[FR] Validity of attribution of frequency for France Info

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In a decision adopted on 15 November 2017, the Conseil d'Etat deliberated on the application for the cancellation, on the grounds that it had exceeded its authority, of the decision adopted by the CSA (Conseil Supérieur de l'Audiovisuel - CSA) on 6 July 2016 attributing a frequency to the national programme company France Télévisions for broadcasting the new France Info continuous news channel terrestrially in digital mode. In application of Article 26.II of the Act of 30 September 1986, the Minister for Culture had called on the CSA to allow priority use of airwave resources by France Télévisions for broadcasting the public news channel that had been created by the Decree of 15 June 2016.

The Conseil d'Etat set aside the criticisms that TF1, a media holding company, had made about the Decree of 15 June 2016 creating the France Info channel and the corresponding amendment to the contractual requirements incumbent on France Télévisions: the disputed decision was one of the application measures. It noted that the creation of a continuous news channel met the need for a knowledge and understanding of current affairs and for their analysis and examination in accordance with the missions attributed to France Télévisions by Article 43-11 of the Act of 30 September 1986. The regulatory authority had therefore not committed a manifest error of judgment with regard to the public-service missions conferred on France Télévisions by the Act when it created the France Info channel. The Conseil d'Etat also noted that the priority allocation of a frequency to France Télévisions had been made possible by the reorganisation of the frequencies already allocated to the company and not by using frequencies that were waiting to be allocated. The decision at issue had therefore not had the effect of reducing resources available for operators outside the public sector, and was therefore not likely to have an adverse effect on the diversity of outlets for socio-cultural expression.

TF1 also argued that the fact that France Télévisions was able to promote the continuous news channel gave it a competitive advantage which distorted the free play of competition to the detriment of the television channel LCI; TF1 had undertaken to refrain from promoting its programmes, in accordance with the agreements on the services of TF1 and LCI concluded with the CSA. TF1 also argued that the provisions of the technical requirements incumbent on France Télévisions, which included the cross-promotion of the company's services without making any provision for an exception regarding the promotion of the France Info service, were illegal. The Conseil d'Etat reiterated, however, that the

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disputed CSA decision allocating the frequency necessary for broadcasting the service had not been made for the purpose of applying these provisions, which did not constitute its legal foundation. That they were illegal could therefore not be raised as an argument. The Conseil d'Etat concluded that the company TF1 was not justified in calling for the cancellation of the CSA's decision of 6 July 2016, and accordingly rejected its application.

Conseil d'Etat (5e et 4e sous-sect.), 15 novembre 2017 - TF

https://www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CETATEXT000036028808&fastReqId=2019223003&fastPos=1

Conseil d'Etat (5th and 4th sub-sections), 15 November 2017 - TF1

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