[FR] Canal Plus case against BeIN Sports for unfair competition dismissed

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On 18 June the commercial court in Nanterre delivered a judgment that had been keenly awaited in the audiovisual sector. Canal Plus, editor of the eponymous premium channel and five derivative versions, including Canal + Sports which offers its subscribers exclusive live sports events, had brought proceedings for unfair competition against BeIN Sports, the Qatari subsidiary of Al Jazeera Network, which edits two sport channels launched in France in the summer of 2012. These channels had acquired a large number of audiovisual rights in respect of sport events, particularly top-level football competitions. BeIN Sports' commercial strategy had enabled it to progress from 500 000 subscribers in 2011 to more than 1.7 million in early 2014. Canal Plus, on the basis of Article 1382 of the French Civil Code, the common law text on tort, called on the court to declare that BeIN Sports had been guilty of unfair competition by adopting irrational economic behaviour, based on the sale of subscription to its channels at an abnormally low price (11 euros per month) in relation to its particularly substantial investments, resulting in disruption of the market; it was claiming almost 300 million euros in this respect. The court therefore considered whether Canal Plus had demonstrated that its competitor was at fault, that it had suffered prejudice as a result of the latter's behaviour, and that there was a causal link between the fault and the alleged prejudice suffered. The first point was the allegation of an abnormally low price. Canal Plus claimed that its competitor's unfair behaviour lay in the combination of very high prices for acquiring rights and a very low sale price which would not allow its offer to achieve profitability in anything less than ten years. The court noted, however, that the price charged by BeIN Sports was in line with market prices (quoting the offer of Canal+, Foot+, at 8 euros per month, and that of Orange Sport - which has since ceased - at 6 euros) and found that Canal Plus had not demonstrated that the prices charged by BeIN Sports for subscription to its channels were abnormally low in comparison with market prices. It went on to examine the issue of the purchase of audiovisual rights at abnormally high prices. Canal Plus held that the provisions of common law on unfair competition should make it possible to oppose the irruption on the market of operators with more financial backing than any other competitor might have. It felt that the structurally deficit economic model of its Qatari competitor inverted the competitive effect of its entry into the market by evicting other editors from the markets for the acquisition of rights. The court noted, however, that the inflation of prices for sport rights had begun well before BeIN Sports

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arrived on the market in June 2012 and that it had not affected the percentage of rights held by Canal Plus for the best matches in the premier league (70%) or for other headliner competitions. Similarly, contrary to the statements made by Canal Plus, the court found that BeIN Sports' entry into the market had not constituted an obstacle to competition since a number of stakeholders had entered bids in 2014 for the acquisition of TV rights (premier league and league of champions). Thus Canal Plus had not demonstrated that the Qatari channel's entry into the market had resulted in an increase in the cost of acquiring rights. In conclusion, the court recalled that the fact of a new arrival suffering losses during the initial stage of developing its offer on a market was not an abnormal situation, as long as it was part of an economic view at the end of which the operator was able to envisage achieving economic equilibrium. In the present case, it was not possible for Canal Plus to presume what its competitor's offer might be in one, three, five or ten years' time, given the extremely rapid and constant evolution of the audiovisual sector and world growth in the sport sector. The court also pointed out that the Vivendi group, of which Canal Plus was part, also had very substantial financial resources at its disposal and that the applicant party had not demonstrated that BeIN Sports' entry into the pay-TV market had had a disrupting influence. Canal Plus having failed to demonstrate the existence of unfair behaviour on the part of its competitor which constituted fault, its claims on this point were rejected. To help provide transparency in this highly competitive market, the court ordered the parties to have the operative part of the judgment published, at their expense, in five national daily newspapers.

Tribunal de commerce de Nanterre (1re ch.), 18 juin 2014 - Canal Plus c/ beIN Sport France

http://www.hlmediacomms.com/files/2014/06/TC-Nanterre.pdf

Commercial court of Nanterre (1st chamber), 18 June 2014 - Canal Plus v. BeIN Sports France

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