

## Media & Entertainment - France

### CSA refuses requests to move to free-to-air digital terrestrial television

Contributed by **Nomos**

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#### Background

The French broadcasting regulatory authority, the *Conseil Supérieur de l'Audiovisuel* (CSA), has jurisdiction to authorise terrestrial broadcasting services.

The move to digital television has completely reshaped the audiovisual scene in France. When the first calls for tender were sent out in 2002, industry professionals expected an increase in the number of paying services and slower growth in free services funded by advertising. However, digital pay television has not enjoyed the predicted success. While the new free-to-air services have found an audience, the new pay television services have yet to break even, due to the costs involved in terrestrial broadcasting to provide national coverage, the small number of subscribers and the low subscription price.

Following the most recent calls for tenders, no one requested authorisation to broadcast pay television services. Therefore, in 2012 the CSA authorised six new free high-definition services, bringing the number of free-to-air national television services to 25.

After the withdrawal of several services, the remaining seven pay services available through terrestrial television belong to well-established television groups TF1, M6 and Canal Plus.

A 2013 change in the law allows licence holders to ask the CSA to modify their authorisation to move from a free-to-air to a pay service or vice versa.

TF1's news channel, LCI, was expected to request to move to a free service considering the competition presented by two free channels, which were subsequently authorised. The other pay channels soon responded. While TF1 subsidiary Eurosport announced its forthcoming withdrawal from terrestrial broadcasting, M6 subsidiary Paris Première and Canal Plus subsidiary Planète+ also requested authorisation to move to a free service.

This probable increase in the number of free services in favour of established operators met with strong opposition from the independent private channels, which:

- appealed the legislative amendment to the European Commission; and
- presented detailed arguments to the CSA on the damaging consequences of the move from pay to free-to-air television.

Before the commission, the independent broadcasters contended that the change in law, which benefited only the subsidiaries of the principal groups, infringed the EU electronic communications directives, and in particular that it disregarded the principle of non-discrimination and the ban on granting special rights.

Thus, the CSA's decision was keenly awaited. According to the law, the amendment of a regime must respect the imperatives of pluralism, quality and diversity of programmes; but the CSA must also take into account the equilibrium of the television advertising market.

#### CSA decision

Following the hearings and studies conducted on the impact of its decision, the CSA rejected the three requests to move from pay television to free-to-air television. It held that, despite their quality and diversity, all the channels were likely to create difficulties by compromising the editorial diversity of the free digital terrestrial television offering.

The CSA's reasoning was based on an analysis of existing advertising market context, the financial situation of the free digital terrestrial television channels and, more generally, consumer expectations.

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The CSA noted that advertising revenue from television services is declining and there is no reversal of this trend in sight. It highlighted the financial fragility of the free channels which are not backed by a major group. Finally, it noted that while there are already 25 free channels in France, the arrival of new channels would lead to a decline in the audience of existing channels, as the trend is towards a reduction rather than an increase in television viewing time.

In addition to these general considerations, the CSA stated that each request was likely to destabilise the existing channels, particularly focusing its attention on the situation of the independent channels, whose target audiences were similar to that of the channels applying to move to free broadcasting.

Therefore, the CSA decided that the conditions had not been met for authorising the move to free broadcasting of one of the applicants; it specified that it remained attentive to changes in the market.

### Comment

The applicants' reactions should be monitored closely – in particular, whether they will appeal the CSA decision and/or decide to cease trading. In any event, the issue of the configuration of television broadcasting services will doubtless arise again in the near future, due to the withdrawal of several pay television services.

Unless it decides to abandon the terrestrial frequencies to the telecommunications operators, the CSA must decide whether future calls for tenders will be reserved for the transition to high definition or whether there is still room for new free services.

The European Commission's decision on the validity of allowing a service to modify its business model without participating in a call for tender is also eagerly awaited.

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