[FR] The Court of Cassation Upholds the Judgment CANAL+ on abuse of its Dominant Position against

IRIS 2000-6:1/14

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The Court of Cassation has rejected the appeal lodged by CANAL+ against the judgment delivered against it by the Monopolies Board, upheld by the Court of Appeal in Paris, on abuse of its dominant position in the market for the television rights for broadcasting cinema films (see IRIS 1999-2: 7 and IRIS 1999-7: 8). CANAL+ pre-purchases 80% of the rights for broadcasting full-length film productions of French origin. This financing goes hand-inhand with a clause reserving exclusive broadcasting rights for the films by a pay-TV channel for one year following the twelve months after its first showing in the cinema, which its competitor TPS challenged in this case.

In support of its appeal, CANAL+ claimed that the court of appeal had not determined precisely the reference market in respect of which the dominant position should be considered. However, the Court found that "in deciding that the company CANAL+ occupied a dominant position, on the one hand in the pay-TV market and on the other in the market for broadcasting rights for broadcasting recent French-language films on pay-TV", the court of appeal had "by a founded decision, determined the limits of the relevant markets and legally justified its decision". CANAL+ also claimed that the fact that it held 59% of the market for broadcasting rights for recent French films was imposed on it by the legal framework and regulations in France, which required it each year to invest 9% of its turnover for the previous year and did not allow it any freedom of choice or behaviour. However, the Court of Cassation found that the court of appeal did not need to determine whether the situation had been engendered by the public authorities, as this circumstance was not such as to allow the practices resulting therefrom to be waived.

The Court of Cassation also agreed that the practices of CANAL+ hindered the development of a new market, in that TPS - like other pay-TV services - did not have access to the films pre-purchased by CANAL+ (80% of French cinema films produced each year) and covered by the exclusivity clause. Thus abuse of its dominant position and the harm to the economy caused by the practices of CANAL+ were established. The Court of Cassation also upheld the order requiring CANAL+ to amend its standard contract for the pre-purchase of rights, either deleting the clause according to which the producer of a film it pre-purchases agrees to refrain from transferring to any other operator the broadcasting rights in respect of a pay-as-you-watch service before and during the period during

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which CANAL+ may make the work available by exclusive broadcasting to its subscribers. The order for CANAL+ to pay a fine of FRF 10 million was also upheld.

Cour de cassation (chambre commerciale), 30 mai 2000 CANAL+ c/ TPS et Multivision.

Court of Cassation (commercial chamber), 30 May 2000 CANAL+v. TPS and Multivision.

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