

Broadcasting Regulations

CATALONIA

Multiple DTT Licence Awarded for the Catalan Sphere

On 14 May 2003 the Government of the Generalitat published a call to tender for the licence to run a multiple digital-terrestrial television (DTT) channel covering the Autonomous Community, principally with free-to-air broadcasts. The decision to grant a licence signifies the beginning of private television within the sphere of the Autonomous region. A new television operator shall broadcast with digital technology using a simple multiplex, i.e., the equivalent of four analogue television stations. The text on the specifications is available at:

<http://www6.gencat.net/dgma/catala/ftp/cantdt.pdf>

The media organisations that submitted tenders were MediaPro and Godó, the latter through the company Emissions Digitals de Catalunya, SA, in which the Godó Group company Catalunya Comunicació, SL, has a 62.5% stake and whose other shareholders include audiovisual companies Beat About, SL (20%), Catalana de Televisió 2003, SL (5%) and Orfeo Català (2.5%), as well as Difusió Digital Societat de Telecomunicacions SA (Tradia), which shall work as a technological partner (10%).

On 1 August, the Government of the Generalitat awarded the tender to the offer led by the Godó Group, with four channels to be broadcast free to air: a general station based on programming from the group's local station, City TV, and three specialist channels: Vida, Parc (for children) and Black (youth music and culture). It shall also include additional interactive services. Broadcasts are set to begin in early 2005.

http://www6.gencat.net/dgma/catala/ftp/Nota_webTDT.pdf

DTR Licence Awarded for the Catalan Sphere

Also on 1 August 2003, the Government of the Generalitat approved a measure to grant 12 digital-terrestrial radio (DTR) licences. 23 projects from 18 different companies presented bids.

The new licences were granted to Agrupación Radiofónica (cadena SER), Fundació Missatge Humà i Cristià (Ràdio Estel), Mediaproducció, Ona Catalana, Onda Rambla, Ràdio Associació de Catalunya, Ràdio Teletaxi FM de Radiodifusió, Radiocat XXI (RAC1), RKOR Ràdio, Sistema Català de Radiodifusió (Flaix Back), Sistema de Radiodifusió (Flaix FM) and Unió Temporal d'Empreses (Radio Salut, Radio Club 25, Ràdio Ciutat de Manresa, Chest Game, Catalana i Aranese de Telecomunicacions and Ràdio i Televisió de Catalunya Nova). The first regular digital-terrestrial radio broadcasts were set to begin in late 2003.

http://www6.gencat.net/dgma/catala/ftp/notapremsa_DAB.pdf

Other News:

- Announcement of bids for a public tender to award different digital-terrestrial radio (DTR) licences of a provincial and supra-provincial nature (DOGC No. 3943, 8/8/2003).
- Proclamation of 16 July 2003 submitting the bill establishing the legal system to public inspection and approval of the technical regulation of telecommunications infrastructure in buildings to provide access to voice, data and video services by twisted pair copper-wire cable technologies (DOGC No. 3943, 8/8/2003).

- Announcement of bids for a supply contract and operating licence for a telecommunications network that enables the provision of high-speed Internet services to localities in Catalonia where ADSL coverage is currently unavailable (DOGC No. 3936, 30/7/2003).

http://dursi.gencat.es/generados/catala/societat_informacio/noticia/1020_12_13940.html

- Act 24/2003, of 4 July 2003, creating the Professional Broadcasters College of Catalonia (DOGC No. 3925, 15/7/2003).

- Agreement between the Generalitat and television operators, content developers and decoder manufacturers of 23 May 2003, starting up a DTT pilot test to reach end users. Around 100 homes in the metropolitan area were to receive this new service based on digital broadcasts from Televisió de Catalunya by the fourth quarter of 2003.

<http://www6.gencat.net/dgma/catala/ftp/cpptdt.pdf>

- Decree 123/2003, of 13 May 2003, amending Decree 15/2003, of 8 January, regulating the transitional legal system for terrestrial local television stations (DOGC No. 3887, 20/5/2003).

SPAIN

Decoder Sentence. Government Forced to Pay Out to CSD

The Supreme Court ordered the government to pay 26.4 million euros to Sogecable (sentence of 12 June 2003; section 6, administrative disputes court).

<http://www.poderjudicial.es/CGPJ/Docuteca/ficheros.asp?intcodigo=2014&IdDoc=SP>

The Court considered that the government was prejudicial to Canal Satélite Digital (CSD) when it banned the marketing and use of its decoders with a simulcrypt system. The Court found that the government agreement of 18 December 1998 breached Community Law and caused serious loss to the digital platform. The compensation established by the Court (a quarter the amount sought by Sogecable) referred to the delay in capturing subscribers (2.3 million) and the subscribers that were definitively lost (24.1 million). The Court rejected claims for compensation for the broadcasts carried out from Luxembourg, finding it was a business decision taken prior to the effect of Royal Decree-Act 1/1997 and because at the time the platform had the exclusive rights for broadcasting Spanish league football matches and had signed contracts with leading film distributors.

If the "digital merger" had not taken place, this decision would have had an extraordinary political importance. In fact, the sentence from the Supreme Court brings to an end a legal battle with great significance because of its political component and the involvement of Community institutions.

The companies ended the digital war through a merger agreement, the Supreme Court brought the case to an end, condemning the government for breaching Community Law and having caused damage with this breach (responsibility of Member States for failure to comply with Community Law).

RTVE Sentenced for Manipulating News Reports

In a sentence passed 23 July 2003, the National High Court condemned RTVE for breaching people's right to strike and union freedoms when it found the network had manipulated reports in the news bulletin about the continuance of the general strike of 20 June 2002 against the "decretazo" decree.

Other News:

- The Antitrust Service Report into Abertis Telecom's buyout of Retevisión, in which it proposed sending the file to the Antitrust Court.

www.mineco.es/dgdc/sdc/Informes%20SGC/N03036INFWEB.pdf

- Decision of 24 July 2003 of the Telecommunications Market Commission (CMT) in relation to disciplinary measure AJ 2003/549 taken against the organisations Antena 3 Televisión, SA and Gestevisión Telecinco, SA,

agreed upon by the Council on 3 April 2003. Through this resolution, the CMT held them to be directly responsible for committing a very serious infringement (art. 79.17 of the General Telecommunications Act) for the repeated failure to meet the information requirements determined by this institution on 23 September 2002. The CMT ordered Antena 3 TV to pay a fine of 269,452.84 euros and Tele-5 to pay a fine of 259,652.37.

www.cmt.es/cmt/document/decisiones/2003/RE-03-07-24-01.pdf

- Order CTE/2114/2003, of 23 July 2003, resolving the public call to tender for the awarding, through an open procedure, of a licence to provide public cable services in the region of Castile-La Mancha (BOE 25-07-2003).

- Decision of 12 June 2003 of the CMT on the dispute between Veo Televisión SA and Sociedad Gestora de Televisión NET TV, SA, about the conditions for the provision of broadcasting the digital television signal provided by the company Retevisión I, SAU.

www.cmt.es/cmt/document/decisiones/2003/RE-03-06-12-00.pdf

- Supreme Court sentence (section 3, administrative disputes court) of 9 June 2003 in which it found there had been an abuse of the dominant position in the granting of licences to television stations in the autonomous communities and Canal + of the rights to the commercial use of matches in the Football League.

<http://www.poderjudicial.es/CGPJ/docuteca/ficheros.asp?intcodigo=2047&IdDoc=sp>

- The Antitrust Service Report into the acquisition of the controlling share of Antena 3 de Televisión, SA by the Planeta Group through Kort Gendeign, SL.

www.mineco.es/dgdc/sdc/Informes%20SGC/N03023INFWEB.pdf

- On 26 June 2003 the plenary meeting of the Senate approved the report of the Speaker studying the rights of bidders and audience, published in the BODG Senate No. 677, of 13 June 2003 (BOGC Senate No. 689, 1/7/2003).

- Electronic signature bill (6/6/2003). On 25 July 2003, an agreement was reached to extend the term for the presentation of the previously mentioned bill until the month of September.

www.congreso.es/public_oficiales/L7/CONG/BOCG/A/A_158-01.PDF

- Writ from the Supreme Court (section 3, administrative disputes court) of 16 May 2003 rejecting the cautionary suspension of the integration of Vía Digital into Sogecable.

- Supreme Court sentence (civil court) of 10 May 2003 in which the Court compared hotel rooms to rooms in private homes and thus exonerated them from having to pay author's rights.

http://www.belt.es/jurisprudencia/reciente/pdf/sts_16_may_03.pdf

The Sociedad General de Autores y Editores (SGAE) announced it would appeal to the Constitutional Court. The SGAE considers that in its decision against any public communication in television and radio broadcasts in hotels, the Court is directly contradicting its own criteria as established in its sentences of 11 March 1996 and 31 January 2003.

- Sentence from the National High Court (administrative disputes court) of 20 February 2003 in which it upheld the decision by the Ministry for Science and Technology to impose a fine on Antena 3 TV for exceeding advertising limits.

Position on Cultural Diversity

Through a communication dated 27 July 2003 (COM Document (2003) 520, "Towards an International Instrument on Cultural Diversity" (http://europa.eu.int/comm/avpolicy/extern/culdi_en.htm), the European Commission took a position on the suitability of adopting an international legal instrument on cultural diversity within Unesco and established the basic elements for it to be adopted.

Other News:

- Communication from the European Commission of 17 September 2003 on the transition from analogue to digital broadcasting (COM Document (2003) 541 final).

http://europa.eu.int/information_society/topics/telecoms/regulatory/digital_broadcasting/documents/acte_es_vf.pdf

- Sentence from the Court of Justice in prejudicial matter C-280/00 (Altmark Trans GmbH) of 24 July 2003, in which the Court found that a financial compensation that only represented the compensation of public-service duties imposed by Member States did not meet the current characteristics of public aid. Instead, four requisites shall have to be met: the beneficiary company must be really charged with executing a number of public-service duties and these duties must be clearly defined; the parameters for calculating the amount of compensation must be previously established in an objective and transparent manner; the compensation may not exceed the level needed to completely or partially meet the expenses involved in the execution of the public service, taking into account corresponding income and a reasonable profit; if the choice of company is not carried out through a public contract, the level of compensation must be calculated on the basis of an analysis of the costs an average company would have to bear.

- Responses to the public consultation on the revision of the Television Without Borders Directive

<http://europa.eu.int/comm/avpolicy/regul/review-twfb2003/contribution.htm>

- The European Commission opened a public consultation to define the new generation of programmes in favour

of the European audiovisual sector. These new programmes shall replace the current Media Plus and Media Formació programmes as of 2005.

http://europa.eu.int/comm/avpolicy/media/med2eva_en.html

- Growth and the audiovisual industry: Iniciativa i2i audiovisual. 2003 Event. Measures to promote the access of Europe's independent production companies to external funding that could be made available from banking and financial institutions (DO No. C-162, 11/7/2003, page 28).

- European Parliament report of 14 July on cultural industries.

<http://www2.europarl.eu.int/omk/sipade2?PUBREF=-//EP//NONSGML+REPORT+A5-2003-0276+0+DOC+PDF+V0//ES&L=ES&LEVEL=3&NAV=S&LSTDOC=Y>

- Communication from the European Commission on the obstacles that hinder general access to new services and applications of the information society through open platforms in the areas of digital television and third-generation e-communications (COM (2003) 410, 9/7/2003). europa.eu.int/eur-lex/es/com/cnc/2003/com2003_0410es01.pdf

- Decision no. 1151/2003/EC of the European Parliament and Council of 16 June 2003 amending Decision No. 276/1999/EC adopting a multiannual Community action plan on promoting safer use of the Internet by combating illegal and harmful content on global networks (DO No. L-162, 1/7/2003, page 1).

- Study into classification systems for films distributed in cinemas and television stations and on DVD and video in the countries of the EU and EES, prepared for the European Commission by Olsberg/SPI and KEA European Affaires in collaboration with KPGM.

europa.eu.int/comm/avpolicy/stat/studpdf/rating_final_report.pdf

- Directive 2003/33/EC from the European Parliament and Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products (DO No. L-152, 20/6/2003).

- Report from the European Parliament of 25 June 2003 on the application of the Television Without Borders Directive.

www2.europarl.eu.int/omk/sipade2?PUBREF=-//EP//NONSGML+REPORT+A5-2003-0251+0+DOC+WORD+V0//ES&L=ES&LEVEL=3&NAV=S&LSTDOC=Y

- Proposed Directive from the European Parliament and Council on unfair trade practices (COM (2003) 356, 18/6/2003).

europa.eu.int/eur-lex/es/com/pdf/2003/com2003_0356es01.pdf

- Green Paper on general interest services (COM (2003) 270, 21/5/2003).

europa.eu.int/eur-lex/es/com/gpr/2003/com2003_0270es01.pdf

- Communication from the European Commission. Towards a World Association for the Information Society: Perspective of the EU in the context of the WSIS of the United Nations (COM (2003) 271, 19/5/2003).

europa.eu.int/eur-lex/es/com/cnc/2003/com2003_0271es01.pdf

- The Court of Justice found that the Spanish and British systems regulating golden shares run counter to the free circulation of capital within the internal European market (sentence of 13 May 2003 in matters C-463/00 and C-98/01).

- The European Commission brought to a close the investigation into football programme rights in Spain (IP/03/655, 8 May 2003)

[http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action=getfile&doc=IP/03/655\[0\]RAPID&lg=ES&type=PDF](http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action=getfile&doc=IP/03/655[0]RAPID&lg=ES&type=PDF)

- The legal protection of electronic pay services - Report from the European Commission on the application of Directive 98/84/EC relating to the legal protection of conditional-access services or services based on this access (COM (2003) 198, 24/4/2003).

europa.eu.int/eur-lex/es/com/rpt/2003/com2003_0198es01.pdf

- Commission Recommendation of 11 February 2003 relating to relevant product and service markets within the electronic communications sector susceptible to ex-ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (DO no. L-114, 8/5/2003).

Report on Review Options for the Convention

The report prepared by Dr. Andreas Grünwald on the review options for the European Convention on TransBorder Television (the Council of Europe agreement equivalent to the Television Without Borders Directive) was recorded in the discussion process about the necessary redefinition of the regulations applicable to communication services. This redefinition would make them applicable to new services independently of the technologies involved. The report recalled that the basis of the regulation applicable to television services is their influence on creating public opinion and analysed whether the new services would also have this ability.

[http://www.coe.int/T/F/Droits_de_l'Homme/media/2_T-TT/3_Textes_et_documents/T-TT\(2003\)002%20F%20Rapport%20de%20Grunwald.asp](http://www.coe.int/T/F/Droits_de_l'Homme/media/2_T-TT/3_Textes_et_documents/T-TT(2003)002%20F%20Rapport%20de%20Grunwald.asp)

Other News:

- Public consultation on the Draft E-Governance Recommendation (3-9-2003)

http://www.coe.int/t/e/integrated_projects/democracy/02_Activities/01_e-governance/default.asp#TopOfPage

- REC (2003) 13 Recommendation from the Committee of Ministers to the Member States on broadcasting information through the media in relation to criminal proceedings (10/7/2003).

http://www.coe.int/T/F/Droits_de_l'Homme/media/

- Draft Recommendation on the rights of reply in the new media environment (latest version 25/6/2003).

[http://www.coe.int/T/F/Droits_de_l'Homme/Media/1_Cooperation_intergouvernementale/02_Projets_de_textes/PDF_MM-PUBLIC\(2003\)004%20F%20Droit%20de%20reponse.pdf](http://www.coe.int/T/F/Droits_de_l'Homme/Media/1_Cooperation_intergouvernementale/02_Projets_de_textes/PDF_MM-PUBLIC(2003)004%20F%20Droit%20de%20reponse.pdf)

- Declaration and Recommendation on freedom of communication on the Internet (28/5/2003).

http://www.coe.int/T/F/Droits_de_l'Homme/media/5_Ressources_documentaires/1_Textes_de_base/2_%

- Draft Recommendation on the rights to extracts of events of major importance (15/4/2003).

http://www.coe.int/T/F/Droits_de_l'Homme/media/1_Cooperation_intergouvernementale/02_Projets_de_textes

- REC (2003)9 Recommendation from the Committee of Ministers to the Member States on measures to promote the democratic and social contribution of digital broadcasting.

http://cm.coe.int/stat/F/Public/2003/adopted_texts/recommendations/f2003r9.htm

United Kingdom: Communications Act 2003

A new law on communications entered into force on 17 July 2003. The regulation included the proposed guidelines the sector provided to the government in the White Paper titled A New Future for Communications published on 12 December 2000, which basically pursued the need to adapt the existing regulations to the process of convergence between the telecommunications, audiovisual and IT sectors. The 2003 Communications Act is the first European regulation that includes within the same text the legal system of infrastructures (telecommunications) and the content that is broadcast (the audiovisual products) and where the sector to be regulated is that of communications.

The main provisions are:

- The functions of Ofcom (Office of Communications) and the transfer of power from the existing regulatory authorities. In particular, Ofcom replaces the Broadcasting Standards Commission (BSC); the Independent Television Commission (ITC); the Radio Authority; the Office of Telecommunications (Of tel); and the Radiocommunications Agency. Ofcom took control of all its powers and began to operate on 29 December 2003.
- The new electronic communications system, based on the transposition of European directives that integrate the new regulatory framework and which, among other matters, involve replacing the licence system for a system of authorisations.
- The establishment of a new regulatory framework for radio and television with a structure that is "more consistent" with the process of digitalisation.
- The reform of media-ownership regulations.

EU Countries. Other News:

Belgium

- New Decree on broadcasting by the French community in Belgium (Decree of 27 February 2003).

<http://www.just.fgov.be>

France

- CSA decision No. 2003-5 of 22 July 2003 on two bills amending decree No. 92-280 of 27 March 1992 on the general principles governing the obligations of publishers of advertising material services with regard to sponsorship and tele-sales.

- On 10 June 2003 the Conseil Supérieur de l'Audiovisuel (CSA) awarded the digital-terrestrial television frequencies and signed agreements with the new television operators.

http://www.csa.fr/infos/textes/textes_detail.php?id=12520

- On 3 September the different operators of the multiplex proposed by different television operators were formally designated.

http://www.csa.fr/actualite/communiqués/communiqués_detail.php?id=13608

Greece

- Code of conduct on news programmes and other broadcasts with political information (Decree No. 77/2003).

United Kingdom

- Communication from the government on the stages of revision for the BBC Charter due to expire in 2006. .

http://www.culture.gov.uk/global/press_notices/archive_2003/dcms107_2003.htm?properties=archive%5F2003%2C%2Fbroadcasting%2FQuickLinks%2Fpress%5Fnotices%2Fdefault%2C&month=

Estats Units: normes sobre titularitat de mitjans

El 2 de juny de 2003, la FCC (Federal Communications Commission) va adoptar una reforma de les normes sobre control de concentracions en els mitjans de comunicació fortament criticades per alguns en considerar que donava via lliure a la creació de monopolis informatius als Estats Units. El 27 de juliol el Congres frenava l'aplicació d'aquestes mesures amb l'adopció d'una llei que prohibia expressament la regulació federal dels límits de titularitat de mitjans. Mesura que ratificava el Senat, el passat 18 de setembre. Ara s'està a l'espera de la decisió del present dels Estats Units, el qual ha anunciat que vetarà la resolució legislativa que anul·li les modificacions proposades per la FCC.