[FR] Canal+ Found Guilty by the Fair Trading Council of Abuse of Dominant Position

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In July 1997 Télévision par satellite (TPS), one of the three digital bundles of channels in France, and its payper-view service Multivision applied to the Fair Trading Council (Conseil de la concurrence) for it to examine certain practices of the terrestrial pay-channel Canal+ which they considered unfair. The decree of 9 May 1995 and the agreement signed by Canal+ and the Conseil Supérieur de l'Audiovisuel (CSA) require the encrypted channel to devote at least 25% of its total annual resources excluding VAT to the acquisition of exclusive broadcasting rights to cinematographic works which have not yet received investment approval. In practice, however, Canal+ pre-purchases 80% of the rights to French cinematographic production with the contractual proviso that, until the end of the period for which it has negotiated exclusive rights to broadcast to its subscribers, the producers must refrain from allowing any other operator rights to broadcast films on television on a pay-per-view basis. For a period of two years from a film's first showing in the cinema, these pre-purchased films may not be broadcast on any pay channel other than Canal+. The channel refused to waive its exclusive rights and allow TPS rights in respect of seven films on a pay-per-view basis. On the basis of a decision by the European Commission on 9 November 1994 (case no.IV/M.469 - MSG Media Service), the Fair Trading Council acknowledged the existence on the one hand of a pay-television market separate from commercial television, and on the other of a market in broadcasting rights for recent French films for their broadcasting by a pay-television service. Considering that the company Canal+ represents more than 70% of pay-television subscribers and that it pre-purchases some 80% of the rights to French cinematographic production, the Council found that it thus had a dominant position in both markets. Lastly, the fact that Canal+ prohibited any broadcasting of its pre-purchased films on a pay-per-view basis both before and during the period in which the channel may use the exclusive rights it has negotiated had the effect of restricting competition in the pay-television market and constituted an abuse of its dominant position, prohibited by the provisions of Article 8 of the Order of 1 December 1986. The Fair Trading Council therefore ordered Canal+ to cease such contractual practices and to pay a fine of FRF 10 million (EUR 1.8 million). The channel has appealed.

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Décision n° 98- D 70 du Conseil de la concurrence du 24 novembre 1998 relative à la saisine des sociétés Multivision et Télévision par satellite (TPS) dans le secteur des droits de diffusion audiovisuelle.

Decision no.98-D 70 of the Fair Trading Council of 24 November 1998 concerning the referral by the companies Multivision and Télévision par Satellite (TPS) in the sector of audiovisual broadcasting rights.

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