Competition authority rejects Molotov platform's complaint about TF1 and M6

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Molotov, a television channel and service distribution platform, streams French audiovisual programmes over the top (OTT) under a 'freemium' model that enables users to access some channels free of charge and pay to subscribe to additional channels and services. It complained to the French competition authority about certain practices used by the TF1 and M6 groups in the television distribution and marketing sector which it considered incompatible with national and EU competition rules.

According to Molotov, TF1 and M6 suddenly and abusively broke the experimental agreements they had each concluded with Molotov for the distribution of their channels and services on its platform. It accused M6, for example, of adopting new general distribution conditions in an effort to force Molotov to only distribute its channels and services to consumers as part of a pay-TV offer, which Molotov felt was incompatible with its 'freemium' business model. TF1 was alleged to have tried to impose on Molotov the conditions of its TF1 Premium service and consequently to have broken the existing distribution agreement between the parties. Molotov suspected that this behaviour was linked to the launch of the joint venture Salto, a subscription-based TV and video-on-demand platform created by TF1, M6 and France Télévisions which the competition authority had authorised on 12 August 2019, with the TF1, M6 and France Télévisions groups as its parent companies. Salto was therefore a future competitor of Molotov, it claimed.

Molotov therefore thought it had been the victim of attempted exclusionary abuse and anticompetitive collusion between TF1 and M6. The platform claimed that it was also in a situation of economic dependency on TF1 and M6, a situation that they had abused through their behaviour.

After analysing the disputed practices, the competition authority considered that Molotov had failed to provide sufficient evidence to support its allegations.

Firstly, regarding the alleged abuse of a collectively held dominant position, neither the letter of referral nor the case file contained any proof that such a position was held collectively by the France Télévisions, TF1 and M6 groups.

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Secondly, as regards the alleged abuse of economic dependency, Molotov had failed to analyse, as required under case law, the situation of economic dependency in which it found itself vis-à-vis TF1 and M6. It had also provided no evidence of the proportion of its total turnover that was represented by TF1 and M6 channels and services respectively.

Thirdly, in terms of the allegations of a horizontal agreement, neither the letter of referral nor the case file contained evidence of the existence of an explicit or tacit agreement between TF1 and M6 having the intention or effect of restricting competition by excluding Molotov from the market.

Finally, regarding the alleged vertical restraint, since the existence of an agreement between M6 and Molotov had not been proven, any analysis with reference to Articles L. 420-1 of the Commercial Code and 101(1) of the Treaty on the Functioning of the European Union was, by definition, excluded.

The competition authority therefore rejected Molotov's complaint for lack of evidence and consequently dismissed the related request for interim measures.

Autorité de la concurrence, 30 avril 2020, décision n° 20-D-08 du 30 avril 2020 relative à des pratiques mises en œuvre dans le secteur de l'édition et de la commercialisation de chaînes de télévision

https://www.autoritedelaconcurrence.fr/fr/article/rejet-pour-absence-delements-probants-de-la-plainte-de-molotov-visant-des-pratiques-de-tf1

Competition authority decision no. 20-D-08 of 30 April 2020 concerning practices in the television distribution and marketing sector

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