

25th July 2000 : Request for interim measures submitted by four film theatre operators

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In a decision dated 25th July 2000, the Conseil de la concurrence examined the request for interim measures submitted by four film theatre operators : Cinevog, les Cinq Parnassiens, Studio du Dragon and MK2, concerning the "UGC Illimité" subscription card.

These operators had submitted a complaint to the *Conseil*, because they considered that the package offered by UGC constituted an abuse of a dominant position or an excessively low price practice, and as a result led to competing companies, who were unable to respond with similar offers, being excluded from the Parisian market. They highlighted the fact that the practice was particularly detrimental to independent Parisian experimental and art film theatres, insofar as the programmes of UGC theatres is in direct competition with these operators for so-called "strong" experimental and art films. Citing the fragile financial situation of independent theatres, they had asked the *Conseil* to launch an emergency procedure, ordering UGC to suspend sales of the card and cancelling or "suspending the effects" of the subscriptions already taken out.

Before examining the admissibility of a request for interim measures, the *Conseil* verifies that the referral on the merits is admissible. This involves ensuring that it has sufficient elements in its possession, not to rule out the possible existence of a practice with an adverse effect on competition.

The available data included shares of takings in 1999 – which reveal that UGC is the leader with 37.2% of takings in the city of Paris and 26% in the entire Ile-de-France region – the fact that UGC belongs to a powerful group and the

observation that it holds three of Paris' six multiplexes. This data appeared sufficient to indicate that UGC is one of the foremost operators in the market. Under these conditions, there were no grounds for ruling out the possibility that it was likely to hold a dominant position, subject to further checks to be carried out during a full inquiry on the merits.

The plaintiff parties claimed that the "UGC Illimité" card constituted sale at a price lower than average variable costs and was predatory in nature. In any market, it is possible that a price may be placed at a low level, not for commercial reasons but with the sole aim of excluding competitors, and subsequently taking advantage of a stronger market position. Any such price is qualified as "predatory" and is prohibited by Articles 8 and 10-1 of the Ordinance of 1st December 1986. According to existing French and EC case law, a price that is lower than average variable costs and which has no economic justification can only be explained by a predatory strategy.

In the decision it has just published, the *Conseil* specified that any subscription package giving the customer the right to an unlimited service must necessarily reach a threshold (at least theoretical), beyond which costs are no longer covered by income. Unless to prohibit any form of subscription offering unlimited services, any evaluation of the variable cost of an unlimited service must be carried out according to real average consumption. The figures provided by UGC showed that the real average consumption of card holders worked out to 0.7 entrances per week, or 37.2 entrances per year, a figure lower than the threshold of 66 to 70 entrances per year, beyond which the variable costs borne by the company are no longer covered by income from sales of the subscription. However, the *Conseil* took the view that the figures produced by the company were only provisional, and applied to too short a period of use. In addition, they did not show the number and behaviour of subscribers on the Parisian market. As a result of these uncertainties, the *Conseil* did not rule out the possibility that the "UGC Illimité" card may constitute a predatory price practice, although this issue must be examined in greater detail during the full inquiry on the merits.

The *Conseil* then ruled on the grounds for the request for interim measures,

which can only be received if it is shown that the practice causes serious and immediate damage to the plaintiff companies, the sector concerned, consumers or the economy in general. On the basis of data taken from the analysis of the rise in theatre operators' takings, carried out by the *Centre national du cinéma* (National Centre for Cinema), which on 26th June 2000 applied to 63 establishments accounting for 92% of takings in Paris, the *Conseil* observed a substantial increase in entrance figures compared with 1999. It is true that UGC recorded a bigger increase in entrances than those of other operators. However, the plaintiffs themselves acknowledged that they had experienced a rise in audiences compared with 1999, and that they were unable to establish any phenomenon of eviction from the market that could be attributed to the "UGC Illimité" card. Consequently, the legal conditions required for the issue of interim measures were not met, and the *Conseil* rejected the requests, without prejudice to any other decision it might take in an alternative context.