

22 june 2017 : Free television sector

Published on June 22, 2017

As part of the reexamination of the commitments made on the acquisition of Direct 8 and Direct Star, the Autorité de la concurrence modifies the framework of measures previously imposed to Group Canal Plus.

Certain injunctions have been lifted, or adapted to take into account the evolution of the markets. Others, however, have been maintained to preserve the competitive dynamics.

BACKGROUND

- 23 July 2012: the Autorité de la concurrence clears the acquisition of free-to-air TV channels Direct 8 and Direct Star by Vivendi and Groupe Canal Plus, subject to several commitments (Decision n°12-DCC-101 - [see the press release](#)).
- 21 December 2012: the French Administrative Supreme Court annuls Decision n°12-DCC-101, notably judging that the commitment made on the acquisition of rights for French films should be reinforced. It specifies that its decision would come into effect from 1 July 2014, so as to enable the Autorité to make a new decision before that date.
- 2 April 2014: The Autorité de la concurrence again clears, subject to several commitments, the transaction. The remedies are made by the parties for a duration running until 23 July 2017 and can be renewed once for five additional years after that date. (Decision n°14-DCC-50 of 2 April 2014 - [see the press release](#)).
- **9 June 2017:** Following exchanges with the Autorité and a consultation with the market stakeholders, GCP formulates a proposal of modified commitments in its last version.

Five years after its initial decision, it now falls to the Autorité to decide whether the commitments should continue to be implemented, in whole or in part, given the evolution of competition in the markets in question.

COMMITMENTS TAKEN IN 2014: OBJECTIVES AND PRINCIPAL MEASURES

Objectives pursued

With the acquisition of free-to-air TV channels Direct 8 and Direct Star , Groupe Canal Plus, the largest pay TV operator in France, strengthened its activities in the free-to-air television markets.

The commitments taken by GCP in the framework of this procedure were designed to:

- Limit the acquisition of rights for American movies, American series and French-language films to prevent GCP from using its buying power to drain competing free-to-air TV channels from the purchasing rights market, however without preventing GCP from supplying the merged channels with attractive programs, to the benefit of TV viewers ;
- Limit the acquisitions, by Direct 8 and Direct Star, of StudioCanal's catalogue movies, so that this catalogue remains available to the other players in the free-to-air television sector ;
- Impose a transparent and non-discriminatory tender procedure of the free-to-air broadcasting rights of major sporting events held by GCP.

Reminder of the core measures

Limit on acquisitions of rights to American films, American series and French films

- ***For American series and films***

GCP undertook to restrict to one the number of majors (large American studios) with which it can finalise frameworks agreements combining the purchase of broadcasting rights for recent films for pay TV and free-to-air broadcasting rights for new films and/or recent American series for free-to-air broadcasting **(commitment 2.1 (a))**.

- ***For the French cinema contents***

Firstly, GCP undertook not to pre-acquire, in the same calendar year, the pay and free-to-air broadcasting rights of the same film for more than 20 movies **(commitment 2.2.1)** from which:

- a maximum of 2 films with an estimated budget of more than 15 million euros;

- a maximum of 3 films with an estimated budget between 10 and 15 million euros;
- a maximum of 5 films with an estimated budget between 7 and 10 million euros.

Secondly, GCP committed to giving up the benefit of any first refusal clause associated with the broadcast of an original French-language film, provided that its free-to-air channels have not acquired the right relating to the first free-to-air broadcast (**commitment 2.2.2.**).

Separate negotiations for pay and free-to-air TV rights for films and series

GCP undertook to:

- call on specific staff to negotiate the free-to-air broadcasting rights of recent French and American movies and series, separately and independently from GCP's pay TV activities.
- not practice/grant any form of bundling, subordination, benefit or financial consideration between acquisitions of pay TV broadcasting rights and free-to-air broadcasting rights' acquisitions. (**commitment 2.6.**)

Limits to acquisitions, by Direct 8 and Direct Star, of StudioCanal's catalogue films

GCP committed to limiting the acquisitions made by Direct 8 and Direct Star from StudioCanal to 36% of the total number and 41% of the total value of catalogued French films acquired annually by each of its channels. GCP also committed to limiting to six months the duration of divestiture to these channels of catalogued French films marketed by StudioCanal. More generally, the commitment prohibits GCP from granting its free-to-air channels preferential and discriminatory conditions in relation to competing free channels for the acquisition of catalogued French films held by StudioCanal (**commitment 2.3.**).

Sale of the free-to-air broadcasting rights to sporting events of major importance

GCP undertook to divest the rights it acquired and which wouldn't be broadcasted as « free-to-air » content on Canal+, after a tender procedure involving all the interested broadcasters (including C8 or CStar as the case may be), on the basis of objective, transparent and non-discriminatory economic criterias **(commitment 2.4.)**.

MARKET CHANGES SINCE 2012: GCP MUST FACE A MORE INTENSE COMPETITION

Pay and free TV sectors have evolved at an intensive pace, in particular since the end of 2016.

In particular, the Altice group is pursuing an ambitious, offensive global strategy based on convergence between its ISP, free and pay TV production and distribution activities. This strategy first became clear with the signing of a framework agreement with NBCUniversal studio (a contract previously held by GCP), allowing it to broadcast on pay TV recent American films acquired within this contract. Publicly available information refers to numerous other projects by the Altice group relating in particular to buying American - and to a lesser extent French - film content.

This proactive strategy of cinema contents purchasing comes with a remarkable breakthrough of Altice in the sporting rights' acquisition markets (in particular the English Premier League and mainly, very recently, the Champions League).

Lastly, Altice also increases its presence on the distribution and broadcasting markets of pay TV channels, in particular Discovery and NBCUniversal, and the launch scheduled this summer of the forthcoming pay TV channel SFR Studio. The acquisition of free-to-pay channel Numéro 23, by Altice (subject to the approval of the French Broadcasting Regulator - CSA), will confirm its expansion in the linear TV sector, enabling it to enter the free television market.

Although GCP keeps having, to date, a central role on the pay TV broadcasting rights markets, in particular regarding French-language films. Therefore it faces a recent and increasing competitive pressure from Altice which pursues an

expansion policy on these same rights' acquisition markets.

This market dynamics thus places GCP in a more and more competitive environment.

A MODIFIED FRAMEWORK

In view of all these evolutions, the commitments have either been maintained, lifted or adapted, based on GCR proposals.

Measures relating to the acquisition of broadcasting rights for recent American films

The Autorité considers that GCP's proposal to increase the number of majors with which it can finalise framework agreements bundling the acquisition of broadcasting rights for free and pay TV, is in line with the conclusions of the competitive analysis. This proposal guarantees sufficient access for free-to-air audiovisual companies to attractive American contents, and increases GCP's leeway in the face of emerging competition from Altice **(commitment 2.1.)**.

Measures relating to the acquisition of broadcasting rights for recent French films

Regarding rights for recent French-language films, although in the coming years Altice is likely to exert competitive pressure on GCP, Groupe Canal still retains an important position in terms of funding French cinema and therefore is able to have a lever effect between its pay TV and free television activities, to the detriment of its competitors. The Autorité therefore deems it necessary, as GCP proposes, to maintain unchanged the quotas for original French films, for which coupled purchases for pay TV and free television are authorised (commitment 2.2.1.).

In terms of rights of first refusal, the Autorité deems that GCP's proposal to enable it henceforth to negotiate alternate priority and/or first refusal clauses is justified regarding the market practice prevailing when several audiovisual groups pre-purchase free-to-air broadcasting windows of a same French

original film. The implementation of these alternate priority and/or first refusal clauses is limited to five years from the expiry date of the final pre-purchased free-to-air broadcasting window. This time limit makes it possible to limit the impact of these clauses on the availability of catalogued works to competing television channels (**commitment 2.2.2.**).

Measures relating to the separation of teams

In order to reduce the possibility, for GCP, of using a lever effect between its acquisitions of broadcasting rights for pay TV and free TV, it is necessary to extend the commitments described previously by maintaining the obligation to separate the commercial teams in charge of negotiating the acquisition of broadcasting rights for recent American films and series (commitment 2.1.) and recent original French films (commitment 2.2.1.) for broadcasting on pay TV and free television. This commitment does not, however, apply to the two joint framework agreements contracted with the majors, or to the twenty French original films that can be jointly pre-purchased, for pay and free-to-air TV (**commitment 2.6.**).

Measures relating to the acquisition of broadcasting rights for catalogued French films

Although the StudioCanal catalogue is still the main quota film catalogue in France today, it is less essential than it was when Direct 8 and Direct Star, which became C8 and CStar, were acquired. In this regard, it seems that DTT channels that are not associated with major groups are able to get what they need, at least in part, from other major French cinema studios. It is therefore justified, as GCP proposes, to raise the ceiling for acquisitions by C8 and CStar with Studiocanal to 50% in volume and in value of French catalogue movies' acquisition carried out annually by each of these channels. Furthermore, GCP's request to be able to negotiate for C8 and CStar a 12-month duration of divestiture of rights to catalogued StudioCanal films, when at least two broadcasts are planned on these channels, is justified in view of market practices. However, the obligation to not grant discriminatory and preferential conditions to C8 and CStar for the acquisition of catalogued French films held by

StudioCanal is unchanged (**commitment 2.3.**).

Measures relating to the acquisition of broadcasting rights for major sporting events

Regarding rights to major sporting events, GCP is no longer able to hold back a substantial portion of the broadcasting rights for major sporting events from free-to-air channels, to the extent that it now holds only a very limited number. This situation is not likely to change, insofar as GCP is now facing increasing competitive pressure on the acquisition market for these rights. This competition is notably due to the Altice company, which is adopting a pro-active strategy of acquisition of sporting rights, and which will, after the planned takeover of channel Number 23, be able to reserve for its free-to-air channel the broadcasting of major events for which it holds the broadcasting rights.

The commitment relating to the organisation of a competitive bid for the divestiture of rights for major sporting competitions is therefore removed (**commitment 2.4.**).

The new framework shall apply until 31 December 2019.

The main operators active in these various markets will be able to find, relatively close at hand, credible alternatives to GCP. Because of the upcoming acquisition of Numéro 23 by Altice, subject to French Broadcasting Regulator – CSA's approval, GCP will no longer be the only operator likely to make its content purchases for broadcasting on pay TV and on free TV.

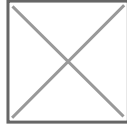
Henceforth, the Autorité de la concurrence deems that the commitments made by GCP set out in the present decision shall remain in effect until 31 December 2019.

¹ *Direct 8 and Direct Star TV channels changed their names several times: they became D8 and D17 respectively and then C8 and CStar in September 2016.*

² *The Autorité authorized on 13 June 2017 the takeover of Groupe News Participations by SFR Group (decision 17-DCC-76 of 13 June 2017 / see press release).*

> See the full text of the decision 17-DCC-93

> Press contact : Aurore GIOVANNINI Tel : 01 55 04 01 81 / Mel



> This Decision was appealed before the Conseil d'Etat (pending case)