, and concludes a contract to this effect with the subscriber or service provider;

6. *Digital television set*: a digital set-top-box and the analogue television set or display together, or the integrated digital television receiver;

7. *Digital set-top-box*: a device, which, together with the antenna, enables the analogue television receiver or display to broadcast digital television programs;

8. *Electronic communication service*: the service defined in Article 188 (13) of the Electronic Communications Act;

9. *Electronic program guide (EPG)*: an application (including content service), which, among others, facilitates the direct access of broadcasts and supplementary services.

10. *European standard*: standard accepted by the Comité Européen de Normalisation (CEN), the Comité Européen de Normalisation Electrotechnique (CENELEC) and the European Telecommunications Standards Institute (ETSI);

11. *Conditional access system*: any technical measure and/or arrangement whereby access to a protected radio or television broadcasting service is made conditional upon subscription or other form of prior individual authorisation.

12. *Conditional access system operator*: a digital broadcaster, program provider or other person or organisation without a legal entity that operates a conditional access system;

13. *Distribution*: the domestic marketing, sale or rental, for the first time, of an analogue television receiver or a digital television set free of charge or for valuable consideration;

14. *Manufacturer*: a business defined in Article 685 (c) of Act IV of 1959 on the Civil Code, which is responsible for the design, manufacture, packaging, marking and distribution of an analogue television receiver or digital

television set or a related electronic communications device, regardless of whether the manufacturer performs the above itself or sub-contracts these tasks. If the seat of the manufacturer is located outside the territory of Hungary, the importer or domestic distributor of the equipment shall be regarded as the manufacturer;

15. *Local broadcaster*: a broadcaster with a coverage area or a city whose population is, respectively, no more than one hundred thousand or five hundred thousand on an annual average;

16. *Information channel*: edited information provided by the broadcaster via a designated television channel which primarily concern the technical or subscription conditions of the broadcasting service, or advertise other services or a collection of other information of public interest;

17. *Information society-related service*: as defined in Article 2 of Act CVIII of 2001 on Certain issues of electronic commerce services and information society-related services;

18. *Integrated digital television set*: a television receiver, which is suitable for displaying digital television programs even without a digital set-top-box;

19. *Digital interactive television service*: digital television services allowing a user feed-back and response via a two-directional or return signal transmission channel;

20. *Interface*: a physical or logical surface of connection, having electric, mechanical and informatics features, with special regard to the interface of analogue television receiver or integrated digital television receiver having specific electric and mechanical features;

21. *Control*: the relationship specified so in Act LVII of 1996 on the Prohibition of unfair market practices and the restriction of competition;

22. *Related facilities*: the facilities associated with the electronic communications network and/or electronic communication service, which allow and/or support the provision of service via the given network. Related facilities include conditional access systems and electronic program guide;

23. *Supplementary digital service*: an information society-related service, including content provision, and a generally digital interactive television service transmitted to the users via the digital transmission network, which does not classify as an electronic communication service under Article 188 (13) of the Electronic Communications Act or a program provision under Article 2 (30) of the Media Act. Such supplementary digital service are, in particular, the following: digital teletext, electronic program guide, video services provided on demand or nearly on demand from the supply compiled by the program provider, and personal program recording service provided to a third party;

24. *Supplementary service provider*: the party providing the service specified in point 23 above;

25. *Regional broadcaster*: a broadcaster with a coverage area exceeding the size of the area covered by local broadcasting, but having less inhabitants than half of the population of the entire country;

26. *Public service programs*: the provision of programs – as stipulated herein – defined in Articles 132 and 133 of the Media Act, produced by a public service broadcaster, as specified in the Media Act;

27. *Public service broadcaster*: a service provider as specified in the Media Act;

28. *Multiplex*: a standardised flow of signals used for digital broadcasting and including television and radio programs, supplementary digital services, electronic communication services, and associated other identification signals and data;

29. *Multiplex service provider*: the party providing the service defined in Article 188 (73) of the Electronic Communications Act;

30. *Broadcast*: a series of radio or television programs and other audio-visual moving pictures edited and disseminated to the public.

31. *Program provision*: program provision as specified in Article 2 (30) of the Media Act, but excluding the operation of an information channel;

32. *Program provider*: the party providing the service specified in point 31;

33. *Free-to-air broadcasting*: broadcasting whereby analogue or digital radio or television programs are transmitted to the subscriber or user via transmission network using terrestrial radio frequencies – with the exception of frequencies primarily allocated to satellite services – and generally allowing one-way data transmission; free-to-air broadcasting also includes broadcasting via a digital free-to-air broadcasting network or free-to-air broadcasting station;

34. *Broadcasting*: electronic communication service provided via any of the transmission networks specified in point 2 above, whereby analogue or digital broadcasting signals are transmitted from the program provider to the receiving device of the subscriber or user, regardless of the transmission network and technology applied. In particular, the following shall be regarded broadcasting: free-to-air broadcasting, satellite broadcasting, broadcasting via a hybrid fibre-coax transmission system, as well as broadcasting a program by a transmission network using an Internet Protocol, if the type or conditions of the service are equivalent to those of broadcasting or this method

substitutes broadcasting performed in another way. Broadcasting accessible by a subscriber as a separate service or included in a package together with other electronic communication services against a fee shall also be regarded as broadcasting. However, signal transmission via a network suitable for connecting less than 10 receiving devices shall not be classified as broadcasting;

35. *Broadcaster*: the party providing the service described in item 34, including the operator of a digital free-to-air broadcasting network, if it performs broadcasting itself. If the transmission network is operated by a party other than the broadcaster, the service provider determining the conditions of the service and concluding a contract with the subscriber or user shall be regarded as the broadcaster.

36. *Open application program interface*: an interface based on digital television standards and regulations, allowing also the running of digital applications of various sources. Such interfaces are in particular the following: MHP, MHEG 5, WTVML;

37. *Available data transmission capacity*: for the purpose of digital free-to-air broadcasting, the gross data transmission capacity available at the given frequency;

38. *Own broadcasting*: broadcasting performed by the program provider by its own or leased electronic communication devices;

39. *Wide-screen program*: a television program produced and edited to be displayed in the full height and width of the screen (the reference format for wide-screen television services is 16:9 or 16:10);

40. *Wide-screen digital television service*: a digital television service that consists wholly or partially of programs produced and edited to be displayed in a wide-screen format.

41. *Teleshopping*: the service defined in Article 2 (22) of the Media Act;

42. *Coverage area*:

(a) in the case of free-to-air broadcasting and satellite broadcasting, the geographical area in which the level of useful signals of broadcasting and the calculated level of avoidance of interference reaches the minimum value specified in the prevailing recommendation of the International Telecommunication Union (ITU),

(b) in the case of other broadcasting, the inhabited area in which the transmission network has been installed and the inhabitants of the given area can connect to the network against a fee customary in that area.

(2) The terms not listed in paragraph (1) above shall be construed in compliance with the definitions provided in Article 188 of the Electronic Communications Act.

PART TWO

BROADCASTING SERVICES

Chapter II

RIGHTS OF BROADCASTERS AND OTHER PERSONS

Broadcasting

Article 6

(1) Upon fulfilment of the conditions stipulated herein and the Electronic Communications Act, any natural person, legal entity or organisation without a legal entity may provide broadcasting services in the territory of the Republic of Hungary.

(2) The intention to commence the provision of a broadcasting service as an electronic communication service as well as the planned starting date thereof shall be reported by the broadcaster to the Authority for registration, according to the provisions of the Electronic Communications Act. Broadcasters may only disseminate programs if authorised to do so under the relevant contract or legal regulation.

(3) In addition to the information stipulated in the Electronic Communications Act, the report shall also specify the programs and services of program providers and supplementary service providers, respectively, to be disseminated by the broadcaster.

(4) Broadcasters shall verify that they have taken the measures required for the protection of copyrights and related rights, by submitting in the report the appropriate data and supporting documents to the Authority. The contract concluded with the relevant program provider or the proof of authorisation to broadcast the given program shall also be attached to the report.

(5) The broadcaster shall report any change in the data set forth in paragraphs (3) and (4) to the Authority within three days.

(6) The Authority shall control compliance of the broadcasting activity with this Act in the scope of market analysis procedures.

Certain electronic communication services associated with broadcasting

Article 7

(1) If, for the purpose of broadcasting directed outside the territory of the Republic of Hungary, an electronic communication service provider transmits the signals of a program provider via

(a) a frequency allocated by the Authority, or

(b) a leased satellite capacity over which the Government of the Republic of Hungary has the right of disposal, or

(c) electronic communications devices installed in the in the territory of the Republic of Hungary and required for the transmission of the signals to a satellite,

it shall report the programs broadcasted to the Authority for registration prior to the commencement of the service.

(2) The broadcaster shall report any change in the data set forth in paragraph (1) to the Authority within three days.

Services provided via digital free-to-air broadcasting network and free-to-air broadcasting station

Article 8

(1) The licence for the operation of a digital free-to-air broadcasting network or a free-to-air broadcasting station may be awarded in an application procedure specified herein.

(2) The licence for the operation of a digital free-to-air broadcasting network or a free-to-air broadcasting station awarded in an application procedure specified herein shall include the following:

(a) the construction of the digital free-to-air broadcasting network or free-to-air broadcasting station with the technical parameters stipulated in the call for applications after obtaining the license specified in the Electronic Communications Act,

(b) the right to use, in compliance with the provisions herein, the radio frequencies allocated to the network or free-to-air broadcasting station specified in subparagraph (a),

(c) to provide, via the network specified in subparagraph (a) broadcasting service, supplementary digital service and other electronic communication service directly to the subscribers or users (free of charge or against a subscription fee), or to other broadcasters or electronic communication service providers, program providers and supplementary digital service providers.

(3) The operator of the digital free-to-air broadcasting network or the free-to-air broadcasting station shall report the commencement of the broadcasting service, supplementary digital service, or other electronic communication service – if the above are performed by itself – in compliance with the relevant rules set forth in the Electronic Communications Act.

(4) The provision of programs via a digital free-to-air broadcasting network, or a free-to-air broadcasting station subject to Hungarian jurisdiction pursuant to the conditions specified in Article 1/A (1) to (4) of the Media Act may commence after registration in accordance with Article 113 of the Media Act. No further registration is required in the case of programs broadcasted under an effective contract for program provision, or the concurrent broadcasting of programs provided exclusively by way of a program distribution network via a digital free-to-air broadcasting network.

(5) The operator of a digital free-to-air broadcasting network is subject to the transmission or contracting obligation stipulated in this Act or in the course of the application procedure specified in paragraph (1). The operator of a digital free-to-air broadcasting station is subject to the transmission obligation defined during the application procedure specified in paragraph (1).

(6) The operator of the digital free-to-air broadcasting network or the free-to-air broadcasting station shall be entitled to use only the part of the available data transmission capacity not contracted for broadcasting for the purpose of supplementary digital service, and/or electronic communication service – in this order –, or allow the use of the remaining free capacity for the same purposes for other parties.

(7) For the purpose of supplementary digital services and/or electronic communication services, the free capacity specified in paragraph (6) of a digital free-to-air broadcasting network or free-to-air broadcasting station may be used

up to 15% of the available data transmission capacity in the transmission network. This level may be reduced by law.

Supplementary digital services

Article 9

(1) If a supplementary digital service also involves the dissemination or publication of edited narrative texts or images not classifying as television programs, and in the course of broadcasting, the program operates together with signals or supplementary technical arrangements and not only signals transmitted based on individually retrieved signals, the supplementary digital service provider shall report the service to the Authority prior to the commencement thereof for registration. The report shall indicate the planned starting date of the service and the name and address of the person having no criminal record, who shall be held liable under the press act and other laws.

(2) The Authority shall register the supplementary digital service provider by applying Article 76 of the Electronic Communications Act as appropriate.

(3) The provider of supplementary digital service as specified in paragraph (1) shall have access rights under Articles 30 to 34 herein.

(4) The provider of supplementary digital service having access rights may be obliged by the Authority to supply the data specified in Articles 151 and 152 of the Electronic Communications Act.

Article 10

(1) In respect of the contents of the supplementary digital service described in Article 9, the provisions set forth in Articles 3 to 4, 4/A to 5/F and 89 of the Media Act shall be applied as appropriate. The additional rules pertaining to the contents of supplementary digital services shall be determined in a separate piece of legislation.

(2) Compliance of the contents of the supplementary digital service described in Article 9 with this Act shall be controlled by the Authority in the scope of market analysis procedures. In the course of the procedure, the National Radio and Television Board (hereinafter: Board) shall act as a competent authority in respect of the requirements set forth in paragraph (1). Upon violation of law, the Authority shall apply the legal consequences stipulated for market analysis procedures in Articles 67 and 68 of the Electronic Communications Act.

Program provision

Article 11

(1) In respect of its activities falling within the scope of this Act, the program provider shall be entitled to the access rights granted under Articles 30 to 34 hereof.

(2) The Authority may order program providers to supply the data specified in Articles 151 and 152 of the Electronic Communications Act.

Handover and maintenance of registers

Article 12

(1) The Authority shall hand over the copy of the register kept on broadcasters, supplementary digital service providers to the Board.

(2) The Board shall hand over the copy of the register kept on program providers to the Authority.

(3) The Authority and the Board shall mutually inform each other of service providers entered in the registers referred to in paragraphs (1) and (2) as well as of any changes occurring in the registers, within eight days of any such registration.

Chapter III

FREQUENCY RIGHTS

General Rules

Article 13

(1) In harmony with its international obligations, the Authority shall apply flexible frequency management tools in order to facilitate

(a) the introduction of digital free-to-air broadcasting on the frequencies assigned to free-to-air broadcasting, according to the relevant standards,

(b) the provision of supplementary digital services on frequencies assigned to free-to-air broadcasting,

(c) the use of other systems and equipment, including those serving national defence purposes, operating on broadcasting frequencies until their withdrawal.

(2) In harmony with its international obligations, the Authority shall apply flexible frequency management tools in an effort to replace analogue frequency use by digital free-to-air broadcasting technologies allowing efficient frequency management. To this end, in the course of the digital switchover the Authority shall be entitled to

(a) initiate – with the prior information of the parties having frequency rights and radio broadcast license holders – the replacement of rights related to analogue and digital frequencies with other frequency rights for analogue or digital broadcasting with similar technical properties,

(b) withdraw a radio broadcast license pursuant to this Act, and

(c) allocate the frequency related to the new right, and issue the new radio broadcast license.

Right to use frequencies allocated for free-to-air broadcasting

Article 14

(1) The operator of a digital radio or television-free-to-air broadcasting network, or free-to-air broadcasting station may obtain right to use the frequencies comprising the frequency range required for the operation of the free-to-air broadcasting network in compliance with the technical and coverage conditions described in the application. The operator of a digital radio or television-free-to-air broadcasting network will not acquire right to use the specific frequencies specified in the application.

(2) Providers of television programs via terrestrial analogue free-to-air broadcasting shall acquire right to use the transmitter frequency band – and not the specific frequencies.

(3) Providers of radio programs via terrestrial analogue free-to-air broadcasting shall acquire right to use the frequency specified in the application.

(4) Based on the right obtained pursuant to paragraphs (1) to (3), the Authority may, or upon the request of the contracted broadcaster, initiate the frequency assignment and radio broadcast licensing procedures.

(5) If the requested specific frequencies need to be changed or the radio broadcast license withdrawn pursuant to this Act or an international obligation, the relevant procedure shall be initiated by the Authority.

Assignment of frequencies allocated for free-to-air broadcasting

Article 15

(1) The Authority shall assign the frequency of the broadcasting station allocated for free-to-air broadcasting to program providers performing broadcasting themselves and having frequency right allocated to free-to-air broadcasting or, in other cases the broadcaster having contracted the beneficiary, based on the submitted transmission plans.

(2) The Authority shall conduct the frequency assignment procedure in compliance with the Electronic Communications Act and this Act.

(3) The frequency assignment of a free-to-air broadcasting station contains the following:

(a) the frequency fee,

(b) the technical conditions and requirement of setting up and operating a free-to-air broadcasting station,

(c) if the free-to-air broadcasting station belongs to a digital radio or television-free-to-air broadcasting network or digital free-to-air broadcasting station, the identification of the network or right, or reference to the fact that the assigned frequency may be replaced by another one that ensures the technical and coverage conditions suiting the network or the digital free-to-air broadcasting station as indicated in the application for the operating licence of the digital free-to-air broadcasting network or free-to-air broadcasting station,

(d) if the free-to-air broadcasting station is linked to television program service performed via terrestrial analogue free-to-air broadcasting, the specification of the transmission frequency band, or reference to the fact that the Authority may change the assigned frequency to another one, belonging to the transmission frequency band and ensuring the technical and coverage conditions as well as coverage area indicated in the application, and

(e) the number and date of the decision or official contract granting the right for the use of a digital radio or television free-to-air broadcasting network, digital free-to-air broadcasting station frequency, a transmission frequency band, or a frequency,

(g) the specific conditions of use of the frequency allocated for a digital radio or television free-to-air broadcasting network, digital free-to-air broadcasting station, a transmission frequency band, or the free-to-air broadcasting of a terrestrial analogue radio program,

(f) the data specified in a separate piece of legislation.

Radio broadcast license for frequencies allocated for free-to-air broadcasting

Article 16

(1) The Authority will issue a radio broadcast license for a free-to-air broadcasting station if the conditions stipulated in the final frequency assignment issued in compliance with Article 15 are fulfilled.

(2) The radio broadcast license of a free-to-air broadcasting station shall contain the following:

(a) the data specified in Article 15 (3) (b) to (f),

(b) the frequency fee and

(c) the data specified in a separate piece of legislation.

(3) The expiry of the radio broadcast license issued by the Authority for free-to-air broadcasting stations shall coincide with the expiry of the right to use the digital radio or television free-to-air broadcasting network or free-to-air broadcasting station, a transmission frequency band, or a frequency.

(4) The Authority shall control compliance with the conditions set forth in the radio broadcast license by way of market analysis procedures. The Board shall also have the right to initiate such procedure. Should the procedure reveal the violation of the conditions stipulated in the radio broadcast license, the Authority shall inform the Board of its findings.

(5) The Board shall refund the verified expenses of a procedure initiated by the Board. However, if the inspection finds that the program provider or broadcaster has violated the conditions stipulated in the program provision contract or radio broadcast license, the costs of the procedure shall be refunded by the party responsible for non-compliance with the conditions.

Operating conditions

Article 17

(1) In the course of fulfilling the requirements pertaining to digital free-to-air broadcasting, the program provider and the broadcaster shall co-operate.

(2) The broadcaster – including program providers also performing broadcasting – shall constantly transmit the identification signals of the program provider and the programs furnished by the program provider, the appropriate program identification signals serving the protection of minors as specified in the Media Act, as well as the signals controlling digital television sets, video and audio recording devices or other electronic communications devices. The identification information or signal shall distinguishable for each program.

(3) The free-to-air broadcasting station of the broadcaster – including program providers also performing broadcasting – may transmit the measuring signal, measuring image, still picture and/or monoscope for a maximum of ten minutes prior to the start and after the end of the program, and for a maximum of two minutes during intermissions between programs. In the event of breakdown the above restriction shall not be applicable.

Frequency change and withdrawal of the radio broadcast license

Article 18

(1) If the free-to-air broadcasting of an analogue radio program must be discontinued prior to the lapse of the validity of the license, because pursuant to Article 13 hereof the Authority withdraws the radio broadcast license due to reasons not imputable to the program provider, the Board shall offer to the program provider, without conducting an application procedure, other program provision rights with similar conditions pertaining to a frequency band and/or a frequency.

(2) The Board may not make the modification of the program provision contract subject to the acceptance of conditions unrelated to the frequency change. The modification shall not affect the validity period of the licence for program provision. In the course of the modification, arrangements shall be made in the contract concerning the

verified costs of the program provider incurred due to the frequency change.

(3) The Authority shall advise the Board of the withdrawal of a radio broadcast license.

(4) The decision concerning the withdrawal of the radio broadcast license shall determine the date or deadline of performance allowing an appropriate time period for the amendment of the program provision contract.

Article 19

(1) If the Authority withdraws the radio broadcast licence for the frequency of a digital radio or television free-to-air broadcasting network, digital free-to-air broadcasting station or a transmission frequency band (frequency right) pursuant to Article 13 hereof, for reasons not imputable to the program provider, the Authority shall assign another frequency corresponding to the previous frequency right and issue the related radio broadcast license, or modify the radio broadcast licenses as appropriate.

(2) The new frequency allocated under paragraph (1) is deemed to correspond the previous frequency right if compared to the date of obtaining the right – apart from the natural population decrease – the population served in the relevant coverage area does not decrease, the reception method of the programs does not change adversely or, the market price of the right – provided that it had been quantified either in the decision concerning the frequency use or the official contract – does not decrease.

(3) The frequency change described in paragraph (1) shall not mean the modification of the contract concerning the frequency right or the official contract.

(4) The Authority shall advise the Board, the broadcaster and the beneficiary of the frequency right of the withdrawal of a radio broadcast license, the award of a new frequency right or the issue of a radio broadcast license.

(5) A frequency allocated for analogue free-to-air broadcasting may be changed to a frequency allocated for digital free-to-air broadcasting with the consent of the program provider having the right of the transmission frequency band, provided that devices suitable to receive the latter service are available for the population in the coverage area to the same extent as the devices for the analogue reception.

(6) The decision pertaining to the withdrawal of a radio broadcast license shall become effective when the issue of a new radio broadcast license is announced.

(7) The frequency fee of the television program provider having right to use a frequency band shall be reduced by the verified costs incurred in connection with the frequency change. The fee reduction shall be effected by the broadcaster who has concluded the contract with the program provider. In the event that the fee reduction is not sufficient to cover the verified costs, the difference will be reimbursed by the central budget.

Fees of frequencies allocated for analogue and digital free-to-air broadcasting

Article 20

(1) The fees for frequencies allocated for free-to-air broadcasting shall be established bearing in mind that it should promote the take off and use of digital program provision.

(2) The fees for frequencies allocated for free-to-air broadcasting shall be established subject to the number of transmitted digital programs and/or transmitted supplementary digital services, and the data transmission capacity used thereby.

(3) Until the target date of digital switchover specified in Article 38 at the latest, frequencies used for terrestrial digital free-to-air broadcasting shall be subject to a reduced fee specified in a separate piece of legislation.

Chapter IV

PROVISIONS PROMOTING THE DIVERSITY OF OPINIONS

Constitutional obligations

Article 21

(1) Except for the cases specified in the Media Act, broadcasters shall not be held liable for the content of the program of a program provider falling under the jurisdiction of any of the parties to the Agreement on the European Economic Area, the European Convention on Transfrontier Television signed in Strasbourg on 5 May 1989 and promulgated by Act XLIX of 1998, and under the Protocol amending it. Nevertheless, based on a relevant decision

of the Board, it shall suspend or terminate the broadcasting of the program.

(2) Apart from the case specified in paragraph (1), a broadcaster may not broadcast a program that violates the basic principles stipulated in Articles 3 and 4/A of the Media Act.

(3) Compliance of broadcasting with this Article shall be controlled by the Authority in the scope of market analysis procedures. In the course of the procedure, the Board shall act as a competent authority in respect of the requirements set forth in paragraphs (1) and (2). Upon violation of law, the Authority shall apply the legal consequences stipulated in case of market analysis procedures in Articles 67 and 68 of the Electronic Communications Act.

(4) The provisions of paragraphs (1) and (2) shall not prejudice the provision of programs falling under Hungarian jurisdiction pursuant to Article 1/A (1) to (4) of the Media Act, which shall be governed by the rules of program provision stipulated in the Media Act.

Article 22

(1) With the exception of the cases specified in paragraph (2), broadcasters may make distinction among the programs they broadcast exclusively based on the economic and technical characteristics thereof; and not based on their contents.

(2) Broadcasters shall preserve, protect and promote national culture via broadcasting as specified in a separate piece of legislation.

(3) Neither the contract concluded by the broadcaster and the program provider, nor the conduct of the parties may

(a) prohibit the broadcaster from concluding a contract with a specific program provider,

(b) allow the application of adverse consequences against the program provider if it appears in other broadcaster's transmission network.

(4) With the exception of analogue terrestrial free-to-air broadcasting, the number of programs being under the control of the same program provider or broadcaster may not exceed twenty five percent of all the programs broadcasted via the given transmission network.

Article 23

In the course of application procedures for the right to use frequencies allocated for free-to-air broadcasting – subject to the provisions set forth in Article 101 (3) of the Media Act applied as appropriate – public service and non-profit program provider undertakings, social organisations shall be given priority.

Transmission obligation

Article 24

(1) In order to preserve, protect or develop the national, ethnical minority and European cultures, to cultivate the national or ethnical minority language, to satisfy the information demands of the citizens, to promote their participation in democratic public life and to maintain the diversity of opinions, when ensuring access to several programs concurrently by way of their services, broadcasters shall discharge the obligations set forth in Article 25, while broadcasters qualifying as dominant players from the aspect of media policy shall have the obligations stipulated in Articles 25 and 26 below (transmission obligation).

(2) A broadcaster shall qualify as dominant in terms of media policy (hereinafter: dominant broadcaster) if

(a) the number of its subscribers exceeds one hundred thousand, or

(b) in the case of broadcasting accessible free of charge, its coverage area extends to more than one third of the population of the Republic of Hungary,

and the sales revenue of the broadcaster or the service provider or undertaking under its control generated by broadcasting or associated services within the territory of the Republic of Hungary exceeds HUF 1,000 million per annum.

(3) In the case of doubt, the dominant broadcaster shall prove that the conditions specified in paragraph (2) do not apply to it.

Article 25

(1) Broadcasters shall transmit the programs of public service program providers defined in Article 132 of the Media Act as a basic service and may not require subscribers to pay an extra fee for access to such services.

(2) The programs specified in Article 132 of the Media Act and broadcasted by public service program providers via free-to-air broadcasting shall be made accessible to the users free of charge.

(3) The provisions set forth in paragraphs (1) and (2) above shall not prejudice the usage charges specified in Articles 79 to 84 of the Media Act.

(4) With the exception of broadcasting via free-to-air broadcasting, broadcasting service shall be rendered free of

charge for all public service program providers, and in turn, public service program providers may not require any remuneration from the broadcaster for the dissemination of the programs thereof.

(5) Broadcasters – up to at least ten percent of their entire capacity, but maximum up to three program providers – shall be obliged to conclude a contract in response to the contract offer of local program providers, in particular, to local public program providers or local non-profit program providers. If a local non profit-oriented program provider or program providers also have a contract offer, the broadcaster shall have the obligation to conclude a contract with at least one local non profit-oriented program provider.

(6) Broadcasters – up to at least an additional ten percent of their entire capacity, but maximum up to three programs of three program providers – shall be obliged to conclude a contract in response to the contract offer of Hungarian regional or nationwide program providers.

(7) If the transmission network of the broadcaster specified in paragraphs (5) and (6) consists of several, technically separable parts that serve local or regional service areas, and allowing the broadcaster to render different services in the various service areas, the obligations set forth in paragraphs (5) and (6) shall apply to each service area separately, as appropriate.

(8) For the purposes of paragraphs (5) and (6) program providers are registered undertakings

(a) that request the broadcaster to disseminate the program, and

(b) the seat of which is located in the coverage area of the regional or local broadcaster, or a separate service area as specified in paragraph (7), and provides its programs specifically for subscribers living in the coverage area of the regional or local broadcaster, and

(c) whose daily air time – without teleshopping and same-day replays – reaches four hours.

(9) For the purposes of paragraphs (5) to (8) the information channel of the broadcaster shall not be taken into consideration.

Article 26

(1) Upon receiving an economically and technically reasonable contract offer from a program provider devoting itself to

(a) the preservation, protection or development of the national, ethnical minority, or European culture, or

(b) the cultivation of the national or ethnical minority language, or

(c) the satisfaction of the information need of the citizens, or

(d) the promotion of the participation of citizens in democratic public life, or

(e) the maintenance of the diversity of opinions, or

(f) media pluralism,

the dominant broadcasters shall conclude a contract for forty television programs with the program provider and broadcast the program thereof to subscribers.

(2) The dominant broadcaster shall formulate its contractual terms with the program providers devoting themselves to the objectives set forth in paragraph (1) so that they be – within reason – justified, transparent and controllable in terms of broadcasting service. Conditions to the contrary may not be applied.

(3) The stipulations in paragraph (2) shall be applied to contractual terms concerning the following:

(a) basic principles applied by the a dominant broadcaster for putting a package together, program type or other requirements for inclusion into various subscriber packages;

(b) contractual terms pertaining to the broadcasting fee paid to the program provider, basic principles of the payment policy of the broadcaster, payment periods, method and time of fee payment (if applicable);

(c) fee charged by the service provider for broadcasting the program, discounts from the fee, or additional fees by program package or program;

(d) procedure for the conclusion of the broadcasting contract, method and conditions of using the broadcasting service, any technical, commercial or other limitations thereof;

(e) description of the technical infrastructure underlying the broadcasting service and the quality target values of the service;

(f) the parameters and data of the program provider using the broadcasting service, that constitute preconditions for concluding the broadcasting contract;

(g) the cases and conditions for amending and terminating a broadcasting contract;

(h) the cases when the broadcasting service is suspended;

(i) breach of contract and its legal consequences.

(4) The dominant broadcaster shall make the contractual terms referred to in paragraph (3) applied to program providers specified in paragraph (2) available on its website. Upon modification of the contractual terms, the dominant broadcaster shall make the new contractual terms available at least thirty days prior to their entry into

force.

(5) The offer may be refused due to objective technical reasons, if the service request indicated therein jeopardises the safety of operation or the integrity of the network.

(6) The offer may be refused due to objective commercial reasons, if the fees indicated therein differ from the costs (including the customary profit) to an extent that makes an agreement unfeasible.

(7) In the case of doubt, it is the broadcaster that shall prove that the transmission of the program is economically or technically unreasonable.

Article 27

(1) If the contract discussed in Articles 25 and 26 is not concluded within thirty days of the offer, the program provider may initiate the legal procedure pursuant to Article 49 of the Electronic Communications Act.

(2) If the legal dispute concerns the local or regional nature, or the role of the program provision specified in Article 26 (1), the competent authority to proceed in the case shall be the Board.

Article 28

(1) Fulfilment of the obligations stipulated in this Chapter shall be controlled by the Authority in the scope of market analysis procedures.

(2) The Authority and the Board shall prepare a joint report, at least bi-annually, on the fulfilment of the obligations imposed in this Chapter, observations concerning their application, or the findings of the market analysis procedures specified in paragraph (1).

(3) The report prepared pursuant to paragraph (2) shall be agreed by the Authority with the stakeholders in compliance with Article 36 of the Electronic Communications Act.

(4) If justified based on the report, the Authority or the Board shall initiate the modification of the obligations.

Data supply

Article 29

(1) The broadcaster shall keep all contracts concluded with program providers for the entire term of their legal relationship, and for an additional five years following the termination thereof, and supply data to the Authority concerning the contractual relationship.

(2) The broadcaster shall submit the data specified in paragraph (1) in the course of the reporting procedure even if their content constitute business secrets.

Chapter V

COMPETITION CONTROL

Conditional access systems and other tools

Article 30

(1) Regardless of the transmission method of digital broadcasting, the operator of any conditional access system shall ensure the technical conditions for the cost-efficient control of transmission with regard to its own conditional access system, so that broadcasters or transmission network operators may conduct a full, local or regional level inspection of services using the conditional access systems and check the number of subscribers.

(2) Regardless of the transmission method of digital broadcasting, the operator of any conditional access system providing conditional access services for digital television and radio services, which conditional access services are essential for reaching any group of the potential audience by program providers, shall:

(a) offer technical services to all program providers and supplementary digital service providers that comply with competition law rules and the principles of fairness, reasonability and equal treatment, and allow reception of the services of program providers or a digital broadcasters with the help of the digital set-top-boxes made available to subscribers or users by the operator of the conditional access service,

(b) maintain separate accounting records concerning conditional access services.

(3) In the course of the licensing, beneficiaries of industrial property rights or copyrights related to conditional access products and systems shall guarantee that the manufacturers of consumer devices receive fair, reasonable and equal treatment during the licensing procedure.

(4) In addition to the obligations set forth in paragraphs (1) to (3), a separate piece of legislation may impose additional access obligations related to the electronic program guide and the appearance or structure of the user interfaces of similar listing or navigating tools.

(5) The broadcaster shall operate a conditional access system that enables parents to restrict access to contents not recommended for minors.

Co-operation capacity of digital interactive television services

Article 31

(1) Broadcasters and program providers operating a digital transmission network suitable to provide digital interactive television service (for the purposes of this Article: obligors) shall make their best effort to apply an open application program interface (hereinafter: API), regardless of the transmission method.

(2) Manufacturers of digital television sets and electronic communications devices suitable to provide digital interactive television services and connectable to digital transmission networks (for the purposes of this Article: obliged manufacturers) shall observe, in respect of such devices, the regulations pertaining to open API.

(3) The obligors and the obliged manufacturers shall create their conditions for accessing APIs observing the principles of fairness, reasonability and equal treatment.

(4) The obligors and the obliged manufacturers may sign an agreement on the uniform application of the conditions stipulated in paragraphs (1) to (3).

(5) The Authority shall publish the agreement specified in paragraph (4).

Article 32

(1) Those entitled to dispose over information required for the software underlying the provision of digital interactive television service, and in particular, an idea, principle, concept, procedure, operating method or mathematical operation constituting the basis of software interface (hereinafter collectively: information), shall grant access to the program provider or digital broadcaster, against valuable consideration and under conditions meeting the principles of fairness, reasonability and equal treatment, to all information required for the full operability of any service supported by API. This regulation shall not prejudice the copyrights existing on APIs.

(2) If the parties cannot come to an agreement concerning the existence of the information listed in paragraph (1) or the remuneration, they may initiate the legal procedure specified in Article 49 of the Electronic Communications Act.

Electronic program guide

Article 33

(1) To the extent as required for the appearance and structure of user interfaces, the provider of the electronic program guide shall allow access to the electronic program guide service for all program providers and supplementary digital service providers, under fair and reasonable conditions and in compliance with the principle of equal treatment.

(2) Without prejudice to the principle of equal treatment, the provider of the electronic program guide shall grant access priority to public service programs broadcasted in the given multiplex over other programs.

Article 34

(1) If the provider of the electronic program guide is controlled by, or controls the program provider of the program broadcasted in its coverage area, or the provider of supplementary digital service rendered in the coverage area, the service provider shall be subject to the obligation set forth in Article 33 inasmuch as the electronic program guide of other, independent electronic program guide providers is not freely accessible by the users in the given coverage area due to lack of capacity or other reasons whatsoever.

(2) The user interface of the electronic program guide specified in paragraph (1) shall, in a conspicuous manner, make reference to the program provider controlling or being controlled by the provider of the electronic program guide, or the program thereof.

(3) The detailed rules pertaining to the appearance and structure of the user interface of electronic program guides shall be determined in a separate piece of legislation.

Review of obligations

Article 35

(1) The obligations set forth in Articles 30, 33 and 34 shall be reviewed by the Authority until the deadline specified in Article 38, by the appropriate application of the procedure described in Articles 52 to 57 of the Electronic Communications Act.

(2) If the procedure specified in paragraph (1) finds that one or more conditional access operators have no dominant market power in the given market, the Authority may relieve the relevant conditional access operator or operators from discharging such obligations, or may impose new obligations, if

(a) the modification or relief would not have an adverse impact on the access to radio and television programs and other contents subject to transmission obligation, and

(b) the modification or repeal would not have an adverse impact on the prospects of effective competition in the retail market of digital television and radio broadcasting services, or the markets of conditional access systems and other related facilities.

(3) The stakeholders shall be notified of the modification of obligations pursuant to paragraph (2) at least thirty, but maximum one hundred and twenty days in advance.

Wide-screen digital television service

Article 36

(1) Public electronic communications networks built and operated by digital broadcasters shall be suitable for the distribution of wide-screen digital television services and television programs.

(2) Digital broadcasters shall transmit to the consumers the received and re-distributed wide-screen digital television services and television programs in an unchanged screen format.

Provisions pertaining to broadcasting fee

Article 37

(1) In order to protect the beneficiaries of copyrights, the broadcaster may, pursuant to its contract with the program provider, collect a fee from the subscriber of the broadcasting service (broadcasting fee) to the benefit of the program provider.

(2) Broadcasters may charge a fee for the access to the various programs exclusively from subscribers, unless the program provider pays a price for electronic communication service, which also includes transmission. In this latter case, however, the price of the individual program or the service package containing the given program may not exceed the amount that would be received if the program provider did not pay a price to the broadcaster for the transmission and other electronic communication services.

(3) The broadcaster may set up various program packages, taking into consideration the amount of subscription fees also including broadcasting fees. Packages shall be set up based on subscriber demand and fulfil the requirements of the basic principles of reasonability, fairness and transparency.

(4) In order to protect the beneficiaries of copyrights, the broadcaster shall keep separate, transparent and controllable records on the following:

(a) the broadcasting fees collected from subscribers for the service of the program provider pursuant to paragraph (1),

(b) marketing or other similar fees collected from the program providers for the promotion and making accessible of the program to the subscribers, and

(c) fees collected in consideration for the operation of the transmission network or the subscriber service.

(5) The records described in paragraph (4) shall be made accessible for the program provider or the person authorised to manage broadcasting fees. The Authority may examine and inspect these records in order to discharge its tasks stipulated in the Electronic Communications Act, and may also impose a data supply obligation in this regard.

PART THREE

SWITCHOVER TO DIGITAL BROADCASTING

General provisions

Article 38

(1) In respect of access to digital television programs, digital switchover shall be implemented in the entire territory of the Republic of Hungary by 31 December 2011, to an extent that at least 94 percent of the population is reached by public service programs via free-to-air digital broadcasting service and the devices suitable for receiving digital broadcasting service are available for them (hereinafter: digital switchover).

(2) The digital switchover of the radio broadcasts shall be implemented gradually, by the transformation of the individual free-to-air broadcasting technologies. The target date and the detailed rules of the digital switchover of the individual free-to-air broadcasting technologies shall be determined in a separate piece of legislation.

(3) A license for analogue radio or television program provision under which the program provider uses free-to-air broadcasting to disseminate its program to the user or subscriber may only be issued if the holder thereof is obliged to co-operate in the process of the digitization of broadcasting.

Application procedure

Article 39

(1) In respect of obtaining a license for the operation of a free-to-air digital radio and television broadcasting network, or a free-to-air broadcasting station by way of an application (hereinafter: application procedure) the separate piece of legislation pertaining to the auction and application for obtaining a frequency right shall be applied as appropriate, unless regulated otherwise in Articles 39 to 43 herein.

(2) In addition to the conditions stipulated in a separate piece of legislation, the documentation of the call for applications shall contain the following:

(a) in the case of applications under Article 43 (1), the obligation to transmit the television programs of public service program providers and the radio programs specified in Articles 132 (3) and (5) and 132 (1) of the Media Act, respectively,

(b) the obligation to conclude contracts with at least two television program providers broadcasting news or programs of public interest serving the information of citizens and operating for at least four years at the time of the entry into force of this Act, and the national public service radio program providers operating for at least three years concerning the broadcasting via the network best accessible by the general public and mobile free-to-air digital television broadcasting network, as well as in the case of television program providers, and the detailed rules thereof,

(c) the obligation to conclude contacts concerning broadcasting with maximum four national program providers with general content, which is applicable to program providers currently providing program via terrestrial free-to-air broadcasting if they make a declaration of commitment to this effect within sixty days following the publication of the results of the application specified in Article 43 (1), and by signing the contract they undertake to start the termination of the analogue terrestrial free-to-air broadcasting until 31 December 2009 and complete it by 1 July 2010,

(d) the technical and coverage features of the digital free-to-air broadcasting network or free-to-air broadcasting station awarded by way of the application,

(e) the required schedule of building the digital free-to-air radio or television broadcasting network, or a free-to-air broadcasting station and the starting date of operation,

(f) the planned schedule for user access to the broadcasting service to be provided via the digital free-to-air broadcasting network or free-to-air broadcasting station,

(g) the information to be supplied to users and subscribers, and the offer for the establishment and operation of the scheme for the discounted and subsidized distribution of digital set-top-boxes,

(h) participation in the early switch-off of the national analogue terrestrial television broadcasting affected,

(i) with the exception of public service program providers, establishment of a separate company for the operation of the digital free-to-air broadcasting network, which does not control and cannot be controlled by the undertakings specified in paragraphs (5) and (6),

j) the continuous fulfilment of the conditions stipulated in paragraphs (5) (a) and (6), and

k) the obligation of giving air raid and disaster warning and related information to the general public.

(3) In addition to the evaluation criteria stipulated in a separate piece of legislation, the documentation of the call for applications shall contain the following:

(a) applicants verifying, by way of a mutual letter of intent, their commitment to make a freely accessible, terrestrially broadcasted new program provider with general content available, shall be given preference,

(b) undertakings pertaining to the broadcasting fees of the public service programs of public service program providers,

(c) applicants undertaking the implementation of interactive supplementary digital services shall be given

preference,

(d) commitments to build up a digital free-to-air radio or television broadcasting network or a free-to-air broadcasting station under conditions more favourable than those stipulated in paragraph (2) (e),

(e) commitments to the planned access by the general public, of a broadcasting service rendered via a digital free-to-air broadcasting network or a free-to-air broadcasting station under conditions more favourable than those stipulated in paragraph (2) (f),

(f) the suitability of digital set-top-boxes for using the interactive services broadcasted via the digital free-to-air broadcasting network,

(g) commitments regarding the information to be supplied to users and subscribers, and any discounted or subsidized distribution of digital set-top-boxes under conditions more favourable than those stipulated in paragraph (2) (g),

(h) commitment regarding participation in the early switch-off of the national analogue terrestrial television broadcasting affected, under conditions more favourable than those stipulated in paragraph (2) (h).

(4) The documentation of the call for applications, with the exception of the application under Article 43 (2), may not contain any other conditions regarding program contents and evaluation criteria beyond those specified in paragraphs (2) and (3) above and Articles 5 to 5/F of the Media Act.

(5) The following companies, and companies controlling them or being under their control may not participate in an application for an operating license of a free-to-air digital television broadcasting network – with the exception of an application specified in Article 43 (3) concerning the operating license of free-to-air digital television broadcasting network receivable exclusively by mobile phones:

(a) the aggregate number of their subscribers in the television broadcasting markets – with the exception of broadcasting performed via free-to-air digital television broadcasting network – exceeds three hundred thousand, or

(b) perform program provision falling within the scope of the Media Act and directed primarily to the territory of the Republic of Hungary.

(6) National radio program provider or an undertaking it controls or controlled by it may not participate in the application procedure specified in Article 43 (2), with the exception of a national public service radio program provider as defined in the Media Act and a national public radio program provider.

(7) Natural persons, legal entities, businesses without a legal entity or other organisations controlling each other may not simultaneously participate in the application.

(8) If the national television program providers currently providing programs by way of terrestrial free-to-air broadcasting do not avail themselves to the option specified in paragraph (2) (c), the winning operator of the digital free-to-air broadcasting network shall be entitled to freely conclude contracts concerning the available transmission capacities with other national providers of programs with general content. National program providers currently providing program via terrestrial free-to-air broadcasting may be included in a digital free-to-air broadcasting network sold in the course of the application specified in Article 43 (1), if they undertake in a contract to start the termination of the analogue terrestrial free-to-air broadcasting of their program until 31 December 2009 and complete it by 1 July 2010.

Article 40

(1) The application procedure shall be supervised by an ad-hoc committee set up by Parliament (hereinafter: Committee). The Committee shall establish its own rules of procedure in compliance with the provisions of this Act and the Rules of Order of Parliament.

(2) Each parliamentary panel may delegate one member to the Committee.

(3) The members of the Committee shall have the number of votes corresponding to the membership of the delegating parliamentary panel at the time of the voting. The approval of the opinion and the rules of procedure of the Committee – with the exception of the cases specified in paragraphs (6) and (7) – requires two-thirds of all the votes.

(4) The following shall require the consent of the Committee:

(a) preliminary and final approval of the documentation of the call for applications,

(b) the decision concerning the validity of the application procedure or the individual offers submitted,

(c) the decision concerning the winning bidder of the application (hereinafter jointly: Committee opinion).

(5) The Authority shall send its draft resolution drawn up in the cases listed in paragraph (4) to the Committee, which shall adopt its opinion within fifteen days from the date of sending, on whether it grants or refuses to grant its consent, or it returns the draft resolution pursuant to paragraph (4) (a) and (c).

(6) In the case listed under paragraph (4) (a) the Committee, at the motion of members having at least one-third of

the voting rights, shall return – if required, on several occasions – the draft resolution for revision to the Authority, together with the justification proposed by the initiating members.

(7) In the case listed under paragraph (4) (c), upon a formal or calculation error, at the motion of members having at least one-third of the voting rights, the Committee shall return – on one occasion – the official draft contract for revision to the Authority, indicating the error therein.

(8) The Authority shall examine the draft resolution or official draft contract returned according to paragraph (6) or (7) within ten days, then, after it shall send the revised version to the Committee for a new opinion, which shall proceed in compliance with the provisions set forth in paragraphs (5) to (7).

(9) In the case listed under paragraph (4) (b) and (c) the Committee may refuse to grant its consent only on the basis of a violation of law (including the violation of the call for applications or the application procedure).

(10) If the Committee refuses to grant its consent, or if the Committee does not adopt its opinion by the deadline, the Authority shall make a decision on the invalidity of the application procedure, or the individual applications, or the unsuccessfulness of the application procedure.

(11) The decision of the Authority concerning the invalidity of the application procedure or the individual applications, or the results or unsuccessfulness of the application procedure may be contested by requesting a judicial review, provided that

(a) after the lapse of the forfeit deadline of thirty days after its adoption, the decision or the official contract may not be contested even if it has not been communicated to other parties – beyond the known clients – entitled to a legal remedy or such party has not gained cognisance of the decision or contract by that time,

(b) the request for a judicial review shall be adjudicated by the Budapest High Court of Justice in a three-member panel, within thirty days following the lapse of the deadline open for the submission of the request,

(c) the order of the Budapest High Court of Justice shall not be subject to an appeal,

(d) it may also be initiated by a member of the Committee.

(12) If the Budapest High Court of Justice ascertains that the Authority, by applying paragraph (10) above, made a decision on the invalidity of the individual applications, or the unsuccessfulness of the application procedure, without having obtained the consent of the Committee to the draft resolution or official contract even though it had complied with the law (including the rules of the call for applications or the application procedure), it shall order the Authority to repeat the procedure, in the course of which the Authority shall adopt a decision identical to the content of such draft resolution or official contract, but without sending them to the Committee or obtaining the consent thereof.

Article 41

(1) Based on the preliminary approval of the documentation of the call for applications in compliance with Article 40 above, the Authority shall publish an announcement on its website and a notice in two national dailies.

(2) The electronic format of the documentation of the call for applications may be downloaded after registration from the website of the Authority free of charge, while the printed version may be obtained at the seat of the Authority against payment of a charge.

(3) The Authority shall hold a consultation on the documentation of the call for applications within fifteen days following the publication of the announcement, in the manner and at the venue specified in the announcement or the notice. The publication date shall be the date of presentation on the website of the Authority.

(4) The consultation may be attended by persons and organisations having obtained the documentation of the call for applications after registration, or their representatives, in a number specified in the documentation of the call for applications.

(5) The participants in the consultation may also submit their questions to the Authority in writing, by the fifth day preceding the consultation at the latest.

(6) The participants in the consultation may make their comments in writing, within twenty days after the publication of the announcement.

(7) The Authority shall summarise the comments concerning the consultation and publish them on its website.

(8) Within thirty days following the publication of the announcement, the Authority – taking into consideration the comments – finalises the documentation of the call for applications and sends it to the Committee for review.

(9) In the course of adopting its opinion, the Committee shall proceed in compliance with Article 40 (6) (final approval).

Article 42

(1) The Authority shall publish an announcement on its website and a notice in two national dailies of the call for applications.

(2) Offers may be submitted within thirty days of the publication of the call as specified in paragraph (1).

(3) The Authority shall adopt a separate decision concerning the invalidity of the application procedure or the individual applications, within fifteen days following the lapse of the deadline for the submission of the offers. The Authority shall adopt its decision concerning the validity of the application procedure or the individual applications in the form of a draft resolution or official draft contract.

(4) The Authority shall send the official draft contract containing the results of the application procedure to the Committee within sixty days following the lapse of the deadline for the submission of the offers for review; the Committee shall proceed in compliance with Article 40.

(5) Within thirty days after obtaining the approval of the Committee, the results of the application procedure shall be published in the official gazette and in electronic format on the website of the Authority.

(6) Within forty-five days after obtaining the approval of the Committee, the Authority shall conclude an official contract with the winner of the application procedure, in compliance with the documentation of the call for applications and the offer submitted by the winner.

Article 43

(1) The Authority shall publish a call for applications for the operating licence of the four digital television free-to-air-broadcasters available during the transition period (one of which will become available after terminating the analogue free-to-air broadcasting of the program of a public service program provider), then, following the digital switchover, for an additional free-to-air digital television broadcasting network by 31 October 2007. The network with the second largest coverage area to be won by the application shall be suitable to provide mobile digital free-to-air broadcasting services meeting European standards.

(2) The Authority shall publish a call for applications for the operating licence of the VHF band, free-to-air digital radio broadcasting network available during the transition period by 31 October 2007. In the course of the application procedure, preference shall be given to applicants – as specified in the documentation of the call for applications – that undertake to include the programs of national public service or national public program provider radios in their offers.

(3) The deadline for publishing a call for applications in respect of the free-to-air digital television broadcasting networks or the VHF and L-frequency band digital free-to-air broadcasting networks to become available after the digital switchover shall be stipulated in a separate piece of legislation.

(4) The term of the license to be granted pursuant to paragraphs (1) to (3) shall be 12 years from the date of signing the official contract on the license, which term may then be extended for another 5 years on one occasion, after conducting the application procedure in compliance with the provisions of this Act.

(5) The operating licences of digital free-to-air broadcasting stations to allow the provision of local and regional broadcasting services shall be granted by way of application procedures at a pace allowed by the digital switchover.

(6) In respect of the preparation of the documentation of the call for applications for the licenses to be granted pursuant to paragraphs (2), (3) and (5), of the application procedure Articles 39 to 43 shall be applied as appropriate.

Digital switchover of free-to-air broadcasting of public service programs

Article 44

(1) The analogue free-to-air broadcasting of the programs of the public service program provider may be terminated station by station comprising the free-to-air broadcasting network, provided that this is made practicable by the digital terrestrial free-to-air broadcasting coverage of the population and the ratio of households equipped with devices suitable for the reception of the digital broadcasting service in the coverage area of this analogue station.

(2) The termination of the analogue free-to-air broadcasting of public service televisions shall be determined in a call for applications.

(3) The operator of the free-to-air digital television or radio broadcasting network or free-to-air broadcasting station shall make the programs of the public service program provider defined in Article 132 of the Media Act available to the users free of charge. This provision shall not prejudice the usage charge collected pursuant to Articles 79 to 84 of the Media Act.

(4) The operator of the free-to-air digital television broadcasting network shall broadcast the programs of the public service program providers defined in Article 132 of the Media Act via the network with the highest population coverage and the mobile free-to-air digital television broadcasting network.

(5) In order to guarantee the digital reception of public service programs, digital set-top-boxes may be subsidised during the three-month period preceding the termination of the public service analogue free-to-air broadcasting in a competition-neutral manner; and the subsidy should only be granted upon request and in justified cases and to a justified extent, exclusively to households in social need, already having a capacity to receive analogue terrestrial

free-to-air broadcasting as stipulated in a separate piece of legislation.

Sources of the digital switchover

Article 45

- (1) The costs of digital switchover shall be covered from the following allocated funds:
 - (a) the source of the Broadcasting Fund specified in Article 131 (3) of the Media Act,
 - (b) the frequency fee for analogue terrestrial broadcasting in the amount specified in a separate piece of legislation,
 - (c) the voluntary payments of service providers,
 - (d) the budgetary appropriation, and
 - (e) other payments.
- (2) The sources allocated for digital switchover may be exclusively used for the following purposes:
 - (a) to pre-finance the costs of the application procedure for a free-to-air digital radio or television broadcasting network or the associated rights;
 - (b) to specifically support those who do not have a device suitable for receiving digital broadcasting, based on social need as specified in a separate piece of legislation; or
 - (c) for other purposes specified in the Annex to Government Resolution No. 1014/2007 (III.13.) Korm. (Digital Switchover Strategy).
- (3) The costs of the application procedure for a free-to-air digital radio or television broadcasting network or the associated rights shall be covered from the Broadcasting Fund.

PART FOUR

CO-OPERATION OF THE AUTHORITIES

Article 46

- (1) The Authority and the Board shall closely co-operate to facilitate the uniform application of law.
- (2) In order to discharge their tasks set forth in this Act, in the Electronic Communications Act and the Media Act, the Authority and the Board shall be entitled to exchange any data, information and documents available, however, in the course of such co-operation they shall comply with the provisions of the Electronic Communications Act and the Media Act pertaining to data protection and business secrets. Accordingly, the authority transferring data to the other one shall, among others, advise the party having supplied the data for such transfer, and the recipient authority shall guarantee the same level of data protection as applied by the transferring authority.
- (3) The Authority and the Board shall stipulate the details of their co-operation in an agreement to be signed before June 30 each year and to be made available for the general public.

PART FIVE

CLOSING PROVISIONS

Entry into force

Article 47

- (1) This Act – with the exception of the provisions stipulated in paragraph (2) – shall enter into force on the fifteenth day following its promulgation.
- (2) Article 40 (1) and (2), Article 47 (5), and Article 53 of this Act shall enter into force on the day of promulgation hereof, while Article 45 (1) (a) and (3) shall enter into force on 1 January 2008 and Article 30 (5) on 1 January 2010.
- (3) Concurrently with the entry into force of this Act, the following shall be repealed:
 - (a) Articles 103 to 106 and 110 of the Media Act,
 - (b) Article 115 (3), (5), (6), (8), Article 116 (2), (3) and (6), Article 117 (4), Article 118 (3) to (7) and Articles 119 and 120 of the Media Act,
 - (c) the words “or irregular” in Article 33 (2) (c) of the Electronic Communications Act,

- (d) Article 94 (4) of the Electronic Communications Act, and
- (e) Article 188 (76) of the Electronic Communications Act.
- (4) Concurrently with the entry into force of this Act, the following shall be repealed:
 - (a) Article 2 (29) and (33) of the Media Act,
 - (b) the text “and their transmission to the receivers of the users through any broadcast transmission and broadcasting system” in Article 2 (30) of the Media Act,
 - (c) Article 114/A of the Media Act,
 - (d) Article 115 (1), (2), (7) and (9), Article 116 (1), (4) and (5), Article 117 (1) to (3), Article 118 (2) and Article 121 of the Media Act.
- (5) Article 23 (2) of Act XLV of 2006 on the amendment of Act II of 2004 on Motion pictures shall be repealed.

Interim provisions

Article 48

Within 30 days after the entry into force of this Act, the Board shall hand over the register of program distributors to the Authority. The Authority shall then enter these service providers in the broadcasters’ register.

Amended legislation

Article 49

(1) Article 33 (2) of the Electronic Communications Act shall be supplemented by the following sub-paragraphs (g) and (h):

“(g) upon the violation of an electronic communications regulation related to broadcasting, 5% of the sales revenues of the offender,

(h) upon the unauthorised use of a radiofrequency or identifier, 1% of the sales revenues of the offender, or, in the absence of sales revenues, at least HUF 10,000, but maximum HUF 100,000.”

(2) Article 33 (3) of the Electronic Communications Act shall be supplemented by the following subparagraph (c):
“(c) in data supply related to broadcasting, 1% of the sales revenues, but at least HUF 100,000”

(3) Article 69 of the Electronic Communications Act shall be supplemented by the following paragraph (9):

“(9) The detailed rules pertaining to the allocation and radio licenses of frequencies, and frequency rights are stipulated in a separate piece of legislation.”

(4) Article 89 of the Electronic Communications Act shall be replaced by the following provisions:

“Article 89 (1) The multiplex service provider shall render the service under reasonable and fair conditions, in compliance with the principle of equal treatment.

(2) If the parties do not conclude the contract within thirty days following the offer, in order to settle the dispute, either party may launch the procedure specified in Articles 49 to 51 of the Electronic Communications Act. The Authority shall be entitled to establish the contents of the contract, as required by the market conditions.”

(5) Article 94 (2) of the Electronic Communications Act shall be replaced by the following provisions:

“(2) As a general principle, electronic communications structure shall be installed on public land or by way of sharing existing electronic communications facilities or in facilities owned by public utility service providers.”

(6) Article 95 of the Electronic Communications Act shall be replaced by the following provisions:

“Article 95 (1) If publicly accessible electronic communications services cannot be provided by installing electronic communications structure on public land or by way of sharing existing electronic communications facilities, and no agreement has been concluded between the public utility or the owner (manager, user) of the private property and the service provider, in the procedure hereunder, the electronic communication structure may be installed primarily in the facilities of the public utility, or secondarily, on the private land (affected property).

(2) At the request of the service provider, the authority may adopt a decision concerning an easement or other right of use, restricting the use of the affected property by its owner – due to public interest in publicly accessible electronic communications services – provided that the service provider proves the following:

(a) it has exerted its best reasonable efforts to come to an agreement with the owner of the affected property,

(b) the installation of the electronic communications structure on public land or by way of sharing existing electronic communications facilities or in the case of private property, in the facilities owned by other public utilities is not practicable due to reasons of environmental protection, public health, public safety, construction issues, or the special features of the electronic communications network.

(3) The request submitted pursuant to paragraph (2) may also be evaluated in the course of the procedure for

licensing the construction of the electronic communications structure.

(4) The authority shall notify the owner of the affected property of the commencement of the procedure.

(5) The official decision shall specify the following:

(a) the restriction required in the interest of the publicly accessible electronic communications service,

(b) the content of the easement or other right of use, thus, especially, the right of the authorised representative of the electronic communications service provider to enter the affected property for the inspection, maintenance and required emergency repair of the electronic communications structure and equipment,

(c) the location and method of installation of the electronic communications structure,

(d) the technical parameters of the electronic communications equipment that may be installed in the electronic communications structure, as well as the relevant limit values stipulated by legal regulations pertaining to environmental protection, public health, public safety and construction.”

(7) Article 96 of the Electronic Communications Act shall be replaced by the following provision:

“Article 96 (1) With the exception of state-owned public areas and the owner of the electronic communications structure affected by the shared use of facilities, the owner of the affected property shall be entitled to a compensation corresponding to the extent of the restriction. In addition, the owner may also exercise the rights specified in Article 108 (2) of the Civil Code.

(2) After the completion of the construction, the service provider installing the electronic communications structure shall restore the original condition of the environment. The owner of the other public utility facility, private property or municipal property used for the installation of the electronic communications structure may agree with the contractor in an improved restoration of the area.

(3) The electronic communications structure shall be installed on the affected property so that it should interfere with the exercise of the owners of adjoining properties to the least possible extent, within the limit values stipulated by legal regulations pertaining to environmental protection, public health, public safety and construction – as allowed by the circumstances –; this disturbance occurring in the course of the installation and operation of the structure shall not classify as unnecessary disturbance defined in the Civil Code.”

(8) The Electronic Communications Act shall be amended as follows: in Article 33 (2) (c) the word “applicable” shall be replaced by “in the year affected by the offence”, in the second part of Article 33 (7) the words “sales revenues” by “sales revenues or communication of the sales revenues”, in the second part of Article 69 (2) the words “frequency right” by “frequency right or license”, in the second part of Article 69 (3) the words “frequencies” by “rights”, in Article 188 (23) the word “subscriber” by “subscriber or user”, and in Article 188 (56) the words “electronic communications service provider” shall be replaced by “electronic communications service provider or undertaking”.

Article 50

Article 187 of the Electronic Communications Act and the title preceding it shall be replaced by the following title and provisions:

“Transposition of European Union legislation

Article 187 This Act serves to transpose the following legislation of the European Communities:

(a) Regulation 2887/2000/EC of the European Parliament and of the Council of 18 December 2000 on unbundled access to the local loop,

(b) Articles 3 and 4, and Article 7 (4) of Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity of the European Parliament and of the Council,

(c) Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive),

(d) Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive),

(e) Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive),

(f) Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive),

(g) Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)

(h) Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services.”

Article 51

(1) Article 188 of the Electronic Communications Act shall be supplemented by the following subparagraph 5/a:

“5/a. *Transmission network*: the arrangement of technical procedures, electronic communication and other equipment used for analogue and digital broadcasting of television or radio program signals, which connects to the transmission media of broadcasting – thus, in particular, to air and radio frequency, vacuum, coax, twisted pair and fibre optic cables;

(2) Article 188 (73) to (75) of the Electronic Communications Act shall be replaced by the following provisions:

“73. *Multiplex service provider*: electronic communications service provider that creates a single standard digital signal flow from radio and television broadcasts or data signals received, then transmits this signal flow or has it transmitted by way of digital broadcasting.

74. *Program distribution*: broadcasting whereby the electronic communications terminal equipment of the subscriber or user connects to the broadcaster’s transmission network at a specific geographical location.

75. *Free-to-air broadcasting*: broadcasting whereby analogue or digital radio or television programs are transmitted to the subscriber or user via transmission network using terrestrial radio frequencies – with the exception of frequencies primarily allocated to satellite services – and generally allowing one-way data transmission; free-to-air broadcasting also includes broadcasting via a digital free-to-air broadcasting network or free-to-air broadcasting station;”

(3) Article 188 (77) of the Electronic Communications Act shall be replaced by the following provisions:

“77. *Broadcasting*: electronic communications service provided via any of the transmission networks specified in point 5/a above, whereby analogue or digital broadcasting signals are transmitted from the program provider to the receiving device of the subscriber or user, regardless of the transmission network and technology applied. In particular, the following shall be regarded broadcasting: free-to-air broadcasting, satellite broadcasting, broadcasting via a hybrid fibre-coax transmission system, as well as broadcasting a program by a transmission network using an Internet Protocol, if the type or conditions of the service are equivalent to those of broadcasting or this method substitutes broadcasting performed in another way. Broadcasting accessible by a subscriber as a separate service or included in a package together with other electronic communications services against a fee shall also be regarded broadcasting. However, signal transmission via a network suitable for connecting less than 10 receiving devices shall not classify as broadcasting;”

(4) Article 188 of the Electronic Communications Act shall be supplemented by the following subparagraph (110), and concurrently the numbering of the current point (110) shall change to (111):

[For the purposes of this Act:]

“110. *Undertaking*: natural persons and legal entities, and businesses without a legal entity – including the Hungarian branch office of undertakings seated in a foreign country – with market operations performed or exerting their impact in the territory of the Republic of Hungary are associated, either wholly or partially, with electronic communications services provided in the territory of the Republic of Hungary.”

Article 52

(1) Article 2 (26) of the Media Act shall be replaced by the following provisions:

“26. *Broadcast transmission system*: a transmission network, as specified in a separate piece of legislation, capable to broadcast at least five programs simultaneously.”

(2) Article 2 (32) of the Media Act shall be replaced by the following provisions:

“32. *Free-to-air broadcasting*: the version of free-to-air broadcasting, as specified in a separate piece of legislation, performed by analogue broadcasting technology.”

(3) In Article 77 (2) of the Media Act the words “herein” shall be replaced by “by law”, and in Article 131 (3) the text “for free-to-air broadcasting and the development of cable networks used for the distribution of programs” shall be amended to read “to cover the costs of the development of digital broadcasting and digital switchover”.

Authorisations

Article 53

(1) The Government is hereby authorised to establish in a decree

(a) the detailed rules of adopting measures required in the interest of the interoperability of devices suitable for

receiving digital radio and television programs,

(b) the detailed rules of using the resources for digital switchover.

(2) The minister in charge of the audio-visual policy is hereby authorised to establish in a decree

(a) the deadlines for the call for applications for the operating licenses of digital free-to-air broadcasting networks or free-to-air broadcasting stations not mentioned in Article 43 (1) of this Act, and for the licenses related to the free-to-air digital radio broadcasting networks in the L-frequency band, and

(b) the rules of procedure of terminating the analogue free-to-air broadcasting of regional and local public service programs.

(3) The minister in charge of the audio-visual policy is hereby authorised establish, in a decree issued jointly with the minister in charge of electronic communications policy, the detailed technical conditions for the distribution, suitability for receiving digital programs and the marking of the same of analogue and digital television sets, taking into consideration the environmental protection commitments of the Republic of Hungary under European Union and international agreements, since the massive, joint application of analogue television sets and digital set-top-boxes requires a significantly higher volume of electric power than the use of integrated digital television sets.

(4) The minister in charge of the audio-visual policy is hereby authorised to establish in a decree, issued jointly with the ministers of electronic communications policy, public finances, and social and labour policy the rules of subsidising digital set-top-boxes in order to guarantee the digital reception of public service broadcasts.

(5) The minister in charge of electronic communications policy is hereby authorised to establish – in agreement with the ministers in charge of public finances and audio-visual policy – in a decree the amount that may be transferred from the fees paid for frequencies used for analogue terrestrial broadcasting to the funds serving as resources for the digital switchover.

Transposition of European Union legislation

Article 54

This Act serves to transpose the following legislation of the European Communities:

(a) Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive),

(b) Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive),

(c) Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive),

(d) Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)

(e) Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services,

(f) Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce).