

5 February 2015: Launch of overseas DTT

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The Autorité de la concurrence fines TDF 4.2 million euros for anticompetitive practices aimed at foreclosing its competitors from calls for tender launched by France televisions overseas

> Version française



In brief

In 2010 France télévisions published nine calls for tender for the award of DTT broadcasting contracts in the overseas territories and communities (five-year contracts).

Three operators responded to these calls for tender with a view to submitting bids, including TDF, the incumbent terrestrial Hertzian broadcaster and OMT, the leading alternative overseas telecommunications operator.

Before and during the competitive dialogue required under tender regulations, TDF did not publish any technical and pricing information concerning access to its infrastructures. This information was however necessary for its competitors to respond to the calls for tender. This absence of any reference offer with regard to hosting on the pylons indispensable for DTT broadcasting led OMT to forego the submission of any tenders for the territories where it was a candidate. The nine contracts were awarded to TDF.

The Autorité de la concurrence issues today a decision whereby it fines TDF a total of 4.2 million euros.

Publication of the reference offer: a major issue in facilitating the entry into the market of alternative operators.

TDF owns the vast majority of the infrastructures necessary for terrestrial Hertzian broadcasting by television channels and the use of hosting on its sites is essential to alternative operators.

On ARCEP's request, the Autorité issued an opinion in 2009 in which it held that TDF's position on the upstream wholesale market of Hertzian broadcasting offers had become stronger since 2006 and that competition in this market was poor due to the small size of alternative operators and the dependence of channels on the incumbent operator's broadcasting infrastructures ([opinion 09-](#)

Strengthening its regulatory framework, ARCEP then imposed a requirement for TDF to publish reference offers (RO) specifying the technical and pricing conditions of regulated offers for hosting and access to the antenna system. The aim of this publication was to ensure a level economic playing field for new entrants by giving them good visibility of the technical and pricing conditions proposed by TDF.

The Autorité de la concurrence's decision

By delaying, without due cause, the publication of this reference offer, TDF abused its dominant position. Competition on the calls for tender was indeed distorted as a result of the asymmetry of information that TDF created between itself and its competitors.

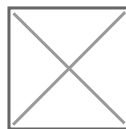
TDF's conduct closed the overseas territories to competition, both in terms of the provision of broadcast services and access to infrastructures throughout the term of the broadcasting contracts (five years).

Based on its assessment of the gravity of the facts and the extent of the damage to the economy, the Autorité fines TDF a total of 3.5 million euros.

Moreover, noting that TDF had already been fined for similar practices (**decision 99-D-14** of 23 February 1999), the Autorité factored in that it was a repeat offence. In the light of this, the amount of the fine was increased by 20%.

> Full text of the decision 15-D-01 of 5 February 2015 on practices implemented in the sector of terrestrial Hertzian television broadcasting overseas

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> See decision of the cour d'appel de Paris (15th September 2016)

> See decision of the Court of Cassation (Supreme Court of Appeal) - 30 May 2018