21 September 2011: Broadcasting - pay television

Published on September 21, 2011

The *Autorité de la concurrence* finds that Canal Plus Group did not comply with several commitments subscribed – including key ones – when it took over TPS.

The *Autorité* withdraws the decision authorizing the merger, thus requiring from the parties to renotify the transaction within one month. Moreover, Canal Plus Group is fined 30 million euros.

> Version française

The *Autorité de la concurrence* has just issued a decision in which it establishes that **Canal Plus Group** did not fulfill several commitments – including key ones – that were attached to the decision[1] authorizing in 2006 the acquisition of **TPS** and **CanalSatellite** by **Vivendi Universal** and Canal Plus Group.

The *Autorité de la concurrence* therefore withdraws the decision authorizing the merger. Unless they restore the previous situation (before the merger), Vivendi and Canal Plus Group will have to renotify the transaction to the *Autorité* within one month.

The *Autorité* noted the seriousness of the breaches established – that are the result of some negligence and, generally speaking, of a repeated lack of diligence and ill will from Canal Plus – as well as the harm to competition that may be generated by these breaches to the commitments. Therefore, the *Autorité* imposed Canal Plus Group a financial penalty amounting 30 million euros.

THE MERGER BETWEEN CANAL PLUS AND TPS: A MAJOR TAKEOVER THAT REQUIRED MANY COMMITMENTS FROM THE CANAL PLUS GROUP

The transaction, which led to the creation of the **Canal+ France** company, led to the merger of the two main operators on the pay-TV market, and in particular led to the creation of a monopoly in channel publishing and the distribution of premium pay-TV offerings and had the effect of strengthening Canal Plus Group's dominant position on the downstream market for the retail distribution of pay-TV. Due to the numerous risks of anticompetitive effects, the merger clearance decision issued by the Minister of the Economy after advice by the *Conseil de la concurrence* had been subject to the implementation of 59

In total, the *Autorité* established that 10 commitments were breached.

Non-compliance with the commitments related to a granted access to channels and to the continuity of quality standards of these channels is deemed of particular seriousness by the *Autorité*, taking into account the essential character of these requirements to protect competition (**For more details, see below**).

The *Autorité* also noted some other breaches regarding the relations between Canal Plus Group and independent TV channels as well as regarding the access to broadcasting rights.

> For a comprehensive overview of all the breaches, refer to File Nr 2.

1) Canal Plus Group was late in giving third party distributors access to the 7 TV channels it had to unbundle, the consequence of which was to give an advantage to its new offer "Le Nouveau CanalSat"

Canal Plus Group did not give access to the 7 TV channels on schedule with the commitments **(breach to commitment Nr 56)**.

On 21 March 2007, Canal Plus launched on its platform a new offer named "*Le Nouveau CanalSat*", prior to providing third party distributors access to the TV channels, and even prior to the communication of the technical specifications for having access to these channels, which were transmitted on 2 April 2007. This schedule slippage enabled Canal Plus to favor a customer migration from TPS's bouquet to "*Le Nouveau CanalSat*", through a commercial proposal including "*new TV channels in the various thematic areas and exclusive content without price upgrade*", when at the same time DSL internet service providers were not yet in the capacity to retail a package including whole or part of the 7 TV channels subject to the mandatory unbundling. These facts give evidence of discrimination to the detriment of DSL providers' platforms (**breach to commitment Nr 20**).

2) Canal Plus Group undermined the quality of the TV channels that were to be unbundled

The obligation to maintain, in metropolitan France (commitments Nr 18 to 33) as well as in overseas départements (commitments Nr 34 and 35), quality standards of the unbundled TV channels, and in particular the premium character of TPS Star (commitment Nr 21), has to be interpreted in close conjunction with the unbundling obligation itself: the aim is to prevent the TV channels whose access is granted to third party distributors from being deprived of their attractive programmes.

- ***Declining quality of TPS Star and loss of its "premium" character***

Since 2007, a fast, significant and lasting deterioration of the quality of TPS Star has been noted, both in terms of programming and innovation. (**breach to commitment Nr 22, §1 – quality standards**). This finding was established through objective, measurable and verifiable criteria. Among others, the Autorité observed a lasting and continuous drop in the costs of programming, a poorer movie programming, the loss of broadcasting rights for sports events, less

> For more details, refer to the full text od Decision 11-D-12 of 21 September 2011 (in French) available on our website and to the press kit (in French)

File Nr 1 :Decision authorizing the transaction (30 August 2006)
File Nr 2 : Table summarizing the breaches to commitments
File Nr 3 :Reasons and consequences of the withdrawal of the clearance decision
File Nr 4 : French reform of merger control
File Nr 5 :The pay-TV sector - some figures
File Nr 6 : Glossary

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> Ruling of the* Conseil d'Etat *(French Administrative Supreme Court) of 17 September 2012