[FR] CNC Called on to Review its System for Financing Digitisation of Cinema Theatres

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On 1 February 2010, the competition authority (*Autorité de la Concurrence*) delivered its opinion on the support arrangements being proposed by the national centre for cinematography (*Centre National de la Cinématographie* - CNC) for financing the digitalisation of cinema theatres. Until now, this cost has been shared between operators, who bear the cost of the investments, and distributors, who mainly reap the benefits of digitisation. They then pass on to the operators part of the savings they have achieved, through private "third-party investors", thereby enabling them to finance some of their investments in digital projection. Almost 1000 cinemas still need to switch to digital in France, but not all of them are in a position to finance the necessary work, or to call on third-party investors, mainly because of the nature and volume of their programming. This is why the CNC is proposing the setting up of a mutualisation fund using third-party investors, which it would manage directly. Its mission would be to collect a contribution from the distributors. This would be a virtual copy fee (*"frais de copie virtuelle"* - VPF), and it would be used to finance 75% of cinema theatre operators' investments. Thus each operator would be able to choose between the CNC offer and the third-party investor offer.

The competition authority, asked for its opinion by the Minister for the Economy on the basis of Article L. 462-1 of the Commercial Code, felt that the project was indeed of "general interest" and that having the digital cinema financed by third-party investors did not seem to be a satisfactory response to this objective. However, the authority felt that the direct intervention of the CNC, as the sector's regulator (which has regulatory powers, collects taxes, and distributes the aid from the support fund that is essential to financing any cinema industry) was likely to seriously distort - or even totally eliminate - competition in the market for financing the digital cinema. By creating such a fund, the CNC would in fact be in direct competition with the third-party investors for a large part of its activity. Whatever precautions might be taken, such a mutualisation fund would have a decisive advantage over its competitors because of its links with the sector's regulator and the corresponding State guarantee.

In light of this, the authority is inviting the CNC to consider alternative solutions that would make it possible to achieve the same objective more economically and with less restriction of competition. It has even suggested considering a solution that would involve direct aid, partly allocated by applying a mechanism of calling

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for tenders financed by a tax on digital copies. The authority believes that this mechanism “appears to be neutral in terms of competition, and neutral for public finances, and would make it easier to target the shortcomings in the market that public intervention wishes to remedy. It appears to be easier to set up than a mutualisation fund, would correspond better to the CNC’s usual method of intervention, and would make it possible to retain the principle of solidarity to which the CNC is legitimately attached”. It is now up to not only the CNC and the public powers, but also the European Commission, which has also been notified of the plan for this arrangement for support in the form of State aid.

Autorité de la concurrence, avis n° 10-A-02 du 1erfévrier 2010 relatif à l’équipement numérique des salles de cinéma

http://www.autoritedelaconcurrence.fr/pdf/avis/10a02.pdf

Competition Authority, Opinion No. 10-A-02 of 01 February 2010 on the digitisation of cinema theatres

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