

18 December 2017: Pay TV

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The Autorité de la concurrence approves the new Groupe Canal Plus reference

regarding the inclusion of independent channels within its offers.

This new reference offer guarantees a balanced relationship between Groupe Canal Plus and the channels

by giving them objective, transparent and non-discriminatory distribution conditions.

In its Decision 17-DCC-92 of 22 June 2017 (**see the press release of 22 June 2017**), the *Autorité de la concurrence* reviewed the injunctions imposed on Groupe Canal Plus (hereinafter "GCP") in 2012 following the acquisition of TPS.

For reference, in view of the dominant position still held by GCP in the pay TV distribution market, the *Autorité* upheld its constraints on the operator, regarding the relations with the channels.

In its Decision 17-DCC-92, the *Autorité* found that GCP still had a prominent position in the pay TV services distribution market, putting channel producers in a position of dependency on it. This situation persists, in particular because of the bulk marketing by GCP since October 2016 of its "by Canal" offers to Internet service providers (ISPs), which then distribute them to their customers. These wholesale offers are marketed by Free ("TV by Canal"), Orange ("Famille by Canal") and Bouygues Telecom ("Start by Canal").

The *Autorité* thus upheld its obligation on GCP to define objective and transparent rules for the distribution of independent channels within its offers. To this end, the *Autorité* called upon GCP to put forward a new reference offer for the inclusion of the independent channels, within 3 months of the notification of its decision.

GCP sent the *Autorité* a first proposal for the new reference offer. This was put out to a public consultation (**see the consultation**), which allowed for the gathering of feedback from the French Broadcasting Regulator (CSA) and interested third parties. The proposal was substantially improved and specified by GCP. The *Autorité* estimated that it was bringing an adequate answer to the recommendations selected in its decision 17-DCC-92 and therefore approved it.

A reference offer updated for inclusion of the independent channels

The new reference offer takes into account the clarification and modification requests expressed in Decision 17-DCC-92, including the definition of specific arrangements for the inclusion of the independent channel subject to GCP's wholesale distribution.

- *Additional minimum payment for channels distributed in the "by Canal" offers*

In particular, the new offer provides for a specific minimum payment for channels included in GCP's wholesale offer, a corollary to the additional revenue generated for GCP by the wholesale offer (the "by Canal" offers made to the ISPs); this mechanism can then ensure a significant additional minimum payment.

More generally, the changes introduced by the new reference offer address the risk, identified by Decision 17-DCC-92, that the introduction of GCP's wholesale offer could give it "*the ability to impose arbitrary commercial conditions on the channels, in view of its current status as inevitable distributor*". In this respect, the new reference offer provides guarantees of transparency regarding the amount that the channels will be paid by GCP for their wholesale distribution.

• *A revised calculation method for the minimum payment of non-exclusive channels*

Other changes were also made, in particular to the method of calculating the minimum payment for channels included on a non-exclusive basis. This revised calculation method makes minimum payments for non-exclusive channels clearer and more coherent.

The implementation of this new reference offer will enable balanced contractual relationships to be maintained between GCP and the independent channels by giving the channels objective, transparent and non-discriminatory distribution conditions.

> **See the full text of decision 17-DAG-01 of 18 December 2017 with the annexed reference offer**

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