[FR] Canal+ Sanctioned for Abuse of Dominant Position

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Canal+, the main investor in the French cinema industry, has just been fined 10 million French francs (more than EUR 1.5 million) for abusing its dominant position in the pay-television market and in the market for the broadcasting rights for recent French films.

The encrypted channel does indeed play an essential role in production by pre-purchasing 80% of French films. This financing is subject to a clause reserving exclusivity for broadcasting these films for one year following the twelve months after the film has first been shown in cinemas.

To ensure their development, the pay-per-view channels of the satellite packages need to offer attractive programming, ie recent films before they are shown on terrestrially-broadcast television. The operator TPS, Canal+'s main competitor, is indeed complaining that no (new) film is available during this period since producers are bound by an exclusivity clause to Canal+.

TPS therefore appealed to the French competition council (Conseil de la concurrence) which delivered its decision on 24 November 1998 (see IRIS 1999-2:7), maintaining that Canal+ was abusing its dominant position in the pay-television market.

In upholding this decision on 15 June, the court of appeal in Paris demonstrated very clearly that Canal+ did indeed occupy a dominant position in the specific market of broadcasting rights for films in French to be shown on pay-television channels as its subscribers constituted 70% of the total subscribers to pay-television and it fixed market prices by pre-purchasing 80% of rights. The Court also found that the fact of a subscriber television operator concluding contracts to purchase exclusive rights was not in itself contrary to the provisions of Article 8 of the order of 1 December 1986 on the freedom of prices and competition. It added, however, that this practice on the part of Canal+, which made the pre-purchase of television broadcasting rights conditional on the films not being broadcast by any pay-per-view television channel during the entire period covered by its own broadcasting rights, resulted in halting development of the sub- market of pay-per-view television. It was therefore clearly contrary to fair trading. The fact that Canal+ was meeting a statutory obligation to finance French production and the argument that these practices had largely contributed to maintaining a flourishing French production industry in no way justified behaviour designed to hamper the

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development of pay-per-view television. In addition to the fine of 10 million French francs, Canal+ is also required under this decision to amend its standard pre-purchase contract. Canal+ must delete the clause under which producers of films pre-purchased by Canal+ waive the right to transfer pay-per-view broadcasting rights to any other operator before and during the period during which Canal+ may broadcast exclusively to its subscribers. Canal+ has not excluded the possibility of appealing to a higher authority, as this decision could threaten the present balance of financing for French cinema film production.

Cour d'appel de Paris, 15 juin 1999, SA Sté Canal+ c/ SNC Télévision par satellite (TPS).

Paris Court of Appeal, 15 June 1999; SA Société Canal+ v. SNC Télévision par satellite (TPS).

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