20 February 2014: Sports press sector

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The Autorité de la concurrence has fined the Groupe Amaury for having driven out of the market a new entrant in the sports press – Le 10Sport.com

> Version française

The Autorité de la concurrence has fined Les Éditions Philippe Amaury (hereinafter the Groupe Amaury) an amount of 3.5 million euro for having implemented a strategy – when Le 10Sport.com was launched on the market – aimed at closing off the market from the new entrant in order to reinforce the monopoly of L'Équipe newspaper.

Launch of the sports newspapers Le 10Sport.com and Aujourd'hui Sport

In September 2008, the company Le Journal du Sport, the result of a partnership between Michel Moulin, founder of Paru Vendu and NextRadioTV, run by Alain Weill, announced the launch of a 24-page colour sports daily focusing on football. Le 10Sport.com was sold at an attractive price (€0.50) and was intended for the mainstream market, directing itself mainly at men under 50. The first issue went out on sale on 3 November 2008.

Two weeks after the announcement, the Amaury Group, owner of newspapers including L'Équipe, Le Parisien and Aujourd'hui en France, itself announced the launch in the coming weeks of a new sports daily entitled Aujourd'hui Sport, whose positioning (format, price, editorial line, and readership) was identical to that of Le 10Sport.com. In late October, the Amaury Group issued a statement claiming that the launch was planned for 3 November, namely the same date as the launch of Le 10Sport.com.

Weighty proceedings including litigation involving the dawn raids performed by the Autorité

In December 2008, Le Journal du Sport, publisher of Le 10Sport.com, filed a complaint before the Autorité de la concurrence. It accused the Amaury Group of unfair commercial practices, disparagement strategies and of putting pressure on advertisers, as well as an exclusionary practice that consisted of launching a new newspaper for the sole purpose of driving out of the market Le10Sport.com.

In May 2009, officers of the Autorité de la concurrence conducted dawn raids in several premises belonging to the Groupe Amaury and seized numerous documents revealing the Group's strategy to drive out of the market Le 10Sport.com. These unannounced inspections were the subject of an appeal by the Groupe Amaury and it was not until September 2012, the date on which the Paris Court of Appeal confirmed the legality of the dawn raids, that the documents collected could be used for investigation purposes.

A strategy designed to oust Le10Sport.com from the market, and with no economic underpinnings

The notes, documents and tables seized show that the Groupe Amaury had created a plan, known as "Project Shanghai" that was designed to "kill Le10Sport".

The documents in the casefile show that the Group had envisaged three scenarios for challenging the launch of Le10 Sport.com. The first consisted of not reacting at all. The second – the one that was adopted – resulted in the creation of a new daily paper. The third corresponded to a reworking of L'Équipe newspaper.

For each scenario, the group had created business plans assessing the costs and benefits that could be expected in terms of finance and circulation (see pages 46-48 of the decision).

• ***An unprofitable financial sacrifice even in the long term***

It emerges from the casefile that the Groupe Amaury chose a response scenario (launch of a new newspaper) from among several options. This choice was never the most profitable option for the Groupe Amaury, but always the option that would do the most damage to Le 10Sport.com, whether in terms of readership or in financial terms.

This choice was an irrational one from an economic point of view for the Groupe Amaury since it generated a major financial sacrifice due to the effect of the cannibalisation of the sales of L'Equipe by the new daily.

• ***A daily with an ephemeral purpose***

The investigation shows that no sales projection performed went beyond 14 months from the launch date. When the chairman of the Group was questioned on the subject of Aujourd'hui Sport's future by the press on 7 November 2008, she indicated that it would "no doubt" be made to disappear in the event of its competitor ceasing publication. In addition, the employees of Aujourd'hui Sport were on detachment from another group subsidiary for a limited period of time or recruited on fixed-term contracts. A date for returning "to the original job" was indicated for the employees on detachment.

The cessation of publication of the Aujourd'hui Sport daily in June 2009, occurring after that of Le 10Sport.com (which had become a weekly) in March 2009, thus corroborated the former's ephemeral nature. In fact, despite improving results, the publication of Aujourd'hui Sport ceased at the very moment when circulation was increasing and at time when the summer season was favourable for media expansion.

Mission accomplished: restoring the L'Équipe monopoly

The strategy implemented by the Groupe Amaury captured some of the 10Sport.com readership, reducing its sales and operating result, and eventually leading to cessation of activity for the daily. By achieving the goal it had set itself, the Groupe Amaury enabled its newspaper L'Équipe to regain its monopoly of the French daily sporting press.

An exclusionary practice that harms both the range of products offered and the readership

The way in which a company reacts when a competitor arrives on the market is legitimate if it is based on fair competition. In this case, the Groupe Amaury artificially launched a newspaper with the sole aim of protecting L'Équipe's monopoly. Consequently, the position currently occupied in the market by the Groupe Amaury is the result of this anti-competitive strategy.

The adverse consequences of such an exclusionary practice are important both for the industry and for the readership. Currently, there is just one product on the market, whereas Le 10Sport.com offered an alternative by positioning itself in a market segment that had been vacant hitherto, that of low-priced sports dailies.

The Autorité de la concurrence fined the Groupe Amaury an amount of 3.5 million euros. In calculating the amount of this financial penalty, the Autorité took into account the seriousness of the facts and the harm done to the economy, as well as the position occupied by the Groupe Amaury and the difficulties it is encountering. To take account of the financial difficulties in which the Group's press subsidiaries find themselves, the Autorité reduced the amount of the penalty by 60%. The Autorité has thus been able to assure itself that the Group, which also covers other activities such as the holding of sporting events (the Tour de France, Dakar Rally, etc.), would be able to afford the penalty.

> For more details about the case, please consult the full text of decision 14-D-02 of 20 February 2014 concerning the practices implemented in the sports press sector

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> See Decision of the Paris Court of Appeal (15tf May 2015)

> See Decision of the Court of Cassation (Supreme court of appeal) - 1st March 2017