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# THE LAW SHOOTER

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## DIGITAL BROADCASTING MAY BE LAUNCHED IN 2009 IN HUNGARY

### I. We have to substitute a significant arrears

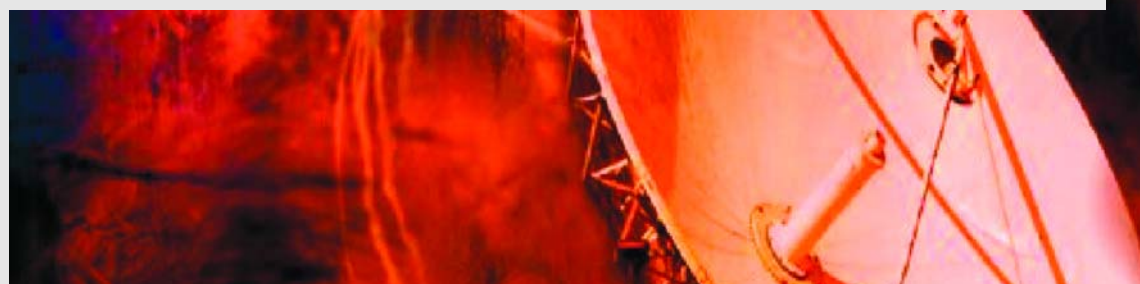
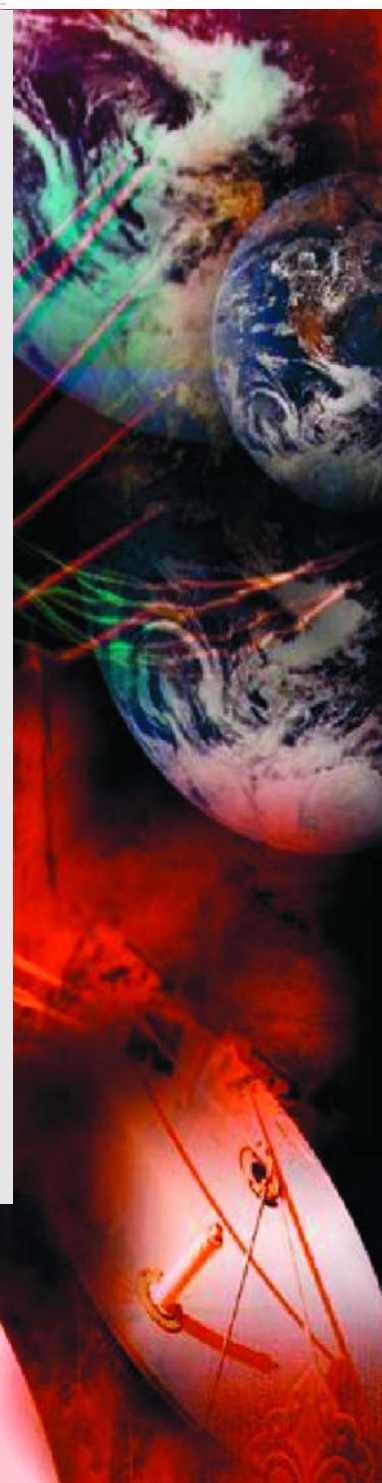
Most of the Member States of the European Union have already built up the legislative background for the digital broadcasting and launched, or will launch in the near future, the terrestrial digital broadcasting. Hungary is, however, lagging behind, as in our country the terrestrial digital broadcasting has not started yet either as a public or as a commercial service.

The legislation concerning the digital switchover is imperative also for that the European Commission set a deadline of 1 January 2012 for switching off the terrestrial analogue broadcasting, in its communication of 24 May 2005 on „Accelerating the Transition from Analogue to Digital Broadcasting”.

One of the advantages of the digital switchover is that it will widen the frequency spectrum, allowing – in current frequency plans – the terrestrial digital broadcasting of 30 or – at a later stage – even 80 TV channels, against the existing 3 (m1, RTL Klub, Tv2).

It is, therefore, of outstanding importance that the Hungarian Parliament passed - on 18 June 2007 - the laws required to the digital broadcasting. In this scope the Parliament adopted a resolution on the regulatory reform of audiovisual media, and passed Act LXXIV of 2007 on the Rules of Broadcasting and Switchover to Digital Broadcasting („Digital Broadcasting Act”), which entered into force on 1 July 2007. With this, however, the legislative process is far not completed. In the second half of the year – in addition to conducting the tender procedure of multiplex service providers – the legislators have to address the regulation of content and announce the National Audiovisual Strategy and – by the end of the year but not later than the announcement of the winner of multiplex tender – pass the new media act.

The digital switchover must be completed until 31 December 2011, in a way that the digital television broadcasting cover the entire territory of Hungary and the public service channels be accessible by at least 96% of the population, having the TV sets suitable for receiving the digital broadcasting service.



## II. Major Principles of the Digital Switchover

The Digital Broadcasting Act provides for the standard regulation of broadcasting i.e. transmission of programs, and for the process and rules of transition from analogue to digital broadcasting.

The regulation of broadcasting was covered partly by Act I of 1996 on Radio and Television Media („Media Act”) and partly by Act C of 2003 on Electronic Communications. The EU legislation requires, however, to separate the regulation of content and the regulation of communication networks used for transmission of content. In view of this requirement, the broadcasting related provisions are taken out of the Media Act and entered – together with the rules of digital switchover - in the Digital Broadcasting Act.

In compliance with the requirement of technological neutrality, the Digital Broadcasting Act creates equal conditions for all broadcasting platforms. Accordingly, broadcasting includes all types of program transmission to the users’ receiver. The Digital Broadcasting Act expressly extend the term „broadcasting” also to the Internet transmission of program, provided that such services are rendered as a substitute for cable television or other digital broadcasting.

In the territory of the Hungarian Republic any natural person, legal entity or non-legal-entity organization are entitled to provide broadcasting services. This, as an intention to commence provision of an electronic communication service, as well as the planned date of commencement shall be reported by the broadcaster to the National Communications Authority for registration. For broadcasting services the Digital Broadcasting Act applies no limitations of license but stipulates that - if the information society services have edited contents – the edited contents shall also comply with the major principles of the Media Act.

In respect of the regulations applicable to the operators of digital broadcasting networks, i.e. the multiplex service providers, the legislators had to determine to what extent state intervention would be required to maintain the freedom of opinion and the diversification of media, while allowing the platform operators sufficient business liberty, so that the multiplex operator role be attractive for the investors. In the multiplex model regulated by the Digital Broadcasting Act, the winning service provider is allowed to fill up the transmission capacity available for him with channels selected by him – in addition to the public service channels and similarly to

the cable and satellite service providers. He concludes contracts with the program service providers and the broadcasters, but the platform operator shall refuse the broadcasting of program not licensed under the Media Act.

The entitlement to operate digital television broadcasting networks and transmitting stations will be awarded through tender.

Participation in the tender is not allowed to a company or a company controlling or being controlled by it which

- a) has an aggregate number of subscribers in excess of 300,000 in the broadcasting markets, or
- b) provides program service falling within the Media Act and primarily targeted to the territory of Hungary.

Simultaneous participation in the tender is not allowed to legal entities or non-legal-entity business associations or other organizations which control or are controlled by each other.

The tender procedure shall be conducted by the National Communications Authority in accordance with the provisions of the Digital Broadcasting Act. The tender procedure shall be supervised by an ad hoc committee set up by the Parliament. Each parliamentary panel is entitled to delegate one member to the committee, and the members shall have a voting right pro rata to the number of the delegating panel as at the date of voting.

Not only the traditional program service providers, but also the financial investors may compete for the operation of the digital television broadcasting networks, if they are able to built up the appropriate infrastructure and conclude the contracts with the broadcasters.

The National Communications Authority will issue tender for the right of operation of four networks available in the transition period (of which one is a public service network and will be available after its analogue program broadcasting is switched off) and one additional digital television broadcasting network available after the switchover, not later than 31 October 2007. Entitlement will be given for a term of 10 years, which can be extended once by an additional term of 5 years.

If you have any further questions please contact dr. Szilvia Kassai (szilvia.kassai@luther-lawfirm.com)



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