[FR] Competition Authority Withdraws Authorisation for Closer Connection between TPS and Canal Plus

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On 31 August 2006 the Ministry for the Economy and Finance gave the green light for the merger of the satellite television platforms CanalSat (Canal Plus, Vivendi Group) and TPS, the two major operators in the pay television market in France (see IRIS 2006-8/22). In view of the extensive risk of harm to competition, this authorisation - issued after obtaining the opinion of the competition council (Conseil de la concurrence) - was made subject to the implementation of 59 undertakings on the part of Vivendi Universal and the Canal Plus group. The operation, which resulted in the creation of the company Canal+ France, created a monopoly for the editing and marketing of premium channels, and reinforced the dominant position of the Canal Plus group in the downstream distribution market, as its competitor TPS had disappeared. On 21 September 2011, the competition authority (Autorité de la concurrence) noted that the Canal Plus group had failed to meet ten of its undertakings - including a number that were essential - and decided to rescind its decision to authorise the operation. “The competition authority feels that failure to perform the undertakings in respect of the provision of channels and the maintenance of their quality is particularly serious since it is essential that the obligations be met in order to protect competition.”

It should be borne in mind that the purpose of these undertakings was to allow those distributors of pay television remaining after the operation (mainly Internet access providers) access to sufficiently attractive content to be able to constitute competitive pay channel packages that would help to ensure competition. The aim was to make it easier for the Canal Plus group’s competitors to acquire audiovisual rights and to enable them to purchase the themed channels they needed in order to constitute attractive packages. The unbundling (i.e., availability from any distributor) of seven channels (TPS Star, Cinéstar, Cinéculte, Cinétoile, Sport +, Piwi, and Télétoon) offering must-have themes for pay television (cinema, sport, young people) constituted the core of the undertakings. In its decision, the competition authority noted that the Canal Plus group had taken its time in making these seven channels available to third-party distributors, which had given an advantage to its new offer entitled “Le Nouveau CanalSat” since the Internet access providers using ADSL were not yet able to propose a retail offer including any or all of the seven unbundled channels. On the basis of this it was possible to establish the existence of discrimination against the ADSL operators’ platforms. What is more, it transpired that Canal Plus had

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diminished the quality of the channels it was to unbundle, in terms of both programming and innovation. TPS Star in particular, according to the competition authority, could no longer be qualified as “prime”. Lastly, the Canal Plus group had not respected a number of its undertakings aimed at enabling third-party distributors to add to their packages by including attractive independent channels, whose independence from the Canal Plus group needed to be safeguarded. The competition authority noted that the Canal Plus group had kept a number of editors of independent channels (including Equidia, Trace TV, and Télémaison) in a dependent situation by maintaining relations with them that were not transparent and hence potentially discriminatory (particularly with regard to the conditions for their remuneration and the duration of their contracts). Noting the essential nature of some of these failings, and recalling that the authorisation for the operation had only been issued in 2006 on condition that all of the 59 undertakings were to be implemented, the authority therefore decided to rescind the 2006 decision authorising the operation, and to fine Canal Plus EUR 30 million. Unless they return to their state prior to the operation, Vivendi and the Canal Plus group now have one month in which to notify the operation again.

Décision n° 11-D-12 du 20 septembre 2011 relative au respect des engagements figurant dans la décision autorisant l’acquisition de TPS et CanalSatellite par Vivendi Universal et Groupe Canal Plus

http://www.autoritedelaconcurrence.fr/pdf/avis/11d12.pdf

Decision No. 11-D-12 of 20 September 2011 on respecting the undertakings contained in the decision authorising the acquisition of TPS and CanalSatellite by Vivendi Universal and the Canal Plus group

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