26 January 2010: Subject to various conditions, the Autorité de la concurrence authorizes the acquisition of the channels TMC and NT1 by TF1

Published on February 15, 2010

On 24 July 2009, TF1 notified the *Autorité* of its acquisition of a share of the AB group that provides it with 100% of the capital of the NT1 station and 80% of the TMC station[1]. After an initial investigation phase, the *Autorité de la concurrence* decided to launch an in-depth examination of the operation on 26 August.

On the basis of a "market test" involving all of the sector's professionals (holders of rights, advertising agencies and advertisers, advertising networks, media planning agencies, competing television stations, etc.), this examination considered all of the markets that are likely to be affected by the operation: on the one hand, the markets for the acquisition of broadcast rights for television programmes and, on the other hand, the television advertising market.

The *Autorité* considers that the operation will serve to strengthen the TF1 group's position in the markets for rights and advertising

- **On the markets for the acquisition of rights**, the *Autorité* ascertained that the TF1 group already has strong positions as a buyer: the TV channel acquires approximately 40% of the American and French films shown on television, almost 40% of the French made-for-TV fiction programmes, and 45% of recent American series. *While the acquisition of TMC and NT1 will do little to strengthen the group's share of the purchases in these markets, the possibility of making the rights acquired by the TF1 group cost effective on three free-to-air stations, instead of only one, will be a competitive advantage over all other buyers.*

- **On the advertising market**, the *Autorité* considered that as a medium for advertisers, television cannot be replaced by other forms of advertising, notably the Internet. The demand for televised advertising was particularly affected by the economic crisis in the last quarter of 2008 and the first semester of 2009, which made it more difficult for the *Autorité* to analyze the state of competition in this market, which was further affected by the reduced offer resulting from the partial halt of advertising by the [public] France Télévisions group.

  The *Autorité* nevertheless found that with nearly 50% market shares, *the TF1 group was keeping a dominant position in this market that could only be strengthened by this acquisition, given the seemingly considerable growth*

APPENDIX / SUMMARY OF TF1'S COMMITMENTS

- **Facilitating the circulation of rights for the benefit of competing channels**

TF1 undertakes to take measures intended to bring about better circulation of rights relating to proprietary works[2] originally filmed in the French language (hereinafter FL) and FL cinematographic works, so as to facilitate the access to these rights on the secondary markets.

- fictional works produced for television: controlling the exercising of the rights of first and last refusal in order to prevent any strategies that would lock in the rights

With regard to FL audiovisual proprietary works, TF1 undertakes, firstly, that when the current contracts or any new contracts call for it to be entitled to a right of first or last refusal, this right will be understood as a right of priority under conditions that are at least equivalent with those of a competing offer. In particular, TF1 will consequently seek the deletion of the second sub-paragraph of article 9 of the agreement signed on 22 October 2008 between itself, on the one hand, and the *Syndicat des Producteurs de Films d'Animation* and the *Union Syndicale de la Production Audiovisuelle*, on the other hand. Indeed, this clause indicated that TF1 could, in certain cases, exercise this right subject to compensation that could be set in the initial contract. There was therefore no guarantee that TF1 would have to align itself with the terms proposed by a third party in order to make use of this right of first and last refusal.

Secondly, to prevent TF1 from using such a clause in order to improperly limit the access to rights by competing stations, the exercising of this right of first and last refusal is conditioned by TF1's commitment to broadcast the works in question within a certain timeframe, and in the daytime or in the evening.

- Movies: same commitments for exercising the pre-emptive right

As for audiovisual proprietary works, TF1 undertakes to actually broadcast the pre-empted films. The exercising of this pre-emptive right is conditioned by TF1's commitment to broadcast the works in question within a certain timeframe, and in the daytime or in the evening.

- ***Limiting the broadcasting of works and programmes within the group***

- Sports programmes

(1) The remaining 20% are held by the Principality of Monaco. It should be recalled that, since 2004, TF1 already held 50% of the capital of the Monte-Carlo Participation company, which held 80% of the capital of TMC
(2) Fiction programmes produced for television (TV films and series).



> See the ordinance of the* Conseil d'Etat *(French Supreme Court for Administrative Law) regarding the ruling of April 22nd, 2010,

> See decision of the Conseil d'Etat (French Supreme Court for Administrative Law), 30th December 2010