[ES] Supreme Court Cancels all DTT Licences Awarded for Valencia in 2006

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On 18 July 2012, the Spanish Supreme Court declared null and void all local allocations of Digital Terrestrial Television (DTT) granted at the beginning of 2006 by the Generalitat Valenciana (Valencian regional government). The Court found that the Generalitat had lacked objectivity and impartiality in the allocation process.

The plaintiff at the action is Tele Elx, the first local television that had broadcast in the Valencian Community. In first instance, the Tribunal Superior de Justicia de Valencia (Valencian High Court) rejected its complaint, whereas the Supreme Court has upheld its arguments.

The Supreme Court reminds that Article 88 of the Royal Legislative Decree No. 2/2000 imposes an obligation on the licensing panel to evaluate the candidates' offers according to the criteria laid down in the tenders. However, this function was outsourced by the licensing panel to a private company.

The Court considers possible the use of external advice but this cannot mean that the assessment of applicants would be systematically made by an external company. Otherwise the licensing panel would not fulfill its role in the assessment of the different bids.

According to the Court, a private entity may have an undisputed technical competence to assess applicants, but lacks objectivity and impartiality to do so. The situation would have been different if, from the assessment made by the private consultant, the licensing panel would have shaded, modulated or corrected these criteria, i.e., the ex-ante evaluation would have been sufficient, based on the knowledge and expertise of the private consultant.

The Supreme Court believes that the private consultant only assumed the numerical score on the basis of which it granted the licences. The Court concludes that the appellant Télé Elx could not know why its tender had not been selected, even though Article 88 of the Texto Refundido de la Ley de Contratos de las Administraciones Públicas (Public Administrations Contracts Act) requires that an explaination should be given for the reasons for agreeing or refusing the grant of a licence.

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Sentencia del Tribunal Supremo, Sala de lo Contencioso-Administrativo, Sección séptima, Recurso Núm.: 5128/2008, 18 de Julio de 2012

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Judgment of the Supreme Court of 18 July 2012

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