[FR] Decision by Competition Authority on historic channels' exercise of preferential rights for films originally made in French

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The French Competition Authority (Autorité de la Concurrence) received an application from the companies Groupe Canal Plus, D8 and D17 (which have since become C8 and C Star) denouncing the practices applied by TF1, France Télévisions and Métropole Télévision in the marketplace for the acquisition of rights in respect of 'catalogue' cinematographic works originally made in French (œuvres cinématographiques d'expression originale française - referred to as 'EOF films'). The obligations to invest in cinematographic production incumbent on the free DTT channels are set out in Decree No. 2010-747 of 2 July 2010.

The applicants claimed that the historic unencrypted channels restrict the access of the other free DTT channels to catalogue EOF films by including priority and pre-emption clauses in all the pre-financing contracts they conclude with film producers. It is claimed that, in practice, these clauses enable the channels to reserve broadcasting of the films concerned for their own or affiliated channels (TMC for TF1, W9 for M6) with no time limit, to the detriment of their competitors, even though the pre-purchased broadcasting has already taken place. The applicants therefore claimed that this constituted an anti-competitive cartel agreement between the historic unencrypted channels and the producers of EOF films, with the cumulative effect of blocking access by channels not associated with a historic unencrypted channel to the rights to broadcast catalogue films made in French.

The Authority noted that the pool of catalogue films the free DTT channels can draw on when compiling their programming schedules in order to meet their obligations to broadcast EOF films is particularly large (more than 8000 films). It also noted that rights to priority and pre-emption could only be exercised in respect of 20% of the French films in this pool, since such rights over the films they contribute to financing were not stipulated by the unencrypted channels until the 1990s, representing only a fraction (about 20%) of the catalogue films available. On investigation, the Authority found during the period observed that rightsholders pre-empted less than 8% of the films that could be pre-empted. It deduced from this that it was not possible to claim that the agreements at issue were likely to result in a sufficiently significant cumulative blocking effect such as to require that the competitors of the companies at issue be prevented from ensuring they obtained rights to broadcast catalogue EOF films.

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Autorité de la concurrence, 27 mai 2019, Décision n° 19-D-10

http://www.autoritedelaconcurrence.fr/pdf/avis/19d10.pdf

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