

11 June 2015: Audiovisual broadcast from the Eiffel Tower

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The Autorité fines TDF 5.6 million euros for practices aimed at foreclosing its competitors from the Eiffel Tower site.

> Version française



After the adoption of interim measures in 2007, the Autorité de la concurrence is today fining TDF 5.6 million euros for distortion of competition in the market for the renewal of the national occupancy contract of the Eiffel Tower site and in the sector relating to FM radio terrestrial broadcasting from the same site.

TowerCast's complaint

TowerCast, a subsidiary of the NRJ group, specialises in terrestrial broadcasting. It alleged that TDF had implemented several practices that in particular prevented it from expanding within the FM radio broadcasting market from the Eiffel Tower.

TowerCast held that TDF had sent it the information that it needed in order to respond to the tender launched by the City of Paris for renewal of the national occupation agreement of the Eiffel Tower site belatedly and in an incomplete form. TowerCast likewise complained that TDF, the national occupant, had carried out similar practices on the hosting market, thus preventing it from making broadcasting offers to radio stations. It also alleged a margin squeeze practice preventing it from submitting a competitive offer to these radio stations.

The interim measures adopted in 2007

In its decision 07-MC-05¹, the Conseil de la concurrence, (the Autorité's predecessor) deemed that the hosting offered by TDF did not allow TowerCast to make offers to radio stations that might offer competition to its own. Inasmuch as it was the eve of the issue by the CSA (French Broadcasting Council) of new authorisations for the use of frequencies by private radio stations, the Conseil issued an interim measure which ordered TDF to put forward a new wholesale hosting offer for FM radio broadcasting from the Eiffel Tower site so that alternative operators could compete effectively with the offers made by TDF to the radio stations.

The Autorité de la concurrence today issued its decision on the merits of the case.

The Eiffel Tower, a strategic site for the broadcasting of radio and TV programmes

Among all the main audiovisual broadcasting sites, the Eiffel Tower site stands out for its particularly broad coverage due to its height. It can reach 11 million inhabitants in the Ile-de-France region, namely 18% of the metropolitan population. The site is used for the broadcasting of all terrestrial DTT services and 30 radio stations. Access to this site is thus essential for broadcasters if they are to be in a position to make broadcasting offers to stations.

The practices implemented

- *TDF transmitted to TowerCast belatedly and in incomplete form the information which was essential in order for it to respond to the tender launched by the City of Paris*

In 2006, when for the first time the City of Paris launched a tender for the renewal of the national occupancy agreement of the Eiffel Tower terrestrial broadcasting site, TDF, the heir of a legal monopoly and outgoing holder of the site occupancy agreement, was the only party to be in possession of all the technical and pricing information that competitors needed in order to put together their bids. This was particularly true in relation to the assets that it would have had to transfer to any competitor chosen by the City under conditions that would allow continuity of service to be maintained. TDF's

competitors were, therefore, at the mercy of its good will.

However, TDF provided this information to TowerCast belatedly and in partial form. It also provided an overestimated valuation of the assets that it would have had to transfer, preventing TowerCast from submitting a bid that was sufficiently precise and competitive for the requirements of the City of Paris's specifications.

- *TDF provided the information that TowerCast needed in order to put together its radio broadcast offer belatedly and in incomplete form*

In order to be in a position to make broadcasting offers to radio stations, TDF's competitors need to be hosted by the occupant of the Eiffel Tower site. Hosting is a technical necessity for alternative broadcasters, who do not hold occupancy authorisation, and a legal obligation for the host, in this case TDF, stipulated in the national occupancy agreement. As a result of not providing a sufficiently comprehensive, tailored offer in time to meet the obligatory deadlines linked to the renewal of frequency authorisations by radio stations seeking a broadcaster, TDF prevented competition from operating on the downstream market of FM radio broadcasting services from the Eiffel Tower site.

- *TDF implemented anti-competitive pricing*

Finally, the hosting offers that TDF made to alternative operators constituted a margin squeeze. Without sufficient economic room, the latter were deprived of the possibility of making offers that could compete with those of TDF.

The fines imposed

By implementing these practices, TDF deprived alternative operators of any possibility of competing effectively and weakened the competitive playing field that would have normally prevailed for audiovisual broadcasting from the Eiffel Tower site. In particular, radio broadcasters were unable to take advantage of the decrease in prices that they could have expected after the market was opened up to competition.

The Autorité has announced two fines that include an additional 25% surcharge as it is a repeat offence - TDF was fined in 1999 for having refused to install and maintain re-broadcasting equipment on the sites that it operated in a

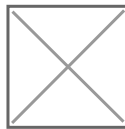
discriminatory and non-transparent way:

- the fine imposed for anticompetitive practices in the context of the renewal of the national occupancy agreement for the Eiffel tower site amounts to 5 million euros;
- the fine imposed for distorting competition on the wholesale market upstream of radio broadcasting and for margin squeeze is 660,000 euros. This takes into account that, as a result of the intervention by the Autorité de la concurrence, which implemented interim measures in 2007, these practices only lasted a few months.

¹ See [press release of 12 July 2007](#)

> [See the full text of Decision 15-D-10 of 11 June 2015 on the practices implemented by TDF on the Eiffel Tower site](#)

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> [See decision of the Paris Court of Appeal \(12 October 2017\)](#)

> ***This Judgement was appealed before the Court of Cassation (Supreme Court of Appeal)***