[FR] TPS-CanalSat Merger: Application under Urgent Procedure for Suspension of Competition Authority Authorisation Rejected

IRIS 2012-10:1/13

Amélie Blocman
Légipresse

On 22 October 2012 the Conseil d'Etat judge sitting in urgent matters rejected the application made by Canal+ under the urgent procedure for the suspension of the decision by the competition authority (*Autorité de la Concurrence*) on Vivendi Universal and Groupe Canal Plus taking exclusive control of TPS and CanalSatellite. It will be remembered that the decision of the Minister of the Economy on 30 August 2006 authorised the companies Groupe Canal Plus and Vivendi Universal to gather together within the company Canal Plus the activities of the pay television channel TPS and of the Canal Plus group. In its decision of 20 September 2011, the competition authority decided to withdraw the authorisation, on the basis of Article L.430-8 of the Commercial Code, and imposed a fine of EUR 30 million. Further to this decision, the Canal Plus/Vivendi group entered another notification of the concentration operation, which the competition authority authorised on 23 July 2012, adding new injunctions to it, "such as to re-establish sufficient competition on the markets for pay television" (see IRIS 2012-8/25). Further to this decision, the companies Canal Plus and Vivendi therefore referred to the courts under the urgent procedure to obtain a suspension order. The applicants felt that the condition of urgency was fulfilled because performance of the injunctions issued by the competition authority in conjunction with its decision would have an immediate and serious harmful effect on their activities, and would have effects it would be difficult to reverse if the decision were to be cancelled subsequently.

In its order, the Conseil d'Etat recalled that Article 521-1 of the Code of Administrative Justice requires two conditions to be fulfilled for a judge sting in urgent matters to be able to allow an application for suspension: firstly, the urgency of the situation must be evident, and secondly, there must be an argument that, at that stage in the preparatory investigation of the case, a serious doubt is created as to the legality of the decision at issue. In the present case, it was noted that the disputed decision made authorisation by the competition authority dependent on the implementation of 33 measures taking effect on dates spread over a period of time - while some were to take effect as soon as the contested authorisation was notified, others were not to take effect until three months later. From the preparatory investigation of the case, it transpired - more particularly from the elements submitted at the actual hearing - that the implementation of the injunctions, of a scope exceeding that of the

© European Audiovisual Observatory (Council of Europe) 2026

undertakings the Canal Plus group proposed to the competition authority in summer 2012, was likely to cause harmful effects for the applicant companies. The judge sitting in urgent matters nevertheless observed that examination of the merits of the applications with a view to cancelling the decisions of 20 September 2011 and 23 July 2012 was scheduled for 14 December 2012. The Conseil d'Etat did not feel there was any risk that implementing the disputed injunctions would have irreversible harmful effects on the economic and financial situation of the Canal Plus group before judgment was delivered on the merits of both these cases. Since the condition of urgency required for justifying the immediate suspension of the contested decision was not fulfilled, the application was rejected. To be continued…

Conseil d'Etat (ord. réf.), 22 octobre 2012, Société Groupe Canal Plus et Société Vivendi Universal

http://www.conseil-etat.fr/fr/selection-de-decisions-du-conseil-d-etat/ordonnance-22-octobre-2012-groupe-canal-plus-et-societe-vivendi-universal-.html

Conseil d'Etat (order under the urgent procedure), 22 October 2012, the companies Groupe Canal Plus and Vivendi Universal

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026