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Judgment of the Court of Justice in Case C-380/05

Centro Europa 7 Srl v. Ministero delle Comunicazioni e Autorità per le garanzie nelle comunicazioni

THE ITALIAN SYSTEM FOR THE ALLOCATION OF RADIO FREQUENCIES FOR TELEVISION BROADCASTING ACTIVITIES INFRINGES COMMUNITY LAW

That system does not comply with the principle of freedom to provide services and does not meet objective, transparent, non-discriminatory and proportionate selection criteria

Centro Europa 7 Srl is a company operating in the television broadcasting sector. Although in 1999 it obtained rights for analogue television broadcasting at national level from the competent Italian authorities, it has never been in a position to broadcast because radio frequencies have not been allocated to it.

An application by Centro Europa 7 for recognition that it was entitled to the allocation of radio frequencies and for compensation for the damage suffered was dismissed by the administrative court.

The Consiglio di Stato, before which the case is now pending, asks the Court of Justice of the European Communities for an interpretation of the provisions of Community law¹ on the criteria for the grant of radio frequencies for the purpose of operating on the television broadcasting market.

The national court states that in Italy the national plan for the allocation of radio frequencies was never implemented for essentially legislative reasons, which allowed the de facto users of radio frequencies to continue broadcasting, notwithstanding the rights of the new rights holders. The successive laws which perpetuated transitional arrangements had the effect of blocking the radio frequencies intended for allocation to the analogue rights holders and of preventing other operators from participating in the digital television experimentation.

¹ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ 2002 L 108, p. 33), Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) (OJ 2002 L 108, p. 21) and Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services (OJ 2002 L 249, p. 21) (Competition Directive).

The Court points out that the successive application of the transitional arrangements structured by national legislation in favour of the incumbent networks has had the effect of preventing operators without broadcasting radio frequencies from accessing the market. The general authorisation to operate on the broadcasting services market, which benefited only the incumbent networks, consolidated that restrictive effect. Those measures have had the effect of freezing the structures on the national market and protecting the position of those national operators already active on that market.

Those arrangements restricting the number of operators in the national territory could be justified by general interest objectives but, as laid down by the new common regulatory framework for electronic communications services,² they must be structured on the basis of objective, transparent, non-discriminatory and proportionate criteria.

The Court accordingly concludes that the exclusive allocation of radio frequencies to a limited number of incumbent operators without any time restriction and without taking account of the above criteria is in breach of the principles of the Treaty on freedom to provide services and the principles laid down in the NCRF.³

Unofficial document for media use, not binding on the Court of Justice.

Languages available: DE EN EL ES FR HU IT NL PL

The full text of the judgment may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-380/05>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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² Referred to as 'NCRF' and consisting of the Framework Directive and four specific directives, including the Authorisation Directive, which are supplemented by the Competition Directive.