6 June 2016: DTT broadcasting

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The *Autorité de la concurrence* fines TDF 20.6 million Euros for abusive intervention with the municipalities aimed at hindering the establishment of its competitors.

Besides, the *Autorité* has fined a loyalty rebate system encouraging TV channels to use TDF's services for most of their requirements.

> *Version française*

In brief

The *Autorité de la concurrence* fines TDF 20.6 million Euros for abusively hindering its competitors' development during Digital terrestrial television's (DTT) deployment between 2006 and 2010. TDF has denigrated its competitors upon a risk of disturbance should a collocated pylon be installed, and has abusively intervened with concerned local public authorities to deter them from clearing the establishment of competitor's infrastructures. TDF had also set up a loyalty rebate system by geographic areas which strongly encouraged channel editors, gathered in multiplexes, to use TDF's services for the major part of their broadcasting requirements.

The terrestrial Hertzian broadcasting sector and Itas Tim's complaint

In order to be received in the entire territory, TV channels have to use the services of broadcasters in charge of delivering their signals to French households' antennas, this broadcasting method being mandatory. Broadcasting

from high points according to a territorial grid set by the CSA, operators have to obtain clearance from public authorities to build pylon sites eligible for the accommodation of their technical broadcasting equipment and, thus, being capable of responding autonomously to the multiplexes' call for tenders.

Former state monopoly, TDF is the sector's leader with 80% of terrestrial Hertzian broadcasting market shares. Its main competitors are Towercast and Itas Tim which filed the complaint. The company transferred the matter to the *Autorité de la concurrence* in September 2009, blaming TDF for hampering its infrastructures' establishment near its own sites. In the decision 10-D-09[1], the Autorité has rejected interim measures' requests for lack of urgency but referred the case for investigation into the merits which is subject to the present decision.

TDF has disseminated a depreciating and deceiving allégations to local public authorities to spur them into refusing the establishment of competitor's broadcasting sites nearby its own facilities.

When DTT was deployed, TDF addressed in July 2009 to nearly all mayors of the Alsace area, first region concerned with the transition from analogue to digital broadcasting, an email instructing to notify TDF with any request concerning competitor's pylon installation to prevent radio disturbance risks, in particular due to the existence of easements they would benefit from.

In other regions, especially during 2009, TDF gave several mayors negative opinions concerning the establishment of competitor's pylons as part of the investigation on notices prior installation, yet again on the same ground of preventing radio disturbance risks.

Yet, said risks are not related to the installation of competitor's pylons on the one hand, and on the other hand fall within the scope of very ordinary common law prevention procedures. As a private company operating on a competitive market, TDF plays no specific part in these procedures being only consulted, as the other operators, by competent administrations before they issue a decision.

However, by fear that a new facility would scramble TV reception for their constituents, several mayors have complied with TDF's negative opinions by refusing, based on radio disturbance risk, facilities which had been properly

cleared by competent administrations. These practices mainly occurred in 2009.

TDF has granted loyalty rebates to multiplexes in order to spur them into delegating their broadcasting sites in exclusive distribution or in their near-entirety

Rebates offered by TDF were granted when more than one multiplex hired TDF for a substantial number of broadcasting sites in a given area: the more substantial the share of sites given to TDF was, the higher was the rebate percentage. In general, the rebate was granted only if at least 70% of involved sites were delegated to TDF.

Serious practices

By disparaging the establishment of competitor's broadcasting infrastructures and by exploiting easements from public authorities, TDF has blocked market entrance and its competitors' development by means not relying on a merit-based competition. TDF has thus erected barriers to entering the market, which were already substantial (natural and regulatory barriers in particular).

Furthermore, this practice occured at a time when, with the transition to fully digital networks, an exceptionnal development opportunity presented itself to alternative companies.

This practice is aggravated by the fact that TDF, exploiting its unequalled reputation with local public authorities, has maintained confusion between its situation as a private company and its former status, by profiting from easements granted in the times of public monopoly.
The application of loyalty rebates is equally serious, insofar as they were executed by the dominant operator, resulting in harming competition by favoring TDF's tenders.

Penalties imposed

Consequently, the Autorité fined TDF 20.6 million Euros (11.6 million for deceiving and disparaging discourse and 9 million for loyalty rebates).

[1] See press release of 9 March 2010.

> See full text of decision 16-D-11 regarding practices implemented in the terrestrial Hertzian broadcasting sector.

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> See decision of the Paris court of appeal (21 December 2017)

> The decision was submitted before the Cour de cassation (Supreme court of appeals)