[FR] CSA’s refusal to authorise LCI’s move from pay TV to freeview: the next stage in the courts

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In a decision delivered on 23 October 2014, the Conseil d’État judge sitting in urgent matters rejected an application from the channel LCI to suspend the decision to refuse the approval of the audiovisual regulatory authority (Conseil Supérieur de l’Audiovisuel - CSA) to move from pay TV broadcasting to freeview. It should be remembered that a CSA decision delivered on 29 July 2014, elaborated on the basis of Article 42-3 (4) of the Act of 30 September 1986, refused granting LCI the approval it requested to change the way in which its digital TV service was financed, with a shift from pay TV to freeview (see IRIS 2014-8/22). LCI was therefore requesting, under the urgent procedure, the suspension of the decision and for CSA to be ordered to issue it provisionally with approval authorising the move from pay TV to freeview.

In support of its application, the channel claimed that the contested decision caused serious and immediate prejudice to its interests, and that since the main distribution contracts, which made it possible to finance the channel, expired on 31 December 2014, the only alternative to moving to freeview was therefore quite simply to close the channel down, resulting in serious change and the dismissal of 60% of its 247 employees. It also claimed that the contested decision would result in the disappearance of a news channel, which was damaging to the fundamental objective of diversity. LCI also claimed that the CSA had appreciated a certain number of elements wrongly, disregarded the principle of entitlement to defence, and failed to provide sufficient justification for its decision, which was vitiated by contradictions in its justifications and was perhaps even illegal.

The Conseil d’État recalled that urgency justified suspending performance of an administrative act if this was sufficiently seriously and immediately damaging to the public interest, to the situation of the applicant party, or to the interests that party wished to defend. It was therefore for the judge sitting in urgent matters to appreciate specifically, in the light of the justifications supplied by the applicant party, whether the effects of the contested act were such as to justify, given the urgency of the matter, not waiting for the judgment on the merits of the case, and therefore suspending performance of the decision. The urgency of the matter therefore needed to be appreciated objectively, and account taken of the full circumstances of the case.

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In the case at issue, the Conseil d'État considered that the financial difficulties referred to by LCI, although they were aggravated by the refusal to move to freeview, they were not such as to prevent the company waiting for a final decision by the administrative courts on the merits of the case. This would be delivered soon, in early 2015, according to the decision. The court went on to observe that there was no legal constraint obliging LCI to cease activities or transform them substantially within this timeframe. What was more, the channel's major financial difficulties were nothing new, and its deficit would in any event be increased further in the short term by moving to freeview. Lastly, the court found that only a final decision delivered by the Conseil d'État could give the channel the legal security necessary for implementing a new broadcasting strategy. LCI's application was therefore dismissed. A decision on the merits of the case is expected in early 2015.

Conseil d'État (ord. Réf), 23 octobre 2014 - LCI

Conseil d'État (decision under the urgent procedure), 23 October 2014 - LCI

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