European Commission: Allocation of Bonus Channels in France Deemed Contrary to EU Law

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Compensatory channels, or “bonus channels”, were awarded to the “historic” operators (TF1, M6 and Canal+) by the 2007 “Television of the Future” Act (see IRIS 2007-3/20) to compensate for the prejudice suffered as a result of the early stoppage of their broadcasting in analog mode and the appearance of competitor channels on digital TV. Since the switch to all-digital was scheduled for November 2011, these compensatory channels could theoretically start broadcasting next month. Except for the fact that in December 2010 the European Commission began infringement proceedings against France in respect of these compensatory channels. The Commission is keen to ensure that the digital dividend should be allocated using procedures that are open, transparent, objective, non-discriminatory and proportionate (apart from the specific case of channels pursuing objectives of general interest). The purpose of this is to ensure the arrival of new players on the market and to increase the choice available to viewers. It came as no surprise on 29 September 2011 when Brussels sent France a reasoned opinion, holding that the French arrangement granting additional television channel (“compensatory channels”) to the three historic operators TF1, M6 and Canal+ outside the normal competition procedure was contrary to EU law, penalised competitor operators, and deprived viewers of a more attractive offer. The Commission held that such a procedure was not possible unless it was necessary in order to obtain an objective of general interest, which was not the case here. Moreover, granting frequencies as compensation did not seem proportionate since the alleged prejudice suffered by the operators in question as a result of stopping broadcasting in analog mode a few months early seemed negligible and could even have been compensated for already by the advantages already granted. Lastly, the Commission held that automatically granting additional channels to certain operators was discriminatory. France now has two months in which to comply with EU legislation, i.e., to repeal the disputed provisions in the 2007 Act, failing which the Commission could apply to the Court of Justice of the European Union.

Press release of the European Commission, "Antitrust: the Commission calls on France to ensure non-discriminatory allocation of digital TV broadcasting frequencies", IP/11/1115 of 29 September 2011

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