2 April 2014: Television

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The Autorité de la concurrence again clears, subject to remedies, the acquisition of D8 and D17 by Vivendi and Groupe Canal Plus.

The commitments made by GCP and Vivendi are identical to those made at the time of the 2012 clearance decision with the exception of the one related to the acquisition of the rights to French films, which has been strengthened.

> Version française

On 2 April 2014, the Autorité de la concurrence again cleared, subject to several commitments, the acquisition by Vivendi and Groupe Canal Plus of the companies D8, D17, Direct Productions, Direct Digital and Bolloré Intermédia.

Brief historical overview

- 23 July 2012: the acquisition of the free-to-air channels D8 and D17, previously known as Direct 8 and Direct Star, by Groupe Canal Plus was authorised by the Autorité de la concurrence subject to a series of five commitments:

1-Limit on acquisitions of rights to American films, American series and French films

The parties therefore undertook only to sign output deals combining acquisitions of both free-to-air and pay TV rights with one of the six major American studios (Universal, Paramount, Warner, Sony, Fox, Disney), from which GCP currently purchases rights.

2-Limit on acquisitions of rights to French films

For unreleased French films, the parties undertook not to acquire in the same calendar year the pay and free-to-air broadcast rights for the same film for more than 20 movies and to dedicate most of their investments to mid-budget films ("middle" films), without the ability to pre-empt the rights of a large number of big-budget films (a maximum of 2 films with a budget of more than 15 million euros, 3 with a budget between 10 and 15 million euros and 5 films with a budget between 7 and 10 million euros).

3- Separate negotiations for pay and free-to-air TV rights for films and series

For acquisitions that fall out of the scope of the two preceding commitments, the parties undertook to use specific staff to negotiate the free-to-air broadcasting rights for French and American films and recent American series, separately and independently from GCP's pay TV activities. These teams of staff will be handled by a separate company for acquiring broadcasting rights for free-to-air TV. GCP will not practice or grant any form of bundling, subordination, benefit or financial consideration between acquisitions of free-to-air broadcasting rights and acquisitions of pay TV broadcasting rights.

4-Limits to acquisitions, by Direct 8 and Direct Star, of StudioCanal's film catalogue

On the French film catalogue market, the parties undertook to limit acquisitions by Direct 8 and Direct Star from StudioCanal to levels reported prior to the merger, to limit the term of assignment of rights to six months and not to grant these channels any preferential terms compared to competing free-to-air channels.

5-Sale of the free-to-air broadcasting rights to sporting events of major importance

Lastly, the parties undertook to sell, for free-to-air broadcasting, the broadcasting rights for sporting events of major importance that they may have acquired. These sales will take place after a transparent and non-discriminatory tender procedure involving all relevant broadcasters. The tender procedure will be organised by an independent trustee approved by the Autorité and responsible for monitoring compliance with commitments.

- 23 December 2013: the Conseil d'État (French Administrative Supreme Court) quashed the decision of the Autorité de la concurrence on procedural grounds. With regard to the substance, it also held that the commitment made with regard to French film rights (2nd commitment in the description above) should be strengthened to take into account the competitive risk linked to the purchase of the second and third free-to-air broadcast windows. It specified, however, that the decision would only take effect from 1 July 2014, to allow the Autorité de la concurrence to issue a new decision prior to this date.

- 15 January 2014: GCP and Vivendi gave renotification of the acquisition to the Autorité de la concurrence.

The operation was re-examined in the light of the current competitive situation

While re-examining the operation, the Autorité carried out a new competition analysis in the light of the situation prevailing today. It also submitted the commitments proposed by GCP to other players in the sector (TV channels, producers, etc.) and launched two market tests on the proposed commitments on 21 January and 3 March 2014. It also took into account comments made by the sectoral regulatory bodies that it consulted (CSA, Arcep).

As a result, the Autorité de la concurrence obtained a marked improvement in the commitments proposed with regard to French film acquisition rights.

Groupe Canal Plus's commitments with regard to French films have been strengthened and the rest of the remedies have been maintained

For unreleased French films, the parties have undertaken not to pre-acquire in the same calendar year the pay and free-to-air broadcast rights for the same film for more than 20 movies and to dedicate most of their investments to mid-budget films ("middle" films), without the ability to pre-empt the rights of a large number of big-budget films (a maximum of 2 films with a budget of more than 15 million euros, 3 with a budget between 10 and 15 million euros and 5 films with a budget between 7 and 10 million euros).

This commitment is substantially similar to the one previously agreed with the Autorité but its scope is extended to any pre-purchase, which makes it possible to cover all the broadcasting windows sold by the producers when they organise the film's financing. This commitment also includes any purchases by Groupe Canal Plus, once the film is produced, of the free-to-air broadcast rights to the film up to 72 months after its cinema release, a period that corresponds to the three free-to-view broadcast windows.

All the other commitments made in 2012 remain unchanged.

All these commitments are made by the parties for a duration running until 23 July 2017. The Autorité will strictly monitor compliance with these commitments. An independent trustee, approved by the Autorité, will be in charge of monitoring compliance. The Autorité will be able to renew the implementation of all or part of these measures, once and for five additional years, if the competition analysis, to be performed before the five-year term ends, so requires.

> Full text of the Decision will soon be available on this page

> Press contact: André Piérard - Tel. (+33) 1 55 04 02 28