[FR] Competition authority refuses to allow Canal Plus' plan for an exclusive distribution agreement with beIN Sports

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Amélie Blocman
Légipresse

In a decision on 9 June 2016, the national competition authority (Autorité de la Concurrence) refused to lift the ban on exclusive distribution of the premium sport channel Canal Plus has been under since 2012, which has been preventing the audiovisual group from finalising its plans to join forces with beIN Sports. Canal Plus wanted to sign a five-year exclusive distribution agreement with beIN Sports, and would have paid the Qatari chain between EUR 300 and 400 million for it. The agreement would have enabled Canal Plus to reconnect with the subscriptions of beIN's 2.5 million customers, with the aim of winning back subscribers the encrypted French channel lost to beIN when the latter obtained the rights for broadcasting a number of major sports competitions. beIN currently holds the rights not only for the French football championship and the Champions League, but also for American basketball and the Wimbledon tennis tournament.

When TPS and Canal Plus merged in 2012, the competition authority imposed 33 injunctions on the Canal Plus Group with the intention of re-establishing sufficient competition in the markets for pay television. One of these required Canal Plus to use CanalSat to distribute premium channels, including sport, on a non-exclusive basis. The injunctions were to be valid for a period of five years, at the end of which the state of competition would be analysed again to consider the relevance of maintaining them. The Canal Plus Group therefore submitted to the competition authority a request for the revision of the injunction concerning non-exclusive distribution which should enable it to conclude an exclusive distribution contract for the beIN Sports channels. The various operators in the markets in question (television channels, holders of sports rights, pay-television distributors, and more particularly the IAPs, etc) have now been consulted. On 13 April 2016, in response to an application from the competition authority, the national audiovisual regulatory authority (Conseil Supérieur de l'Audiovisuel - CSA) delivered its opinion, and the Canal Plus Group proposed a series of undertakings which have been tested on the market with the various stakeholders concerned. On completion of a detailed examination of the various elements in the dossier, the competition authority felt that there was at present no justification for an early revision of the injunctions, even if Canal Plus were to adopt the undertakings it proposed. It felt that the change in the legal and actual circumstances taken into account in 2012 was not significant enough to make any difference to the

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competition analysis carried out at the time, which was the justification for the injunctions at issue; these were therefore still necessary. On the market upstream of the acquisition of sports rights, the competition authority noted that, as in 2012, the Canal Plus Group and beIN Sports held the broadcasting rights to virtually all the most attractive sports competitions, particularly for football. The structure of the market, close to a duopoly comprising the Canal Plus Group and beIN Sports, was still characterised by the dominance of the former of the two. The acquisition of the rights for the English Premier League by the Altice Group (SFR) was still an isolated case rather than a demonstration of the emergence of sufficient and durable competition in the market. Similarly, on the market downstream of the distribution of pay-television services, the Canal Plus Group still held a dominant position, with a market share of between 70% and 80%.

More generally, since implementation of the injunctions imposed in 2012, there have been clear rules of play for independent channels gaining access to distribution on CanalSat. It has also become possible for distributors in competition with the Canal Plus Group, including the IAPs, to compete effectively with the exclusive distribution of channels on CanalSat by having the possibility of gaining access to attractive content. The competition authority therefore feels that any isolated changes to this particular injunction might endanger the usefulness of the measures as a whole, and the authority is anxious to maintain consistency and effectiveness. The authority will nevertheless be carrying out a thorough re-examination of all the injunctions imposed in 2012, starting in July, in consultation with all the stakeholders concerned, so that a clear and foreseeable framework can be defined for 2017-2022.

Communiqué de presse de l'Autorité de la concurrence, 9 juin 2016

http://www.autoritedelaconcurrence.fr/user/standard.php?id_rub=629&id_article=2784

Press release of the national competition authority, 9 June 2016

http://www.autoritedelaconcurrence.fr/user/standard.php?id_rub=630&id_article=2785

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