

# 9 October 2006: Access of local radios to national advertisement

Published on October 09, 2006

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## **The Conseil de la concurrence accepts the commitments of GIE Les Indépendants**

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In its decision dated October 6th 2006, the Conseil de la concurrence has accepted the commitments proposed by the GIE (economic interest group) Les indépendants, which were deemed likely to meet the competition concerns raised by the Conseil. The Conseil has therefore closed the litigation proceedings.

### **History of the case**

At the end of 2003, the Conseil de la concurrence received a complaint, by the company Canal 9, which notably operates local radio Chante France as part of the group. Canal 9 complained that the GIE Les Indépendants (1)refused access to radio Chante France into the group. The company considered that this refusal was discriminatory and prevented Chante France from having access to the market for national advertisement, which is a necessary source of income for its financial balance.

The GIE considered on the other hand that Chante France did not meet the statutory conditions required to join the group, notably because it belonged to a group of radio stations, which operates Skyrock station, classified in the national category (D category).

## **The competition concerns**

During the investigation, the case officer transmitted to the group Les Indépendants a preliminary examination of the case in which were expressed competition concerns on the statutory conditions for the membership to the GIE, and on the way the statutes were implemented in practice.

Indeed, it appeared that the membership conditions required to stay, or leave the GIE were neither objective nor transparent and were lacking a clear definition. Moreover, elements of the file led to believe that these inaccuracies could be used by the GIE to discriminate against certain radios. Lastly, the existence of severe penalties in case a radio left the group, also raised difficulties, in so far as this could lead to market foreclosure.

The case officer considered that there was no alternative solution economically equivalent to the membership of the GIE for an independent local radio anxious to enter the market for national advertisement. It was also considered that it could not be excluded that the agreement between the companies of the group, aimed at fixing the conditions for the membership and the keeping in the GIE, enters the area of application of the provisions of the code of commercial law, prohibiting agreements and abuse of dominant position, provided the conditions have the object or the effect to prevent, in discriminatory conditions, the access of certain local radios to the market for national advertisement.

## **The commitments made by the GIE les Indépendants**

While challenging the anticompetitive character of the practices denounced by the plaintiff, the GIE Les Indépendants presented commitments to the Conseil de la concurrence. These proposals were published on the Conseil's website on June 15th 2006 in order to receive observations from potentially interested third parties. The examination of the commitments led to several amendments in their drafting.

The GIE Les indépendants has committed itself to reform its statutes as well as all the documents sent to applying radio stations in order to:

- clarify the conditions of eligibility, i.e. conditions which give an applying radio the possibility to receive an application file and to submit it to the GIE's Board of directors and General Assembly
- specify membership conditions and notably their content (clarify the notion of « independence » towards national networks)
- improve the clarity of the admission procedure, notably in formalizing the stages (receipt of the file, examination and effective admission) and defining precise deadlines.
- review its exclusion procedure, in fixing deadlines
- suppress the penalties required in case of a withdrawal from the group

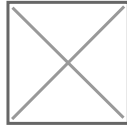
### **The impact of the commitments**

The Conseil has accepted the commitments, considering that they meet its own competition concerns, despite the fact that they do not entirely satisfy the plaintiff Canal 9.

The Conseil points out, in this respect, that a decision to accept commitments cannot be used to satisfy the request of one party nor to reply to a particular interest, but rather to guarantee the good functioning of competition on a market with a public and economic objective.

(1) Interest economic group aimed at marketing advertising space of local or regional radio stations to national or international advertisers. Given the limited nature of their geographical coverage, local radio stations are attractive for national advertisers only when they are part of a group.

**> Decision of October 6th 2006 relative to practices implemented by the GIE  
Les indépendants in the sector of radio advertisement**



**> See decision of the Paris Court of Appeal (6th November 2007)**

**> See decision of the Cour de cassation (Supreme Court of appeals) - 4th  
November 2008**

**> See decision of the Paris Court of Appeal (6th October 2009)**

**> See decision of the Paris Court of Appeal (1st June 2010)**