[FR] Conseil d’Etat Validates TF1’s Purchase of TMC and NT1 Channels

IRIS 2011-2:1/24

Amélie Blocman
Légipresse

With two decisions delivered on 30 December 2010, the Conseil d’Etat rejected the requests made by M6 for the cancellation of the decisions adopted by the Autorité de la Concurrence (competition authority) and the Conseil Supérieur de l'Audiovisuel (audiovisual regulatory body - CSA) authorising the acquisition by TF1 of the entire capital of the AB Group, in order to gain control of the terrestrially broadcast digital channels TMC and NT1. On 16 January 2010, the competition authority had validated this concentration operation, on condition that the parties made a number of undertakings, required because of the effects on competition identified in the markets for both broadcasting rights and television advertising. In support of its appeal for the decision to be cancelled, M6 claimed that the authority should have prohibited the operation because of these effects on competition. The Conseil d’Etat, however, considered that these effects were not so important that prohibiting the operation was the only possible proportionate measure to take.

In the alternative, M6 claimed that the undertakings entered into by the parties were insufficient. The channels concerned undertook firstly to refrain from any form of coupling, subordination, advantage or consideration in marketing advertising space on TF1 and on NT1 and TMC, and secondly that the marketing of advertising space on NT1 and TMC should be carried out in an autonomous fashion by a company other than TF1’s advertising agency, with only “support” functions being carried out jointly within the Group. Other undertakings had been made, more particularly to limit the increase in the purchasing power of the TF1 Group, and to facilitate the circulation of works and access to rights by the other channels. The Conseil d’Etat found that these undertakings address the risks identified.

In its second decision, the Conseil d’Etat, as the country’s highest administrative jurisdiction, was called upon to pronounce on the validity of the CSA’s approval of the operation in March 2010 (see IRIS 2010-5/24). M6 held that the CSA had exercised its powers wrongfully by merely approving the decision made by the competition authority and had defined additional undertakings in disregard of the principle of impartiality. The Conseil d’Etat found that the changes implied by the purchase of the AB Group were not on a scale or of the type such that the CSA should have refused approval and withdrawn the authorisation issued to the TMC and NT1 channels. It based its decision on an overall appreciation of the various

© European Audiovisual Observatory (Council of Europe) 2026

undertakings required of the company TF1 by the CSA in addition to those already entered into in respect of the competition authority, which were considered as being such as to preserve the diversity of the programme offer, guarantee maintenance of a separate editorial line for each of the three channels, and not jeopardise a sufficient diversity among operators. It is true that the Act of 1 August 2000 emphasises the need for operator diversity, stressing the importance of the inclusion in DTV of operators independent of the incumbent groups (such as TF1), which in turn have been given the benefit of "compensatory channels" by the Act. However, it did not specifically prevent these groups, subject to sufficient supervision, from obtaining further authorisations in the DTV sector. The CSA had therefore not committed an error of appreciation in considering that the operation submitted to it was not on a scale or of the type such that it should have refused its approval.

Conseil d'Etat, 30 décembre 2010, Société Métropole Télévision, n° 338197 et n° 338273

Conseil d'Etat, 30 December 2010, Société Métropole Télévision, Nos. 338197 and 338273

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026