

Digitization of cinemas

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Digitizing movie theatres is a general interest objective that doubtlessly justifies public intervention. However, the *Autorité de la concurrence* is of the opinion that the least competition-restricting ways must be sought and it provides proposals to reach this end.

In October 2009, the Minister for the economy, industry and employment made a referral to the *Autorité de la concurrence* in order for it to examine a financial support system proposed by the *Centre national de la cinématographie et de l'image animée* (National cinematography and animated image centre - hereinafter "CNC") so as to provide cinemas with digital equipment.

The digitization of cinemas

The development of digital cinema will thoroughly transform the film industry and lead to the sector's complete reorganization. The aim of digital projection is to dematerialize the distribution of films in movie theatres. Equipping a cinema with digital projectors makes it possible to move from silver film, which is expensive to produce and transport, to digital versions that are easy to copy and transport.

The benefits and costs resulting from this technological revolution are distributed very differently according to the sector's various levels: the investments will be borne by operators, while the bulk of the gains will go to distributors. This situation has led to the emergence of a new market for the financing of digital equipment for cinemas, which is entrusting intermediaries (i.e. third party investors), with the mission of partly transferring to operators some of the savings obtained by distributors for the printing of copies, in order to allow the operators to partially finance their digital projection investments.

However, some cinemas will not be able to finance digital equipment and will also be unable to call on third party investors, as the nature and volume of their programming (number of films shown as exclusives during the first week) does not coincide with the viability of the models set up by these private actors.

In response to this difficulty, the CNC is planning to set up a mutualization fund that would operate on the model of the third party investors, that it would directly operate and that would serve to levy distributors for a contribution (VPF or "virtual print fee") that would be used to finance up to 75% of the investments of cinema operators. The fund's operation would have to be financially balanced, and each operator should be able to choose between the CNC's offer and that of the third party investors.

The CNC's project corresponds to a purpose of general interest to which the market for the financing of digital cinema by third party investors would seemingly be unable to meet in a satisfactory manner. However, the sector regulator's direct intervention may well cause significant competition distortions, and even totally eliminate competition on the market for the financing of digital cinemas.

Indeed, by creating a digitization fund intended for all cinemas, outside of the market or not, the CNC will be responding to the same demand as the one that is currently being met by third party investors and, for a considerable part of its activity, it would be in direct competition with these private operators.

Nonetheless, the CNC is a sector regulator that has regulatory powers, collects taxes, and distributes aid from the support fund, all of which are essential for the financing of the entire cinema industry. Its intervention in a competitive market may result in significant competition distortions, and even totally eliminate competition on the market for the financing of digital cinemas.

Actually, irrespective of the precautions that could be taken, the fund managed by the CNC would maintain a decisive advantage over its competitors as a result of its links with the sector regulator and of the State guarantee provided to the mutualization fund.

Moreover, the fund's management method (i.e. in consensus with the overall profession), creates a risk of imposing on all actors an amount for the "virtual print fee" (VPF) that is out of step with the market, thereby resulting in an amount of State aid greater than what is currently anticipated.

As such, without renouncing the general interest objective, an assessment of alternative solutions is necessary in order to determine how this same objective could be reached in a more economical manner and in a way that results in less restriction for competition.

Both Community law and national law accept competition distortions that are indispensable in order to ensure the viability of a project that is recognized as a general interest objective, but only under the condition that these threats are proportionate with the desired objective and that there are no other means for reaching this objective under more acceptable economic conditions that would raise less competition concerns.

With this outlook, the *Autorité* considers that a solution consisting of direct aid, partially allocated via an invitation to tender system and financed by a tax on digital copies, could provide an alternative that deserves consideration. This system would appear to be neutral from a competitive standpoint, neutral for public finances, and it would serve to better target the market's shortcomings that the public intervention is intended to remedy. It would be less of a burden to implement than a mutualization fund, it would correspond better with the CNC's usual intervention methods and would serve to maintain the principle of solidarity to which the CNC is legitimately attached.

However, it is not up to the *Autorité* to decide on this matter, as it falls within the area of expertise of the CNC and of the appreciation of the public authorities, under the control, if relevant, of an administrative judge and of the Court of Justice of the European Union.

The full text of opinion 10-A-02, relative to the digital equipping of cinemas, can be consulted on the Internet site of the Autorité de la concurrence:

www.autoritedelaconcurrence.fr