[FR] Competition authority urgently calls for regulatory constraints on traditional audiovisual providers to be relaxed

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On 21 February 2019, at the request of the National Assembly's Committee on Cultural Affairs and Education, the French competition authority published its opinion on the forthcoming audiovisual reforms. The authority's key proposal is for the relaxation of restrictions on traditional audiovisual providers in order to enable them to compete on equal terms with online video platforms (e.g. Amazon and Netflix). The evidence is clear: these new platforms, which entered the market in 2014 and have more subscribers in France than Canal Plus (Netflix has over 5 million subscribers) have adopted an innovative business model by combining content production, publication and distribution (i.e. the entire traditional audiovisual value chain) within the same company. So-called "delinearisation", which releases viewers from the constraints of television programme schedules, also gives them access to a vast catalogue at low cost (EUR 8 to EUR 14 for Netflix; no additional charge for Amazon Prime subscribers). In addition, unlike linear channels, these platforms can access their users' data, which enables them to constantly improve their services and, in particular, their recommendation algorithms. Faced with these new uses, the business models used by both pay TV and free television channels are being seriously challenged.

As a result, the competition authority has proposed a number of reforms. Audiovisual regulations are still based on the traditional model of free-to-air linear programmes. These regulations - which, according to the authority, are particularly restrictive in France compared with other European countries - impose unequal legal constraints on traditional national broadcasters, limiting their ability to adapt to changes in the market. In addition, the transposition of the Audiovisual Media Services Directive, which will require delicate coordination between different regulatory authorities, will not fully address this imbalance, according to the competition authority.

It therefore considers it necessary to re-examine the existing regulations on television advertising, which are much more restrictive than those applicable to Internet-based services. To this end, the authority recommends allowing targeted advertising, which television cannot currently offer to advertisers. It also suggests opening up television advertising to prohibited sectors (cinema, publishing and distribution, which make extensive use of digital advertising).

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The authority's other proposals mainly concern programming. It favours loosening obligations to invest in European and French audiovisual production by pooling obligations at the level of television groups, for example, and introducing a certain amount of pooling between the "corridors" of audiovisual and film production obligations. It also recommends reviewing conditions governing the use of independent productions. This obligation, which makes it possible to avoid excessive concentration, undermines the availability of content (and ultimately the diversity of available productions). The authority suggests limiting the definition of "independence" to that of the "capital independence" of a producer from the relevant broadcaster, without setting conditions regarding contractual negotiation on the distribution of rights.

Under current regulations, films cannot be broadcast on Wednesday and Friday evenings, any time on Saturdays and before 8.30pm on Sundays. Since films are available at any time on VoD platforms, the authority recommends removing these restrictions.

Lastly, the authority recommends a review of the 1986 Law on anti-concentration measures, which only apply to television operators and which therefore exclude an increasingly significant proportion of content providers.

All these adaptations are considered 'urgent' and should, in the authority's opinion, be quickly implemented without waiting for the audiovisual law to be debated in early 2020. They therefore concern the provisions relating to advertising and production obligations contained in the decrees of 27 March 1992 and 2 July 2010.

Autorité de la concurrence, Avis n° 19-A-04 du 21 février 2019 relatif à une demande d'avis de la commission des Affaires culturelles et de l'Éducation de l'Assemblée nationale dans le secteur de l'audiovisuel

http://www.autoritedelaconcurrence.fr/pdf/avis/19a04.pdf

Competition authority, opinion no. 19-A-04 of 21 February 2019 regarding a referral from the Committee on Cultural Affairs and Education of the National Assembly in the audiovisual sector

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