



MEDIA COMMISSION

Country Report Iceland

Nordic meeting in Helsinki 11. - 12. April 2013

EFTA Surveillance Authority Decision and the Icelandic National Broadcasting Service – a Public Service Medium Act No. 23/2013

In September 2002 the Northern Lights Communications Ltd. (NLC, now 365 midlar ehf.), a private broadcaster, lodged a complaint concerning alleged state aid granted by the Icelandic State in favour of the Icelandic National Broadcasting Service Ríkisútvarpið (RÚV). In its complaint, Northern Light Communications Ltd, claimed that the broadcasting licence fee and the advantages provided by law for its collection, put RÚV in a favourable position in relation to its competitors.

Furthermore, Einar Agustsson, the former owner of the internet portal Tunga.is, claimed that unlimited state aid granted from the Icelandic Government to RÚV, and in particular to its Internet service www.ruv.is, clearly violated the state aid provisions of the EEA Agreement.

In April 2004, the Authority adopted a new chapter in its State Aid Guidelines relating to the application of the state aid rules to public service broadcasting. The Competition and State Aid Directorate of the Authority forwarded the complaint to the Icelandic Government for comments and requested further information on RÚV's financing, based on the above mentioned guidelines.

Following the adoption of the chapter on state aid to public service broadcasting of the Authority's State Aid Guidelines in April 2004, which was replaced by a new chapter in February 2010, the Authority extended its investigation beyond the complaints. The investigation covered the general financing regime of RÚV by the public authorities, which compensates the broadcaster for the costs of all its activities within the public service remit entrusted to it by the relevant national legislation.

It is important to note that RÚV is active on new media markets. It runs an Internet homepage, www.ruv.is, with numerous services and a quite extensive teletext services. The other broadcasters on the Icelandic television market have not set up teletext services to a similar extent as RÚV. Also a number of other news providers in Iceland offer similar services on the Internet. RÚV is also involved in activities on the mobile telephony platform.

Changes were made to the law in order to fulfil the demands of EFTA Surveillance Authority with the Act on the National Icelandic Broadcasting Service No. 6/2007. A new limited liability company was established according to the new law and the National Broadcasting Service (Ríkisútvarpið ohf.; RÚV) began operations on 1 April 2007 under the new Act. That act also introduced substantial amendments to the operational structure of the RÚV. Furthermore, a new public service contract was signed in 2007 between the Ministry of Education Science and Culture and the RÚV. The purpose of the public service contract was to define in a more extensive way the public service obligations of the RÚV.



MEDIA COMMISSION

However, various drawbacks in the application of the new law came to light. Therefore, the Minister of Education, Science and Culture decided in 2009 that it would be necessary to review the current legislation from 2007. Furthermore, the EFTA Surveillance Authority stated that several concerns could be relieved if certain conditions were met. These conditions called for changes and amendments to current legislation. The conditions of the ESA were as follows:

- A clear definition of the public service remit should be implemented.
- An ex ante mechanism for inclusion of new public service activities in the public service remit should be implemented.
- An ex post supervision mechanism by an independent authority regarding the fulfilment of the public service remit had to be established.
- To the extent commercial activities were carried out within RÚV, a separation of accounts should be implemented in accordance with the Directive 2006/111/EC (Transparency Directive).
- Ensuring an establishment of a transparent mechanism whereby the net benefit of the commercial exploitation is taken into account when calculating the net public service costs and relating compensation.
- Any commercial exploitation of the public service should be in line with market practice. This implies a duty not to undercut advertising price. An independent authority should periodically check compliance with these rules.
- The State guarantee in favour of RÚV (i.e. the better financing conditions which it enjoys due to its legal form) should be limited to the financing of services of general economic interest. It should be also proportionate thereto and not result in any overcompensation. Non public service activities by RÚV were only to be guaranteed by the State, if they are remunerated with a market premium.

In 2009 the Minister of Education Science and Culture appointed a committee of experts to review the 2007 Act and propose changes to the law. Proposals were submitted at the end of January 2010 where the role of the RÚV as a public service broadcaster was examined. The most important points in the report were as follows:

1. The RÚV's independence, as a public service medium, should be increased. For this purpose, the company's income for public service broadcasting should be made predictable and definite by basing the decision on the allocation to the RÚV in each year's national budget on the total amount of the broadcasting fee collected during previous year.
2. A special subsidiary should be established to handle the company's operations which do not come under the definition of public broadcasting services, as is done. Activities handled by the company would include, e.g., the sale of advertising space, services, publishing, the leasing of technical equipment, facilities, etc. The narrow definitions in the EU rules on public financing would impose severe restrictions on the operations of the subsidiary.



MEDIA COMMISSION

3. Transparency in the running of the RÚV should be increased. Ways should be sought of ensuring that the social aims of public service media operations, transparency and equality, apply to all aspects of the RÚV's activities. In addition, procedures in staff recruitment should be transparent, and all vacant positions should be advertised for application, including that of the Director of the RÚV.
4. Democracy in the administration of the RÚV should be increased. This should be done by sharing the power of the Director with others and increasing the involvement of other employees in decision-making. In addition, an annual "Broadcasting Congress" should be held, with the participation of the general public, in order to discuss and formulate the policy of the RÚV.
5. The independence and job security of employees of the RÚV working on news and related programmes should be increased by setting special conditions for giving them cautions and dismissing them.
6. The responsibility of the Minister of Education, Science and Culture for the RÚV should be defined better and emphasised. This would involve, amongst other things, transferring the state's share in the company back to the Minister of Education, Science and Culture, in accordance with the arrangement that is in force elsewhere in the Nordic countries, with the exception of Finland, where state-owned limited companies other than public broadcasting companies come under the Ministry of Finance. In addition, an assessment should be made of whether it is proper that the minister at any given time should have a representative on the board of the company.
7. The role of the board, and appointments to it, should be changed. The role of the board should be defined not simply as an administrative body, as is currently the case; the board should be responsible for policy formulation and professional control of the senior management of the RÚV. Also, the number of members of the board should be increased, e.g. by having representatives of the academic community and artists' associations, and the company's employees, on the board. As qualifications for membership of the board, experience, knowledge or professional qualifications relating to the operation of public service broadcasting should be required.
8. The pros and cons of changing the operational form of the RÚV should be examined. It should be borne in mind that EU regulations prevent public service broadcasting being run as a traditional state body with 'unlimited capacity for loss'.

A task force was then formed to write a new bill taking the conditions of the EFTA Surveillance Authority into account, the proposal of the committee of experts, as well as the comments and criticisms that the Ministry had received, both formally and informally. Furthermore, the legislation of Iceland's neighbouring countries, in particularly the Nordic countries was examined.

On February 9th 2011, the EFTA Surveillance Authority published its decision on appropriate measures in the financing of the Icelandic National Broadcasting Service. According to the decision, the Icelandic Authorities had to take all legislative, administrative and other relevant actions necessary and any incompatible aid should be abolished with effect from 1 July 2011. However, the establishment of an independent media authority was a prerequisite condition for the adoption of a new regulatory framework for RÚV. That happened with enactment of the



MEDIA COMMISSION

Media bill as Act No. 38/2011, which was passed by Parliament April 15th 2011. Subsequently some of the appropriate measures could be entrusted to the independent Media Regulatory Authority, Media Commission, established under the new law.

However, the regulatory role of the Media Commission for the operation of RÚV was dependent upon amendment to the National Broadcasting Service Act No. 6/2007. A bill was introduced in the Parliament, but was not passed as law in the parliamentary year of 2010-2011. The enactment of the Icelandic National Broadcasting Service, a public service medium bill was passed as Act No. 23/2013, by the Parliament in February 1st 2013.

In the new act the public service remit is much better defined including RÚV's role and its duties. According to the new law the RÚV shall establish and operate a wholly-owned subsidiary to handle activities that are not considered public service activities. The new subsidiary will be established and start to operate on January 1st 2014. The law also requires a stricter financial separation between operations connected with public service broadcasting from those other operations by the company or its subsidiary. New provisions are introduced in commercial communication, i.e. a ban on sponsorship except in the case of major events and limits in advertising time. Furthermore, the board of directors has been changed and the scope of responsibilities of the board has been increased. The annual fee that the Director of Internal Revenue collects at the same time as taxes (earmarked tax) has been changed in order to better ensure the Icelandic National Broadcasting Service's financial independence.

According to the new law the Media Committee shall each year make an independent assessment of whether the RÚV has discharged its role as a public service broadcaster. Furthermore, the RÚV shall seek the authorisation from the Minister of Education, Science and Culture for the provision of new public broadcasting services if it is expected to cost more than 10% of its annual fee that the Director of Internal Revenue collects at the same time as taxes. The Media Commission shall assess the proposed service and take into the account social, cultural and democratic implications of the new service.

Amendments to the Media Law No. 38/2011 – Media Concentration

On 27th of March amendments were made to the Media Law No. 38/2011. Minor and mostly technical changes were made to several provisions, however a whole new chapter on media concentration was amended to the current law. The amendments allow the Competition Authority to intervene when diversity and plurality is being challenged.

According to Article 62 b in the Media Law No. 38/2008 all mergers where a media company is involved with a turnover of 100 million ISK or more has to be notified to the Competition Authorities. The form of such a notifications are according to the competition law. In mergers where media companies are involved, the Competition Authority has to take into account whether plurality or diversity of the media market is challenged. The Competition Authority has to seek the opinion of the Media Commission prior to its decision. Furthermore, the Competition Authority can prevent a merger if it has negative impact on media plurality and



MEDIA COMMISSION

diversity or can impose conditions to prevent negative effects on the media market.

Technical Developments in Iceland

The State Trading Centre on behalf of The Icelandic National Broadcasting Service (RÚV) invited interested parties to take part in pre-selection for competitive dialogues for providing Digital Video Broadcast (DVB) services on June 12th 2012.

The RÚV plans to close down its current analogue television broadcast network before the end of 2014. RÚV were therefore seeking a partner to provide DVB in an economical and reliable way. RÚV was in this aspect prepared to purchase a broadcasting system, sign a long term leasing contract for broadcasting services or enter into a joint venture partnership with a service provider. Furthermore, either the system may be handed over to RÚV, or operated by the partner for a short or long period of time.

Emphasis has been laid on guaranteeing that users experience premium quality broadcasting services. The service shall be capable of distributing Standard Definition TV (SDTV) and High Definition TV (HDTV) as well as transporting some radio programs (channels) over the same system. The service is to be ready for use in stages during the next 2-4 years, starting with the distribution of one SDTV program (converting it to HDTV within 4 years) and one HDTV program as well as the radio programs. Additionally a solution to broadcast RÚV's programmes to the ocean area nearest to Iceland for seafarers is needed. It is advantageous if this solution is provided by the same supplier.

The RÚV has been looking for a technologically neutral solution in the sense that the RÚV is impartial to the type of the distribution service. The broadcast network shall though be in accordance with European DVB standards as well as Nordic and EBU recommendations. It shall be simple and inexpensive for the users to start using the service and a subscription fee for RÚV's programs is not allowed.

The broadcast service shall, in this phase, reach at least 99.9% of the population effectively covering most of Iceland's lowland. The service shall at least be available at homes, businesses, public buildings and summer house areas. The minimum service area will further be specified as coordinated service spots. It is foreseen that the service may be able to broadcast programs other than RÚV's which is regarded as advantageous for the users.

The project is divided into three major components, namely Head-End, Backhauls and Delivery. A proposed solution shall at least consist of the Delivery component but may also contain Head-End and Backhaul components. The operation of these may also be proposed. Tenderer shall assume that the RÚV will be the holder of a frequency license for DVB-T/T2 distribution that may be used for the service. The TV analogue network is to be operated in parallel to the DVB service for 6 months in each area.

The RÚV currently operates FM radio transmitters at 100 sites broadcasting two national radio programs, LW radio transmitters at two sites and 110 own radio sites facilities. The current analogue TV network consists of 180 transmitters. Over 90% of the radio transmitters are located



MEDIA COMMISSION

at the same sites as the TV transmitters.

On 27th of March 2013 a contract was signed between the Telecom operator Vodafone and the RÚV. Vodafone will operate the digital broadcasting transmission for the RÚV channels for the next 15 years. Vodafone estimates that the revenues will be 4 billion ISK during the contract period. According to the contract, RÚV's current broadcasting transmission system for both radio and television will be operated by Vodafone. Analogue television broadcasting will end in the year 2014, but the current FM-transmission system will be operated during the whole contract period. Furthermore, high-definition television will be available for 99,8% of the population before the end of 2014.

Proposed amendments to the media law on the media coverage of elections

The OSCE published a report on the early parliamentary elections on 25 April 2009. Several suggestions are to be found in this report on the media coverage of elections. It is important to note that the report is published prior to the enactment of the media law, which means that suggestions on amendments are made to the Broadcasting Act No. 53/2000. Furthermore, a new National Public Service Act has been passed in the parliament since the report was published. However, in neither of these acts, provisions are to be found on media coverage of elections.

The OSCE points out in its report that the legal framework governing the media is essentially composed of the Constitution, The Broadcasting Act, The Regulation on Broadcasting Activities, the Icelandic National Service Act, the Public Service Contract and internal regulations within RÚV. This set of legislation does however, not provide rules on the media coverage of elections. Thus the OSCE suggests that consideration could be given to granting the independent media authority a supervisory role in the relation to media in elections and to adopting a set of rules on media coverage of the campaign.

The OSCE also suggest that the independent media authority could consider issuing instructions on political advertising to help ensure consistent media practice. Paid airtime should clearly be marked as such in order to highlight the commercial nature of the messages.

Finally, the OSCE points out that the provisions of free airtime could be addressed in legislation in order to ensure consistent practice in each election.

In November 2012 the Minister of Education, Science and Culture appointed a political committee with the task to propose amendments to the media law on media coverage of elections. Each party in the parliament appointed one member for the committee. The political committee published a report with its suggestions on 27 February 2013. In the report the OSCE's suggestions are taken into careful consideration.

In order to fulfil the requirements and suggestions of the OSCE, the committee proposed amendments to the Media Law No. 38/2011. It proposed that the election period would start



MEDIA COMMISSION

formally six weeks prior to the election day. During these six weeks, the media would have to be particularly careful to fulfil requirement of due accuracy and impartiality. Furthermore, the committee proposed that the public service broadcaster, RÚV would be obliged to provide free airtime in television. The RÚV would thus be required to set certain rules on free airtime for political parties and candidates.

The political committee suggested that the Media Commission would get the task to publish a report on the matter after each general election. Furthermore, political parties or candidates should have the opportunity to get an unbinding opinion of the Media Commission on whether a medium has fulfilled its lawful requirements prior to general elections.

The committee also proposes changes in media law with the purpose of making restrictions to political advertisements and other „opinion advertisements“ which can influence the opinions on the general public.

The committee finally proposed restrictions on how political polls were to be covered in media with the purpose to make the news on such polls as balanced as possible.

The report and suggestions were introduced to the Minister of Education, Science and Culture and the Parliament. However, since it was too late to make additional amendments to the media law no amendments on media coverage on elections were passed at the Parliament.