

Communication concerning the decision of the Curia of Hungary
in the administrative case n° Kfv.III.37.666/2012

Within the framework of a public tender for the award of the rights to use frequencies for providing mobile telecommunications services, the National Media and Infocommunications Authority, the defendant in the present case, accepted the tenders of M. T. Nyrt., T. M. Zrt., V. M. Zrt. and M. M. Zrt. In its decision, the defendant obliged all the service providers of the mobile telecommunications market, including the aforementioned successful tenderers, to provide inland roaming services with the aim to reduce the competitive disadvantage of M. M. Zrt, a state-owned service provider.

In its final judgement rendered on 17 September 2012, the Metropolitan Tribunal quashed the above decision of the defendant based on the joint claim of M. T. Nyrt, T. M. Zrt. and V. M. Zrt. that acted as the first, second and third plaintiffs respectively.

The second and third plaintiffs, in addition, the defendant and M. M. Zrt. as an intervener to promote the interests of the defendant submitted petitions for judicial review against the final judgement to the Curia of Hungary.

Based on the petitions of the defendant and the intervener, the Curia was called upon to decide whether the defendant had to apply the legal rules in force at the time of the invitation to tender procedure or at the time of the adjudication of tenders when assessing tender applications. The Curia argued that the amended provisions of legislation which had been modified during the course of administrative proceedings should be taken into account and should be applied in such proceedings only if the amended provisions explicitly stipulated that they had to be applied in pending cases as well. Given that in the present case there was no express regulation as regards the application of the modified provisions in pending cases, the petitions of the defendant and the intervener were ill-founded.

In connection with the petitions of the second and third plaintiffs, the Curia was also requested to decide whether the decision of the defendant could be considered an administrative decision awarding rights separately to each service provider, in particular to the second and third plaintiffs. The Curia established that the interrelated acts of awarding rights to different service providers could not be handled separately, and therefore found that the plaintiffs' petitions for judicial review were unjustified.

With regard to the above, the Curia upheld the judgement of the Metropolitan Tribunal which had previously quashed the administrative decision of the defendant.

Budapest, the 12th of March 2013

Administrative and Labour Department of the Curia of Hungary