[ES] Government Approves a New Decree-Law on Television

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On 23 February 2009, the Spanish Government approved a new Decree Law, whose provisions deal with the introduction of Digital Terrestrial TV (DTTV) and limits to media ownership.

In Spain, laws are generally approved by Parliament, but, in case of urgent need, can also be approved by the Government, by means of a “Decree Law”. In this case, the Government has considered that, in the context of the economic crisis and the switch-off of analogue terrestrial TV, there was an urgent need to change the limits to media ownership in order to allow the national broadcasters to reach, within the new limits, the agreements needed to create companies adapted to the decrease in advertising revenue and able to fund the transition from analogue to digital terrestrial television.

Regarding the switch-off, it is important to bear in mind that in Spain terrestrial TV broadcasting is still considered a public service, which can be directly managed and provided by the State through public broadcasters, or which can be indirectly managed by those private companies that are granted a concession.

The private concessionaires are required to cover at least 96% of the population and the national public broadcaster RTVE is required to cover at least 98%. However, this means that once the switch-off takes place, a small part of the population, located in certain rural areas, will not have access to the public service of terrestrial TV.

The new Decree Law establishes that, in order to avoid that situation, the national terrestrial TV broadcasters shall reach, within three months, an agreement to ensure that their free-to-air DTTV programmes are simultaneously available from at least one satellite platform. Access to those programmes via satellite will be restricted to those areas not covered by DTTV once the switch-off is complete. The users in those areas shall not be required to pay any subscription fee or any decoder rental.

That scheme may also be used by regional or local terrestrial TV concessionaires, provided it can be ensured that their programmes are only effectively received by users within the areas specified by the concessions granted to those broadcasters.

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All these provisions shall be further implemented by means of a Decree.

As regards media concentration, the Government has decided to remove the ownership limit that prevented any company from having more than 5% of capital shares in more than one national terrestrial TV concessionaire. According to the new limit, a company is only prevented from acquiring shares in more than one national terrestrial TV concessionaire if the average audience share of all the channels affected by the acquisition during the previous 12 months was greater than 27%. This limit will not apply if the 27% audience share threshold is reached once the acquisition is complete.

However, there are two additional limits with which broadcasters have to comply. A company cannot get a voting right or a relevant participation in the capital share of more than one terrestrial TV concessionaire, if the following apply:

a) It gets control of spectrum capacity equivalent to two national DTTV multiplexes or, for each region, more than one regional DTTV multiplex.

b) That means that there would be fewer than three concessionaires, which would be considered as detrimental to media pluralism.

The Decree-Law also establishes that national public broadcasters shall not control more than 25% of the spectrum capacity available for DTTV, and regional and local public broadcasters shall not control more than 50% of the spectrum capacity available for DTTV in the corresponding territories.

Real Decreto Ley 1/2009, de 23 de febrero, de medidas urgentes en materia de telecomunicaciones, Boletín Oficial del Estado, n. 47, de 24 de febrero de 2.009, pp. 19.015 y ss.

http://www.boe.es/boe/dias/2009/02/24/pdfs/BOE-A-2009-3022.pdf

Decree Law 1/2009, of 23 February 2009, on urgent measures for the telecommunications sector, Official Journal n. 47, 24 February 2009, p. 19015 ff.

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