Referral and request for interim measures filed by the companies Multivision and TPS, concerning certain practices implemented by the companies Canal Plus and Kiosque

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On 9th January 2001, the companies Multivision et TPS submitted a referral to the *Conseil de la concurrence*, accompanied by a request for interim measures, concerning certain practices implemented by the companies Canal Plus and Kiosque (subsidiary of Canal Plus) which the plaintiffs considered to be anticompetitive. In particular, they asked the *Conseil* to order Canal Plus and Kiosque to cease purchases of exclusive rights to broadcast recent French films on pay-per-view.

(N.B. Pay-per-view is an emerging method of paid television broadcasting, whereby the viewer selects the programmes he wishes to watch and is billed directly “for the service” via a digital terminal.)

The *Conseil* first of all ruled on the admissibility of the referral on the merits, which is a prerequisite for any examination of a request for interim measures.

On this point, it considered there were no grounds for ruling out the possibility, at this stage of the proceedings and subject to a full inquiry on the merits, that the combination of certain practices could be qualified as anticompetitive. The practices concerned involved, on the one hand, the company Canal Plus reaching a general agreement with cinema professionals to exclude pay-per-view, and on the other hand the company Kiosque developing its activity by signing contracts with producers to purchase exclusive pay-per-view broadcasting rights for most of the high-audience films available.

The condition of admissibility having been established, the *Conseil* then proceeded to examine the request for interim measures. In the light of the case documents, it took the view that there was sufficient evidence to justify the imposition of immediate measures, referred to as interim measures. This procedure, which is faster than the normal process, enables the *Conseil de la concurrence* to take urgent decisions in the event of "*serious and immediate damage to the economy in general, that of the sector concerned, the interests of consumers or the plaintiff company*". It is in no way a substitute for a full inquiry into the referral on the merits, which will be conducted at a later date and will culminate in a new decision.

The *Conseil* took the view that the practices, whereby the company Kiosque purchased exclusive pay-per-view television broadcasting rights for recent French films and froze these rights for a period of 24 months following the cinema release of the said films (whereas under the terms of the contract the company Kiosque may only exercise them for a period of three months), were of a serious and immediate nature, likely to damage :
- on the one hand, the sector concerned :

by weakening the company Multivision, Kiosque's only competitor in the pay-per-view market, and whose financial situation is already in deficit ;

by making it impossible for the company Multivision to respect its obligations in terms of quotas of French language films broadcast, which could prevent it from renewing its operating agreement with the CSA (Broadcasting Regulator) and exposes it to the risk of penalties and possible withdrawal of its authorisation by the CSA.

- on the other hand, the interests of consumers :

by reducing the choice of attractive recent films to which they have access via pay-per-view.

Although at a hearing, the company Kiosque finally undertook to renounce this exclusivity for all but five films and made its decision public, the *Conseil de la concurrence* considered that the practice, albeit limited, nevertheless threatened

to distort the play of competition, given that these five films would naturally be chosen for their attractiveness.

For this reason, the *Conseil* ordered "the companies Canal Plus and Kiosque, as well as all companies acquiring their rights as a result of the merger with the companies Vivendi and Universal, to refrain from acquiring, either directly or indirectly, exclusive pay-per-view television broadcasting rights for recent French language cinema films, without exception, until such time as a full decision is handed down on the merits of the case."