

Before the  
INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

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**EMMIS INTERNATIONAL HOLDING, B.V.**  
**EMMIS RADIO OPERATING, B.V.**  
**MEM MAGYAR ELECTRONIC MEDIA KERESKEDELMI ÉS SZOLGÁLTATÓ**  
**KFT.**  
**ACCESSION MEZZANINE CAPITAL L.P.**  
**DANUBIUS KERESKEDŐHÁZ VAGYONKEZELŐ ZRT.**

Claimants

v.

**THE REPUBLIC OF HUNGARY**

Respondent

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**REQUEST FOR ARBITRATION**

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***Counsel for the Claimants:***

Eugene D. Gulland  
Miguel López Forastier  
Alexander O. Canizares

COVINGTON & BURLING LLP  
1201 Pennsylvania Avenue, NW  
Washington, D.C. 20004-2401  
202-662-6000 (telephone)  
202-662-6291 (telefax)

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## REQUEST FOR ARBITRATION

Claimants **Emmis International Holding, B.V., Emmis Radio Operating, B.V., MEM Magyar Electronic Media Kereskedelmi és Szolgáltató Kft., Accession Mezzanine Capital, L.P.** and **Danubius Kereskedőház Vagyonkezelő Zrt.** (henceforth, the Claimants) hereby submit to arbitration administered by the International Centre for Settlement of Investment Disputes (ICSID) the following dispute with the **Republic of Hungary** (the Respondent or the Republic):

### I. SUMMARY OF THE DISPUTE<sup>1</sup>

1. This dispute concerns the Respondent's unlawful expropriation of the Claimants' investments in Hungary and related measures. The Claimants made large investments in nationwide FM-frequency radio-broadcasting licenses in Hungary at and/or after the launch of the Sláger and Danubius radio stations in 1997. In acquiring, managing and operating those investments, the Claimants relied on guaranteed legal protections for their rights and interests, including the commitment to treat their investments fairly and strictly in accordance with Hungarian law.

(a) Claimants **Emmis International Holding, B.V.** (**Emmis International**), **Emmis Radio Operating, B.V.** (**Emmis Radio**), and **MEM Magyar Electronic Media Kereskedelmi és Szolgáltató Kft.** (**MEM**), each invested in **Sláger Rádió Műsorszolgáltató Zrt.** (**Sláger Radio** or **Sláger**), a Hungarian company that won a competitive tender for one of the two licenses for FM national radio-broadcasting frequencies in Hungary.

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<sup>1</sup> Factual allegations made herein are based on documentary evidence as well as representations of corporate employees of the Claimants to be presented in detail at the appropriate stage of this proceeding. Citations to some of the documentary evidence in support of the allegations made herein are provided in Part IV of this Request for Arbitration.

(b) Claimants Accession Mezzanine Capital, L.P. (Mezzanine) and Danubius Kereskedőház Vagyonkezelő Zrt. (Danubius Sales House or DSHV) each invested in Danubius Rádió Műsorszolgáltató Zrt. (Danubius Radio or Danubius), a Hungarian company that won a competitive tender for the other national radio-broadcasting FM frequency in Hungary.

2. Sláger and Danubius operated their licenses successfully for twelve years. The Republic then broke its commitments to them in 2009 by conducting highly irregular and unlawful “tender” procedures that resulted in their replacement as licensees of the two national radio-broadcasting frequencies. The tender procedure did not accord Sláger Radio and Danubius Radio, the incumbent licensees, the preference in the tender guaranteed by Hungarian Law. In addition, the prevailing bidders had (i) prohibited conflicts of interest that should have disqualified their bids; (ii) no national broadcast experience and limited regional broadcast experience, and (iii) unfeasible business plans, among other irregularities. What the prevailing bidders did have were Hungarian owners and close ties to the two leading political parties in Hungary.

3. The tender procedures were so scandalously flawed that the Chairman of the National Radio and Television Broadcasting Board (ORTT) publicly denounced the tenders and resigned in protest. The Ambassadors of nine nations took the highly unusual step of issuing a “Joint Statement” condemning the “non-transparent” tender and similar acts of the Hungarian Government. Despite the clear and indisputable evidence that the tender procedures violated multiple legal requirements, the new bidders were awarded the frequencies in November 2009 even before the Hungarian courts could investigate the irregularities making the tender illegal. Since then, the Hungarian Media Law has been altered to ensure that there is no effective remedy under Hungarian law for violations of the tender procedures, and to impose new penalties that undercut the autonomy of broadcasters.

4. Through those measures, the Respondent indirectly expropriated the Claimants' investments, including the value of the capital stocks of Sláger Radio and Danubius Radio, related assets (including rights granted by the licenses) and operations. The successor licensees launched their operations by hiring the experienced staff that had worked for Sláger and Danubius. The Respondent paid no compensation for the expropriation of the Claimants' investments. Each of the measures taken by the Respondent against the Claimants violates the Republic of Hungary's obligations under its Bilateral Investment Treaties with (i) the Kingdom of the Netherlands,<sup>2</sup> (ii) the Swiss Confederation,<sup>3</sup> (iii) the United Kingdom of Great Britain and Northern Ireland,<sup>4</sup> (collectively, the Treaties), and principles of international law. These breaches have deprived the Claimants of substantially the entire value of their investments and have caused great financial injury, in an amount that will be proved in the course of this arbitration. The Claimants are entitled to full reparation under the Treaties and customary international law for the damages caused by those violations.

5. As described herein, Claimants previously notified the Respondent of these investment disputes, but all attempts to resolve the disputes amicably have proven unavailing. The Claimants accordingly request the Secretary-General to register this Request for Arbitration and to direct the parties to proceed to constitute an arbitration tribunal to hear this case. A glossary with definitions of the most important capitalized terms appears at the end of this Request for Arbitration.

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<sup>2</sup> Agreement Between the Kingdom of the Netherlands and the Hungarian People's Republic for the Encouragement and Reciprocal Protection of Investments *signed at Budapest, 2 September 1987, entered into force 1 June 1988* [hereinafter Netherlands Treaty] (Ex. 1).

<sup>3</sup> Agreement Between the Swiss Confederation and the Hungarian People's Republic on the Reciprocal Promotion and Protection of Investments, *signed at Berne, 5 October 1988, entered into force 16 May 1989* [hereinafter Switzerland Treaty] (Ex. 2).

<sup>4</sup> Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Hungarian People's Republic for the Promotion and Reciprocal Protection of Investments *signed at Budapest, 9 March 1987, entered into force 28 August 1987* [hereinafter UK Treaty] (Ex. 3).

## II. PARTIES TO THE DISPUTE

6. Claimant **Emmis International Holding, B.V.** (Emmis International), is a company organized and existing under the laws of the Netherlands. Emmis International's address is Strawinskylaan 3105 Atrium, 1077 ZX Amsterdam, the Netherlands. Annexed hereto as Exhibit 4 is a duly certified copy of Emmis International's resolution authorizing the submission and prosecution of this claim.

7. Claimant **Emmis Radio Operating, B.V.** (Emmis Radio), is a company organized and existing under the laws of the Netherlands.<sup>5</sup> The address of Emmis Radio is Strawinskylaan 3105 Atrium, 1077 ZX Amsterdam, the Netherlands. Annexed hereto as Exhibit 5 is a duly certified copy of Emmis Radio's resolution authorizing the submission and prosecution of this claim.

8. Claimant **MEM Magyar Electronic Media Kereskedelmi és Szolgáltató Kft.** (MEM) is a company organized and existing under the laws of the Republic of Hungary.<sup>6</sup> The address of MEM is Árpád fejedelem útja 26-28, Budapest, 1023, Hungary. Annexed hereto as Exhibit 6 is a duly certified copy of MEM's resolution authorizing the submission and prosecution of this claim.

9. Emmis International, Emmis Radio and MEM each holds stock in Sláger Radio, the former licensee of an FM national radio-broadcasting frequency in Hungary.<sup>7</sup>

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<sup>5</sup> On 6 June 2011 and 27 May 2011, Credit Suisse First Boston Radio Operating, B.V. (Netherlands), and its subsidiary CSFB Rádió (Hungary) Befektetési Kft. (Hungary), changed their names to Emmis Radio Operating, B.V., and Emmis Rádió (Hungary) Befektetési Kft., respectively, in anticipation of Emmis International Holding, B.V.'s acquisition of Credit Suisse First Boston Radio Operating, B.V., and CSFB Rádió (Hungary) Befektetési Kft. on 21 July 2011.

<sup>6</sup> MEM is also referred to as MEM Magyar Electronic Media Kereskedelmi és Szolgáltató Korlátolt Felelősségű Társaság. Prior to 6 July 2011, MEM was named MEM Marquard Electronic Media Kereskedelmi és Szolgáltató Korlátolt Felelősségű Társaság.

<sup>7</sup> A chart reflecting the current organizational structure of the Sláger investment is annexed hereto as Appendix I-A. Annexed hereto as Appendix I-B is a chart reflecting the organizational structure of the Sláger investment as it existed in 2009. The Sláger broadcasting license included 16 different frequencies (continued...)

- Emmis International holds 59.50 percent of the stock of Sláger Radio. Emmis International holds 54 percent of those shares directly and 5.5 percent indirectly through Sláger Rádió Értékesítési Kft., a Hungarian company.
- Emmis Radio holds 25.50 percent of the stock of Sláger Radio. Emmis Radio holds 20 percent of the shares of Sláger Radio directly and 5.5 percent indirectly through its subsidiary Emmis Rádió (Hungary) Befektetési Kft.<sup>8</sup>
- MEM holds 15 percent of the shares of Sláger Radio directly.

As described herein, the Respondent has indirectly expropriated the capital stock of Sláger Radio and other investments by awarding the frequency that Sláger was serving to a different, politically-connected, company under procedures that violated Sláger's legal rights.<sup>9</sup>

10. Claimant **Accession Mezzanine Capital, L.P.** (Mezzanine) is a partnership organized and existing under the laws of Bermuda. Mezzanine's address is Century House, 16 Par La Villa Road, Hamilton, Bermuda. Annexed hereto as Exhibit 7 is a duly certified copy of Mezzanine's corporate resolution authorizing the submission and prosecution of this claim.

11. Claimant **Danubius Kereskedőház Vagyonkezelő Zrt.** (DSHV) is a company organized and existing under the laws of the Republic of Hungary. DSHV's address is Kálmán Imre utca 1, Budapest, H-1054, Hungary. Annexed hereto as Exhibit

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that varied by region within Hungary. The term "frequency" is used herein to refer to those frequencies as a group.

<sup>8</sup> Emmis Radio owns 96.67 percent of the shares of Emmis Rádió (Hungary) Befektetési Kft.; Emmis International owns the remaining 3.33 percent.

<sup>9</sup> See Robert Hodgson, *The Same Old Song*, Budapest Times, 2 November 2009 ("Two of Hungary's most listened to radio stations last Wednesday failed to secure the renewal of their licenses to broadcast. The national broadcasting regulator ORTT awarded the right to use Hungary's two existing national FM frequencies to new stations thought to have ties to the largest two political parties.") (Ex. 9); Thomas Escritt, *Hungary broadcast regulator quits over radio bids*, Financial Times, 6 November 2009 (Ex. 10) ("The chairman of Hungary's communications regulator has resigned after representatives of the main government and opposition parties voted to terminate two foreign-owned radio stations' broadcasting licenses and award the frequencies to bidders regarded as commercially weaker."); see also *Strange "Reverse Lobbying" Over Radio Frequencies*, Hísterző, 2 November 2009 (Ex. 11).



8 is a duly certified copy of DSHV's corporate resolution authorizing the submission and prosecution of this claim.

12. Mezzanine and DSHV each holds stock in Danubius Radio, the former licensee of an FM national radio-broadcasting frequency in Hungary.<sup>10</sup>

- Mezzanine indirectly holds, through three tiers of subsidiaries, all the stock of Danubius Radio.
- Mezzanine is the sole shareholder of first-tier subsidiaries Mezzanine Management Central Europe Finance S.A., Mezzanine Management Bermuda S.P.V. and Mezzanine Management Central Europe Investment S.A.
- Mezzanine Management Central Europe Finance S.A. and Mezzanine Management Bermuda S.P.V. own 70 percent and 30 percent, respectively, of the stock of second-tier subsidiary DSHV.
- DSHV is the sole shareholder of third-tier subsidiary LEG 2003 Vagyonkezelő Zrt.
- Mezzanine Management Central Europe Investment S.A. owns 3.80 percent of the stock of Danubius Radio.
- DSHV owns 96.19 percent of the stock of Danubius Radio.
- LEG 2003 Vagyonkezelő Zrt. owns the remaining 0.01 percent of the stock of Danubius Radio.

As described herein, the Respondent has indirectly expropriated the capital stock of Danubius Radio and other investments by awarding the frequency that Danubius was serving to a different, politically-connected, company under procedures that violated Danubius's legal rights.<sup>11</sup>

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<sup>10</sup> A chart reflecting the organizational structure of the Danubius investment is annexed hereto as Appendix II. Danubius' license included 11 different frequencies that varied by region within Hungary. The term "frequency" is used herein to refer to those frequencies as a group.

<sup>11</sup> See Robert Hodgson, *The Same Old Song*, Budapest Times, 2 November 2009 (Ex. 9); Thomas Escritt, *Hungary broadcast regulator quits over radio bids*, Financial Times, 6 November 2009 (Ex. 10); see also Strange "Reverse Lobbying" Over Radio Frequencies, *Hírszerző*, 2 November 2009 (Ex. 11).

13. The authorized representatives for the Claimants are Eugene D. Gulland and Miguel López Forastier of Covington & Burling LLP. The powers of the Claimants' representatives are set forth in the resolutions and powers of attorney included herewith as Exhibits 4-8. All correspondence related to this proceeding should be addressed to Eugene D. Gulland, Esq., COVINGTON & BURLING LLP, 1201 Pennsylvania Ave., N.W., Washington, D.C. 20004-2401, United States of America (telephone 202-662-5504; telefax 202-778-5504), with a copy to Miguel López Forastier, Esq., COVINGTON & BURLING LLP, 1201 Pennsylvania Ave., N.W., Washington, D.C. 20004-2401, United States of America (telephone 202-662-5185; telefax 202-778-5185).

14. The Respondent is the **Republic of Hungary**. This Request for Arbitration should be served on the Respondent in the person of Dr. Viktor Orbán, Prime Minister of the Republic of Hungary, at the following address: Prime Minister Office ("Miniszterelnökség"), 1357 Budapest, Pf. 6, Hungary (telephone +36 (1) 795-5000; telefax +36 (1) 795-0381); and Dr. Tamás Fellegi, Minister of National Development for the Republic of Hungary, at the following address: 1440 Budapest, Pf. 1, Hungary (telephone +36 (1) 795-6703; telefax +36 (1) 795-0630). The Claimants are providing the Prime Minister and the Minister of National Development with advance courtesy copies of this Request for Arbitration.

### **III. ICSID JURISDICTION**

15. As explained below, ICSID has jurisdiction over this investment dispute under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention).<sup>12</sup> The Respondent has expressed its consent to ICSID jurisdiction in (i) the Netherlands Treaty, (ii) the Switzerland Treaty, and (iii) the UK Treaty. Claimants Emmis International, MEM, Mezzanine and DSHV

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<sup>12</sup> Convention on the Settlement of Investment Disputes between States and Nationals of Other States, made in Washington, D.C., 18 March 1965, in force since 14 October 1966 [hereinafter the ICSID Convention].

have expressed their consent to ICSID jurisdiction in a letter dated 30 June 2010.<sup>13</sup> Claimant Emmis Radio has consented to ICSID jurisdiction in a letter dated 13 July 2010.<sup>14</sup> The Claimants ratify their consent herein.

#### A. THE ICSID CONVENTION

16. The Republic of Hungary, the Kingdom of the Netherlands, the Swiss Confederation, and the United Kingdom of Great Britain and Northern Ireland are each parties to the ICSID Convention.

- The Republic of Hungary signed the ICSID Convention on 1 October 1986 and ratified it on 4 February 1987, with an effective date of 6 March 1987.
- The Kingdom of the Netherlands signed the ICSID Convention on 25 May 1966 and ratified it on 14 September 1966, with an effective date of 14 October 1966.
- The Swiss Confederation signed the ICSID Convention on 22 September 1967 and ratified it on 15 May 1968, with an effective date of 14 June 1968.
- The United Kingdom of Great Britain and Northern Ireland signed the ICSID Convention on 26 May 1965 and ratified it on 19 December 1966, with an effective date of 18 January 1967.

17. Under Article 25 of the ICSID Convention, ICSID has jurisdiction over “any legal dispute arising directly out of an investment” between a State party to the ICSID Convention and a national of another State party to the Convention, if both parties to the dispute have consented in writing to submit the dispute to ICSID.<sup>15</sup>

18. Each of the Claimants is — *vis à vis* the Respondent — a “national of another Contracting State” as defined by Article 25(2)(b) of the ICSID Convention.

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<sup>13</sup> Notice Letter from Counsel for Claimants to Dr. Viktor Orbán, Prime Minister of the Republic of Hungary, and Dr. György Matolcsy, Minister of National Economy of the Republic of Hungary, 30 June 2010 at 3, 12 [hereinafter Notice Letter] (Ex. 12).

<sup>14</sup> Supplement to the Notice Letter from Counsel for Claimants to Dr. Viktor Orbán, Prime Minister of the Republic of Hungary, and Dr. György Matolcsy, Minister of National Economy of the Republic of Hungary, 13 July 2010 at 2, 4 [hereinafter Supplement to Notice Letter] (Ex. 13).

<sup>15</sup> See ICSID Convention, Article 25.

- Emmis International is a national of the Kingdom of the Netherlands because it is a company organized and existing under the laws of that Kingdom.<sup>16</sup>
- Emmis Radio is a national of the Kingdom of the Netherlands because it is a company organized and existing under the laws of that Kingdom.<sup>17</sup>
- MEM is a national of the Swiss Confederation for the purposes of the ICSID Convention and the Switzerland Treaty because it is a legal entity controlled by a Swiss national, Mr. Jürg Marquard.<sup>18</sup>
- Mezzanine is a national of the United Kingdom of Great Britain and Northern Ireland because it is a firm or association constituted and existing under the laws of Bermuda.<sup>19</sup>
- DSHV is a national of the United Kingdom of Great Britain and Northern Ireland for the purposes of the ICSID Convention and the UK Treaty because it is a company organized and existing under the laws of Hungary and the majority of its shares are indirectly owned by Mezzanine, a national of the United Kingdom of Great Britain and Northern Ireland.<sup>20</sup>

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<sup>16</sup> See *Emmis International Holding, B.V.* Resolution dated 16 August 2011 (Ex. 4); Netherlands Treaty, Article 1(b)(ii) (Ex. 1).

<sup>17</sup> See *Emmis Radio Operating, B.V.* Resolution dated 16 August 2011 (Ex. 5); Netherlands Treaty, Article 1(b)(ii) (Ex. 1).

<sup>18</sup> See *MEM Magyar Electronic Media Kereskedelmi és Szolgáltató Kft.* Resolution and Power of Attorney dated 5 September 2011 (Ex. 6); Switzerland Treaty, Article 1(1)(c) (Ex. 2).

<sup>19</sup> See *Accession Mezzanine Capital L.P.* Resolution dated 17 October 2011 (Ex. 7). The UK Treaty protects “corporations, firms and associations constituted or incorporated under the law in force [...] in any territory to which the Agreement is extended [...]” UK Treaty, Article 1(3)(a) (Ex. 3). The UK Treaty has been extended to Bermuda. See Website of the UK Ministry of Foreign Affairs (reporting on the Exchange of Notes extending the Treaty to Bermuda on 7 November 1991) (Ex. 14). The ICSID Convention applies to Bermuda because the United Kingdom of Great Britain and Northern Ireland, a party to the ICSID Convention, is responsible for Bermuda’s international relations and has not excluded Bermuda from the application of the Convention. See ICSID Convention, Article 70; see also Website of the British Foreign Commonwealth Office, List of Multilateral Treaties Applying to Bermuda (showing that the ICSID Convention has been extended to the territory of Bermuda) (Ex. 15).

<sup>20</sup> See *Danubius Kereskedőház Vagyonkezelő Zrt.* Resolution dated 20 October 2011 (Ex. 8). Article 8(1) of the UK Treaty provides that “[a] company which is constituted or incorporated under the law in force in the territory of one Contracting Party and in which before such dispute arises the majority of shares are owned by investors of the other Contracting Party shall in accordance with Article 25(2)(b) of the Convention be treated for the purposes of the Convention as a company of the other Contracting Party.” UK Treaty, Article 8(1) (Ex. 3).

19. Each of the Claimants held, directly or indirectly, investments in the territory of the Republic of Hungary within the meaning of the ICSID Convention, as well as within the meaning of the Netherlands Treaty, the Switzerland Treaty or the UK Treaty. While the term “investment” is not defined in the ICSID Convention, it is defined very broadly in the Netherlands Treaty, the Switzerland Treaty, and the UK Treaty.

- The Netherlands Treaty (Article 1(a)) defines the term “investment” to mean “every kind of asset connected with the participation in companies [...] more particularly, though not exclusively [...] (i) movable and immovable property as well as any other rights in rem in respect of any kind of asset; (ii) rights derived from shares, bonds and other kinds of interests in companies and joint ventures; (iii) title to money, goodwill and other assets and to any performance having an economic value; [...] [and] (v) rights granted under public law [...].”
- The Switzerland Treaty (Article 1(2)) defines the term “investments” as “includ[ing] every kind of assets and particularly: a) movable and immovable property as well as any other rights in rem, such as servitudes, mortgages, liens, pledges; b) shares, parts or any other kinds of participation in companies; c) claims to money or to any performance having an economic value; d) copyrights, industrial property rights (such as patents, utility models, industrial designs or models, trade or service marks, trade names, indications of origin), know-how and goodwill; e) concessions under public law, including concessions to search for, extract or exploit natural resources as well as all other rights given by law, by contract or by decision of the authority in accordance with the law.”
- The UK Treaty (Article 1.1(a)) defines “investment” as “every kind of asset connected with economic activities [...] and in particular, though not exclusively, [...] (i) movable and immovable property and any other property rights [...]; (ii) shares of stocks, bonds and debentures and any other form of participation in a company; (iii) claims to money and other assets or to any performance under contract having a financial value; (iv) intellectual property rights and goodwill; [and] (v) business concessions conferred by law or under contract [...].”

20. Until the Claimants were deprived of their investments as described in Part IV of this Request for Arbitration, the Claimants held the investments previously detailed in paragraphs 9 and 12, above.

21. The Claimants’ investments in the stock of Sláger Radio and Danubius Radio evidenced their interests in the value of the rights conferred by their broadcasting

licenses. These rights included not only the rights to conduct broadcast operations but also the legal protection granted by the Media Law and the regulations or other instruments adopted to implement the Media Law. Those rights and protections included, *inter alia*, the preference that was accorded to existing licensees in competitive tenders in which they sought renewal of their licenses, and a legal framework guaranteeing that tenders would be conducted lawfully and in a fair and transparent manner.

22. The dispute described herein is a legal dispute arising directly out of the Claimants' investments in the Republic of Hungary, as explained in Part IV.

## **B. CONSENT TO ICSID JURISDICTION**

23. The Claimants and the Respondent have each consented in writing to submit this dispute to ICSID arbitration. The Respondent has expressed its consent in the Netherlands Treaty, the Switzerland Treaty, and the UK Treaty. The Claimants have expressed their consent in the letters described below and each ratifies its consent by the filing of this Request for Arbitration.

### **1. The Respondent's Consent Expressed in the Netherlands Treaty**

24. Article 4 of the Netherlands Treaty prohibits direct or indirect expropriation of investments unless the measures are taken in the public interest and under due process of law; they are non-discriminatory or not contrary to the Contracting Party's undertakings; and just compensation is provided without undue delay. The Netherlands Treaty also requires, among other things, that the Republic of Hungary (i) accord fair and equitable treatment to investments of companies of the Netherlands; (ii) not impair by arbitrary or discriminatory measures the operation, management, maintenance, use, enjoyment or disposal of such investments;<sup>21</sup> (iii) accord "full physical security and protection" that is no less favorable than that accorded either to its own

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<sup>21</sup> Netherlands Treaty, Article 3(1) (Ex. 1).

nationals or to investments of investors of any third State,”<sup>22</sup> and (iv) observe any obligation it may have entered into with regard to investments.<sup>23</sup>

25. Article 10 of the Netherlands Treaty provides for the settlement of disputes through ICSID arbitration:

“1) Any dispute between either Contracting Party and the investor of the other Contracting Party concerning expropriation or nationalization of an investment shall as far as possible be settled by the disputing Parties in an amicable way.

2) If such disputes cannot be settled, within six months from the date either Party requested amicable settlement, it shall upon request of either disputing party be submitted to an arbitral tribunal. [...]

3) In case both Contracting Parties have become members of the [ICSID Convention], disputes between either Contracting Party and the investor of the other Contracting Party under the first paragraph of the present Article shall be submitted for settlement by conciliation or arbitration to the International Centre for the Settlement of Investment Disputes.”

26. As already noted, Emmis International and Emmis Radio are investors of the Kingdom of the Netherlands by reason of being constituted under the laws of that Kingdom and holding investments in Hungary.<sup>24</sup> This Request for Arbitration primarily concerns an investment dispute arising out of or relating to the expropriation of the investments of Emmis International and Emmis Radio in Hungary. This dispute also results from breaches of other standards of the Netherlands Treaty described above, which are subject to arbitration in this proceeding with the parties’ mutual consent.

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<sup>22</sup> Netherlands Treaty, Article 3(2) (Ex. 1).

<sup>23</sup> Netherlands Treaty, Article 3(5) (Ex. 1).

<sup>24</sup> Netherlands Treaty, Article 1(b)(ii) (Ex. 1).

## **2. The Respondent's Consent Expressed in the Switzerland Treaty**

27. Article 6 of the Switzerland Treaty prohibits direct or indirect expropriation of investments unless the measures are taken in the public interest, on a non-discriminatory basis, according to due process of law, and effective and adequate compensation is provided without delay. The Switzerland Treaty also requires, among other things, that the Republic of Hungary (i) accord at all times fair and equitable treatment to investments of investors in its territory that is no less favorable than that accorded to its own investors or to investments of investors “of the most favoured nation, if this latter treatment is more favourable” and (ii) not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, sale, and, should it so happen, liquidation of such investments.<sup>25</sup>

28. Article 10 of the Switzerland Treaty provides for the settlement of disputes through ICSID arbitration:

“1) For the purpose of solving disputes with respect to investments between a Contracting Party and an investor of the other Contracting Party and without prejudice to Article 9 of this Agreement (Settlement of disputes between Contracting Parties), consultations will take place between the parties concerned.

2) If these consultations do not result in a solution within six months, the parties to the dispute may proceed as follows:

a) A dispute concerning Article 6 of this Agreement shall upon request of the investor be submitted to the International Centre for the Settlement of Investment Disputes instituted by the Convention of Washington of March 18, 1965, on the settlement of investment disputes between States and nationals of other States.

b) In the event of a dispute not referred to in paragraph (2), letter a) of this Article the dispute shall be submitted, upon agreement on such submission

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<sup>25</sup> Switzerland Treaty, Article 4(1) (Ex. 2).



by both parties to the dispute, to the International Centre for the Settlement of Investment Disputes.”

29. As already noted, MEM is an investor of Switzerland for the purposes of the Switzerland Treaty by reason of being controlled by a Swiss national.<sup>26</sup> This Request for Arbitration primarily concerns an investment dispute arising out of or relating to the expropriation of MEM’s investment in Hungary. This dispute also results from breaches of other standards of the Switzerland Treaty described above, which are subject to arbitration in this proceeding with the parties’ mutual consent.

### **3. The Respondent’s Consent Expressed in the UK Treaty**

30. Article 6 of the UK Treaty prohibits expropriation of investments or any measures having an effect equivalent to expropriation unless the measures are taken for a public purpose and subject to due process of law, on a non-discriminatory basis and against prompt, adequate and effective compensation, measured by the market value of the investment. The UK Treaty also requires, among other things, that the Republic of Hungary (i) accord at all times fair and equitable treatment to investments of investors of the United Kingdom; (ii) ensure full protection and security for such investments in its territory; (iii) not impair by unreasonable or discriminatory measures the operation, management, maintenance, use, enjoyment or disposal of such investments; and (iv) observe any obligation it may have entered into with regard to those investments.<sup>27</sup> Article 3 of the UK Treaty prohibits treatment that is less favorable than that accorded to “investments or returns of investors” of the Republic of Hungary or of any third State.

31. Article 8.1 of the UK Treaty provides for settlement of disputes through ICSID arbitration:

“1. Each Contracting Party hereby consents to submit to the International Centre for the Settlement of Investment Disputes (hereinafter referred to as “the Centre”) for the settlement by conciliation or arbitration under the

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<sup>26</sup> Switzerland Treaty, Article 1(1)(c) (Ex. 2).

<sup>27</sup> UK Treaty, Article 2.2 (Ex. 3).

Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington on 18 March 1965 any legal dispute arising under Article 6 of this Agreement between that Contracting Party and an investor of the other Contracting Party concerning an investment of the latter in the territory of the former. [...] If any such dispute should arise and agreement cannot be reached within three months between the parties to this dispute through pursuit of local remedies or otherwise, then, if the investor affected also consents in writing to submit the dispute to the Centre for settlement by conciliation or arbitration under the Convention, either Party may institute proceedings by addressing a request to that effect to the Secretary-General of the Centre as provided in Articles 28 and 36 of the Convention. In the event of disagreement as to whether conciliation or arbitration is the more appropriate procedure the investor affected shall have the right to choose. [...].”

32. As already described, Mezzanine is an investor of the United Kingdom by reason of being constituted under the laws of Bermuda and holding investments in Hungary.<sup>28</sup> DSHV is an investor of the United Kingdom for the purposes of the UK Treaty because it is a company constituted under the laws of Hungary whose shares are indirectly owned by a UK national, and because it holds investments in Hungary. This Request for Arbitration primarily concerns an investment dispute arising out of or relating to the expropriation of Mezzanine’s and DSHV’s investments in Hungary. This dispute also concerns breaches of other standards of the UK Treaty described above, which are subject to arbitration in this proceeding with the parties’ mutual consent.

#### **4. The Claimants’ Consent**

33. Claimants Emmis International, MEM, Mezzanine and DSHV consented to ICSID jurisdiction of this dispute in a letter dated 30 June 2010 addressed to the Prime Minister and to the Minister of National Economy of the Republic of Hungary.<sup>29</sup>

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<sup>28</sup> UK Treaty, Article 1.3(a) (Ex. 3).

<sup>29</sup> Notice Letter at 2-3 (Ex. 12).

Claimant Emmis Radio did the same by a letter dated 13 July 2010 addressed to the same Government officials.<sup>30</sup>

34. Each of the Claimants hereby restates and ratifies its consent to ICSID jurisdiction of all aspects of the dispute described in this Request for Arbitration. None of the Claimants has submitted this dispute for resolution to the courts or administrative tribunals of the Respondent, nor has any of the Claimants previously agreed with the Respondent to submit the dispute to any other dispute-settlement procedures.

35. Each of the Claimants has also satisfied any consultation requirement of Article 10 of the Netherlands Treaty, Article 10 of the Switzerland Treaty, and Article 8 of the UK Treaty. As described below, the disputes arose from the Respondent's unlawful course of action culminating in ORTT's decision in October 2009 to oust Sláger Radio and Danubius Radio from operating on the nationwide FM frequencies by awarding licenses for those frequencies to other, politically connected entities. As described above, Emmis International, MEM, Mezzanine and DSHV, joined later by Emmis Radio, sent a formal notice of dispute to the Respondent in June 2010 describing in detail the disputes and requesting consultations to avoid the need for arbitration. Consultations between the Claimants and the Respondent were held in Budapest on 28 September 2010. The U.S. Ambassador to the Republic of Hungary and the Commercial Counselor at the American Embassy in Budapest discussed the dispute with the Minister for National Development, Dr. Tamás Fellegi, on 10 November 2010. Despite those efforts, no resolution was achieved.<sup>31</sup> Accordingly, the Claimants are compelled to submit the dispute to final resolution by an ICSID arbitral tribunal.

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<sup>30</sup> Supplement to Notice Letter at 2 (Ex. 13).

<sup>31</sup> In a letter dated 17 December 2010 responding to Claimants' Notice of Dispute, Respondent's representative, Dr. Fellegi, Minister of National Development, asked Claimants to confirm whether they wished to have an in-person meeting and offered to use "best efforts" to schedule such a meeting. The letter was not delivered until late January 2010 owing to delays of the postal service. Claimants accepted Respondent's offer by letter dated 4 February 2011, requesting a meeting for the purpose of reaching a (continued...)

#### IV. SUMMARY OF THE RELEVANT FACTS

36. The following abbreviated description of the relevant facts is submitted to provide background information concerning the issues in dispute to show that there is, between the Claimants and the Respondent, a legal dispute arising directly out of Claimants' investments.<sup>32</sup> The Claimants will present a full statement of the facts and the law, as well as supporting evidence, at the appropriate stages of this proceeding.

##### A. THE OPENING OF THE HUNGARIAN RADIO-BROADCASTING INDUSTRY IN THE 1990s

37. Before 1989, the Hungarian Government pervasively controlled broadcast services and all media outlets in Hungary. Starting that year, Hungary progressively opened up its economy and adopted a series of policies designed to foster free expression for media, and to attract domestic and foreign capital to modernize its infrastructure and its public services, including radio-broadcasting services.

##### 1. The Media Law

38. As part of this process, in 1996, Hungary adopted a new media law, known as the Act I of 1996 on Radio and Television Broadcasting (the Media Law). One observer has referred to the Media Law as "one of the most influential instruments of change for media in the former Soviet Bloc."<sup>33</sup>

39. The Media Law created the National Radio and Television Broadcasting Board (ORTT), an organ of the Republic charged with regulating the radio and television broadcasting industries in Hungary under fair and transparent procedures. ORTT administered the public tender of radio-broadcasting frequencies and had the authority to

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negotiated settlement and accepting Respondent's conditions of confidentiality. No response to Claimants' letter was received.

<sup>32</sup> See ICSID Institution Rule 2(1)(e).

<sup>33</sup> See Press Reference, Hungary Press, Radio, TV, Newspapers, at <http://www.pressreference.com/Gu-Ku/Hungary.html>.

award two commercial national radio-broadcasting licenses to exploit those FM frequencies for up to seven years and to award renewal of those licenses for five years without calling a new tender.

## **2. The General Terms of Tender (GTT)**

40. To protect the right of broadcast media to free expression insulated from government interference, and to provide a predictable and transparent business environment for investors, ORTT in 1996 adopted the General Terms of Tender (the GTT). The GTT's stated purpose includes fostering "freedom and diversity of information and culture, the preservation and enrichment of national and universal culture and in order to have the tender procedure in compliance with the applicable legal regulations and the principle of competition neutrality." As required by the Media Law, the GTT was promulgated as a regulation under the Media Law that established the conditions for the acquisition of broadcasting rights, a transparent procedure for conducting public tenders of those rights, and the "criteria [for] evaluation" of those tenders.

41. An important feature of the GTT — and a focal point of the Claimants' disputes with the Republic — is the explicit guarantee of preference for the incumbent licensee in any tender for the renewal of its license for that frequency.<sup>34</sup> Similar provisions are explicitly contained or routinely followed as a practice in the legal systems of most nations whose governments do not control or monopolize the operation of broadcasting. Such a practice protects freedom of speech from government control, reinforces the commitment by broadcasters to the communities they serve, and encourages long-term investment.

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<sup>34</sup> General Terms of Tender, Section 65.3.1 ("That bidder shall be preferred, who has held a broadcasting right awarded in tender *for the frequency forming the subject matter of the call for tender*, if it operates and broadcasts in accordance with its studio license and the Media Law."). (Emphasis added.)

42. To prevent the creation of monopolies, the GTT (as required by the Media Law) prohibits bidders for national radio-broadcasting licenses or those with controlling influence in those bidders from having a controlling influence in another enterprise engaged in radio or television broadcasting in Hungary.<sup>35</sup> A bidder is required to comply with this rule at the time of “submission or evaluation of the bid, at the conclusion of the [broadcast] agreement or at any time between these points of time.”<sup>36</sup>

**B. THE CLAIMANTS’ INVESTMENTS IN THE HUNGARIAN RADIO-BROADCASTING INDUSTRY**

43. In 1997, ORTT issued an international call for tender of the licenses of two national FM radio-broadcasting frequencies. In reliance on the guarantees provided in the Media Law and the GTT, Sláger Radio and Danubius Radio participated in the tender. Later that year, ORTT awarded Sláger Radio and Danubius Radio each a license for a period of seven years.<sup>37</sup> Both Sláger Radio and Danubius Radio were aware when they entered into their respective license agreements with ORTT of the guarantee of preference provided in the GTT and expected that they would be able to operate those licenses over multiple license terms, as long as they complied with the Media Law and provided satisfactory broadcasting service. Consistent with this expectation, ORTT renewed the licenses of Sláger Radio and Danubius Radio for an additional period of five years starting in 2004.

44. Through highly professional management and operation of the licenses, Sláger and Danubius provided broadcasting services that were a success for the licensees and for the Republic of Hungary. Independent ratings services determined that more than 40% of all adults (aged 15+) in Hungary were listening daily to one or the other of the

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<sup>35</sup> *Id.*, Section 25.5

<sup>36</sup> *Id.*, Section 25.

<sup>37</sup> Hungária Rádió Műsorszolgáltató Részvénytársaság (Hungária Rádió) was the winner of the Sláger Radio frequency in 1997. Hungária Rádió was renamed Sláger Radio in 1998. The Danubius frequency had been operating under the name Danubius since the 1980s under state control.

stations as of September 2009. Both Sláger and Danubius repeatedly received awards — including the coveted recognition as Hungarian “Superbrands” designating the most popular and best-known businesses in Hungary. Sláger also received the “Most Trusted Brand” recognition during 2007-2009. At the same time, the Republic of Hungary benefited by receiving more than HUF 10 billion (nearly \$50 million) in broadcasting fees from Sláger and Danubius, plus substantial additional amounts in corporate income and employment taxes.

**C. THE 2009 TENDER FOR THE FREQUENCIES HELD BY SLÁGER AND DANUBIUS**

**1. The Call for Tender (2009 CFT)**

45. On 29 July 2009, ORTT published a Call for Tender (the 2009 CFT) for the issuance of licenses for the frequencies held by Sláger Radio and Danubius Radio for a license period beginning in November 2009. The 2009 CFT required applicants to submit their bids two months later, on 28 September 2009, allowing very little time to conduct and complete the process. This abrupt procedure infringed the Media Law, which required that a call for tender be published 12 months before the expiry of the existing licenses.<sup>38</sup> According to the Media Law, a Call for Tender may not deviate from the GTT unless permitted by the Media Law or the GTT.<sup>39</sup> The Media Law provided that the GTT was incorporated by reference in any call for tender.<sup>40</sup>

46. Under the 2009 CFT and the GTT, the ORTT was to conduct a two-step evaluation of each bid. First, the ORTT was required to evaluate whether the bid met formal requirements for content and completeness.<sup>41</sup> Second, if the bid was formally valid, the ORTT then evaluated the merits of the bid. ORTT was required to exclude any bid with a business plan that was “incorrect in respect of the market circumstances, based

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<sup>38</sup> Act I of 1996 on Radio and Television Broadcasting (Media Law), Section 107(2).

<sup>39</sup> *Id.*, Section 95(3).

<sup>40</sup> *Id.*

<sup>41</sup> Call for Tender, Sections 3.4.1 & 3.4.3; General Terms of Tender, Sections 60-69.

on ungrounded business assumptions, or . . . not in compliance with [the bidder's] own planned income and costs.”<sup>42</sup> The 2009 CFT required as a criterion for evaluation on the merits that all bidders offer a broadcasting fee of at least HUF 350 million (maximum HUF 700 million) annually for the first 19 months of the license term and a fixed broadcasting fee of HUF 200 million annually plus a percentage (not less than 8 percent) of the bidder's net sales revenue for the remaining period of the license. The 2009 CFT placed significant weight on the broadcasting fee (45 out of a possible 100 points). Two of the other evaluation categories (Programming Plan and Technical Data Relating to Broadcasting Services, 40 and 5 points, respectively) were structured so that all applicants could (and did) win the maximum possible points by doing nothing more than agreeing to implement ORTT's specified standards — which deprived Sláger and Danubius of any preference based on their demonstrated success of programming and the technical expertise they had acquired over 12 years of operations on the frequencies. The remaining criterion in the 2009 tender competition — broadcast experience (10 points) — gave points for broadcast experience of any kind, but without reference to experience acquired by broadcasting on the frequency that was the subject of the tender.<sup>43</sup>

47. As drafted, the new 2009 tender criteria potentially allowed a bidder to offer an unrealistically high bid so that it would be mathematically impossible for its rivals to overcome any advantage acquired through superior experience, and the criteria gave no explicit credit for experience on the two frequencies. But the terms of the 2009 CFT noted above also seemed to rule out unfeasible financial offers by warning that

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<sup>42</sup> Call for Tender, Section 3.4.2.1.1. ORTT was also required to exclude the bid of a bidder whose acts “severely violate[] the fairness of the tender or the interests related thereto.” Call for Tender, Section 3.4.2.1; *see* GTT, Section 64.1.

<sup>43</sup> Although ORTT had included a maximum broadcast fee in a published draft of the 2009 CFT and defended such a limit as necessary to prevent excessive and unrealistic bids, the ORTT eventually eliminated any maximum broadcast fee in the final 2009 CFT, thereby inviting precisely the sort of unrealistic bids it had warned against. ORTT also added new language providing that non-national broadcast experience “cannot be regarded as a disadvantage” when evaluating a bidder's experience, thus effectively eliminating any preference for the incumbents. Call for Tender, Section 3.4.3.1.3.



ORTT would exclude bids with unfounded business plans.<sup>44</sup> This gave Sláger and Danubius some reassurance that other bidders should not be able to overcome the incumbent preference and other strengths of their bids by proposing unrealistic financial terms.

## 2. The Tenders

48. The 2009 CFT designated 28 September 2009, two months after the 2009 CFT was issued, as the deadline for submitting bids. Working very hard, Sláger Radio and Danubius Radio managed to complete the work necessary to submit their bids by the deadline. Including the bids by Sláger Radio and Danubius Radio, ORTT received four bids for each license, for a total of eight bids.

49. In March 2009, ORTT was composed of a Chairman and five other members nominated by political parties and approved by Parliament. Two members were nominated by the then-governing MSZP party, and two were nominated by the opposition Fidesz Party and its ally KDNP. One was nominated by another party, SZDSZ. Unlike the other members, the Chairman was nominated by the President of the Republic and the Prime Minister. The Chairman did not cast a vote in the first round of voting in matters related to the evaluations of tenders for national radio-broadcasting licenses, but could do so in the subsequent rounds. A two-thirds majority was required to adopt ORTT resolutions on evaluations of tenders.<sup>45</sup>

50. During the short period in which the accelerated tender was conducted, the Hungarian press reported that the leading MSZP and Fidesz Parties were collaborating to use their influence over ORTT to replace Sláger Radio and Danubius Radio with new Hungarian operators that were loyal supporters of the two parties.<sup>46</sup> Representatives of

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<sup>44</sup> Call for Tender, Section 3.4.2.1.1.

<sup>45</sup> Media Law, Section 45(1).

<sup>46</sup> See, e.g., *Danubius and Slager Could Disappear*, Népszabadság, 30 September 2009 (Ex. 16) (“Lesser known, and entirely new bidders submitted their bids in response to the call for bids for the frequencies. . . . (continued...)”)

Sláger and Danubius received overtures warning that they should reach accommodations with the two leading parties to have a chance of renewing their rights to operate the Sláger and Danubius radio stations. Sláger’s representatives received overtures directly from senior officials in the MSZP party, principally Ms. Ildikó Lendvai, President of the MSZP party and László Puch, Director and former Treasurer of MSZP.<sup>47</sup> Danubius’s representatives received solicitations from people connected to the Fidesz party, principally Messrs. Tamás Fellegi and Zsolt Nyerges, who emerged as the ultimate owners of Advenio Zrt. (Advenio), which later took over the Danubius frequency.<sup>48</sup> Mr. Fellegi, who is a former senior advisor to Viktor Orbán (one of the founders of the Fidesz party and the current Prime Minister), is now the Minister of National Development for

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Our sources indicate that MSZP (Hungarian Socialist Party) and Fidesz agreed, whereby now protégés of both ‘sides’ would have a national commercial channel of their own.”); *Radio: the excluded company wants to sue*, Világgazdaság, 9 October 2009 (Ex. 17) (“Rumour spread that the two political sides split up the frequencies between each other . . . .”); *Danubius and Sláger Under Siege*, Népszabadság, 17 October 2009 (Ex. 18) (“The tender for the radio frequencies currently used by Sláger Rádió and Danubius Rádió could become a political show.”); see also Peter Murphy, *Politics Killed the Radio Stars*, TOL, 10 December 2009 (Ex. 19) (“Suspensions of a carve-up of the airwaves between Fidesz and the Socialists crystallized dramatically. . . when Laszlo Majtenyi the nonpartisan chairman of the ORTT, resigned his post the day after the vote in protest.”).

<sup>47</sup> Index.hu, *Econet allies with the Left-wing*, 3 February 2011 (Ex. 39) (“Leading socialists assisted at the birth of Neo FM. Both Ildikó Lendvai (party chairman) and László Puch (party director) tried to settle Neo’s disagreements with the American owner of Slager on behalf of Neo.”); Robert Hodgson, *Radio Station Refuses to Go Pop*, Budapest Times, 10 November 2009 (Ex.40) (“Vice chairwoman of Slager’s board of directors, Barbara Brill, who is also senior vice president for operations of the station’s U.S. owner Emmis International, claimed that she had been approached informally prior to the ORTT tender by someone close to “one of the parties.” The party was seeking to acquire some measure of control over the station, she said, but declined to elaborate on this allegation, adding only that there was a witness present.”).

<sup>48</sup> See *Strange “Reverse Lobbying” Over Radio Frequencies*, Híszerező, 2 November 2009 (Ex. 11) (“In the weeks leading up to the National Radio and Television Board’s (ORTT) decision on the radio broadcasting license tender, media politicians of Hungary’s two biggest political parties MSZP and Fidesz initiated contact with the commercial radio broadcast license holders Danubius and Sláger who eventually lost their bid to retain the licenses dangling before them the possibility of holding onto their frequencies provided that Hungarian companies could acquire majority stakes in the broadcasters.”); Peter Murphy, *Politics Killed the Radio Stars*, TOL, 10 December 2009 (Ex. 19) (“Advenio is owned by influential investor Tamas Fellegi, a vocal supporter of the center-right political party Fidesz who also owns the right-leaning Lanchíd Radio. FM1 is backed by Econet and Est Media Group, the former a media group that has won contracts under the current Socialist government.”).

the Republic of Hungary in Mr. Orbán's administration.<sup>49</sup> Sláger and Danubius placed their trust in the law, notwithstanding the prospect that they might lose the frequencies if they did not agree to accommodations giving Hungarian supporters of the political parties ownership interests in the licenses and editorial influence over the news operations.<sup>50</sup>

51. For the period after July 1, 2011, every bidder offered the annual fixed broadcasting fee of HUF 200 million and proposed additional fees calculated as a percentage of its projected net sales revenues from the preceding year. As Sláger and Danubius feared, the other bidders with little or no broadcast experience offered to pay unfeasibly high fees:

- In the tender for the Sláger frequency, Sláger Radio offered 11.55 percent of net sales revenues. The FM1 Konzorcium (the FM1 Consortium) and Zene Rádió Zrt. each offered a financially unfeasible fee of 50 percent of net sales revenues and Danubius Radio offered 15 percent.
- In the tender for the Danubius frequency, Danubius Radio offered 15 percent of net sales revenues. Advenio offered an unfeasible fee of 55 percent; Zene Rádió offered an unfeasible 50 percent of net sales revenues and Juventus Zrt. offered 10.50 percent.

52. On 7 October 2009, ORTT disqualified Zene Rádió from both bids on grounds that its business plans — which contemplated a broadcasting fee of 50 percent of projected net sales revenues — were unrealistic and “based on ungrounded business assumptions.” But ORTT declined to disqualify the bids of the FM1 Consortium and

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<sup>49</sup> Respondent has appointed Mr. Fellegi as the “person in charge” of the present dispute “on behalf of the Hungarian Government.” See Letter from Mihály Varga to Covington & Burling LLP, 3 August 2010 (Ex. 20).

<sup>50</sup> See *Strange “Reverse Lobbying” Over Radio Frequencies*, *Híszerező*, 2 November 2009 (Ex. 11) (“We have it confirmed from multiple sources that prior to awarding the radio licenses to the current winners Fidesz media politicians lobbied with Danubius for a majority Hungarian stake, while the socialists lobbied with Sláger Rádió for the same. . . . Tamás Fellegi, owner of Advenio Zrt., who was bidding for the Danubius frequency, made direct contact with the incumbent broadcaster . . . .”; Thomas Escritt, *Hungary broadcast regulator quits over radio bids*, *Financial Times*, 6 November 2009 (Ex. 10) (“Both foreign-owned stations said that before the tender process began they received visits from people claiming to represent the two parties, offering a deal that their licenses would be extended if the parties received 50 per cent of the companies’ equity.”).

Advenio, which contained broadcasting-fee offers in the same range, despite the fact that such business plans were also unfeasible and unrealistic. A study commissioned by the Chairman of ORTT and prepared by media-economics experts from Corvinus University in Budapest concluded that “there is no hope for the bidders [that offered such unrealistically high percentage net sales revenues] to achieve the results they forecasted in their business and financial plans, *i.e.*, to pay the offered broadcast fees during the whole term of the license.”<sup>51</sup> The non-political staff of ORTT reached a similar conclusion. In particular, it questioned the viability of the business plan submitted by Advenio and opined that the FM1 Consortium’s business plan was “unfounded.”<sup>52</sup> ORTT staff advised the members of the Board to reject the bids of both Advenio and the FM1 Consortium.

53. ORTT did not disqualify the bids of the FM1 Consortium and Advenio even though those two bidders were also in violation of the antimonopoly rules of the Media Law and the GTT as well as rules governing the tender. Under Section 123(1) of the Media Law and Section 25.5 of the GTT, companies having a controlling influence in companies that provide regional radio-broadcasting services or provide such services themselves are prohibited from bidding for a national broadcasting license. At the time of submission of their bids, both the FM1 Consortium and Advenio were, for purposes of the Media Law, owned and controlled by companies that either had a controlling influence in other companies that provided regional radio-broadcasting services or provided such services themselves. Lánchíd Rádió Zrt., which had a regional radio broadcasting right, owned a controlling interest in Advenio. The FM1 Consortium was owned and controlled by Radiocafé Kft., which also had a regional radio broadcasting right, and Est Media Group, Kft., which owned Radiocafé Kft.

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<sup>51</sup> Dissent of Dr. László Majtényi, Chairman of the ORTT regarding ORTT Resolutions No. 1903, 1905 and 1911/2009 (X. 7), 12 October 2009, at 2-3.

<sup>52</sup> See ORTT Office Proposal No. 1046/2009, 5 October 2009; ORTT Office Proposal No. 1047/2009.

54. The bids of the FM1 Consortium and Advenio were vehicles intended to facilitate the transfer of the Sláger and Danubius frequencies to companies owned by Hungarian nationals and with support of the MSZP and Fidesz political parties.<sup>53</sup> As ORTT members were aware, neither the FM1 Consortium nor Advenio existed until just before the bids were due.<sup>54</sup> The FM1 Consortium was organized on 21 September 2009, seven days before its bid for the Sláger license was filed with ORTT. On 27 October 2009, one day before ORTT selected and publicly announced the winners of the tender, the FM1 Consortium, apparently anticipating a favorable outcome, established a new company, FM1 Kommunikációs és Kulturális Zrt. (FM1 Zrt.), for the purpose of executing the broadcasting agreement with ORTT granting it Sláger's license.<sup>55</sup> Similarly, Advenio was created several weeks before the bids were due by Mr. Tamás Fellegi, who is now a prominent official in the Fidesz party-controlled government, and Zsolt Nyerges, an influential businessman and lawyer with ties to Fidesz officials.<sup>56</sup> Neither company had any commercial operating experience or assets of its own.

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<sup>53</sup> See *Danubius and Sláger Under Seige*, Népszabadság, 17 October 2009 (Ex. 18) (“[I]t is discussed as an open secret that the parties of the two ‘political camps,’ MSZP and Fidesz, have struck a backroom deal on the ‘redivision’ of the commercial radio market to the detriment of the currently operating commercial stations. Delegated by political parties, the ORTT’s members have clearly failed to distance themselves from all of this.”).

<sup>54</sup> See Advenio Zrt., Articles of Association, 4 September 2009 (Ex. 21); see also *Danubius and Sláger Could Disappear*, Népszabadság, 30 September 2009 (referring to the FM1 Consortium and Advenio as “lesser known” and “entirely new bidders”) (Ex. 16).

<sup>55</sup> FM1 Kommunikációs és Kulturális Zrt., Deed of Foundation, 27 October 2009 (Ex. 22) (excerpt translated).

<sup>56</sup> See Advenio Zrt., Articles of Association, 4 September 2009 (Ex. 21); Infocenter.hu, *Change in the Ownership of Lánchíd Rádió*, 15 October 2009 (Ex. 23) (noting Mr. Fellegi’s ownership of a majority of the shares of Infocenter.hu Zrt., and announcing Infocenter.hu’s acquisition of Lánchíd Rádió, Advenio’s owner); see *Danubius and Sláger Could Disappear*, Népszabadság, 30 September 2009 (Ex. 16); *Strange “Reverse Lobbying” Over Radio Frequencies*, Hírszerző, 2 November 2009 (Ex. 11) (“Advenio owner Tamás Fellegi never made secret of his own right-wing leanings.”); see also Attila Kapitány, *Tamás Fellegi, Orbán’s éminence grise, in the limelight*, Népszabadság, 8 June 2010 (Ex. 24) (discussing Mr. Fellegi’s ties to Prime Minister Orbán and noting that Zsolt Nyerges “is known as an important businessman in the [Fidesz] party”).

55. Over the strong objections of the ORTT Chairman, ORTT certified the bids of the FM1 Consortium and Advenio as valid. The MSZP Party and Fidesz Party members of the Board — ordinarily bitter political rivals — unanimously voted for the resolution allowing the FM1 Consortium and Advenio to participate in the tender despite their defective bids. The Chairman and the other non-aligned member of ORTT both dissented and publicly denounced the integrity of the proceeding by which the FM1 Consortium and Advenio bids were accepted. The Chairman noted that, although Fidesz and MSZP are “bitter foes [...] who will fight to [...] death over a village radio station license, [...] here [, where two national radio-broadcasting frequencies were at stake,] they were in full agreement.”<sup>57</sup> The non-aligned ORTT Board member (who had been appointed by the SZDSZ Party) criticized ORTT’s actions as the product of a “political deal” and a “flagrant disregard of the rule of law.”<sup>58</sup>

### 3. ORTT Awards the Frequencies to Non-Compliant Bidders

56. On 28 October 2009, ORTT announced the winners of the tenders: Advenio and the FM1 Consortium.

- Advenio, whose investors had connections with the Fidesz Party, and one of whom is now a Government official, was given first place in the tender for the Danubius Radio frequency, the incumbent came in second, and Juventus was third. But for the Respondent’s unlawful actions, Danubius would have been the successful bidder.
- The FM1 Consortium, with apparent support from the MSZP Party, was given first place in the tender for the Sláger Radio frequency, Danubius Radio was second, and Sláger was third. But for the Respondent’s unlawful actions, Sláger would have been the successful bidder (with Danubius electing to operate its own existing frequency rather than a new one).

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<sup>57</sup> Thomas Escritt, *Hungary broadcast regulator quits over radio bids*, Financial Times, 6 November 2009 (Ex. 10).

<sup>58</sup> Dissent of Dr. János Timár, Board Member of the ORTT regarding ORTT Resolution No. 1903/2009, 8 October 2009, at 2.

57. On 29 October 2009, the Chairman of ORTT resigned, citing irregularities in the tender procedure for both licenses. He told the *Financial Times* that he suspected that “the need to secure [political] party financing may have been a factor in the adjudication process.” In the face of the growing public outcry against the questionable tender procedure, and commencement of judicial action against ORTT and request for interim relief, ORTT hastened to execute license agreements with Advenio and the FM1 Consortium<sup>59</sup> on 4 November 2009 — even before the courts or other bodies could investigate the tenders. ORTT simply disregarded that neither bidder had properly removed its prohibited conflicts of interest. The day before executing the broadcast agreement with FM1 Kommunikációs és Kulturális Zrt (FM1 Zrt.), ORTT passed a resolution allowing Radiocafé, the co-owner of FM1 Zrt., to retain its existing regional broadcasting license for up to six months, thereby allowing FM1 Zrt. and its owners to avoid complying with the Media Law as well as their own binding declaration in their bid that they would irrevocably and unconditionally waive the conflicting regional broadcasting license at the time of entering into a broadcast agreement.<sup>60</sup>

58. ORTT also allowed one of Advenio’s owners to reduce its conflicted ownership in Lánchíd Rádió rather than dispose of its regional license, as required in the Call for Tender and mandated by the Media Law.<sup>61</sup> ORTT’s conclusion of the broadcast agreements with FM1 Zrt. and Advenio was unlawful as well as discriminatory towards

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<sup>59</sup> The FM1 Consortium bidder and the FM1 Consortium entity that entered into the license agreement with the ORTT are not the same. The bidder was the FM1 Consortium, and the party to the license agreement entered into on 4 November 2009 was FM1 Kommunikációs és Kulturális Zrt. (FM1 Zrt.).

<sup>60</sup> See Call for Tender, Section 2.8.4. Ostensibly to correct the conflict of interest violation, in April 2010, Est Media Group Kft. sold its interest in Radiocafé, the regional radio broadcaster, which until then owned 75 percent of FM1 Zrt. However, in February 2011, the owners of FM1 Zrt. restructured their shareholdings to sell back 25 percent of the shares of FM1 Zrt. to Est Media Group Kft., thus partially restoring the ownership structure as it existed before.

<sup>61</sup> *Id.*

Sláger and Danubius. The new licensees commenced broadcasting activities on 19 November 2009, immediately replacing Sláger and Danubius.<sup>62</sup>

#### **4. The Respondent's Attempts to Shield Its Unlawful Measures**

59. Sláger and Danubius each sought an emergency injunction to prevent the ORTT from executing the new broadcasting agreements and a declaration from Hungarian courts that ORTT's broadcasting agreements with FM1 Zrt. and Advenio were unlawful. Sláger and Danubius each intended to ask ORTT to cancel the respective broadcasting agreement upon obtaining a favorable declaratory judgment.

60. In January 2010, Hungary's Metropolitan Court ruled that ORTT's tender process for the national FM frequencies was unlawful.

- With respect to Danubius, on 5 January 2010, the Metropolitan Court held that ORTT had acted unlawfully by failing to reject the bid of Advenio as formally invalid and by concluding a license agreement with Advenio.
- With respect to Sláger, on 19 January 2010, the Metropolitan Court similarly ruled that ORTT had acted unlawfully by failing to reject the bid of the FM1 Consortium as formally invalid and by awarding the tender to that consortium.
- Because the Metropolitan Court held that the bids of the FM1 Consortium and Advenio were formally invalid, the Metropolitan Court found it unnecessary to rule on the feasibility of the bidders' financial proposals and business plans and did not engage in any comparative analysis of the bids.

The Metropolitan Court of Appeals upheld both judgments on 14 July 2010.

61. In February 2010, the Hungarian Parliament (or National Assembly) established a committee to investigate "political party affiliations and background deals" in connection with the tenders of the Sláger and Danubius frequencies. Immediately following elections held in April 2010 in which the Fidesz party — as expected — gained a large majority control of Parliament from the MSZP, the new Parliament abruptly ended the investigation by setting aside the resolution establishing the committee.

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<sup>62</sup> FM1 Zrt. and Advenio are operating the frequencies under the trade names Neo FM and Class FM, respectively.



62. The Hungarian Parliament then amended the Media Law to shield the award of the licenses to Advenio and the FM1 Consortium from administrative correction. In July 2010, the Hungarian Parliament adopted Section 24(1) of Act LXXXII of 2010, which amended the Media Law to allow the termination of a broadcasting agreement between ORTT and a broadcaster on grounds of unlawfulness only if the unlawful situation was caused exclusively by the broadcaster. In contrast, the old Media Law required an unlawful broadcasting agreement to be terminated if an unlawful situation existed, irrespective of how the unlawful situation came into existence. This new rule was plainly intended to thwart Sláger and Danubius, as several members of Parliament charged during Parliamentary debates.<sup>63</sup> Indeed, the new rule effectively meant that, notwithstanding the courts' judgments that ORTT acted unlawfully by awarding the Sláger and Danubius licenses to the FM1 Consortium and Advenio, ORTT was no longer required to remedy the unlawful situation by terminating its broadcasting agreements with FM1 Zrt. and Advenio. The amendments to the Media Law also replaced ORTT with a new regulatory agency, the Media Council of the National Media and Communications Authority ("Media Council").

63. The Parliament took further steps to prevent redress to Sláger and Danubius in December 2010, when it enacted Act CLXXXV of 2010 on Media Services and Mass Media (the "New Media Law"). Among other things, the New Media Law imposed new rules governing tender and licensing of radio broadcasting frequencies under which the Media Council may reduce broadcast fees that are unrealistically high, thus giving Advenio and the FM1 Consortium an escape from their unfeasible bids. In addition, Section 207(7) of the new law prohibits the Media Council from terminating an unlawful broadcasting agreement if ORTT was partly responsible for the unlawful situation. This new rule went even farther in protecting the new licensees than the July 2010 amendment (Act LXXXII) by expressly prohibiting the termination of unlawful

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<sup>63</sup> During Parliamentary debates, this amendment was referred to as the "lex Sláger Rádió." National Assembly of the Republic of Hungary, Minutes of the Closing Parliamentary Debate relating to Act LXXXII of 2010, 22 July 2010 (translated excerpt, p. 1) (Ex. 25).

broadcasting agreements with ORTT despite the binding court judgments that both the FM1 Zrt. and Advenio agreements were unlawful.

64. The actions of the Hungarian Government in connection with the tender, and later in respect of the amendments to the Media Law, have aroused widespread international condemnation. In November 2009, soon after Sláger and Danubius were abruptly replaced through the unlawful tender procedures, the Ambassadors of nine nations issued an extraordinary “Joint Statement” condemning “non-transparent behaviour affecting [foreign] investors in such areas as public utilities, broadcasting and elements of the nation’s transport infrastructure,” and calling for the enactment and implementation of “new anti-corruption legislation” to preserve the openness of the Hungarian economy and to protect investors.<sup>64</sup>

65. Similarly, the subsequent amendments to the Media Law, which were designed to shield ORTT’s unlawful tender for the Sláger and Danubius frequencies, and to empower the Government to impose strong penalties threatening press and media freedoms of speech, have drawn strong protests from the international community that the Government is attempting to dominate the broadcast, print and internet media in Hungary and suppress unofficial voices.<sup>65</sup>

66. The European Commission, the European Parliament, the Council of Europe, and the Organization for Security and Cooperation in Europe have each condemned the Media Law as extending Government control over media and press

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<sup>64</sup> See Joint Statement on Transparency, 18 November 2009 (Ex. 26); see also *Hungary’s Investment Climate Worrying Diplomats*, Reuters, 19 November 2009 (Ex. 27). The Joint Statement was issued by the Ambassadors to Hungary of Belgium, France, Germany, Japan, Norway, Switzerland, The Netherlands, the United Kingdom, and the United States.

<sup>65</sup> See, *Hungary’s Other Deficit*, The Economist, 6 January 2011 (Ex. 28); *The Putinization of Hungary*, The Washington Post, 26 December 2010 (Ex. 29); *Mr. Orban Forgets*, N.Y. Times, 4 January 2011 (Ex. 30).

freedoms and urged the Hungarian Government to amend it.<sup>66</sup> On 21 January 2011, the European Commission warned that the Media Law may violate European Union laws guaranteeing freedom of expression and media independence and demanded that the law be changed.<sup>67</sup> The Hungarian Government continues to strike a defiant posture and has refused to scale back the draconian provisions of the Media Law, notwithstanding street protests in Budapest and calls by the European Parliament that the Media Law should be “suspended as a matter of urgency.”<sup>68</sup>

67. Because the various amendments to the Media Law precluded any meaningful remedy despite findings that ORTT had acted illegally, the Claimants chose not to continue litigating the pending court actions in Hungary. ORTT subsequently sought review in the Supreme Court, which on 23 February 2011, (i) upheld the Metropolitan Court of Appeals’s judgment as to Danubius, holding that ORTT had acted unlawfully by registering Advenio’s bid as formally valid and by awarding the Danubius

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<sup>66</sup> Letter from Neelie Kroes, Vice-President of the European Commission, to Tibor Navracsics, Deputy Prime Minister, dated 21 January 2011 (Ex. 31); Council of Europe – Commissioner for Human Rights, *Hungary: Commissioner Hammarberg initiates dialogue and calls on the authorities to ensure freedom of expression and media pluralism*, 1 February 2011 (Ex. 32); Council of Europe – Commissioner for Human Rights, *Opinion of the Commissioner for Human Rights on Hungary’s media legislation in light of Council of Europe standards on freedom of the media*, 25 February 2011 (Ex. 33); Organization for Security and Cooperation in Europe, Representative on Freedom of the Media, *Hungarian media legislation severely contradicts international standards of media freedom, says OSCE media freedom representative*, 7 September 2010 (Ex. 34).

<sup>67</sup> See Letter from Neelie Kroes, Vice-President of the European Commission, to Tibor Navracsics, Deputy Prime Minister, dated 21 January 2011 (Ex. 31).

<sup>68</sup> See Gordon Fairclough, *Hungary PM Faces Critics of Media Law*, Wall St. J., 20 January 2011 (Ex. 35). On 7 March 2011, the Hungarian Parliament amended certain aspects of the Media Law, but refused to change controversial provisions, prompting renewed criticism and street protests in Budapest. See, e.g., Organization for Security and Cooperation in Europe, Representative on Freedom of the Media, *Despite Adjustments, Hungary’s Media Law Continues to Violate OSCE Commitments, Says OSCE Representative on Freedom of the Media*, 8 March 2011, at <http://www.osce.org/fom/75999> (Ex. 36); *Thousands protest Hungary’s media law*, Associated Press, 15 March 2011 (Ex. 37). On 10 March 2011, a majority of the European Parliament issued a resolution declaring that the Media Law “should be suspended as a matter of urgency.” European Parliament, Resolution P7\_TA-PROV (2011) 0094, *Media Law in Hungary* (Parliament “[c]alls on the Hungarian authorities to restore the independence of media governance and halt state interference with freedom of expression and ‘balanced coverage’ ...”) (Ex. 38).

license to Advenio on the basis that the bid of Advenio was subject to a conflict of interest; and (ii) reversed the Metropolitan Court of Appeals's judgment as to Sláger on grounds that one of the owners of FM1 Zrt., Radiocafé Kft., had filed a declaration stating that Radiocafé Kft. would remove the prohibited conflict of interest in case of winning the tender. The Supreme Court's review did not extend to many other irregularities, including the fact that, as noted above, FM1 Zrt. did not ultimately comply with its undertaking because ORTT allowed FM1 Zrt. to circumvent it.<sup>69</sup>

#### **D. CONSEQUENCES OF THE RESPONDENT'S MEASURES**

68. The measures described above, implemented by ORTT and other organs of the Hungarian State and attributable to the Respondent under international law, have caused substantial damages to the Claimants, including the total loss of their respective investments. The amount of these damages will be documented in detail by competent financial evidence in this proceeding. The Republic of Hungary has disclaimed all responsibility for its conduct and has not paid any compensation for the injuries inflicted on the Claimants.

#### **V. CLAIMS**

69. The Claimants' substantive claims and the legal bases therefor will be explained in detail at the appropriate stage of this proceeding. The purpose of the following statement of claims is to show, for the purposes of Institution Rule 2(1)(e), that the dispute hereby submitted to ICSID arbitration is a legal dispute arising directly out of the Claimants' investments in Hungary.

70. The Respondent's measures described in the preceding paragraphs, including in particular the unlawful tender and award of the radio-broadcasting frequencies formerly held by Sláger Radio and Danubius Radio and the actions taken in furtherance thereof, have expropriated, or nationalized, without compensation and

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<sup>69</sup> *Supra* at ¶ 57.

without complying with the other requirements imposed by applicable law, the investments of (i) Emmis International, Emmis Radio and MEM in and related to Sláger Radio and its operating activities; and (ii) Mezzanine and DSHV in and related to Danubius Radio and its operating activities. The same measures also violate the other standards of treatment of investors, such as the Claimants, under the applicable treaties, including without limitation the prohibition against unreasonable or discriminatory measures, and the obligation to provide fair and equitable treatment.

71. The Respondent's measures described above have caused grave damage to the Claimants, in an amount to be established at the proper stage of this proceeding. The *quantum* of the damages suffered by the Claimants includes, *inter alia*, the fair market value of the investments of which the Claimants have been deprived, measured in accordance with the applicable legal standards.

72. The Respondent's measures described above also violate its obligations under the Netherlands Treaty, the Switzerland Treaty, and the UK Treaty (including the provisions of treaties with other States that are incorporated by the most-favored-nation principle of Article 3(2) of the Netherlands Treaty, Article 4(2) of the Switzerland Treaty, and Article 3 of the UK Treaty), and customary international law.

73. The Respondent's additional violations of the Treaties include: (i) failure to observe obligations attendant upon a direct or indirect expropriation of an investment;<sup>70</sup> (ii) failure to ensure and afford fair and equitable treatment to investments;<sup>71</sup> (iii) failure to observe the duty not to impair by unreasonable or discriminatory measures the operation, management, maintenance, use, enjoyment or disposal of investments;<sup>72</sup> (iv) nationality discrimination against the Claimants and in

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<sup>70</sup> Netherlands Treaty, Article 4 (Ex. 1); Switzerland Treaty, Article 6 (Ex. 2); UK Treaty, Article 6 (Ex. 3).

<sup>71</sup> Netherlands Treaty, Article 3(1) (Ex. 1); Switzerland Treaty, Article 4(2) (Ex. 2); UK Treaty, Article 2(2) (Ex. 3).

<sup>72</sup> Netherlands Treaty, Article 3(1) (Ex. 1); Switzerland Treaty, Article 4(1) (Ex. 2); UK Treaty, Article 2(2) (Ex. 3)

favor of Hungarian nationals in the award of radio-broadcasting licenses; and (v) failure to observe obligations entered into with regard to investments.<sup>73</sup>

74. The Respondent's violations of customary international law include (i) breach of the international minimum standard of treatment of foreign investors and (ii) expropriation without compensation of Claimants' investments without observance of due process and payment of prompt, adequate and effective compensation equal to fair market value of the investments. Customary international law is applicable in this case under Article 42(1) of the ICSID Convention.

75. Accordingly, the measures adopted by the Republic of Hungary have given rise to investment disputes concerning (i) the "expropriation or nationalization of an investment" within the meaning of Article 10(1) of the Netherlands Treaty; (ii) a "dispute concerning Article 6 of this Agreement" within the meaning of Article 10(2)(a) of the Switzerland Treaty; (iii) a "legal dispute arising under Article 6 of this Agreement" within the meaning of Article 8(1) of the UK Treaty, and an investment dispute subject to arbitration in this proceeding with the parties' mutual consent.

## **VI. REQUEST FOR RELIEF**

76. For the foregoing reasons, the Claimants respectfully request that a tribunal be constituted in accordance with the Convention and the Rules to resolve the claims set forth in this Request for Arbitration,<sup>74</sup> and that the tribunal render an award in favor of the Claimants:

- a. Declaring that the Respondent has breached the Treaties
  - i. by expropriating the Claimants' investments without complying with the requirements of the Treaties, including payment of prompt, adequate and effective compensation;

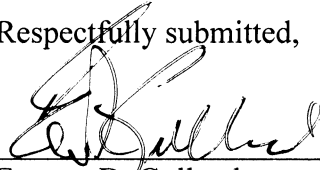
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<sup>73</sup> Netherlands Treaty, Article 3(5) (Ex. 1); UK Treaty, Art. 2(2) (Ex. 3)

<sup>74</sup> The Claimants hereby reserve their right to amend or supplement this Request for Arbitration.

- ii. by failing to accord fair and equitable treatment to the Claimants' investments;
  - iii. by taking unreasonable or discriminatory measures that impaired the operation, management, maintenance, use, enjoyment or disposal of the Claimants' investments; and
  - iv. by discriminating against the Claimants and in favor of Hungarian nationals in the award of radio-broadcasting licenses; and
  - iv. by failing to observe obligations entered into with respect to Claimants' investments;
- b. Declaring that the Respondent has breached customary international law
  - i. by violating the minimum standard of treatment of foreign investors; and
  - ii. by expropriating the Claimants' investments without observance of due process and payment of prompt, adequate and effective compensation;
- c. Ordering the Respondent to pay to the Claimants full reparation in accordance with the Treaties and customary international law, including compensation for damages sustained as a result of the aforesaid expropriation, in an amount to be established in the proceeding, plus compound interest thereon in accordance with applicable law and gross up of any taxes that may be imposed by the Respondent on or affecting such compensation;
- d. Ordering the Respondent to pay all costs and expenses of this arbitration proceeding, including the fees and expenses of the tribunal and the cost of legal representation, plus interest thereon in accordance with applicable law;
- e. Granting pre-award compound interest on all compensatory damages from the date of each breach to the date of issuance of the award and post-award compound interest on all amounts awarded from the date of the award to the date of payment; and
- f. Such other or additional relief as may be appropriate under the applicable law or may otherwise be just and proper.

Respectfully submitted,



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Eugene D. Gulland

Miguel López Forastier

Alexander O. Canizares

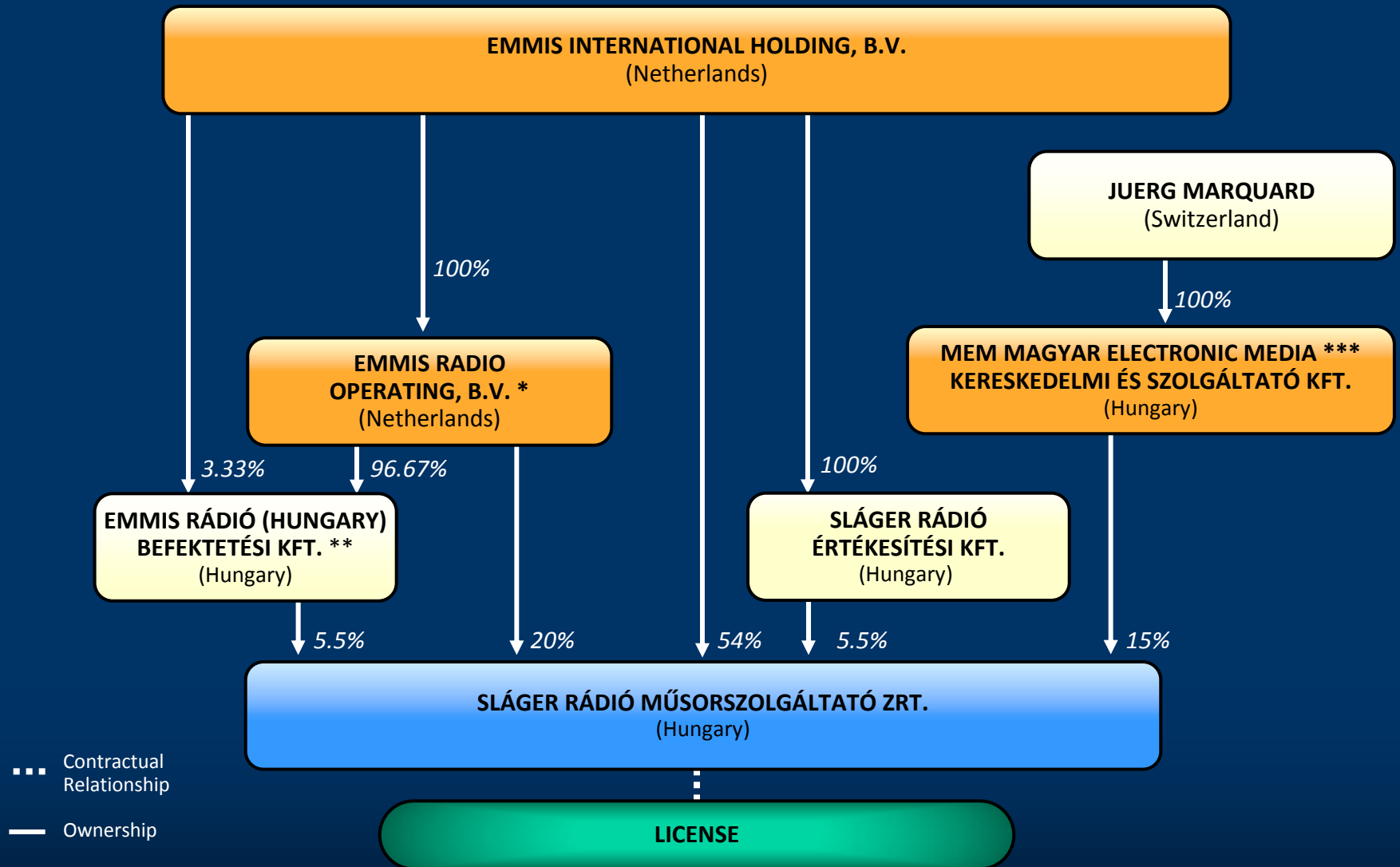
COVINGTON & BURLING LLP  
1201 Pennsylvania Avenue, NW  
Washington, DC 20004-2401  
202-662-5504 (telephone)  
202-778-5504 (telefax)

*Counsel for the Claimants*



# Appendix I

# APPENDIX I-A -- SLÁGER INVESTMENT (CURRENT)

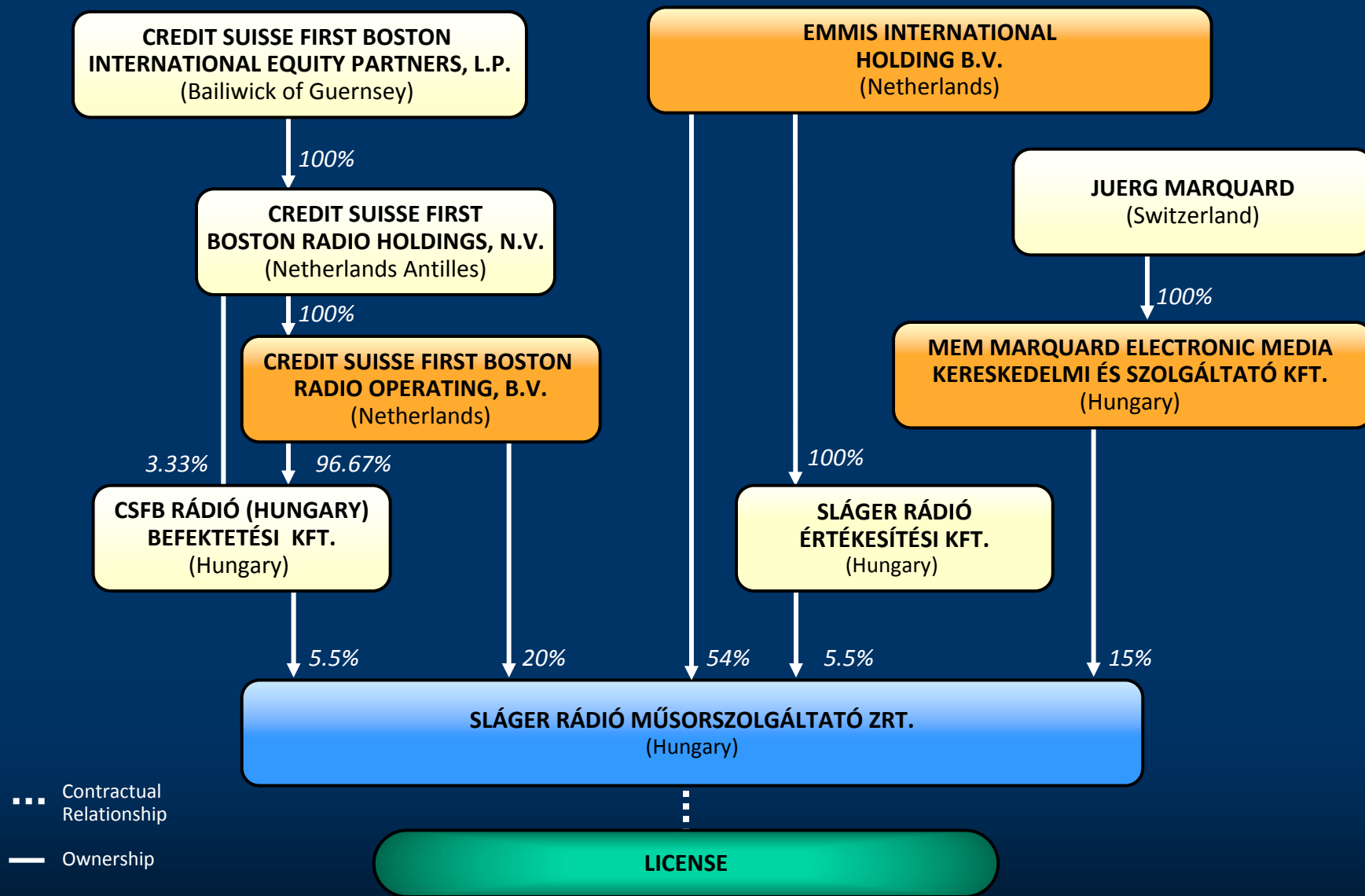


\* As of 6 June 2011, Emmis Radio Operating, B.V. is the new name of Credit Suisse First Boston Radio Operating B.V. See n. 5.

\*\* As of 27 May 2011, Emmis Rádió (Hungary) Befektetési Kft. is the new name of CSFB Rádió (Hungary) Befektetési Kft. See n. 5.

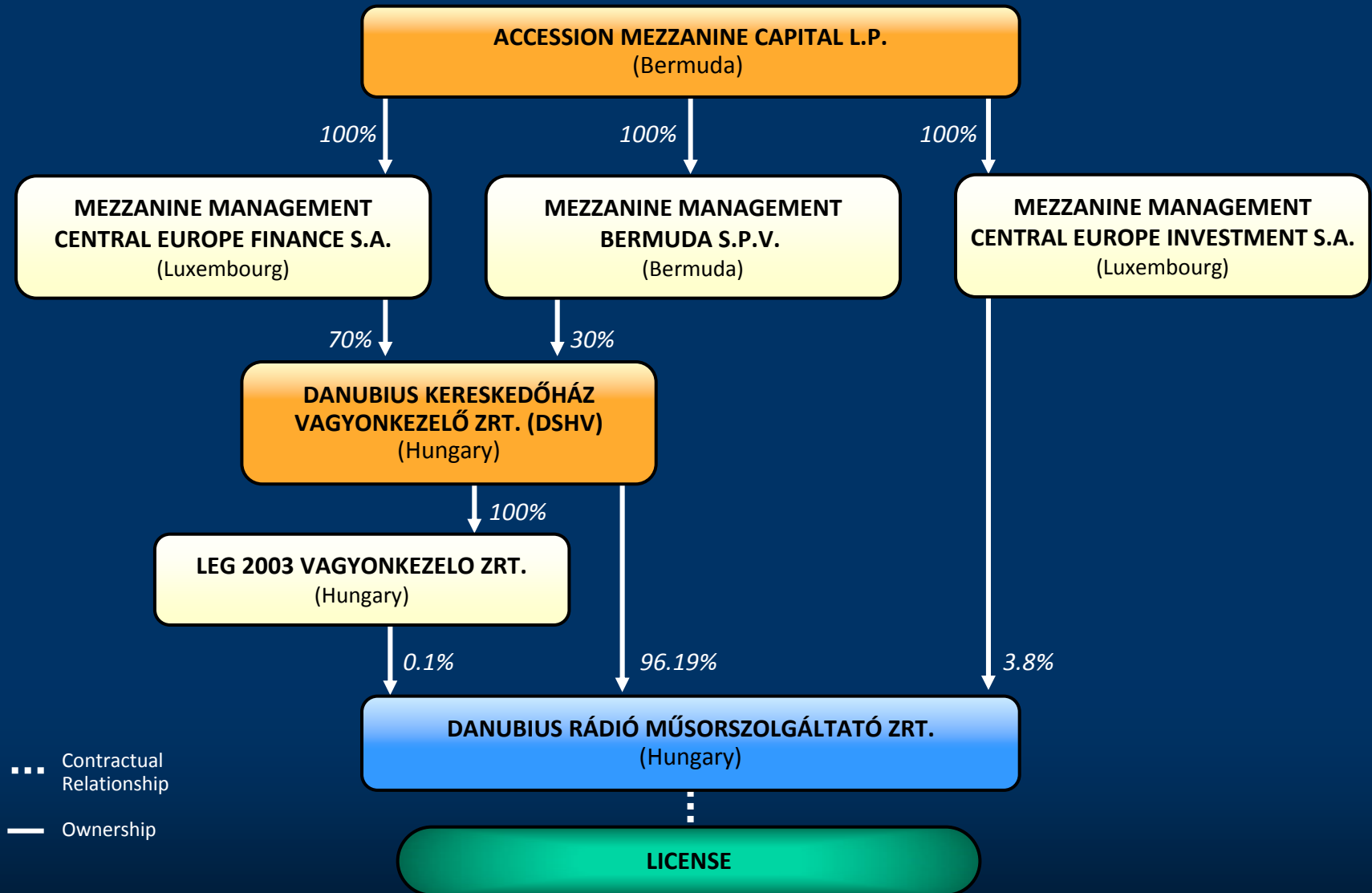
\*\*\*As of 6 July 2011, MEM Magyar Electronic Media Kereskedelmi és Szolgáltató Kft. is the new name of MEM Marquard Electronic Media Kereskedelmi és Szolgáltató Kft.

# APPENDIX I-B -- SLÁGER INVESTMENT (2009)



# Appendix II

# APPENDIX II -- DANUBIUS INVESTMENT (2009 AND CURRENT)



# Glossary

## **GLOSSARY**

### **Advenio**

Advenio Zrt., registration No. 01-10-046459, seat: Üllői út 102, Budapest, H-1089, Hungary, the bidder to which the Danubius Radio national FM radio-broadcasting frequency was awarded by ORTT in the 2009 Tender.

### **2009 CFT or Call for Tender**

The Call for Tender for national FM radio-broadcasting frequencies administered by ORTT in 2009.

### **DSHV or Danubius Sales House**

Claimant Danubius Kereskedőház Vagyonkezelő Zrt., registration No. 01-10-045008; seat: Kálmán Imre utca 1, Budapest, H-1054, Hungary.

### **Danubius Radio or Danubius**

Danubius Rádió Műsorszolgáltató Zrt., registration No. 01-10-044119, seat: Kálmán Imre utca 1, Budapest, H-1054, Hungary, a Hungarian company operating one of two licenses for national FM radio-broadcasting frequencies in Hungary, which was owned by Claimants Mezzanine and DSHV.

### **Emmis International**

Claimant Emmis International Holding, B.V., a company organized and existing under the laws of the Netherlands.

### **Emmis Radio**

Claimant Emmis Radio Operating, B.V., a company organized and existing under the laws of the Netherlands.

<b>Emmis Rádió (Hungary) Befektetési Kft.</b>	Emmis Rádió (Hungary) Befektetési Kft., registration No. 01-09-689680; seat: 99. Vaci u, Budapest, H-1139, Hungary. A subsidiary of Claimant Emmis Radio Operating, B.V. that holds 5.5% of the shares of Sláger Radio. Emmis Radio owns 96.67 percent of the shares of Emmis Rádió (Hungary) Befektetési Kft; Emmis International owns the remaining 3.33 percent.
<b>Fidesz</b>	A political party in the Republic of Hungary presently in control of the Parliament.
<b>The FM1 Consortium</b>	FM1 Konsorcium, the bidder in the Call for Tender to which ORTT awarded the Sláger Radio frequency. The FM1 Consortium was composed by Radiocafé Kft., which had a regional radio broadcasting right, and Est Media Group, Kft., which owned Radiocafé Kft.
<b>FM1 Zrt.</b>	FM1 Kommunikációs és Kulturális Zrt., registration No. 01-10-046502, seat: Csévi utca 7. b. ép., Budapest, H-1025, Hungary, a Hungarian company established by members of the FM1 Consortium for purposes of executing the broadcast agreement with ORTT in November 2009 awarding FM1 Zrt. the Sláger Radio frequency.
<b>GTT or General Terms of Tender</b>	General Terms of Tender, a regulation adopted in 1996 under the Media Law that established, <i>inter alia</i> , the conditions for the acquisition of broadcasting rights, a procedure for conducting public tenders of those rights, and the “criteria [for] evaluation” of those tenders.



**Lánchíd Rádió Zrt.**

Lánchíd Rádió Kft., registration No. 01-09-875336, seat: Üllői út 102, Budapest, H-1089, Hungary. The Hungarian company that owned a controlling interest in Advenio Zrt. as defined in the Media Law at the time of Advenio's submission of its bid in the Call for Tender.

**LEG 2003 Vagyonkezelő Zrt.**

LEG 2003 Vagyonkezelő Zrt., registration No 01-10-044995, seat: Kálmán Imre utca 1, Budapest, H-1054, Hungary. Subsidiary of Claimant DSHV.

**Media Council**

Media Council of the National Media and Communications Authority, a new regulatory agency governing media industries established by Act LXXXII of 2010. The Media Council replaced ORTT.

**Media Law**

Act I of 1996 on Radio and Television Broadcasting, adopted by the Republic of Hungary in 1996 as part of a series of policies designed to foster free expression for media and attract domestic and foreign capital to the radio-broadcasting industry.

**MEM**

Claimant MEM Magyar Electronic Media Kereskedelmi és Szolgáltató Kft., Registration No. 01-09-863420; seat: Árpád fejedelem útja 26-28, Budapest, 1023, Hungary, a company organized and existing under the laws of the Republic of Hungary.

**Mezzanine**

Claimant Accession Mezzanine Capital, L.P., a partnership organized and existing under the laws of Bermuda.

**Mezzanine Management Central Europe Finance S.A.**

A subsidiary of Claimant Mezzanine.

<b>Mezzanine Management Bermuda S.P.V.</b>	A subsidiary of Claimant Mezzanine.
<b>MSZP</b>	Magyar Szocialista Párt (MSZP), the Socialist Party in the Republic of Hungary, which, in coalition with the SZDSZ (Free Democrats) party, controlled Parliament from 2002 to April 2008. After SZDSZ terminated the coalition agreement, MSZP governed without a majority in Parliament from May 2008 to April 2010 by holding 49.22% of the votes.
<b>New Media Law</b>	Act CLXXXV of 2010 on Media Services and Mass Media, enacted by the Hungarian Parliament in December 2010. The New Media Law imposed new rules governing tender and licensing of radio broadcasting frequencies.
<b>ORTT</b>	National Radio and Television Broadcasting Board, an organ of the Republic of Hungary charged with regulating radio and television broadcasting in Hungary. It was replaced by the Media Council in 2010.
<b>Rádió Juventus Zrt.</b>	A Hungarian company, registration No. 01-10-044277, seat: Róbert Károly körút 82-84, Budapest, H-1135, Hungary, that submitted a bid for Danubius's frequency.
<b>Sláger Radio or Sláger</b>	Sláger Rádió Műsorszolgáltató Zrt., registration No. 01-10-045219; seat: Rumbach Sebestyén utca 19. 2nd floor, Budapest, H-1075, Hungary. A Hungarian company operating one of two licenses for national FM radio-broadcasting frequencies in Hungary, which was owned by Claimants Emmis International, Emmis Radio, and MEM.

**Sláger Rádió Értékesítési Kft.**

A Hungarian company owned by Claimant Emmis International holding 5.5% of the shares of Sláger Radio. Registration No. 01-09-736879; seat: Rumbach Sebestyén utca 19.2 em., Budapest, 1705, Hungary.

**Zene Rádió**

Zene Rádió Országos Kereskedőház Zrt., registration No. 01-10-046466, seat: Mészáros u 58/B 3, Budapest H-1016, Hungary. Bidder in the Call for Tender for the Sláger Radio and Danubius Radio frequencies that was disqualified by ORTT as formally invalid on grounds that its business plan in its bid was unrealistic.