[FR] CSA Opinion on TF1’s Purchase of the Channels NT1 and TMC

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Amélie Blocman
Légipresse

On 28 September 2009, the *Conseil Supérieur de l’Audiovisuel* (audiovisual regulatory body - CSA) published its opinion on the TF1 Group’s operation to buy the two free-view digital channels NT1 and TMC, as requested by the *Autorité de la Concurrence* (competition authority). The operation is in line with the logic of recent developments in the audiovisual sector, which has seen major structural changes since the launch of digital television in March 2005. The new free-view channels, the number of which has increased from seven to eighteen, are competing with the “historic” channels and are attracting an increasing share of the audience. These channels are also having to cope with the development of pay television and Internet TV. To stem their audience losses they have to differentiate themselves using expensive exclusive features, and hence have to spread the cost of acquiring programmes over a number of services, more specifically by negotiating broadcasting rights at group level.

The CSA, which is responsible under the Act of 30 September 1986 for ensuring editorial diversity, programme quality and diversity, the development of production and creation in France, and the promotion of unimpeded competition, therefore analysed the operation, and has issued a favourable opinion, although there are a number of reservations.

The CSA held that the TF1 Group’s control of three free-view channels could impede competition in the markets for both television advertising and broadcasting rights for sport events. It therefore proposed imposing on the TF1 Group a ban on coupling the TF1 channel with either TMC or NT1. It also felt it was necessary to limit advertising exclusivity, for example by laying down a threshold corresponding to a percentage of TF1 Publicité’s turnover. Lastly, the CSA suggested banning for a limited period tendering for sport events for more than two free-view channels. For the other markets, and more specifically the market for technical broadcasting services, the CSA noted that some of the effects of the operation would depend directly on the commercial and editorial strategies the TF1 Group chose to implement for TMC and NT1. There were also a number of aspects of uncertainty surrounding the evolution of the free-view television sector, and in particular the market for television advertising. In the circumstances, the CSA felt it would be desirable to keep an eye on the TF1 Group by asking it to provide certain information on a regular basis including, for the market for television advertising, a quarterly statement of the TF1 Group’s net

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income from advertising, an estimate of the corresponding market shares, a list of its hundred most important advertisers, the contracts between the Group and the twenty-five most important advertisers, and all the exclusivity contracts signed. For contracts for acquiring broadcasting rights, the CSA has suggested that the TF1 Group should communicate all the contracts reached by the TF1 Group with the main American producers and the list of all the works broadcast on TMC and NT1, including the name of the vendor of the work, the acquisition price, and - for works that have already been shown previously - the name of the initial broadcaster. It would then be for the competition authority, in the light of the information at its disposal and if necessary on the basis of undertakings proposed by the TF1 Group, to determine measures for avoiding the risk of hampering the free play of competition. If it decides to approve the operation, arrangements or undertakings in addition to the remedies envisaged in respect of competition will be examined as part of the CSA's analysis under Article 42-3 of the Act of 30 September 1986. Watch this space for the next instalment!

Avis n° 2009-12 du 28 septembre 2009 relatif à la demande d'avis de l'Autorité de la concurrence portant sur l'acquisition des chaînes TMC et NT1 par le groupe TF1

http://www.csa.fr/upload/dossier/avis_autorite_concurrence_tf1_tmc_nt1.pdf

Opinion No. 2009-12 of 28 September 2009 on the application from the competition authority for an opinion on the TF1 Group's acquisition of the channels TMC and NT1

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