[FR] Conseil d'Etat Deliberates on Digital TV Channel Numbering in a Satellite Package Offer

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On 17 December 2009 the Conseil Supérieur de l'Audiovisuel (audiovisual regulatory body - CSA) called on Canal+ Distribution to change the numbering of the terrestrially broadcast television channels NRJ 12 and BFM TV in the offer of its Canal Sat package, in response to the channels' desire to be given the place numbering they have for digital broadcasting, i.e. 12 for NRJ 12 and 15 for BFM TV, whereas they were numbered 36 and 55 respectively in the package. Canal Sat then appealed to the Conseil d'Etat for the decision to be cancelled (see IRIS 2010-2: 1/18). In a decision delivered on 9 July 2010, the Conseil d'Etat (the highest administrative court in France) overturned the CSA's decision, on the grounds that the CSA had committed a "mistake of law" in its interpretation of paragraph 2 of Article 34-4 of the Act of 30 September 1986 (as amended). The Conseil d'Etat noted that Canal Sat's offer, which included all the national digital TV services broadcast unencrypted, included a "digital TV section" in which these channels were each allocated their logical number plus three digits. Nevertheless, the Conseil d'Etat stated quite clearly that the fact that the "historic" channels were also included in the same service plan in the places corresponding to their logical numbers did not of itself require the distributor to allocate their logical numbers to the channels NRJ 12 and BFM TV. Similarly, the distributor was free to choose its own thematic organisation of the service plan, as long as it observed the criteria of fairness, transparency, uniformity and non-discrimination, meaning that the services must be grouped homogenously according to their programming. Thus, contrary to what the CSA had decided, the fact that only some digital TV channels in the package were allocated the same number as their logical number did not necessarily constitute discrimination.

Aside from the issue of channel numbering, BFM TV wanted to be placed immediately after the channels LCI and i-Télé in the "information" category in Canal Sat's offer, and not after the channels Euronews and LCP. Canal Sat justified the order it had applied by its choice to group together, at the start of the sequence of numbers in the same theme, those channels with programming that offered the least specialised content. The Conseil d'Etat found however that the nature of the information actually broadcast by the channel was not sufficiently different from that of i-Télé and LCI to justify, objectively, in the light of the single criterion applied, the placing it had been given. Canal+ Distribution was therefore enjoined to allocate to BFM TV a placing justified "by objective criteria" within three months. However, the Conseil d'Etat rejected the application brought by NRJ

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12 which, having been placed in the “series and entertainment” category, wanted to be included in the “Canal+ channels and major general channels” category instead. The Conseil d’Etat found that the channel’s programming had a preponderance of series and entertainment programmes.

Conseil d’Etat, 9 juillet 2010, Société Canal+ Distribution

Conseil d’Etat, 9 July 2010, the company Canal+ Distribution

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