[FR] LCI and Paris Première on freeview DTTV: Conseil d'Etat validates CSA decisions

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In two decisions delivered on 13 July 2016, the Conseil d'Etat (France's highest administrative tribunal) rejected the appeals brought against decisions made by the national audiovisual regulatory authority (Conseil Supérieur de l'Audiovisuel - CSA) in December 2015. The decisions authorised the channel LCI to switch to freeview DTTV and refused the request from Paris Première to do so. Article 42-3 of the Act of 30 September 1986, amended by the Act of 15 November 2013, allows the CSA the possibility, under certain conditions, of authorising a pay DTTV channel to switch to freeview, waiving the common-law procedure which provides for freeview DTTV frequencies to be allocated after a call for tenders (the "open procedure"). In the case at issue, BFM TV, one of LCI's competitors, and the company Nextradio TV, of which it is a subsidiary, had called on the Conseil d'Etat to cancel the CSA's decision granting approval to LCI. Paris Première and M6 had also called for the decision refusing approval to be overturned. In both its decisions, the Conseil d'Etat stated that, in accordance with Directive 2002/20/CE (Authorisation Directive), it was for the CSA to appreciate whether the imperative of diversity and public interest justified application of this specific procedure, whenever it received a request for approval pursuant to Article 42-3 of the Act of 30 September 1986 from a pay DTTV operator wishing to switch to freeview. Furthermore, it was for the CSA to consider whether, consequently, the matter did indeed fall within the scope of the waiver provided for in the legislation. The Conseil d'Etat recalled that the CSA had to take account of the risk of the applicant channel's disappearance, the impact that switching to freeview might have on the other channels, the respective contributions of the channels to the diversity of the sector, and the quality of programmes. Any change in the authorisation with regard to conditions for funding the service should then be seen as necessary to achieving a general interest objective, in accordance with the Directive.

Thus with regard to LCI the Conseil d'Etat, in rejecting the appeal brought by BFM TV and Nextradio, noted more specifically that the CSA had not been fought in considering that its continuation as a pay channel carried a serious risk of the channel's disappearance, and that the economic viability of BFM TV would not be jeopardised by a switch to freeview. It also found that the CSA had indeed taken into account the undertakings entered into by LCI with regard to developing its programme schedule, and offering a news channel format that was different from

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that of the existing freeview channels. The CSA had thus been right to consider that such broadcasting would result in greater diversity and improved programme quality.

With regard to Paris Première, the Conseil d'Etat found that the CSA had been right to consider that although the channel did indeed risk disappearing from the DTTV scene if it were to remain a pay channel, it would not necessarily disappear altogether, since it was also broadcast on cable satellite and telecommunications networks. Thus by appreciating the risk of the service's disappearance not solely on DTTV but on all the networks on which it was distributed, the CSA had not committed a legal error. The Conseil d'Etat found that the service was not at risk of disappearing in the short or medium term, although it admitted the possibility of an unfavourable development in operating conditions which would justify the lodging of a new application for approval. The CSA had also been right in finding that the channel's contribution to diversity and to programme quality was limited, specifically given a high proportion of repeat showings, a relatively low volume of new programmes, and a large proportion of tele-shopping programmes. The Conseil d'Etat further found that the CSA had been right in considering that, in the light of these elements, there was no justification for allowing the waiver procedure, under which pay DTTV channels could switch to freeview, to be applied to Paris Première.

Conseil d'Etat, 13 juillet 2016, BFM TV Nextradio

http://www.conseil-etat.fr/Decisions-Avis-Publications/Decisions/Selection-des-decisions-faisant-l-objet-d-une-communication-particuliere/CE-13-juillet-2016-societe-BFM-TV-societe-NextRadioTV

Conseil d'Etat, 13 July 2016, BFM TV Nextradio

Conseil d'Etat, 13 juillet 2016, Métropole Télévision Paris Première

http://www.conseil-etat.fr/Decisions-Avis-Publications/Decisions/Selection-des-decisions-faisant-l-objet-d-une-communication-particuliere/CE-13-juillet-2016-societe-Metropole-Television-societe-Paris-Premiere

Conseil d'Etat, 13 July 2016, Métropole Télévision Paris Première

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