[ES] Supreme Court Declares Invalid the 2010 Licensing of National Digital Terrestrial Television

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On 27 November 2012, the Supreme Court declared null and void the decision of the Council of Ministers of 16 July 2010, which awarded an entire multiplex to each of the existing national commercial broadcasters (Antena 3, Gestevisión Telecinco, Sogecable, Veo TV, NET TV and La Sexta), for non-compliance with the applicable Audiovisual Law (see IRIS 2010-4/21).

What was challenged was not the spectrum allocation itself, a matter that the Court understands to be mainly a technical issue, but the procedure that was followed for the allocation of frequencies. The licences were awarded without any public tenders, which was not consistent with the applicable audiovisual law.

According to the Court, nevertheless, the ruling cannot affect the validity of the frequency allocation but the procedure of allocation since the award of licences was not only based on the 2010 Council's decision. In any case, it is outlined that the result itself could be objected to, paving therefore the way for a possible challenge to the whole licensing of national DTT to commercial broadcasters.

The appeal to the Court was made in November 2010 by Infraestructuras y Gestión 2002 SL, a company that tried to obtain a DTT license both on national and regional levels. The Supreme Court's judgment was agreed on 27 November 2012 but was not published in the Official Journal until 21 December 2012.

Sentencia de 27 de noviembre de 2012, de la Sala Tercera del Tribunal Supremo, por la que se declara la nulidad del Acuerdo del Consejo de Ministros de 16 de julio de 2010, por el que se asigna un múltiple digital de cobertura estatal a cada una de las sociedades licenciatarias del servicio de televisión digital terrestre de ámbito estatal

http://www.poderjudicial.es/search/doAction?action=contentpdf&databasematch=TS&reference=6578501&links=acuerdo%20del%20Consejo%20de%20Ministros%20de%2016%20de%20julio%20de%202010&optimize=20121218&publicinterface=true

Judgment of the Supreme Court of 27 November 2012 declaring null and void the Decision of the Council of Ministers on 16 July 2010 to award a national digital multiplex to every national digital terrestrial television operator

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