[FR] Conseil d'État upholds ARCOM decision not to renew NRJ 12 and C8 licences

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Amélie Blocman
Légipresse

NRJ 12 and C8 asked the *Conseil d'Etat* (Council of State) to annul the decision taken by the *Autorité de régulation de la communication audiovisuelle et numérique* (French audiovisual regulator – ARCOM) not to renew their digital terrestrial television licences on the grounds that it had exceeded its powers. They also requested the annulment of ARCOM's decision to grant licences to Ouest-France TV and CMI France, as well as its decision not to allocate all the frequencies mentioned in the call for applications after the Canal Plus group announced it was removing its pay-TV channels from DTT and withdrawing the applications of its four channels that had been among the 15 pre-selected.

With regard to the decision not to award all the licences mentioned in the call for applications, the *Conseil d'Etat* pointed out that the withdrawal of the four channels announced by the Canal Plus group had been a new development for ARCOM, occurring six days before its decision to award the frequencies, and that it had not been in a position to assess at such short notice the economic consequences that the immediate award of four additional licences to free DTT channels might have on the balance of the sector. Consequently, it had not infringed the provisions of the Law of 30 September 1986 by not immediately increasing the number of licences granted to such channels and by issuing only 11 of the 15 licences mentioned in the call for applications.

However, the *Conseil d'Etat* considered that ARCOM should launch a new public consultation and impact study without delay, in accordance with the conditions set out in Article 31 of the Law, in order to decide whether the economic situation of the sector favoured the launch of a call for applications for the four licences that had not been awarded or whether, on the contrary, the process should be postponed for two years, renewable once, from the expiry of the existing licences concerned.

With regard to ARCOM's assessment of the applications, the *Conseil d'Etat* noted that under Articles 29 and 30-1 of the Law of 30 September 1986, it was ARCOM's responsibility to assess the comparative merits of the applications received in the light, in particular, of their contribution to pluralism and diversity of operators and to the production and distribution of French and European works, their impact on competition, the prospects for their financing and their ability to comply with their

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legal obligations. Contrary to what the applicants had suggested, these provisions thus defined criteria that were objective, transparent, favourable to competition, non-discriminatory and proportionate. They therefore did not infringe the objectives of Article 45 of the aforementioned Directive of 11 December 2018[PG1] .

In the present case, ARCOM had authorised the broadcasting of the services BFM TV, CMI TV, CNews, CStar, Gulli, LCI, OFTV, Paris Première, TFX, TMC and W9 in its decisions of 11 December 2024. It was clear from the documents in the files that, in the light of the applications received and the other existing DTT channels, many of which were general-interest channels, ARCOM had sought to select channels that would increase the diversity of the types of programmes and content offered and that it had therefore favoured, in particular, applications with a specific theme, such as news, music, documentaries or regional representation, or targeting a specific audience, such as young people, through dedicated formats.

In the case of C8, which enjoyed a high audience share on DTT, was not a traditional terrestrial channel, and, according to ARCOM, offered a large volume of live, original programmes that were not as diverse as those of its competitors, the *Conseil d'Etat* considered that the regulator was legally entitled to take into account the channel's repeated breaches of its legal and contractual obligations committed in recent years, particularly with regard to respect for human rights, protection of minors and control of its programmes. These failings cast doubt on the channel's ability to meet its obligations. Finally, since its creation 20 years previously, the channel had suffered chronic and significant losses, while the growth plan set out in its application was not consistent with its past results or the future outlook for the advertising sector.

With regard to NRJ 12, ARCOM noted that it planned to devote most of its airtime to TV dramas, including many repeats, and entertainment, genres that were already well represented on DTT, as well as teleshopping, to which the channel already devoted more than 1,000 hours per year. In addition, its commitment to broadcast original programmes was substantially inferior to that of other candidates. Lastly, the forecast growth in advertising revenue for NRJ 12, which had only posted a positive net result in one financial year since its creation, contrasted with both the decline in its audience share, including among the young audience that it targeted, and the outlook for the advertising sector.

The *Conseil d'Etat* also ruled that, taking into account the specific features of each project and its comparison of all the applications, ARCOM had not acted illegally when assessing the merits of the applications from CMI TV, OFTV, TFX, TMC and W9. The requests submitted by C8 and NRJ 12 were rejected.

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While the nine channels that were already present on DTT and had their frequencies renewed remain accessible, C8 and NRJ 12 ceased broadcasting on 1 March. Viewers will be able to access the two new channels, T18 and OFTV, from 6 June and 1 September 2025 respectively.

CE, 19 février 2025, n° 499823, 500009, Sociétés NRJ 12 et NRJ Group, C8

https://www.conseil-etat.fr/fr/arianeweb/CE/decision/2025-02-19/499823

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