

5 October 2007: TV services Broadcasting

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The commitments obtained by the Conseil de la concurrence from TDF will facilitate the entrusting of programme broadcasting by analogical channels to competing technical operators

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Emettel's complaint : market foreclosure by TDF

At end 2006, Emmettel company had submitted a referral to the Conseil de la concurrence on the grounds that TDF had concluded long term exclusive contracts with public TV channels just a few weeks prior to the effective opening up of the terrestrial analogical market to competition. Emmettel also challenged the existence of partial opt-out clauses in the contracts concluded with public channels and TF1 and M6 channels, which were very restrictive. These clauses restricted the number and the power of the secondary network broadcasting sites, which could be excluded from the contract annually.

The interim measures ordered by the Conseil

Technological changes - such as the transition from the terrestrial analogical broadcasting of TV services to the digital mode - pave the way for challenging the situations acquired by incumbent operators such as TDF. The quasi-exclusive nature of the contracts concluded between TV channels and TDF enables the latter to foreclose its position and to prevent new players to enter the broadcasting market despite the opening up to competition. Before the Conseil de la concurrence had reached a decision on the merits, the Conseil had ordered emergency measures in May 2007 (decision 07-MC-02).

As part of the analysis of the case on the merits, the Conseil de la concurrence has accepted TDF's commitments, considering that they may restore the free play of competition

As part of the procedure on the merits, TDF proposed commitments, which follow most injunctions pronounced by the Conseil in the interim measure procedure.

These commitments have already been subject to a market test, which aimed at gathering observations of interested third parties. The Conseil analysed all the elements of the case during the hearing and requested certain adjustments be made to the proposals. The Conseil has issued its decision in which it accepts the commitments and makes them binding. It has closed the case.

TDF will propose the channels an amendment to their contracts, specifying that no transfer request to competing broadcasters may be refused to broadcasting sites of a power inferior or equal to 25 watt. Moreover early cancellation possibilities will be introduced into bipartite and tripartite contracts involving local authorities.

The commitments also provide for the creation, within TDF, of an assessment and follow-up committee so as to monitor the effective implementation as well as the setting-up of mechanisms aimed at increasing employees' awareness of competition law.