[FR] CSA Recommendation to the Conseil d'Etat on Surcharged Telephone Services

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Under Article 1 of the Act of 30 September 1986 (as amended), the Conseil supérieur de l'audiovisuel (audiovisual regulatory body - CSA) is authorised to make recommendations to the editors and distributors of audiovisual communications services regarding compliance with the principles set out in the Act. On the basis of this, having observed that a number of television channels were increasingly promoting the calling of surcharged telephone services or telematic services that could not be classified as advertising, particularly in order to take part in games, to vote or to contribute to a programme, the CSA adopted a recommendation on 5 March 2002 reminding all the television services of the principles to which they are legally bound.

According to these principles, such practices must not contravene the Decree of 27 March 1992 prohibiting unlawful advertising; the CSA recommends that where a reference to a telephone service is not related to the programme being broadcast, it must be made during an advertising slot. The CSA also reiterates in its recommendation the obligations concerning the indication of the cost of the services and the possibilities provided by legislation on games to have the cost of communication refunded. The private nation-wide channel TF1, a large-scale user of the surcharged telephone services referred to, took the matter before the Conseil d'Etat, calling for the recommendation to be cancelled. The Conseil d'Etat, in a decision of 9 February 2004, found that the CSA had not overstepped its area of competence. It was indeed one of its duties to reiterate the rules incumbent on operators, not only in terms of the ban on unlawful advertising, but also as regards information to the public and the legislation banning games of chance. Moreover, by stating that the television services may, outside advertising slots, refer to their own services or Audiotel, Teletel and Internet sites as long as the reference constitutes a direct continuation of the programme being broadcast and does not result in connexions with services unrelated to that programme or in competition with services of the same kind offered by third-party companies, the CSA's interpretation of Article 8 of the Decree of 27 March was neither wrong nor made outside its sphere of competence to make a new rule. Thus TF1 was deemed unfounded in calling for the CSA's recommendation to be cancelled.

Conseil d'Etat, 9 février 2004, Société télévision française TF1

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