

LIBERALIZATION OF THE
AUDIO-VISUAL COMMUNICATION SECTOR
IN MOROCCO
(MAJOR ACHIEVEMENTS OF THE HACA)

2002 - 2006



Major achievements of the High Authority for Audio-visual Communication between July 2005 and June 2006

It is possible to confirm that the process of reform of the Moroccan audio-visual sector, of which one of the great priorities was to prop up the creation of private companies of audio-visual communication, is taking a concrete shape, at the same time as the first results of the action of the High Authority for Audio-visual Communication (HACA) become tangible, in particular regarding the implementation of the new normative provisions.

As an agent of the integrity of the audio-visual communication freedom, but also of its balanced exercise within the confines of the respect of the public rights, the High Authority achieved one of its primary missions, namely the establishment of **the specification prototypes** of audio-visual communication services. This enterprise, which had the priority during all the 1st quarter of the year 2005, ended in the validation of the prototypes by the Higher Council of Audio-visual Communication, in accordance with the provisions of article 26 of law n° 77.03, defining the principal axes of obligations of the audio-visual operators. The second significant task was then **the setting in conformity of the audio-visual operators with the new normative framework**. It was actually a question of formalizing the provisions of articles 84 of law n° 77.03 for the private operators and articles 49, 81 and 82 for the public national audio-visual companies. This venture, which started just after the validation of the specification prototypes, constituted a key phase in the process of the implementation of the new legal framework liberalizing the audio-visual communication sector.

This operation thus opened the way for the concrete and serene achievement of another fundamental objective of the HACA: **the approval of the specifications of the SNRT and Soread-2m**, established beforehand by the Government. This stage was reached by highlighting the complementarities between the services offered by the two companies of the public pole, while taking account of their functional, leading and financial specificities. Thereafter, the HACA was **to put in conformity the private operators already in activity on the Moroccan territory**. The first file was that of Radio Méditerranée Internationale, known as "Médi 1", which regularization was concretized by three Higher Council Decisions: the decision n°15 bearing establishment of its schedule of specifications, the decision n° 16 bearing attribution of the exploitation licence and the decision n° 17 bearing assignment of the hertzian frequencies. The second file related to "Radio operator "Sawa", a radio station substituting the old service in Arabic "Voice of America" (VOA), which had the characteristic to be a dismemberment of the administrative services of the United States Federal Government, emitting on derogatory and exceptional authorization delivered by the Ministry of Communication. For all these reasons, its process of setting in conformity could only be accomplished in the middle of the second quarter 2006, by the means of decisions n° 09-06 and n° 10-06 of May 03, 2006. As regards the third file, it concerned an operator called "SAMAMA MEDIA", selling for a few years audio-visual services with conditional access. Since the entry into force of law n° 77.03, a legal procedure of regularization was initiated by the High Authority, which

provided an accompaniment to this company in order to constitute acceptably its file. The Higher Council decided, in June 28, 2006, to grant an authorization of selling the previously mentioned service.

In addition, concerned mainly about gathering all its actions within a transparent scope to preserve the credibility of the process of the audio-visual communication liberalization, while consolidating the objectivity of its interventions as a regulator, the High Authority concretized, at the beginning of the year 2006, three significant enterprises relating to the establishment of internal procedures. First of all, **the adoption of the investigation procedure of the requests for licence**, in the current of the first quarter 2006, resulted from the necessary and urgent appliance of the provisions of articles 10 and 23 to 26 of the law n° 77.03, as well as the need to specify the concrete rules to be applied respectively to the various legal procedures (by private contract, the call for tender and the call to demonstration of interest). In the second place, **the implementation of the investigation procedure of the requests for authorization**, on the basis of article 33 of law n° 77.03, required initially an in-depth study, in order to set up practical rules relating to the constitution of the files, their deposit and their investigation, before their submission to the Higher Council deliberation, and this with regard to selling audio-visual services with conditional access in Morocco by foreign distributors via local representatives, as well as covering commercial and cultural events during a limited period or experimenting networks. Lastly, and in the same spirit of transparency with respect to the public and private operators, the High Authority worked out **a procedure defining the forms and time limits of payment of the royalties of the radio electric frequencies use**.

Concerned with preserving the objectivity of the audio-visual communication legal framework, the Dahir bearing creation of the High Authority entrusted to this one the mission of setting up the rules applicable to certain significant fields. Within this framework, the first two quarters of year 2006 had been marked by two noteworthy attributions. First of all, in accordance with the provisions of article 3.17 of the aforesaid Dahir, **the enacting of the legal and technical standards applicable to the audio-visual communication audience measurement**, by the means of the CSCA decision n° 03-06 of February 15, 2006, which reflected the concerns relating to the conditions of reliability, relevance and transparency of these mechanisms of measurement, but also left to the professionals a great margin of freedom and self-regulation to organize their mutual relationships and to define their reciprocal engagements. Then, in accordance with the provisions of article 3 subparagraph 13 of the same Dahir and in the absence of precise legislative or lawful provisions, the Higher Council is in the course of finalizing a set of standards laying down the main guidelines in **the treatment of pluralism in political information broadcasted by the audio-visual media beyond the election times**, on the basis of the idea according to which pluralism is not an aim in itself, but the mechanism for the High Authority to make sure that the public is informed in the most complete, objective and honest way. As underlined by the President of the CSCA during the workshop with the audio-visual operators, which was held in Rabat on June 23, 2006 on this subject, this decision, which would be adopted without delay, recommends a flexible, progressive and qualitative approach of the role of the High Authority on the matter, respectful of the editorial freedom of the operators, with regard to the political aspect of informative pluralism as well as for its social dimension, the objective being to promote a step that could be qualified as " self

disciplinary car" or "of self regulatory", whose principal concern consists of political information emancipation.

Within the framework of the High Authority mission of regulation, and as a deliberating authority, the CSCA was brought to investigate a certain number of **complaints**, emanating from political organizations, trade unions or associations recognized of public utility, relating to violations, by the bodies of audio-visual communication, of the laws or payments applicable to the audio-visual communication sector. Moreover, certain decisions answered the requests of persons or entities having suffered a prejudice, following the broadcasting of an information attempting on their honour or which was obviously contrary to the truth. These decisions can be classified in three principal categories. First, those relating to **the right of reply**, in accordance with the provisions of article five of the constitutive Dahir of the High Authority. Although the majority of these decisions were subtle, they were favourably received by the whole of the concerned actors. The polemic that some of the decisions could cause urged the CSCA to deploy a step mingling a certain rigour with a progressive approach, consisting in particular of showing some flexibility with respect to the audio-visual operators, in this phase of recent implementation of the new normative framework of the national audio-visual sector. Then, on the basis of the provisions of article 3-15 of the Dahir bearing creation of the HACA, and on those of articles 2 (subparagraph 3 in fine), 65 (last subparagraph) and 68 of law n° 77-03 relating to Audio-visual Communication, the CSCA gave a number of decisions related with **publicity**, considered to be significant by the professionals of the sector as by the audio-visual operators. The latest of these decisions was that rendered on June 28, 2006 relating to the conditions of mentioning the sponsor - Le Crédit

Agricole – inside the program “ Yaoumiyat Al Fallah ” broadcasted by Radio MEDI 1, which stated that the aforesaid program used what is qualified “clandestine publicity» in article 2.2° of the law n° 77-03 and prohibited by article 14 (paragraph 2) of its schedule of specifications, besides not respecting the provisions relating to the modalities of mentioning the sponsor as defined by article 19 of the same specifications. Lastly, in accordance with the provisions of article 3-13 of the constitutive Dahir of the HACA and in expectation of a general and impersonal decision to be taken by the CSCA, the latter was obliged to treat individually the files relating to **the pluralism of expression**, trying at the same time to constitute a coherent, objective and transparent jurisprudence on the matter. This task, without any doubt, being one of the most significant and neuralgic missions of the High Authority, the CSCA was brought to settle with austerity certain subtle files, while keeping in mind its progressive approach.

In addition, within the framework of its regulatory mission, the Higher Council also had the occasion to put forth **recommendations and official statements**, recalling in particular to the operators certain basic rules of the exercise of their activities. Such was the case for the recommendation relating to **covering the legal procedures** by the operators of audio-visual communication or for the official statement on **selling audio-visual services with conditional access**. Moreover, in accordance with the provisions of paragraphs 1, 3, 4 and 5 of article 3 of the constitutive Dahir of the High Authority, the CSCA also rendered a certain number of important advices for the sector of the audio-visual communication, such as for example that given at the request of Its Majesty, in February 2006, about the institutional reorganization of the public audio-visual sector.

But beyond the sector or category dimensions of all these decisions and recommendations, the total impact sought by the CSCA is on the infra and supra structural scales, through the long termed contribution of this decisional corpus on the level of the general dynamics of the audio-visual communication sector. Thus, on the first stage, it is easy to note that **the jurisprudence of the CSCA** largely contributed to specify and clarify certain zones of shade that surrounded the existing legal battery. However, it is at the supra structural level that the action of the CSCA wants to be most fundamental. Indeed, through its various advices, official statements, recommendations and decisions, the deliberating authority of the HACA is attached to **convey a new philosophy within the field of the audio-visual communication**, apart from the spirit that governed the practices used at the time of State the monopoly. More in agreement with the new facts which define the liberalized national audio-visual sector, in a field from now on strongly globalized, characterized by a competition exacerbated by the phenomena of capitalistic, functional and technical convergences, the CSCA thus fixed itself for objective to gradually spread a certain number of principles, such as **progressiveness, competitiveness, the complementarity and the diversity**, of which it already made its doctrine.

Within this range, since the adoption of the Moroccan Radiophonic Plan by the Higher Council at the end of the year 2005, the High Authority looked into the legal admissibility of the 49 request files for licence of the exploitation of radio services and 7 files of television services. These examinations revealed the defect of control by the majority of the candidates of the necessary legal requirements, highlighting the need for the High Authority to increase its efforts in accompanying them. After that, the High Authority also sought new frequencies (FM) to be allotted to the

audio-visual sector and obtained the assent of the ANRT, for those having to be allotted at the time of this first wave of licence, after achieving the formalities of international coordination. The scarcity of the frequency resources naturally resulted in making choices privileging, initially, the projects proposing audio-visual services centred on diversity, proximity and complementarity with those proposed by the public and private operators already existing. To this end, as a territorial segmentation reconciling socio-cultural considerations with the concern of ensuring the new private operators the best conditions of economic viability for their activity, the concept of “audience pond” was adopted as a basis bringing together the expressed offer and the actual needs.

Thus, on May 10, 2006, the Higher Council of the Audio-visual Communication announced the results of its deliberations in connection with **the granting of the first wave of licences to 11 new private services**, including 10 of radio and one of satellite television. The decisions taken by the Council constituted the result of a work carried out by the High Authority for 17 months, devoted to the study and the implementation of a work methodology enabling it to make sure that the Moroccan citizens can reach new diversified audio-visual services, complementary with the existing services, while rationalizing the use of the frequencies available and ensuring the future operators an investment atmosphere favourable to the viability of their projects. On the occasion of the speech made at the time of the signature of the schedules of specifications of the new operators, on May 17, 2006 in Rabat, the President of the HACA, Mr Ahmed Ghazali, insisted on the fact that the High Authority does not have any vocation to exert an unspecified supervision and even less with being an authority of censure. The governing idea was that, in accordance with the spirit of the law, only the operators were

responsible for their respective editorial lines, the intervention of the High Authority consisting primarily in establishing with all the actors, particularly the new ones, operational links to enable them to benefit from a fruitful accompaniment. Resulting from and referring to the principle of progressiveness, this accompaniment has for first finality to pre-empt the devices to set up, for and by the operators, on the various levels of decision and operation, in terms of management resources and procedures of communication with the High Authority, in order to ensure beforehand the best conditions to the respect of the engagements contained in their respective schedule of specifications.

Like the files relating to the services with conditional access exclusively concerning television services, over the period covering the last two quarters of 2005 and the two first quarters of 2006, the High Authority looked into ten files of **requests for authorization to cover musical and cultural festivals**, as the International Film Festival of Marrakech, or the Mawazine Festival. On another hand, and in addition to a certain number of authorizations delivered for the exploitation of frequencies on an experimental basis, such as the decision n° 07-06 of 26 April 2006 bearing a **provisional authorization for the exploitation on an experimental and provisional basis a Terrestrial Numerical Television (TNT)**, the CSCA rendered, on May 19, 2006, its decision n° 34-06 by which it grants to the company ITTISSALAT Al MAGHRIB **the authorization to sell on the Moroccan territory the audio-visual communication service with conditional access**, indicated by the commercial name "TV via ADSL Offers». The broadcasting via ADSL of the programs composing this service had already been the experimentation object authorized by Higher Council Decision on April 19, 2006. Finally, in order to promote a

healthy competition offering diversified services to the public, the CSCA decided to fill out the segment of satellite television with a charge by granting an authorization for the "HK Distribution" company to sell on the Moroccan territory the audio-visual service with conditional access called "SHOW TIME", distributed via satellite by the "Gulf DTH FZ- LLC", established in Dubai free zone.

These are some major phases, extremely significant in the sense that they illustrate the way liberalization of the Moroccan audio-visual sector took and is still taking place concretely and gradually. Nevertheless, by bearing in mind the complexity of the stakes and the challenges confronted by this process, it is easy to deduce the central role that the High Authority is supposed to perform in the guarantee of public freedoms, the independence of opinion and ideological pluralism in the audio-visual media.