[FR] Criteria for Issuing Authorisations to Operate Terrestrial Radio Broadcasting Services

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In an unpublished judgment of 6 July 2005, the Conseil d'Etat dismissed the company CANAL 9's petition to set aside two decisions of the Conseil Supérieur de l' Audiovisuel (the audiovisual regulatory authority - CSA) rejecting CANAL 9's applications to operate a category D terrestrial radio service called “Chante France” in the Digne, Briançon and Toulon-Hyères zones, under the jurisdiction of the Comité Technique Radiophonique (Radiophonic Technical Committee) of Marseille.

The Conseil d'Etat relied on Article 29 of the Act of 30 September 1986: in issuing authorisations, the CSA assesses the public interest of each project, in the light of the overriding requirements to protect diversity in currents of socio-cultural expression, to ensure a diverse range of operators and to prevent abuses of dominant position and practices restricting the free exercise of competition. It also takes into account the service's funding arrangements and operating prospects, particularly in relation to the scope for print media outlets and audiovisual communication services to pool advertising resources. On the grounds of CANAL 9's structural deficit and consistently negative operating result, the appealed decisions of the Conseil Supérieur de l ' Audiovisuel were well-founded; in exercising the powers assigned to it by the legislature, the CSA had not misinterpreted the requirements of Article 10 of the European Convention on the Protection of Human Rights and Fundamental Freedoms.

The Conseil d'Etat explained that the evidence showed CANAL 9's operating result had been consistently negative from 1996 to 2001, and that - although CANAL 9 asserts that it belongs to a financially sound group whose partners enjoy an acknowledged capacity to invest - it did not produce, in support of its application, either an estimate of income and expenditure or budget estimates detailing the source and amount of the funding it might receive. Notwithstanding the fact - cited by CANAL 9 - that the company's parent group had written to the Chair of the CSA guaranteeing its support for the development of its subsidiary, CANAL 9 did not provide any details regarding the level of funding thereby made available. Consequently, in holding that the application submitted by the appellant company did not provide the necessary financial guarantees to ensure the continual, effective and sustainable operation of a national radio service in the aforementioned zones, the CSA had not made an error in its assessment.

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In another unpublished judgment of 10 August 2005, the Conseil d'Etat held that the DEVCOM Association was not justified in its petition to set aside the CSA's decision of 22 July 2003 rejecting its application - in response to a call for applications issued on 27 February 2002 - to operate medium-wave terrestrial radio services over the Paris zone.

The Conseil d'Etat, recalling the aforementioned provisions of Article 29 of the Act of 30 September 1986, held that, in the light of the requirement for a diverse range of programmes, the CSA had not made an error in turning down the appellant association's project in the Paris zone, aspects of which are already offered by Espace FM, Media Tropical, Latina, Africa n° 1 and Radio Nova, respectively, in favour of other applications whose formats were not previously available in this zone.

The CSA had not made an error in its assessment regarding the requirement for a diverse range of programmes in comparing the DEVCOM Association's proposed programme for a medium-wave frequency in the Paris zone with other programmes already available on the medium-wave and FM bands in the same zone.

Arrêt inédit du Conseil d'Etat, Sous-section 5, Premier ressort, 6 juillet 2005, n° 270210, n° de rôle 05396. SAS CANAL 9 / Conseil supérieur de l'audiovisuel

Unpublished judgment of the Conseil d'Etat , Sub-section 5, Appealable, 6 July 2005, n° 270210, list n° 05396. CANAL 9 company / Conseil Supérieur de l' Audiovisuel

Arrêt inédit du Conseil d'Etat, Sous-sections 5 et 4 réunies, Premier ressort, 10 août 2005, N° 261734, n° de rôle 05493 - Association DEVCOM / Conseil supérieur de l'audiovisuel

Unpublished judgment of the Conseil d'Etat , Sub-sections 4 and 5, Appealable, 10 August 2005, N° 261734, list n° 05493 - DEVCOM Association / Conseil Supérieur de l'Audiovisuel

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