# [FR] Competition Council Makes Pronouncement on an Exclusive Agreement for Catch-up TV

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Catch-up TV, which enables a viewer to watch on-demand content broadcast previously on a channel's ordinary network, has developed considerably in recent months. Initiated by Arte (with Arte +7), catch-up TV was also adopted in March by M6 (M6 Replay) and Canal Plus (Canal Plus on demand), and will be available, from 26 May 2008, for Orange television subscribers (TV using ADSL), under the terms of a partnership signed by Orange (France Télécom) and France Télévisions, which will give Orange subscribers exclusive rights to watch, or watch again, at any time during a 15-day period, the main programmes broadcast by France Télévisions. It was announced that this "Rewind TV" service would be set up at the start of 2008, but it was in fact delayed because of the complaint brought by the *Association Française des Opérateurs de Réseaux et de Services de Télécommunications* (French association of network and telecom service operators - AFORST), whose members include Neuf Cegetel, SFR, Bouygues Telecom and Telecom Italia-Alice), before the Council on Competition. AFORST claimed that the exclusive agreement between France Télécom and France Télévisions hindered competition on the grounds that the other Internet access providers, deprived of access to this content, were not able to construct attractive alternative offers, and called for the suspension of the agreement in question as a conservatory measure. On 7 May 2008, the Council on Competition rejected the complaint, holding that the application did not provide any conclusive demonstration that the agreement hindered competition. More particularly, it noted that the area of exclusivity was limited (since the partnership only covered certain programmes broadcast originally between 6pm and midnight and excluded cinema films and sport, i.e. "premium" programmes) and that it was limited (to two years after its effective launch). The Council also noted that all consumers (regardless of which access provider they used) still had the possibility to view programmes covered by catch-up TV on the Internet site of France Télévisions and that exclusivity conferred on the partnership an economic balance that satisfied not only the parties to the agreement but also the producers who, for the first time ever, would receive remuneration for the broadcasting of their programmes on catch-up TV. Lastly, the Council held that the programmes concerned by the exclusivity were not must-carry programmes and that the other ADSL operators could differentiate their offers by proposing other interactive services to their clients (such as music catalogues) or developing partnerships with other channels, or even negotiating an agreement with France Télévisions on

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broadcasting catch-up on programmes not covered by the partnership in question. The decision of the Council on Competition was therefore in line with the CSA's opinion of 15 January 2008. The dispute had been referred to the CSA, which had concluded that the conditions required to justify adopting conservatory measures were not at that stage met, although in the longer term a development of catch-up TV services using exclusive agreements between a channel and an ADSL or cable operator could be damaging to the interests of consumers and/or to the development of competition on the broadband market. On the basis of these observations, the Council on Competition insisted on emphasising that its rejection of AFORST's complaint, at a time when the market was still very much in its infancy and the partnership had not yet begun to apply, did not prevent companies in the sector referring the matter to the Council at a later date if they had new elements based on subsequent observation of the market. The matter is therefore not yet closed.

***Avis du Conseil supérieur de l'audiovisuel du 15 janvier 2008 au Conseil de la concurrence portant sur la demande de mesures conservatoires de l'AFORST concernant les pratiques mises en œuvre par les sociétés France Télécom et France Télévisions***

http://www.csa.fr/upload/dossier/avis_tvr_15_janvier_08_a.pdf

*Opinion of the CSA delivered on 15 January 2008 to the Council on Competition in respect of AFORST's application for conservatory measures concerning the practices used by the companies France Télécom and France Télévisions*

***Décision n° 08-D-10 du 7 mai 2008 relative à des pratiques mises en œuvre par les sociétés France Télécom et France Télévisions dans le secteur de la télévision de rattrapage***

http://www.conseil-concurrence.fr/pdf/avis/08d10.pdf

*Decision no. 08-D-10 of 07 May 2008 on practices implemented by the companies France Télécom and France Télévisions in the catch-up TV sector*

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