[FR] Renewal of DTT licences: ARCOM shortlist cannot be contested on grounds of abuse of power

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Amélie Blocman
Légipresse

In a decision adopted on 28 February 2024 on the basis of Article 30-1 of the Law of 30 September 1986, the *Autorité de régulation de la communication audiovisuelle et numérique* (the French audiovisual regulator – ARCOM) issued a call for tenders for the allocation of 15 licences to operate digital terrestrial television (DTT) services. In a press release published on 24 July 2024, ARCOM announced that it had "shortlisted, as a preparatory measure," 15 of the 25 eligible applicants and intended to negotiate agreements with them, an "indispensable condition for the granting of a DTT licence valid for up to ten years". The companies Le Média, C8, NRJ 12 *et al* then asked the *Conseil d'Etat* (Council of State) to annul the shortlist on the grounds of abuse of power, insofar as their applications had been rejected before the selection process was complete.

In its decision, the *Conseil d'Etat* pointed out that, under Articles 28, 30-1 and 32 of the Law of 30 September 1986, as part of the procedure for the allocation of DTT licences, ARCOM, having checked the admissibility of the applications received, was then responsible for examining those that were deemed admissible. In order to weigh up the respective merits of the various applications, ARCOM was required to review all of them before either accepting or rejecting them at the same meeting. The *Conseil d'Etat* thought it was acceptable for ARCOM, in the interests of sound administration, to announce, during the review phase, a list of candidates with which it intended to start negotiating the terms of licences pursuant to Article 28 of the Law of 30 September 1986, since it was not making a final decision at this stage to reject certain applications. Even after publishing such a list, it could still end negotiations with any of the shortlisted applicants or open them with another applicant that had not been shortlisted.

In this case, the *Conseil d'Etat* thought that, although the companies concerned claimed that the shortlist was likely to have serious economic consequences for applicants depending on whether they were on it or not, the shortlisting process was a preparatory measure that could not be treated as separate from the licensing decisions themselves and could not therefore be referred to the courts on the grounds of abuse of power. However, applicants who were rejected at the end of the procedure, just like anyone else with a sufficient interest in doing so, would be able to contest, including by way of interim measures, the issuing of

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licences or the rejection of their own applications, which would be notified to them with grounds in accordance with the aforementioned provisions of Article 32 of the Law of 30 September 1986.

On 22 November, the *Conseil d'Etat* therefore ruled inadmissible the claims lodged by the companies Le Média, C8, NRJ 12 *et al*, requesting the annulment of the ARCOM decision announced in the press release of 24 July 2024.

On 12 December, ARCOM published its decision to award DTT licences to 11 of the broadcasters shortlisted in July. The Canal+ group had announced a few days earlier that it was withdrawing the applications for its pay-TV channels (Canal+, Canal+ Cinéma, Canal+ Sport and Planète+). The rejected broadcasters have already filed a new appeal with the *Conseil d'Etat*.

CE, 22 novembre 2024, n° 497830, Le Média, C8, NRJ 12 et autre

http://www.conseil-etat.fr/fr/arianeweb/CE/decision/2024-11-22/497830

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