15th April 2002 : The Conseil de la concurrence hands down interim measures against Télédiffusion de France (TDF)

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With regard to the introduction of digital terrestrial television (DTT), following a referral by the company Antalis, on 11th April 2002 the *Conseil de la concurrence* handed down interim measures against TDF.

Digitisation : a new technology for terrestrial television

At present, there are three main ways of receiving television programmes in France : terrestrial over-the-air, satellite and cable.

Terrestrial over-the-air broadcasting involves the transmission of high frequency radio waves. It currently uses analogue technology, but in the future it will use another type of technology : the digital process.

Digitisation will enable more faithful sound and picture reproduction, a wider range of programmes thanks to compression techniques where several programmes are broadcast over the same frequency band, access to interactive services and reception via portable and mobile receivers.

Digital Terrestrial television : an introduction managed by the public authorities

The law of 1st August 2000 relative to the freedom of communication set out the modalities for allocating radio-electric resources and the conditions in which the

CSA (Conseil supérieur de l'audiovisuel, French Broadcasting Regulator) grants the authorisation required for implementing digital terrestrial television.

On 24th July 2001, the *CSA* launched a call for candidates for digital terrestrial television, and published a list of 29 zones, corresponding to the initial planning phase.

Antalis' complaint

On this future market, Antalis would like to propose to television programme editors that it carries out the technical operations required for transmitting and broadcasting their services to the public.

Antalis indicates that it cannot provide this service unless it has access to TDF's broadcasting sites, which are essential to its future activity.

Antalis considers that TDF's hosting conditions are excessive, insofar as the cost of accessing TDF's sites is prohibitive and prevents it from exercising its future activity competitively on the digital television market.

It believes that these sites can be qualified as essential infrastructures, in that it is unable to install similar equipment within the time limits set down by the government, within reasonable economic and technical conditions.

Dominant position and essential infrastructure status of TDF's sites

Only TDF broadcasts the programmes from the public service stations using all analogue telecommunications procedures, in line with the law of 30th September 1986. The private general interest stations usually rely on TDF for broadcasting and transmitting their programmes, even though theoretically TDF is in competition with other operators.

Taking into account the opinion handed down by the *CSA* on 6th March 2002, which indicates the "*dominant position* [of TDF] *on the market for technical terrestrial over-the-air broadcasting of television services*", the *Conseil de la*

concurrence does not rule out the possibility that TDF may hold a dominant position on the French markets for terrestrial over-the-air analogue broadcasting of television stations and therefore, potentially on its adjacent market (the distribution of technical services for terrestrial digital television), on which it could be in competition with Antalis.

Nor does it rule out, at this stage of the inquiry, the possibility that the TDF sites situated in the 29 zones defined by the *CSA* in its call for candidates on 24th July 2001, constitutes an essential infrastructure to which TDF would be required to provide access under transparent, non discriminatory conditions, and conditions which reflect costs.

The need for an interim measure

The economic balance of the digital terrestrial television sector depends critically on the existence of effective competition at all levels, and could be compromised if one of the activities concerned were exercised by a company in a position to receive monopolistic income and exclude the arrival of new entrants on the market in question.

Concerning the technical broadcasting of programmes, it is essential that programme editors have access to competing offers that are transparent and comparable. The tariffs proposed by TDF to Antalis so far do not appear to present these characteristics. To be able to offer editors such a service at the start of 2003, the company Antalis must urgently be made aware of the hosting conditions on TDF sites situated in the 29 zones appearing on the first list published by the *CSA*.

Consequently, the *Conseil de la concurrence* has ordered "*the company TDF to disclose to any company so requesting it, an introductory service offer concerning at least the terrestrial broadcasting sites installed in the first 29 broadcasting zones defined by the* CSA *in its decision of 24th July 2001. This service offer must be detailed item by item, and must incorporate tariff conditions established in an objective, transparent and non-discriminatory fashion, at a price in relation to the direct and indirect costs of the services offered, including reasonable return on capital invested*".

> Decision n° 02-MC-04 of 11st April 2002 relative to a request for interim measures filed by the company Antalis

> See decision of the Paris Court of Appeal (21st May 2002)