10 February 2014: Telecoms/Media in Martinique-Guadeloupe-Guiana-Reunion

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Subject to a number of commitments, the Autorité de la concurrence has cleared the acquisition of Mediaserv by Canal Plus Overseas, a subsidiary of the Canal Plus Group

> Version française

The Autorité de la concurrence has cleared, subject to a number of commitments, the exclusive takeover by the Canal Plus Group, through its Canal Plus Overseas subsidiary, of the Mediaserv company and of those companies responsible for the management of fibre-optic network public services in Martinique, Guiana and Reunion.

Through the takeover of these companies, the Canal Plus Group, the main supplier of subscription television services, will be entering the telecommunications market in France's overseas départements and regions.

Paid-for television and telecoms in France's overseas départements and regions

Canal Plus Overseas is the main provider of subscription television services in France's overseas départements and regions. These overseas territories also have certain specific features that distinguish them from those on the mainland, including high numbers of subscribers to paid TV services, usually via satellite, and currently rather limited access to television programmes transmitted via the Internet, although these are likely to develop.

Mediaserv is one of the main suppliers of internet access in the overseas départements and regions, along with Orange and the various subsidiaries of the Altice group.

In this context, the Autorité de la concurrence has identified several competition risks related to the transaction.

Identified competition risks

• First of all, once the transaction has been completed, there could be an incentive for Canal Plus Overseas to refuse to allow internet service providers in competition with Mediaserv to distribute Canal+ Les Chaînes and CanalSat packages. The roll-out of access to television via ADSL and fibreoptics will indeed be through the ISP network on which Canal Plus "self-distributes" in exchange for commission paid to an ISP (1). There is a risk inherent in this arrangement that Canal Plus Overseas could reserve this type of access for Mediaserv or guarantee it more favourable conditions than those granted to other ISPs. As the main station-owner and distributor of paid TV, Canal Plus might also enable TV subscription packages marketed by Mediaserv in the context of its triple play offers to benefit from channels unavailable to other ISPs.

• Furthermore, Canal Plus Overseas, which already markets most of the paid television subscriptions in France's overseas départements and regions, could rely on the attraction of the Canal+ Les Chaînes and CanalSat packages and, thanks to its acquisition of Mediaserv, combine it with internet access under conditions that the competing ISPs would not be able to match.
Such a strategy would enable Canal Plus Overseas to marginalise Mediaserv's competitors on the internet access market and, in the long term, threaten incentives for innovation and maintaining a variety of offers in terms of price and quality.

• Furthermore, the Autorité noted that the transaction would result in the removal of an outlet for broadcasters in France's overseas départements and regions, thus increasing their dependence upon the Canal Plus Group while making it harder for other operators to offer attractive TV viewing packages.

To avoid such risks, the Autorité de la concurrence has obtained a set of substantial, credible and verifiable commitments from the Canal Plus Group.

1- To enable ISPs to distribute Canal + packages under equivalent pricing conditions to those from which Mediaserv benefits

To avoid discriminatory treatment of the other internet access suppliers, the Canal Plus Group has undertaken to give these suppliers, if they so request, the option of distributing the Canal Plus Overseas (Canal+ and CanalSat) through self-distribution under transparent technical and pricing conditions that are objective and non-discriminatory. Canal Plus has also undertaken to ensure that conditions offered to subscribers via competing Internet platforms are no less favourable in comparison with those offered to Mediaserv subscribers.

Furthermore, Canal Plus undertakes not to give Mediaserv any exclusivity over the channels it broadcasts. Any channels broadcasts by Canal Plus and distributed by Mediaserv would thus be made available to the other internet access providers under transparent, objective and non-discriminatory pricing conditions.

2- Regulating the marketing of packaged offers

In order to prevent Canal Plus from relying on its database of paid television subscribers for the purpose of developing the sales of its internet service provision in a manner that is prejudicial to competition, Canal Plus has undertaken not to market offers that combine Canal Overseas subscription television offers with Mediaserv internet access offers at rates lower than those applied individually to each of these offers, or with technical or commercial advantages that would not be accessible to those subscribing separately to these offers. Furthermore, Mediaserv's offers cannot be priced lower than their average total costs.

Subscription firstly to Canal Overseas paid television services and secondly to Mediaserv's internet access offers must remain separate and those subscribing to both offers will be entitled to cancel both of them after an initial one-year's subscription period. Subscribers leaving Mediaserv but wishing to retain their subscription to Canal + Les Chaînes or CanalSat will be guaranteed the option of transferring their subscription to another ISP.

3 – Remedy the dependence of independent channels with respect to Canal Overseas and remove obstacles to the development of independent channels

To this end, in order to provide broadcasters with the means to arbitrate between Canal Plus distribution offers and those of other paid TV operators, Canal Plus Overseas will make separate distribution offers for exclusive channels on each competing operator's platform, regardless of the number of subscribers to the said operator (2).

Canal Plus Overseas must therefore make channel distribution offers by separating its remuneration proposal platform by platform (remuneration for a Canal Plus Overseas broadcast on the Mediaserv platform, Orange platform, Altice/Numericable platform, Parabole platform, etc.) so that these networks can compare and arbitrate between packages offered by other operators.

Finally, in order to remove obstacles concerning the limited eligibility of internet television in overseas départements and regions, Canal Plus has also undertaken to enter into agreements through which it will share its satellite broadcasting capacity with pay TV operators who make the request, if they prove they have distribution agreements with networks included in the CanalSat package.

The commitments have been made for a five-year, renewable period

This series of undertakings have been made by the parties for a term of five years. The Autorité will scrupulously monitor their compliance. An independent trustee, approved by the Autorité, will be responsible for ensuring they are performed satisfactorily. The Autorité may renew once, for an additional five years, the implementation of all or part of these measures if analysis of the competition situation renders it necessary.

(1) Self-distribution enables Canal + to market its own stations itself – thus retaining a direct relationship with its subscribers – when they are transmitted through FAI platforms or cable operators.

(2) This measure was restricted to platforms with more than 500,000 subscribers in the injunctions pronounced by the Autorité in its decision 12-DCC-100 of 23 July 2012. The effects of this transaction, which could increase economic dependency of the networks, justifies extending this measure without restriction as to the number of subscribers so that competition can be introduced on each of the distribution platforms in France's overseas départements and regions, including those of the

smallest operators.

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> The full text of Decision Nr 14-DCC-15 will soon be published on this page