



DECISION 253/2010, DATED 17 NOVEMBER, OF THE PLENARY SESSION OF THE CATALAN AUDIOVISUAL COUNCIL

Authorization for the transfer of the licence for the provision of audio broadcasting services in the town of Cervera 99.2 MHz.

Background

1. On 8 July 2010, Mr Raúl Rodríguez González, in name and representation of Sociedad Española de Radiodifusión, SL (SER), filed with this Council a letter (entry register no. 1880/2010) in which he requested authorization for a proposed transfer of the concession for the public audio broadcasting service on metric waves with frequency modulation in the town of Cervera (99.2 MHz) to the newly founded company Ràdio Lleida, SL.
2. On 22 September 2010, the Catalan Audiovisual Council asked Sociedad Española de Radiodifusión, SL to provide it with the documents required so that the Council could examine the transaction for which authorization had been requested (dispatch register no. 990/2010). The requested documents were submitted to the Council on 22 October and 3 November 2010 (entry register no. 2411/2010, 2540/2010 and 2541/2010).
3. Decision 233/2010, of 20 October 2010, of the Plenary Session of the Catalan Audiovisual Council extended the term for ruling on and giving notification of the procedure for the application for authorization of the transfer of the licence.
4. Sociedad Española de Radiodifusión, SL is the current holder of the licence for the provision of the public audio broadcasting service on metric waves with frequency modulation in the town of Cervera (99.2 MHz).

According to the administrative file for this radio station, the licence which is the subject of this report was awarded to Ràdio 13 de Catalunya, SA, by means of a Decision of the Government of Catalonia dated 30 May 1995.

Subsequently, Ràdio 13 de Catalunya, SA transferred ownership of the aforementioned concession to Ràdio Cervera, SA, a transaction which the Government of Catalonia authorized by means of its Decision dated 9 November 1999.

Once again the concession was transferred, this time to Ona Catalana, SA, a transaction which the Government of Catalonia authorized by means of its Decision dated 6 July 2004.



The Catalan Audiovisual Council, by means of Decision 189/2007, of 13 June, of the Plenary Session of the Catalan Audiovisual Council, renewed the concession held by Ona Catalana, SA, for the radio station at Cervera 99.2 MHz, for a period of ten years.

Later on, by means of Decision 85/2008, of 4 June, by the Plenary Session of the Catalan Audiovisual Council, authorization was given for a statutory merger between Ona Catalana, SAU, and Sociedad Española de Radiodifusión, SL.

5. Subsequently, Decision 193/2010, of 28 July, of the Plenary Session of the Catalan Audiovisual Council turned the concession for the public audio broadcasting service at Cervera 99.2 MHz into a licence for the provision of audiovisual media services.

6. Having regard to the report by the Legal Department of the Council.

Legal grounds

One. Legal framework

On 1 May this year General State Law 7/2010, of 31 March, on audiovisual media services, (hereinafter referred to as the LGCA), came into force, and according to its Sixth Final Provision it is basic legislation. Nonetheless, as part of the legislative implementation afforded to the regions the provisions of Law 22/2005, of 29 December, on audiovisual communication in Catalonia (LCA) remain applicable in all aspects in which they do not conflict with the LGCA.

It should be borne in mind that though Article 56 of the LCA established the non-transferability of licences, under the repealing provision of the LGCA it has been repealed because it conflicts with the provisions of the State law. Consequently, Article 29 of the LGCA, which regulates legal transactions for licences for audiovisual media services and establishes that licences may be transferred with the prior authorization of the broadcasting authority with jurisdiction and provided that a series of conditions are met, is applicable to this transaction. Specifically, Article 29 of the LGCA states the following:

1. The formalization of legal transactions involving an audiovisual media services licence requires the prior authorization of the broadcasting authority with jurisdiction and are subject, in any case, to the payment of a fee to be determined by the national Government in the case of nationwide licences or the autonomous regions in all remaining cases. This authorization may only be refused if the applicant does not demonstrate compliance with all the conditions set by law to obtain the said licence or they do not replace the previous holder in the latter's obligations.

2. Transfer and lease are also subject to the following conditions:





a) At least two years must have elapsed since the initial award of the licence before either of the types of legal transaction may be formalized.

b) When carried out with natural or legal persons who are nationals of countries that are not members of the European Economic Area, they are subject to the principle of reciprocity and accrue the payment of the fee set by law. Pursuant to the provisions of international treaties and conventions to which Spain is a party, and with the prior report of the broadcasting authority with jurisdiction, the Council of Ministers or the body with jurisdiction in the autonomous region may exceptionally authorize a transaction for reasons of general interest when this principle has not been met.

c) If the licence involves the award of a complete multiplex or two or more channels, no more than 50% of the capacity of the licence may be leased. The lease must comply with the provisions of Article 24.3 relating to the occupation of the radio spectrum by the multiplex and the operation of channels featuring wholly or partially paid-for content.

In all cases, the leasing of channels may only be authorized if the lessee certifies beforehand their compliance with all the conditions established by law for obtaining the licence.

d) Subleasing is prohibited under all circumstances.

e) In compliance with the bid which won the award of the licence.

In this respect, the Catalan Audiovisual Council is the broadcasting authority with jurisdiction in Catalonia to rule on legal transactions concerning audiovisual media services licences, that is to say on the transfer and leasing of licences.

Two. Transaction subject to authorization

Authorization has been requested for a proposed transfer of the licence for the provision of audio broadcasting services for the town of **Cervera (99.2 MHz)** by its current holder, Sociedad Española de Radiodifusión, SL, to Ràdio Lleida, SL, a newly founded company.

The shareholding structure of the acquiring company is as follows: Sociedad Española de Radiodifusión, SL (44.33%), Radio España de Barcelona, SA (22.17%) and Prensa Leridana, SL (33.50%).

Both the transferor company for the licence and Ràdio Lleida, SL, are part of the same group.



The period of two years that is required by law since the initial award of the licence for the formalization of the transfer of the licence has elapsed, and the acquiring company complies with the conditions established by law to obtain a licence.

Moreover, this transaction complies with the guarantees of pluralism and control of mergers between undertakings in audiovisual media services, as established in Title IV, Chapter II of Law 22/2005, of 29 December, on audiovisual communication in Catalonia and those established by General State Law 7/2010, of 31 March, on audiovisual media services.

Three. Validity of the concession legal system

Decision 193/2010, of 28 July, of the Plenary Session of the Catalan Audiovisual Council, which turned the concession that is the subject of this Decision into a licence for the provision of audiovisual media services, establishes that the applicable substantive system is the one established by prevailing regulations together with the specific obligations and commitments assumed by the provider in the original tender.

In this respect, Ràdio Lleida, SL, the acquirer of the licence for the provision of audio broadcasting services in the town of Cervera (99.2 MHz), shall have to comply with the obligations, commitments and offers signed by the transferor company in the tender in which it was the successful bidder, and comply with the technical parameters assigned to the stations.

In the light of the foregoing, the Plenary Session of the Catalan Audiovisual Council has adopted the following:

DECISIONS

1. To authorize Sociedad Española de Radiodifusión, SL to transfer to Ràdio Lleida, SL the licence for the provision of audio broadcasting services in the town of Cervera (99.2 MHz). This authorization shall be subject to the submission to this Council within two months from notification of this Decision of documented proof of the actual transfer of the licence.
2. To notify Sociedad Española de Radiodifusión, SL and Ràdio Lleida, SL, of this Decision.

Barcelona, 17 November 2010

Ramon Font Bové
President

Santiago Ramentol Massana
Secretary