

Court of Justice of the European Communities: Case of Centro Europa 7

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On 28 July 1999, Centro Europa 7 was granted rights by the competent Italian authorities for terrestrial television broadcasting at the national level, authorising the installation and use of a television network using analogue technology. The national allocation plan for radio frequencies adopted on 30 October 1998 would see to the allocation of frequencies for such broadcasting activities. However, the plan was never adopted. Instead a series of national laws succeeded each other, which prevented Centro Europa 7 from effectively making use of its rights to the benefit of incumbent operators. Centro Europa 7 sought justice before domestic courts and the highest Italian administrative court, the *Consiglio di Stato* (Council of State), which while reviewing the case referred ten questions to the European Court of Justice. The *Consiglio di Stato* asked the Court to rule on the interpretation of the provisions of the EC Treaty on freedom to provide services and competition, Directive 2002/21/EC (Framework Directive), Directive 2002/20/EC (Authorisation Directive), Commission Directive 2002/77/EC ('the Competition Directive'), and Article 10 of the ECHR, in so far as Article 6 EU refers thereto.

The European Court of Justice declared two questions as being inadmissible as the Court had not been presented with the necessary information to enable it to adequately rule on the matter. The Court summed up the situation as one in which incumbent operators have been allowed to carry on their broadcasting activities through several legislative interventions to the detriment of new entrants having secured rights for terrestrial television broadcasting. These legislative interventions consisted of a series of laws providing for transitional arrangements in favour of the incumbent networks, which had the effect of preventing operators without radio frequencies, such as Centro Europa 7, from accessing the market it sought to operate in and for which it had successfully secured rights in 1999. The Court deemed these transitional arrangements to have been constructed in a manner contrary to the NCRF, which implements provisions of the Treaty, in particular those on freedom to provide services, in the area of electronic communications networks and services. Several provisions of the NCRF do indeed call for objective, transparent, non-discriminatory and proportionate criteria to be observed in the process of allocating and assigning radio frequencies. These criteria are not present in the Italian system of legal transitional arrangements, which left untouched the status of incumbent networks

as the radio frequencies de facto continued to be theirs to use and prevented Centro Europa 7 from exercising its rights as it was not given the practical means to do so through the subsequent allocation of radio frequencies.

The Court concluded: “Article 49 EC and, from the date on which they became applicable, Article 9(1) of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), Article 5(1), the second subparagraph of Article 5(2) and Article 7(3) of directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive), and Article 4 of Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services must be interpreted as precluding, in television broadcasting matters, national legislation, the application of which makes it impossible for an operator holding rights to broadcast in the absence of broadcasting radio frequencies granted on the basis of objective, transparent, non-discriminatory and proportionate criteria.”

Judgment of the Court (Fourth Chamber), 31 January 2008, Case C-380/05, Centro Europa 7 Srl v. Ministero delle Comunicazioni e Autorità per le garanzie nelle comunicazioni

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