12 July 2007: Terrestrial broadcasting of FM radio stations and analogical and digital TV

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The Conseil de la concurrence orders TDF to propose to towerCast A new wholesale hosting offer for broadcasting FM from the Eiffel Tower site in order to allow the company to effectively compete with the incumbent operator's offers

> Version française

Following a complaint by the company towerCast, subsidiary owned at 99.9% by NRJ group, specialized in terrestrial broadcasting, concerning practices implemented by TDF company, the Conseil de la concurrence adopts interim measures against TDF, before reaching its decision on the merits.

TowerCast's complaint : eviction practices implemented by TDF during the occupancy contract renewal of the Eiffel Tower terrestrial broadcasting site and margin squeeze in the wholesale hosting offer proposed by TDF on this site

TowerCast's complaint alleged the delaying tactics implemented by TDF durin the take over bid launched by the City of Paris for the renewal of the national occupancy contract of the Eiffel Tower terrestrial broadcasting site.
TowerCast notably alleges that TDF had belatedly transmitted an estimate of the equipment transfer value, that was necessary to participate in the take over bid. TowerCast also alleges that TDF had then sent an overestimated valuation, thus preventing towerCast from presenting a competitive offer for the

occupancy of the Eiffel Tower broadcasting site.

TowerCast also alleges that the price of the offer made to measure, which was belatedly presented by TDF, prevented the company from making competitive offers to radio stations for broadcasting from the Eiffel tower site(1).

The business space which is left to towerCast between this wholesale offer and the retail price proposed by TDF to FM radio stations, is, according to the company, insufficient to cover an efficient operator's specific costs (margin squeeze practice).

The Interim measures: the Conseil orders TDF to propose a new wholesale hosting offer free of margin squeeze effect

The Conseil emphasized that towerCast is TDF's sole competitor on the market for FM radio terrestrial broadcasting. Its access to the Eiffel Tower broadcasting site in order to make broadcasting offers from this site, is especially important, notably as a result of technical constraints, which are an incentive to use the Eiffel Tower site for terrestrial broadcasting in the Ile-de-France region.

The Conseil de la concurrence has estimated that the margin squeeze practice, which is likely to constitute an abuse of dominant position by TDF, constituted an immediate and serious impact on the opening of the sector to competition, on the eve of the issue by the CSA (French Broadcasting council) of new authorizations for the use of frequencies by private radio stations. Therefore the Conseil has adopted interim measures.

The Conseil de la concurrence orders TDF to :

· transmit a wholesale hosting offer for FM radio broadcasting from the Eiffel Tower site within one month, enabling alternative distributors to effectively compete with the retail offers made by TDF to radio stations, without supporting any margin squeeze effect;

· limit to one year the duration of the contract, which the company is about to

sign with private FM radio stations for the broadcasting of their programmes from the Eiffel tower site.

On this last point, the Conseil specifies that in the case where some contracts would already have been signed at the date of the decision's notification, TDF will have to propose the radio stations concerned to sign a new contract for one year, thus invalidating the one previously signed.

The measures, which are justified by the urgent situation, aim at preventing the closing of the market for 5 years.

1) Among the major radio and TV broadcasting sites, the Eiffel Tower site stands out for its specially broad coverage due to its height. It can cover 11 million inhabitants in the Ile-de-France region, i.e. 18% of the metropolitan population. The site is used for the broadcasting of all terrestrial analogical TV and DTT services and 30 radio stations (see on the subject the opinion rendered by the CSA on 3 April 2007)

> ***Decision 07-MC-05 of 11 July 2007 relative to a request for interim measures by towerCast***



> ***See decision of the Paris Court of Appeal (24th August 2007)***