



St. Gallen, 5 December 2024

Press Release

regarding judgment A-956/2024 of 4 December 2024

Candidates for Biel TV broadcast licence essentially equivalent

Early this year, Canal B was awarded the Biel TV licence as of 2025. The Federal Administrative Court considers that Canal B and TeleBilingue are essentially equivalent candidates and instructs DETEC to assess the diversity of opinion and programming offered by the two candidates.

At the start of 2023, the Federal Office of Communications (OFCOM) put 38 radio and TV licences out to tender for the period 2025 to 2034. On 11 January 2024, the Federal Department of the Environment, Transport, Energy and Communications (DETEC) awarded a television licence for the “Biel/Bienne” coverage area to Mystik SA, a company operating as Canal B SA (in formation). DETEC took the view that Canal B SA (in formation) was the candidate best able to fulfil the performance mandate. On 12 February 2024, TeleBilingue AG lodged an appeal against this ruling with the Federal Administrative Court (FAC).

Three-step licencing procedure

The Radio and Television Broadcasting Act provides for a three-step licencing procedure. It describes the general requirements to obtain a licence. If the licencing authority has to decide between several candidates, the licence is awarded to the candidate that is best able to fulfil the relevant performance mandate. If several candidates seem essentially equivalent in this respect, preference is given to the candidate who best enhances the diversity of opinion and programming.

TeleBilingue AG argued that Canal B SA did not fulfill the licencing requirements and requested an improvement in the rating of its tender and the rating of Canal B SA’s tender to be reduced.

Essentially equivalent candidates

In its judgment, FAC confirms that Canal B SA fulfils the licencing requirements since financial viability only has to be credibly demonstrated and since the contributions are primarily produced in the coverage area. It corrects DETEC’s evaluation with regard to one selection criterion and two sub-criteria. First, the evaluation method for one sub-criterion is found to be inconsistent with federal law because it discouraged the employment of trainees. Second, FAC finds DETEC made a legal error in correcting the TeleBilingue offer and in considering an irrelevant element. Taking these corrections into account, the

candidates are essentially equivalent. As a result, DETEC must determine which candidate best enhances the diversity of opinion and programming.

The Court partially upholds the appeal and refers the matter back to DETEC. To avoid jeopardising the security of supply, FAC grants the current licensee TeleBilingue AG an interim licence of five months from the date of the judgment.

This judgment is final and may not be appealed to the Federal Supreme Court.

Contact

Rocco R. Maglio

Press secretary

+41 (0)58 465 29 86

+41 (0)79 619 04 83

medien@bvger.admin.ch

About the Federal Administrative Court

Located in St. Gallen, the Federal Administrative Court (FAC) was established in 2007. With its staff of 375 employees (314.7 FTE) and its 73 judges (65 FTE) it is the largest federal court in Switzerland. The Federal Administrative Court has jurisdiction to hear appeals against decisions rendered by Swiss federal administrative authorities. In specific matters, the FAC may grant review on decisions rendered by cantonal authorities. Recourse actions are also reviewed by the Court. The FAC is composed of six divisions. It renders an average of 6,500 judgments every year.