[FR] Wine Channel Contests Granting a Competitor a Broadcasting Convention

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During the summer, the Conseil d'Etat received an application under the urgent procedure from Edonys, the international television channel devoted to wine, represented by Media Place Partners, which had been refused a broadcasting convention at the end of March 2011. The channel wishes to broadcast discussions and documentaries on the wine sector and to propose interactive tastings. However, this is not allowed under the "Evin Act" which bans all direct or indirect advertising in favour of alcohol (as stated in Article L. 3323-2 of the Public Health Code). Edonys called for the suspension of performance of the convention granted to its competitor, Deovino, by the audiovisual regulatory body (Conseil Supérieur de l'Audiovisuel - CSA) on 6 July 2011. The channel had undertaken to follow a "good conduct" charter, and to refrain from organising tastings and promoting wine, and has announced plans to broadcast programmes on the health risks posed by the consumption of wine.

The applicant's main claim was that the broadcasting of Deovino's programmes was contrary to the aim of protecting public health set out in Article L. 3323-2 of the French Public Health Code. It also felt there was serious doubt as to the legality of the CSA's deliberation since its Chairman, who had taken part in the deliberation, rendered it irregular by having retired several months earlier. Also, one of the CSA members who had been involved with granting Deovino a broadcasting convention is said to have personal and professional connections with one of the channel's managers. The Conseil d'Etat swept these arguments aside, however; it took care to recall that use of the urgent procedure to achieve suspension or performance was conditional on "urgency justifying the procedure, or the production of an argument such as to cast serious doubt, at that stage in the investigation, on to the legality of the decision".

The Conseil d'Etat went on to state that the fact that the CSA's Chairman was retired on the date of the deliberation "was not such as to give rise to a serious doubt as to the legality of these acts, since the circumstance had no effect on the continuation of his term of office". It also noted that there were "many, specific clauses in the broadcasting convention signed with Deovino on observance of the rules governing propaganda and advertising in favour of alcoholic beverages". The application under the urgent procedure was therefore rejected.

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Edonys has indicated its intention to broadcast from the Grand Duchy of Luxembourg to the whole of Europe, and particularly to France, whereas Deovino is scheduled to start broadcasting from France in October.

Conseil d'Etat, 29 août 2011, SARL Média Place Partners

http://www.easydroit.fr/jurisprudence/Conseil-d-etat-29-Aout-2011/J297282/

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