



The conditional authorization of the acquisition of exclusive control of OCS and Orange Studio by Canal Plus Group

Antonin PARRA BOURGUET

To quote this paper: A. PARRA BOURGUET, “The conditional authorization of the acquisition of exclusive control of OCS and Orange Studio by Canal Plus Group”, *Competition Forum*, 2025, n° 0064, <https://competition-forum.com>.

Resume: *In decision no. 24-DCC-04 of January 12, 2024, the French Competition Authority authorized the acquisition of exclusive control of OCS and Orange Studio by Canal Plus Group.*

However, this authorization was subject to the implementation of certain procedural commitments by Canal Plus Group, with the aim of preserving the diversity of French cinema.

On July 11, 2023, Canal Plus Group, an audiovisual group founded in 1984 and active in France and internationally in the publishing, production and broadcasting of general-interest channels (such as Canal+), and various specialized channels (such as Canal+ Sport and Canal+ Series), notified the French Competition Authority (FCA) of its plan to acquire exclusive control of OCS and Orange Studio.

Prior to this transaction, OCS was simultaneously controlled by Orange SA and Canal Plus Group. The company was active in pay TV channel publishing and offered video-on-demand services via subscription. Orange Studio was wholly owned by Orange

SA and was active in the co-production and distribution of films and series.

As part of the investigation phase, the Authority carried out a wide-ranging market consultation via questionnaires submitted to the various operators active in the film, TV and video-on-demand sectors in particular. As a result, the Authority reconsidered its decision-making practice regarding these markets, taking the view that the segmentation based on broadcasting mode (linear or non-linear) was no longer appropriate, both “at the level of the upstream markets for the acquisition of broadcasting rights, and at the level of the intermediate markets for the publishing and marketing of pay TV channels”¹.

¹ A. Ronzano, « Engagements : L’Autorité de la concurrence autorise, sous réserve d’engagements comportementaux, un groupe à prendre le contrôle exclusif d’un concurrent et ce qu’il reste d’une société

qu’il détenait déjà conjointement (OCS ; Orange Studio / Canal Plus) », *Concurrences*, No. 2-2024, Art. No. 117608, 2024.

At the end of the investigation phase, the Authority identified several anti-competitive risks. Firstly, the transaction in question could have led to the creation of a monopsony situation in favor of Canal Plus Group, by making the group the only pre-purchaser of recent French films for first pay-window². This is because the Canal Plus Group and OCS are the only two first-window pay TV channels available to French film producers for pre-financing their film projects.

The acquisition of OCS by Canal Plus Group would thus increase the group's bargaining power vis-à-vis film producers, who would now have no other option. As a result of this acquisition, there would be a risk of a deterioration in the diversity of French cinematographic offerings, since Canal Plus Group would consequently become the only operator available to French producers.

Secondly, regarding the acquisition of Orange Studio by Canal Plus Group, the operation presented two anti-competitive concerns. The FCA pointed out a risk of reducing the availability of French films offered by the Orange Studio catalog – on the replay services of free-to-air channels –, as well as a potential reduction in the number of channel packages offered by various Internet Service Providers (ISPs) to certain users – especially

to consumers in the French overseas territories.

After examining the transaction proposed by Canal Plus Group, and in view of the anti-competitive risks identified, the Authority authorized it on January 12, 2024, subject to compliance with certain conditions, with the aim of preserving the diversity of French cinematographic offerings³.

The central legal question raised by this case was the following: what type of behavioral commitments would the French Competition Authority make subject to the authorization of an exclusive takeover leading to the creation of a monopsony and a potential deterioration in the diversity of French cinema?

In order to answer this question and analyze the implications of this decision, it is first necessary to detail the anti-competitive risks inherent in the proposed acquisition of exclusive control notified by Canal Plus Group. Secondly, it would seem appropriate to examine the various commitments entered by the Group to mitigate these risks.

² The media sector is governed by the media chronology, a mechanism that establishes the rules governing the distribution of films in the media market.

The first payment window, which corresponds to the first broadcast period, gives pay TV channels like OCS

and Canal+ in France the exclusive right to offer a film first, generally six months after its theatrical release.

³ FCA, 12 Jan. 2024, Dec. No. 24-DCC-04, relating to the acquisition of exclusive control of OCS and Orange Studio by Canal Plus Group (Bolloré).

I) Identification of the anti-competitive risks generated by Canal Plus Group's proposed acquisition of exclusive control of OCS and Orange Studio

Following notification of the proposed acquisition of exclusive control by Canal Plus Group, the Authority identified a few risks to competition, both upstream and downstream.

On the upstream market of production financing, one of the issues at the heart of this decision was the risk that the transaction would give Canal Plus Group the position of sole pre-buyer of recent French films for broadcast in the first pay window.

The Authority's analysis of the horizontal effects of the transaction were related to the acquisition of broadcasting rights for original French-language films in the first pay-window. The first highlighted risk was the elimination of the alternative window represented by OCS, leading to the creation of a monopsony situation in favor of Canal Plus Group.

However, the Authority does not consider that there is any risk that Canal Plus would increase its negotiating power about the agreements concluded with cinema trade associations concerning this first six-month pay window. It notes that, prior to the takeover, Canal Plus Group was already

virtually monopsony – in a “quasi-monopsony” situation – on the market for the acquisition of rights to broadcast recent original French-language films in the first pay window⁴. This was because OCS's contribution to the overall financing of film production was declining, with the result that Canal Plus Group already enjoyed a significant bargaining power.

The Authority also identified a second risk of a deterioration in the diversity of French cinematographic offerings, and hence a reduction in the range of recent original French-language films available to users. In fact, OCS adopted a particular and diversified editorial line when it comes to acquiring original French-language films, which differs from that of Canal Plus Group⁵. The transaction in question could therefore result in the elimination of an alternative window for the pre-financing of film projects – especially for some film projects that would have been financed by OCS but will probably not be financed by Canal Plus Group —, thus restricting the financing opportunities for these projects.

On the downstream market of film availability, the Authority noted that the transaction would be likely to restrict access to original French-language films offered by the Orange Studio catalog on the free-to-air channels' replay services.

⁴ *Ibid.*, pt 242.

⁵ *Ibid.*, pt 247.

Finally, there was a risk of a reduction in the channel packages made available by various ISPs to users in the French overseas departments and regions, as these operators would not benefit from equivalent alternatives to the OCS channels.

More specifically, the Authority indicated that the transaction presented a risk based on two criteria, namely the ability and incentive for the new Canal-OCS entity to foreclose the overseas distribution market (and therefore cease marketing OCS channels to overseas distributors, contrary to current practice)⁶.

In this case, as OCS is the only contractual partner available to these distributors, these two criteria are met.

Given that these distributors are unable to continue their business without access to OCS, the new entity would be able to cease all collaboration with them without exposing itself to the risk of them switching to a different supplier⁷. It would thus be able to drive them out of the ultra-Marine market and enter it directly (first criterion).

In addition, this strategy would be economically viable (second criterion), since the loss of revenues generated by ultra-marine distributors could be offset by the acquisition of new users through enhanced offers such as a combined Canal+ and OCS offer (second criterion).

II) Remedies taken by Canal Plus Group to prevent the anti-competitive risks arising from the acquisition of exclusive control of OCS and Orange Studio

In response to the horizontal effects on the upstream market and vertical effects in the downstream market, Canal Plus Group proposed five-year behavioral commitments with a view to obtaining approval for the acquisition of exclusive control. These commitments were designed to preserve the diversity of French cinema.

First of all, in order to maintain an alternative source of financing for French cinema, Canal Plus Group has undertaken to maintain a team specifically dedicated to OCS/Ciné+ acquisitions⁸. This team, different from that of Canal+, will be specifically responsible for the pre-purchase of French first-run films for French producers (which implies the availability of its own budget and independence in decision-making). In this respect, the annual budget of this Ciné+/OCS team will be similar to the amount that OCS has undertaken to guarantee under its inter-professional agreement signed with the film industry's professional organizations on February 9, 2022.

⁶ *Ibid.*, pt 392.

⁷ *Ibid.*, pt 378.

⁸ *Ibid.*, pt 440.

Canal Plus Group has also undertaken, on behalf of the Ciné+/OCS team, to propose the pre-purchase of at least 25 French film projects over a five-year period (including a minimum of four French film projects per year). This prevented the Canal+ acquisition team from refusing to broadcast these films in the first pay window⁹.

In addition, Canal Plus Group has undertaken not to hinder the transfer of broadcasting rights for certain films, in particular French films for which Orange Studio is involved in production prior to the transaction and does not have a distribution mandate¹⁰.

Lastly, Canal Plus Group has undertaken to make the Ciné+/OCS offer accessible to all interested distributors in the French overseas territories, in compliance with objective, transparent and non-discriminatory pricing criteria¹¹.

Numerous previous decisions by the Authority in the press and media sector have made authorization for the acquisition of exclusive control of one company by another subject to the fulfillment of various commitments, to prevent any risk of restricting competition. This was notably the case in the decision concerning the

acquisition of exclusive control of Mondadori France by Reworld Media¹². In this case, the Authority analyzed the market for readers of general-interest car magazines and noted that the transaction would reduce the number of independent press groups from three to two, giving the new entity a significant market share. Consequently, to remedy this risk, Reworld Media undertook to sell Auto-Moto or Auto-Journal to an independent group.

Nevertheless, in this decision on the proposed acquisition of exclusive control notified by Canal Plus Group, it would not have been surprising if the Authority had rejected the commitments proposed by the group, given the horizontal effects involved, just as it did in the case of the proposed merger between the M6 and TF1 groups. In that case, the FCA stated in a press release: “The proposed commitments included a separation of the advertising departments of the TF1 and M6 channels. However, the incentives for these agencies to compete would have been limited by the control that Bouygues would have exercised over them. The risk of price rises could therefore not have been ruled out”¹³.

Thus, in this decision concerning the acquisition of exclusive control of OCS and

⁹ *Ibid.*, pt 448.

¹⁰ *Ibid.*, pt 451.

¹¹ *Ibid.*, pt 456.

¹² FCA, 24 Jul. 2019, Dec. No. 19-DCC-141, regarding the sole control acquisition of Mondadori France company by Reworld Media company.

¹³ FCA, « TF1/M6: The Autorité de la concurrence takes note of the decision to withdraw its planned acquisition », Press Release, 16 Sept. 2022.

Orange Studio, the authority could reasonably have considered that the control exercised by Vivendi (a French media and communications group) over Canal Plus Group and OCS could lead to a reduction in their incentives to compete. This would have led to a potential reduction in the purchase prices of first-run film windows, to the detriment of French producers.

Despite this, the Authority did not include these shareholder concerns in its analysis, which may seem surprising, especially as the decision does not provide any clarification on this issue. It only mentions that Canal Plus Group's commitments were accepted by the Authority because of the "particular context" of the case¹⁴. Indeed, one of the reasons for this decision was OCS's financial difficulties. Although the failing firm theory was rejected in this case, OCS's financial situation was considered by the Authority, which made authorization of the transaction subject to behavioral commitments that it considered more appropriate than structural commitments.

Conclusion

Alain Ronzano underlines the contribution of this decision, in that the Authority has revised its delimitation of the upstream markets for

the acquisition of broadcasting rights, the intermediate markets for the publishing and marketing of television channels, and the downstream markets for the distribution of television services¹⁵. As a result, it considered that in the present case, it was no longer relevant to segment markets according to broadcasting mode (linear or non-linear), either for the upstream markets for the acquisition of broadcasting rights, concerned by the transaction, or for the intermediate markets for the publishing and marketing of pay TV channels specializing in films and series.

This is due to the fact that the reform of the media chronology in 2022 has led, on the one hand, to an alignment of film exhibition windows on various media, and, on the other, to a harmonization of mandatory contribution levels to European and original French-language film and audiovisual production for these channels and platforms. The latter are now able to acquire broadcasting rights for recent cinematographic productions under similar timeframes.

However, in this decision, the Authority maintained a distinction based on the broadcasting window, taking the view that video-on-demand services are not in direct

¹⁴ FCA, 12 January 2024, Dec. No. 24-DCC-04, *op. cit.*, pt 302.

¹⁵ A. Ronzano, « Engagements : L'Autorité de la concurrence autorise, sous réserve d'engagements

comportementaux, un groupe à prendre le contrôle exclusif d'un concurrent et ce qu'il reste d'une société qu'il détenait déjà conjointement (OCS ; Orange Studio / Canal Plus) », *op. cit.*

competition with first-window cinema pay TV channels.

This decision reflects a more flexible approach on the part of the French Competition Authority to behavioral commitments regarding the horizontal effects of a merger. It does not put an end to structural commitments but seems to suggest a more demanding standard of proof for

refusing behavioral commitments submitted by companies to mitigate the horizontal effects of their planned operations.

Antonin PARRA BOURGUET