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The *Autorité de la concurrence* reconsiders the regulatory framework applicable to Canal Plus.

It launches today a public consultation to determine if the obligations incumbent on the operator since 2012 should be lifted, adapted or renewed for the 5 years to come.

> Version française

In July 2012, the *Autorité de la concurrence* has, again[1], cleared the acquisition of TPS by the Canalp Plus Group (GCP), subjecting its decision to 33 injunctions[2]. It had besides cleared the acquisition of channels D8 and D17[3] by GCP, subject to the compliance with 7 commitments[4].

These measures, taken for 5 years (until 23 July 2017) can be renewed for 5 additional years (2017-2022) if circumstances warrant it. It is on this basis that the *Autorité* proceeds to a new competitive analysis of the markets involved.

In order to shed light on today's prevailing competitive landscape in the pay and free TV sectors, it calls for the interested actors to give their opinion on the opportunity to lift, adapt or renew these measures. The contributions to the public consultation are to be addressed to the *Autorité* before 30 September 2016. It will issue its decision on 23 June 2017 at the latest.

Objectives pursued by the decision to clear the acquisition of TPS

The measures imposed to GCP within the context of TPS' takeover held 3 objectives:

1. fostering diversity of the sector's players (distributors, independent channels);
2. preserving the competitive future of the new economic fields coming from emerging consumption habits (on-demand or subscription video);
3. protecting the balances of the French cinema's financing system.

In order to avoid the preemption of the best contents by GCP, purchasing behaviours of the latter have been strictly supervised:

- limitation of the contracts duration between GCP, American studios and French producers and supervising of their conditions;
- divestiture of on-demand exploitation rights of Studio Canal's catalogue's movies to any operator who would request it;
- presence of GCP in OCS, its direct competitor, via an independent trustee.

On the intermediate market of edition and commercialization of pay-tv channels and on the downstream market of pay-tv broadcasting services, the *Autorité* has defined measures guaranteeing clear playing rules for the access of independent channels to a broadcasting on CanalSat and an effective competition on the downstream market:

- resumption of a minimal proportion of independent channels;
- reference offers ensuring channels transparent, impartial and non-discriminatory resumption conditions regarding technical, commercial and pricing matters;
- resumption of any channel detaining premium rights on a non-exclusive basis;
- supervision of broadcasting rights' purchasing conditions by GCP in order to allow alternative distributors, particularly internet service providers (ISPs), to compete effectively with CanalSat's broadcasting exclusivities;
- provision to outside distributors of every movie channel edited by GCP (Ciné+ channels) for its CanalSat bundle ("unbundling");
- prohibition of contracts providing the exclusive or privileged presence of its on-demand offers on ISPs' platforms.

Finally, concerning the overseas regions and departments, a general injunction forbids GCP to sign specific contracts for overseas territories, comprising provisions less favourable to distributors than these concluded in the mainland.

Commitments taken by GCP during the acquisition of D8 and D17

Regarding free TV, GCP has entered commitments limiting the number of framework contracts it can hold with Americans studios as the number of recent French movies allowed it to cumulate broadcasting rights for free and pay TV. GCP has also committed to restrict acquisitions of catalogue French movies from Studio Canal for a broadcasting on D8 and D17.

In terms of sports-themed programmes qualified as « major importance events », under applicable regulation, of which GCP would possess the rights, their distribution to free channels has to be done through an impartial, transparent and non-discriminatory competitive process.

Lastly, GCP has committed to negotiating free-to-air broadcasting rights acquisition both separately and without exercising pairings, subject to exceptions explicitly provided in the commitments.

Questions raised by the *Autorité*

The *Autorité*'s decision regarding the renewing of all these obligations requires a new competition analysis. The *Autorité* should have clear ideas on circumstances of fact or of law which would justify the lift, modification or continuation of the measures adopted in 2012[5].

IN ORDER TO REFLECT ON THE IMPLEMENTATION OF THE ADOPTED MEASURES AND ON THE SECTOR'S EVOLUTIONS, THE *AUTORITÉ* WOULD LIKE TO DELVE INTO THE FOLLOWING TOPICS.

Does the arrival of new competitors justify a lift or an adaptation of the measures taken in 2012?

The *Autorité* raises questions on the competitive impact of new linear (such as SFR Sport) or non-linear (such as Netflix) television actors, of which it will examine the position on the broadcasting rights acquisition market as well as downstream, on the market of pay-tv broadcasting services. The *Autorité* will analyse to which extent the new emerging uses, such as access to TV channels through a simple internet connection (known as "over-the-top" offers) modifies the markets' competitive functioning.

Should basic and second-level television offers be distinguished within the ISPs'?

The *Autorité* will also examine if it remains relevant for competitive analysis to distinguish television offers proposed by some ISPs in the basic triple play subscription to those needing the payment of an additional subscription (known as "second-level services").

Do new contents deserve to be regarded as premium today?

The *Autorité* will analyse the potential evolution of said "premium" programmes, in other words programmes likely to foster the decision to subscribe, for sports, movies and fictions (where does it leave TV series for example).

What kind of impact can the affiliation of D8 and D17 to GCP have on contents acquisition and their public?

Finally, the *Autorité* will examine the impact of the enrollment to GCP of the channels D8 and D17, renamed C8 and CStar, on their contents acquisition power as well as on their audience and positions on the market of TV advertising.

The consultation is opened until 30 September

To do so, the *Autorité* will collect the necessary information among the actors involved on this sector. The present public consultation's aim is to allow any interested actor to express itself on the necessity of renewing GCP's obligations, on the results of their implementation, on the actual state of competition and on the market's evolutions.

The other elements on the schedule

Targeted questionnaires will also be sent to the main actors (TV distributors, rights holders, channels editors), who will be heard by the investigation services in the next few months.
The *Autorité* will also gather the views of the French Broadcasting Regulator (CSA), and of the French Telecommunications Regulator (Arcep), which expertise will help shedding light on the evolutions that have occurred on the different markets of television and telecommunications, such as their competitive reach.

Finally, after inter partes exchanges with GCP, the *Autorité* will issue its decision on 23 June 2017 at the latest.

[1] In September 2011, the Autorité had withdrawn its clearance of GCP's acquisition of TPS for non-compliance with several commitments. See press release of 21 September 2001 and decision 11-D-12.
[2] See press release of 23 July 2012 on decision 12-DCC-100 of 23 July 2012.
[3] Named then Direct 8 and Direct Star and soon renamed C8 et CStar.
[4] Decision 14-DCC-50 of 2 April 2014 and press release, reinforcing the commitments made, adopted after withdrawal of the initial decision 12-DCC-101 of 23 July 2012 (see press release).
[5] In their drafting adopted on 2 April 2014 in decision 14-DCC-50 regarding the Canal Plus/D8 transaction.

> See the public consultation document

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