



St. Gallen, 1 September 2022

Press Release

regarding judgment B-6872/2017 of 22 August 2022

SBB awarded advertising spaces for third parties lawfully

The Swiss Federal Administrative Court rejects the appeal of the TX Group regarding the licence for the use of SBB-advertising spaces for third-parties awarded to Allgemeine Plakatgesellschaft.

Swiss Federal Railways (SBB) reissued an invitation to tender for the use of its third-party advertising spaces in 2017. This tender related to the transfer of the exclusive right to allocate, market and manage from 2019 for a period of up to ten years advertising spaces, specifically for printed posters at railway stations and for digital advertising. Notably, a non-revenue-based minimum rent and a percentage sum of the annual revenues are to be paid under the awarded special use license. From the six tenders submitted, SBB selected that of Allgemeine Plakatgesellschaft AG (APG) and granted it the award in November 2017. The media company TX Group AG submitted an appeal against this award with the Federal Administrative Court (FAC).

Public procurement law not applicable

Firstly, the FAC notes that the invitation to tender for third-party advertising spaces is subject not to public procurement law, but rather licensing law. This is because the fees paid by the selected tenderer indirectly contribute to the financing of the public tasks of SBB, a situation that differs significantly from the purpose of the public procurement law. Consequently SBB has greater freedom to select its licensees than it would under public procurement law.

Unfounded complaints

The FAC rejects the appeal. In the opinion of the Court, it is unclear to what extent information was passed on asymmetrically within the renegotiation process during the invitation to tender. The Court is unable to identify any unequal treatment of the selected tenderer and the appellant. With regard to the accusation of opaque and unequal evaluation, the Court further concludes that SBB communicated the award criteria, various main criteria and their weighting transparently to all tenderers to an equal extent. The Court also identifies no breach of law with respect to the nature and level of detail of the criteria issued. Furthermore, SBB did not act unlawfully while handling business secrets of TX Group AG and was not arbitrary in its award.

This judgment may 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 365 employees (305.6 FTE) and its 72 judges (64.5 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.