[FR] Temporary consultation between distributors on film release schedule compatible with competition law

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On 16 April 2021, the *Autorité de la concurrence* (competition authority) issued an opinion in response to a request submitted by the *Médiateur du cinéma* (cinema ombudsman) in February 2021. In accordance with Article L. 213-6, para. 2, of the *Code du cinéma et de l'image animée* (Cinema and Moving Image Code), the ombudsman asked the competition regulator to examine the possibility of consultation between film distributors aimed at agreeing a regulated film release schedule until the situation returned to normal. It asked the competition authority to "set out the framework of what it is possible to do at this stage" in order to allow distributors to engage in negotiations. In mid-March 2021, the stock of films concerned was estimated at around 400, which would mean releasing 50 to 60 films per week to ensure they were all released within a reasonable period of time. By way of comparison, since 2016, the average number of new films released per week has been around 14. The distributors therefore need to actively consider possible solutions for when cinemas reopen.

The competition authority therefore outlined the framework and conditions under which temporary consultation between distributors on film release dates could be compatible with competition law. It thought the envisaged consultation would probably be classified as an agreement that restricted competition at both French and European levels. However, in the case of a dispute, the parties to the agreement could, under certain conditions, benefit from an individual exemption, such as that provided for in Article 101(3) TFEU and Article L. 420-4(I)(2) of the *Code de commerce* (Commercial Code). They could begin by demonstrating that the agreement would help to promote economic progress and provide verifiable evidence of this. In this regard, in its referral, the ombudsman explained that the agreement would aim to preserve the diversity of films and the widest distribution of works in accordance with the general interest during an exceptional period characterised both by the accumulation of an unprecedented stock of films and by probable sanitary restrictions when cinemas reopened. Furthermore, in a previous opinion issued in 2009 (09-A-50 of 8 October 2009), the competition authority had noted that cultural objectives could be accepted as part of economic progress. In addition, agreements allowing the improvement of production and distribution through better services or better quality were recognised as sources of qualitative economic progress.

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Secondly, the parties to the agreement should demonstrate that the net effect of the agreement would be at least neutral from the cinema operators' point of view and that it would not be detrimental to spectators because it would give them access to a diverse range of films of all types. Thirdly, they should establish the inadequacy, given the exceptional nature of the current situation, of alternative options to consultation between distributors on a film release schedule, such as, for example, programming commitments or derogations from media chronology through the direct distribution of films via video-on-demand platforms or television channels. Finally, they should demonstrate that competition would be preserved for a substantial part of the film distribution sector, and that the stakeholders involved would continue to compete on many parameters not included in the agreement.

As long as the parties to the agreement demonstrated that these conditions were met, the competition authority considered that such an agreement between distributors on a time-limited schedule for the release of films when cinemas reopened could, in this particular context, benefit from an individual exemption. Distributors could therefore begin negotiations within this framework.

Autorité de la concurrence, avis 21-A-03 du 16 avril 2021 relatif à une demande d'avis du Médiateur du cinéma sur les modalités de sortie des films en salle

https://www.autoritedelaconcurrence.fr/fr/avis/relatif-une-demande-davis-du-mediateur-du-cinema-sur-les-modalites-de-sortie-des-films-en#:~:text=En%20savoir%20plus-,Dans%20un%20contexte%20marqu%C3%A9%20par%20l'amplification%20du%20ph%C3%A9nom%C3%A8ne%20d,projet%20de%20concertation%20des%20distributeurs

Competition authority opinion 21-A-03 of 16 April 2021 following a request by the cinema ombudsman for an opinion on cinema release arrangements

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