[FR] Another Setback for Terrestrially-broadcast Digital Television

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On 20 October the Conseil d'État, in response to an application brought by TF1, cancelled the last six of the twenty-three authorisations issued in June 2003 by the CSA (Conseil supérieur de l'audiovisuel audiovisual regulatory body) to editors of television services intended for terrestrial broadcasting in digital mode. The authorisations had been allocated to the channels MCM, Canal J, Sport +, I-Télévision, Ciné-Cinéma Câble and Planète Câble, held by Canal+ and Lagardère. Referring to the joint control exercised by the two companies on the channels MCM and Canal J, TF1 felt that the authorisations allocated to these channels brought the total number of authorisations allocated to Canal+ up to seven, whereas at the time the maximum number any one operator was permitted to hold either directly or through companies it controlled, according to Article 41 of the Act of 30 September 1986, was five. Under Article L. 233-3 of the Commercial Code, one company was deemed to control another company if it owned the majority of the voting rights. Moreover, if two or more persons, working together, jointly determined the decisions made by the general meetings of shareholders of a third company, such persons were deemed to exercise "joint control" of that company.

Looking into the financial structures of the companies Canal+ and Lagardère in the light of these principles, the Conseil d'État found firstly that the company Lagardère Thématiques, since it held their entire capital, controlled the companies Canal J and MCM, which each held an authorisation to broadcast. Moreover, the companies Canal+ and Lagardère Images themselves had joint control of the company Lagardère Thématiques, as they held 49% and 51% of its shares respectively and had agreed in writing to define the strategy of their subsidiary by mutual agreement. The Conseil d'État inferred from this that the company Canal+ was joint holder, with the Lagardère Group, of the authorisations attributed to the companies MCM and Canal J. Canal+ already had the indirect benefit of the authorisations attributed to each of its subsidiaries Sport+, I-Télévision, Ciné-Cinéma Câble and Planète Câble, in addition to the authorisation attributed to it for the full, simultaneous broadcasting on terrestrially-broadcast digital television of its own terrestrially-broadcast programmes. The procedure organised by the CSA had indeed resulted in Canal+ holding, directly or indirectly, alone or jointly, seven authorisations to broadcast. It did not matter that the Act of 9 July 2004 had amended by the Act of 30 September 1986 by raising the ceiling to seven authorisations; the Conseil d'État cancelled the six authorisations

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at issue. The following day, the CSA launched a public consultation with a view to a further call for applications for the six invalidated frequencies. Although, according to the CSA, this should not result in any delay in launching terrestrially-broadcast digital television (scheduled in March 2005 for channels for which no charge is made and September 2005 for pay channels), the schedule is nevertheless seriously threatened by the choice of the standard for digital broadcasting (Mpeg 2 or Mpeg4), currently subject to the Prime Minister's decision.

Conseil d'État (5th and 4th sub-sections combined), 20 October 2004 - TF1

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