[FR] Numbering of BFM TV and NRJ 12 Channels: Suspension of CSA Decisions

IRIS 2010-3:1/21

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In an order delivered under the urgent procedure on 16 February 2010, the Conseil d'Etat has suspended the two decisions by the Conseil Supérieur de l'Audiovisuel (audiovisual regulatory body - CSA) ordering Canalsat to revise the numbering in its offer of the channels NRJ 12 and BFM TV (see IRIS 2010-2: 1/18). It will be recalled that the two channels are numbered 12 and 15 respectively in the "logical numbering" for DTV drawn up by the CSA, and that they wish to keep the same numbers on all the broadcasting media. They had turned to the CSA as they felt they were being disadvantaged by their numbering in the Canalsat package, operated by Canal + Distribution, in which they are numbered 36 and 55 respectively. The CSA instructed the group to change its numbering, which it considered "discriminatory" and contrary to the new provisions of Article 34-4 of the amended Act of 30 September 1986.

Canal + Distribution has lodged two appeals against these decisions, one in the ordinary manner and the other under the urgent procedure. Under the urgent procedure a judge receiving an application for an administrative decision to be cancelled or set aside may order its suspension, or the suspension of some of its effects, where this is justified by the urgency of the application and there is an argument such as to cast serious doubt as to the legality of the decision (Art. L. 521-1 of the Code of Administrative Justice).

The Conseil d'Etat based its order on the CSA's interpretation of Article 34-4 of the Act of 30 September 1986, which Canal + Distribution holds to be erroneous from a legal point of view, in considering whether there was serious doubt as to the legality of the contested decisions. It considers that the CSA's decisions are based on an interpretation of the text that is in turn based on the preparatory work for the Act, according to which it was the legislator's intention to prevent distributors structuring the services they offered by only partially adhering to the "logical numbering" of 1 to 18, by keeping these numbers only for the "historic" channels. The judge noted that another interpretation was possible, based on the letter of the law, which merely provided that if the distributors did not observe the "logical numbering", i.e., if they did not use the numbers 1 to 18 for the sequence of DTV channels, they were required to reserve for these channels a homogenous group that observed the same sequence and was placed immediately after a multiple of 100. The Conseil d'Etat also noted the urgency of the matter, inasmuch as the

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new numbering needed to be established by 1 March 2010 at the latest and that the risk of disturbing Canalsat's services schedule was likely to have serious consequences for both Canalsat and viewers.

As proof was provided of serious doubt as to the legality of the contested decisions and of the urgency of the matter, the Conseil d'Etat has therefore suspended the contested decisions by the CSA until the case is heard in the normal way, and has ordered the State to pay Canal + Distribution 3,000 euros in procedural costs.

Conseil d'Etat (ord. réf.), 16 février 2010, Société Canal + Distribution

http://www.conseil-etat.fr/cde/node.php?articleid=1966

Conseil d'Etat (order under the urgent procedure), 16 February 2010, the company Canal + Distribution

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