[FR] TF1 Guilty of Abuse of Dominant Position in the Television Advertising Market

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A decision taken on 13 February 2001 by the Conseil de la concurrence (the French Council on Competition) in a case brought to its attention by CANAL+ dealt with the practice of market share discounts operated by the company TF1 during the period 1994/1997 concerning the sale of advertising space on television. This practice involves allowing specific reductions to advertisers whose proportion of advertising expenditure on TF1 is greater than the channel's share of the television advertising market. Referring to a previous decision (18 June 1996) and to the decision of the European Commission on 20 September 1995 concerning RTL/Veronica/Endemol, the Council agreed that there was a separate market for television advertising and went on to note that, over the period in question, TF1 held a proportion of this market in excess of 50% (ahead of the second operator, France Télévision Publicité, with 29%). Yet a comparison of the audience share and the market share of each of the channels shows that T1 is the only channel to obtain advertising investment shares larger than its audience share across the board. The Council also noted that, even for its standard target viewer (the now-famous housewife under the age of 50), the channel was able to charge rates which were higher than those of its competitors, thereby demonstrating the power it wielded. In the light of these elements, the Council concluded that, during the period in question, TF1 occupied a dominant position in the television advertising market. The Council went on to note that applying discounts on the basis of market shares had resulted in advertisers allocating to TF1 a share of their advertising budget at least equal to the channel's market share. As a result, this discount - similar to a loyalty discount - hampered the fluidity of advertising investment between the various channels. According to the consistent case-law of the Court of Justice in Luxembourg and the Council on Competition, a company in a dominant position commits an abuse if it applies loyalty discounts. Moreover, the fact that the market leader applied this practice meant that it subsequently spread to the other channels, which made the market even more rigid. The Council therefore decided to fine TF1 FRF 8 million, despite the fact that the channel claims that it no longer applies any practice of the nature of a market share discount.