[FR] Canal Plus Purchases Direct 8 and Direct Star: Competition Authority Gives Green Light, Subject to Conditions

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On 23 July 2012, at the end of a thorough three-month examination, the Competition Authority (Autorité de la Concurrence) authorised the acquisition by Vivendi and the Canal Plus Group of the DTV channels Direct 8 and Direct Star, subject to a number of conditions. It should be recalled that on 5 December 2011 the main French pay television operator sent notification of this acquisition, which opened up pay television for the operator. In examining the notification, however, the Competition Authority found that the operation raised “serious doubts” as to impeding competition (see IRIS 2012-5/21), which set in motion the procedure for a thorough examination. By giving its authorisation, the Authority deems the undertakings given by the parties to the operation with a view to resolving the competition problems that have been identified are now sufficient.

The main risks that were causing the Competition Authority concern involved the acquisition of rights. As the main purchaser of cinematographic rights for first-and second-window broadcasting on pay television in France, Canal Plus was able to take advantage of its position to pre-empt the acquisition of more attractive broadcasting rights for showings on Direct 8 and Direct Star. Canal Plus has therefore undertaken to purchase films or American-origin series for both its pay and free channels from only one of the six major American studios (Universal, Paramount, Warner, Sony, Fox or Disney). For first showings of French films, Canal Plus has undertaken to refrain from acquiring the broadcasting rights for both free and pay television in the same year for more than twenty cinematographic works. The parties will also be required to devote the major part of their investments to medium-budget films, without being able to pre-empt the rights of a large number of large-budget films (no more than two films with a forecast budget of over 15 million euros, three with a forecast budget of between 10 and 15 million euros, and five with a forecast budget of between 7 and 10 million euros). Apart from these two cases, the parties have undertaken to negotiate pay and free television rights for recent films and series separately, through specific teams and separate companies.

The second risk of the operation was that Canal Plus, which holds the most important portfolio of rights for French stock films (i.e. those already shown on television) through its subsidiary Studio Canal, would block the free channels’

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access to these films, thereby protecting its own free channels Direct 8 and Direct Star from competition. The risk was particularly important for the other DTV channels that broadcast few first showings of films and therefore have a vital need for Studio Canal's stock films. The parties have therefore undertaken to limit acquisitions of French stock films by Direct 8 and Direct Star from Studio Canal to the level recorded prior to the operation. Furthermore, the rights will only be allowed for a maximum of six months, and Direct 8 and Direct Star may not be allowed preferential conditions over their competitors in the free channel market.

Since the Canal Plus Group is in a position to acquire, or already holds, the rights for broadcasting sports competitions of major importance, which it must transfer to free channels by virtue of Article 20-2 of the Act of 30 September 1986, the last risk identified for the operation concerned the pre-emption of these events in favour of its own unencrypted channels Direct 8 and Direct Star. To circumvent this risk, Canal Plus has undertaken to transfer these sports rights on concluding a transparent, non-discriminatory tender process involving all the broadcasters concerned. This is to be organised by an independent agent authorised by the Competition Authority.

All these undertakings, adopted for a renewable five-year period, will be closely monitored by the Competition Authority.

In September it will be the turn of the audiovisual regulatory authority (Conseil Supérieur de l'Audiovisuel - CSA) to give its final opinion on the operation concluded by the Bolloré and Vivendi/Canal Plus groups. The undertakings made will be included in an addendum to the channels' agreements; these will be negotiated between the CSA and the Canal Plus Group.

Décision 12-DCC-101 du 23 juillet 2012 relative à l'acquisition de Direct 8 et Direct Star

http://www.autoritedelaconcurrence.fr/doc/enga_d8.pdf

Decision 12-DCC-101 of 23 July 2012 on the acquisition of Direct 8 and Direct Star

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