The Autorité de la concurrence issues a favourable opinion on the draft decree to extend the subscription packages for unlimited access to cinemas until 31 December 2023

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Nevertheless, it has requested the *Centre National du Cinéma et de l'image animée* (CNC, The French Film Commission) to draw up a competitive assessment of the impact of this extension within three months of its adoption.

Background

Though critical of the time constraints under which it had to issue its decision and the fact that it was impossible to conduct a detailed assessment of the competitive impact of the proposed framework due to a lack of sufficient economic data, the *Autorité de la concurrence* has issued a favourable opinion on the draft decree to extend the packages for unlimited access to cinemas until 31 December 2023. In effect, the *Autorité* is of the opinion that the few elements collected during the investigation and at the hearing make it possible, *a priori*, to rule out the main competitive risks likely to result from the proposed measure, and that the current holders of unlimited access cards could have been aggrieved if these authorisations were not renewed.

However, in addition to this favourable opinion, the *Autorité* has requested the CNC to draw up an interim assessment within three months of the adoption of the draft decree, analysing the impact of the extensions on the various actors in the cinema industry.

The authorisation procedure

In order to offer an "unlimited card" package to cinema goers, cinema operators must first request authorisation from the president of the CNC, in accordance with articles L. 212-27 et seq. of the *Code du cinéma et de l'image animée* (CCIA, French cinematographic industry code). These requests for authorisation (or renewal of authorisation) must be accompanied by economic data, so that the president of the CNC can ascertain, in particular, whether "the reference price", which serves as the basis for the remuneration of rights holders and distributors, has been set taking into account the evolution of the average price of tickets sold per unit by the cinema operator, the situation in the cinema market, and the observed and expected effects of the access package. Three cinema operators (Pathé Gaumont cinemas, the UGC national distribution channels and the "Cinéma des Cinéastes" cinema) have been authorised to date.

A year ago, given the upheaval in the film industry due to the Covid-19 sanitary crisis and the difficulties for the operators to provide reliable economic data to substantiate their requests to renew their authorisation, an extension of 15 months was granted by the decree of 23 September 2021 [1], issued after a favourable opinion from the *Autorité* (see Opinion 21-A-10 of 17 September 2021) This opinion was accompanied by a request for the CNC to draw up an interim assessment within three months of the adoption of the draft decree, analysing the impact of the extension on the other operators.

The competitive analysis conducted by the *Autorité de la concurrence*

The *Autorité* once again received a request for extension, essentially due to the same difficulties, until a single date for all the operators concerned, namely 31 December 2023. Firstly, having noted with regret the fact that the referral was submitted late, despite the expiry dates of the authorisations were known, and

secondly, the fact that no interim assessments and certain economic data were drawn up, even though these were available, the *Autorité* noted that the few elements gathered during the investigation and the hearing make it possible, *a priori*, to rule out the main competitive risks on the situation of independent cinema operators, rights holders and distributors that would be likely to result from the proposed framework.

In its analysis, the *Autorité* also considered the negative impact on the current holders of unlimited cinema subscription package if the authorisations were not renewed. Finally, it notes that given the changes to the legal framework for unlimited cinema subscription packages that may take place by the end of 2023 following the "Cinema and Competition" mission launched jointly by the French Minister of Economy and the Minister of Culture, and the single deadline of 31 December 2023 for current authorisations envisaged in the proposed framework, requests for authorisation or renewal of authorisation would all be examined, if necessary, under the lens of the new provisions of the CCIA.

In view of the foregoing, the *Autorité* has issued a favourable opinion on this second request for extension.

Nevertheless, the *Autorité* reiterates the fact that automatic extensions of authorisation, without detailed economic analysis, can only be considered in exceptional cases and cannot be regarded as a permanent situation. Once again, it invites the CNC to draw up an interim assessment within three months of the adoption of the draft decree, to assess the impact of these two successive extensions on the actors in the cinema sector.

[1] Decree 2021-1219 of 23 September 2021.

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See full text of the opinion

Contact(s)

Maxence Lepinoy
Chargé de communication,
responsable des relations avec les
médias
06 21 91 77 11
Contact us by e-mail