The Autorité de la concurrence clears, subject to conditions, the creation of the Salto platform by TF1, France Télévisions and Métropole Télévision (M6)

Published on August 12, 2019

Background

Following a referral decision by the European Commission, TF1, France Télévisions and Métropole Télévision (hereinafter referred to as M6) notified to the Autorité de la concurrence to the contemplated creation of a joint venture, Salto, on 17 June 2019. After a thorough and detailed investigation, enlightened by the opinion issued by the CSA, the Autorité clears the creation of this joint venture, subject to conditions.

While the transaction is significant, a sustained dialogue with all stakeholders resulted in its clearance in Phase 1 within eight weeks, once the proposed commitments removed all identified competition concerns.

Salto will distribute television services, including the digital terrestrial television (DTT) channels of the parent companies and their associated services and functionalities (e. g. catch-up television) and subscription video-on-demand (SVOD). Salto's offering will be streamed over the top (OTT) and therefore be accessible to consumers directly on the Internet without the intermediary of a distributor.

As part of the procedure, the parties submitted commitments upon filing the notification form in order to address the competition concerns raised by the transaction. As a result, the Autorité was able to quickly consult the market on this initial proposal. Market stakeholders's responses to the market testcontributed to exchanges with the notifying parties. These discussions led them to propose a

substantially improved new version of their proposed commitments, which in turn was market tested prior to final amendments which were considered satisfactory by the Autorité.

After examining the possible effects of the transaction on the various markets concerned, the Autorité cleared the transaction subject to commitments (as proposed in their final version on 31 July 2019).

These commitments aim to prevent coordination risks between TF1, France Télévisions and M6, as well as risks identified concerning:
- the upstream market for the acquisition of broadcasting rights
- the market for editing and marketing television channels
- the market for the distribution of pay TV services
- advertising markets

UNDERTAKEN COMMITMENTS

1. UPSTREAM MARKETS FOR THE ACQUISITION OF BROADCASTING RIGHTS FOR AUDIOVISUAL CONTENT

In order to replenish the catalogue of its SVOD platform, Salto will be active in the markets for the acquisition of broadcasting rights for audiovisual content (cinematographic and audiovisual works and flow programmes). In line with its Opinion 19-A-04, the Autorité has, for the first time, considered the existence of a single market for the acquisition of linear and non-linear broadcasting rights (except for recent films).

The Autorité analysed to what extent TF1, France Télévisions and M6 are likely to use their position on the markets for the acquisition of linear broadcasting

rights in order to restrict the access of Salto's competitors to non-linear broadcasting rights and to favour Salto in this respect. This risk has been eliminated with regard to American and European contents, in particular because of the presence of significant competitors.

On the other hand, as regards original French-language content and flow programmes, the Autorité identified a risk that the parent companies may implement a generalised strategy of coupling their purchases of linear and non-linear broadcasting rights in order to promote Salto's access to non-linear broadcasting rights, a strategy which would have been harmful both to Salto's competitors and to copyright holders. It also found that the contracts for the purchase of linear broadcasting rights concluded by TF1, France Télévisions and M6 included contractual clauses likely to make the purchase of non-linear broadcasting rights by Salto's competitors more complex (holdback clauses, priority and pre-emption rights).

- **To address these competitive risks, TF1, France Télévisions and M6 have undertaken to limit their possibilities for joint purchases of linear and non-linear broadcasting rights.**
- **In addition, the supply conditions by which Salto will acquire contents from its parent companies will be regulated in several ways so that Salto's ability to acquire exclusive contents from its parent companies will be limited.**
- **In addition, Salto's possibilities to benefit from the contractual clauses contained in the contracts for the purchase of linear broadcasting rights concluded by TF1, France Télévisions and M6 will be strictly regulated.**

2. INTERMEDIATE MARKETS FOR EDITING AND MARKETING TELEVISION CHANNELS

As part of its activity as a distributor of television programming, Salto will enter

into distribution contracts with channel operators.

Following its analysis, the Autorité ruled out any problems concerning pay TV channels given TF1's and M6's weak position in this market.

Taking into account recent market developments, the Autorité for the first time considered a market for the editing and marketing of free-to-air DTT channels. It found that the channels operated by TF1, France Télévisions and M6, as well as their associated services and functionalities, were essential to enable television distributors to provide an attractive offering to consumers.

However, the Autorité considered that, following the launch of Salto, the parent companies could have the ability and incentive to prevent Salto's competing distributors from accessing, at least in part, their channels and associated services and features.

- **In order to resolve these competition concerns, TF1, France Télévisions and M6 have undertaken that Salto will not be able to enter into exclusive distribution agreements for free-to-air DTT channels and their associated services and features. This lack of exclusivity applies particularly to the channels of free-to-air DTT of its parent companies and their services and associated functionalities but also to those of third party operators. However, in order to maintain Salto's incentives to innovate and differentiate itself, the commitments provide for the possibility for Salto to benefit from temporary exclusivity for services and functionalities of its own initiative.**
- **TF1, France Télévisions and M6 have also undertaken to offer directly, i.e., without the intermediary of Salto, the distribution of their free-to-air DTT channels along with their associated services and functionalities to any third party distributor on objective and non-discriminatory terms. To this end, the commitments provide in particular for a mechanism for setting the remuneration due by Salto to its parent companies by two independent experts.**

3. DOWNSTREAM MARKETS FOR THE DISTRIBUTION OF PAY TV SERVICES

In view of the proximity of the business activities of TF1, France Télévisions and M6 in providing television services and Salto's activities in the field of distribution, the Autorité considered that there was a risk of cross-promotion between the free-to-air DTT channels of TF1, France Télévisions and M6 and the Salto platform.

- **The parties have therefore undertaken to limit the possibilities of cross-promotion between their channels and the Salto platform.**

In other respects, Salto will be a new entrant in the market for the distribution of pay TV services and will face significant competition, in particular from SVOD platforms and Internet service providers. Under these circumstances, the Autorité ruled out any competition concerns in the market for the distribution of pay TV services and therefore considered that no commitments in this respect were required.

4. ADVERTISING MARKETS

Salto will not sell advertising space. The Autorité has therefore ruled out any horizontal risks associated with the transaction on these markets.

On the other hand, Salto will likely buy advertising space from its parent companies. As such:

- **The parent companies have undertaken to market advertising space to Salto on the basis of general terms and conditions of sale, and under objective and non-discriminatory conditions.**

5. COORDINATION RISKS BETWEEN TF1, FRANCE TÉLÉVISIONS, M6 AND SALTO

In view of the links created by the transaction, the Autorité considered that it is likely to increase transparency between the parent companies and/or Salto on the markets for the acquisition of broadcasting rights for audiovisual content and for editing and marketing of free-to-air DTT channels, and to a lesser extent, pay TV channels. Such transparency is likely to facilitate coordination between TF1, France Télévisions and M6, as well as with their joint subsidiary.

- **In order to meet this competition concern, the parent companies have undertaken to put in place a set of individual and collective guarantees designed to limit the exchange of information between Salto and its parent companies to what is strictly necessary and within a precise framework.**

Conditions for implementing the commitments

The commitments proposed by the parties will apply throughout mainland France and in French overseas departments, regions and collectivities.

With the exception of commitments to prevent any risk of coordination, which will apply for the lifetime of Salto, the remedies will apply for a period of five years from the date of the decision. At the end of this period, they may be renewed for a maximum period of five years following a competitive analysis to be conducted by the Autorité.

regarding the creation of a joint venture by France Télévisions, TF1 and Métropole Télévision companies

See full text of the decision

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