9 March 2010: Terrestrial hertzian broadcasting of television programmes by digital signal

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The *Autorité de la concurrence* does not declare emergency measures against TDF but continues the investigation on the merits regarding the complaint by Itas Tim

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The company Itas Tim had referred to the *Autorité de la concurrence* relative to practices implemented by the TDF company in the sector of hertzian broadcast services by digital means. Its complaint also included a request for interim measures.

The *Autorité de la concurrence* renders its decision in which it rejects the request for interim measures. However, it has decided to carry on its examination on the merits, given that it is not impossible that some of the identified practices may have adverse effects on competition.

The complaint by Itas Tim

Itas Tim is a corporation that employees 25 people and that generates direct activity within the Itas group for approximately 100 other people (manufacturing of pylons and antenna systems, set-up and maintenance of transmission stations) out of the group's 200 employees. Itas Tim is active as a broadcaster of digital terrestrial television and analogue radio. At the same time, Itas Tim also manages sites by providing accommodation services to other operators on its own pylons. Itas Tim offers its services to all digital television multiplex operators in France, as well as local televisions and radio stations.

Itas Tim's complaint against TDF denounces a policy of opposing the establishment of competing infrastructures near its own sites, while refusing access to these locations for the installation of Itas Tim's own structures. Itas Tim notably claims that :

- TDF unfairly influences local and regional administrations in order to persuade them not to authorise the construction of competing infrastructures and to give preference to limited competition through its own accommodation offer ;
- TDF employs delaying tactics in order to slow the implementation of Itas Tim when the latter has obtained an authorisation to erect its own competing infrastructure ;
- TDF refuses to allow Itas Tim to access its locations in order to install its own infrastructures.

The *Autorité de la concurrence* does not pronounce emergency measures but will continue the investigation on the merits

The *Autorité de la concurrence* has considered that it had not been demonstrated that the practices in question were sufficiently damaging to the immediate interests of the plaintiff or to the sector's economy so as to justify interim measures.

With regard to providing information to mayors, the *Autorité* has taken note that in the first semester of 2010, the CSA (Broadcasting regulator) and the ARCEP (Telecommunications and posts regulator) will jointly be launching an information campaign for local and regional administrations relative to the legal and technical aspects of the transition to digital television.
With regard to accessing TDF's locations, and at this stage of the deployment of digital television, the *Autorité* found that Itas Tim had, so far, always been able to find alternative sites to those of TDF for the deployment of its infrastructures.

However, all of the practices brought to light by Itas Tim will be examined as part of its investigation on the merits.

Indeed, at this stage of the investigation, it cannot be excluded that the dissemination of partial or misleading informations by TDF to the local and regional administrations might constitute an abuse of dominant position, since it would have led its competitor Itas Tim to be excluded from the upstream market.

Moreover, the bulk of the sites occupied by TDF were acquired while it was still a public industrial and commercial establishment, with a legal monopoly on radio and hertzian television broadcasting. The incumbent operator on the market has a twofold advantage: it can occupy sites that best lend themselves to television broadcasting in terms of their topography, while not having to deal with the reluctance of communities regarding the duplication of locations within their territory. Given this situation, it cannot be excluded that access to TDF sites may be necessary in order to foster an effective competition on the basis of infrastructures, and that, under certain circumstances, access refusal could constitute an abuse of dominant position.

To consult the full text of decision 10-D-09, of March 9, 2010, regarding the request for interim measures asked by the Itas Tim compagny relative to the practices implemented by the TDF corporation in the sector of hertzian broadcast services by digital means.