

The Belgian Competition Authority (BCA) has partially accepted the request of Kinopolis to abrogate the remedies imposed in 1997 and modified in 2010, as from 26 April 2020.

On 31 March 2017 Kinopolis has filed a request to lift the remedies imposed by the Competition Council in 1997 in respect of the concentration between the Bert and Claeys groups, creating the Kinopolis Group. Kinopolis filed already in 2006 a request to abrogate the remedies which resulted in minor changes by the judgement of the Court of Appeal of Brussels of 11 March 2010.

Given the updated market structure, the Competition College of the BCA had decided on 31 May 2017 to abrogate the need for a preliminary authorisation by the BCA in respect of expansion by organic growth as from a transitional period of 2 years. The other remedies (concerning the prohibition of exclusive or priority rights in respect of the distribution of films, the programming agreements with independent cinema owners, and the prohibition of the acquisition of cinema complexes without a preliminary authorisation of the BCA) remained valid.

At the request of Euroscop and I-Magix, the Court of Appeal of Brussels, section Market Court, has in a judgement of 28 February 2018:

- confirmed the decision of the Competition College of 31 May 2017 with regard to maintaining the First Condition and the Second Condition, as well as maintaining the Fourth Condition regarding acquisitions;
- annulled the decision of the Competition College of 31 May 2017 with regard to abrogating the Fourth Condition regarding new initiatives by Kinopolis (organic growth) because of a lack of motivation as stated by the Court of Appeal of Brussels.

Given the actual market structure, the College has decided on 26 April 2018 to abrogate the need for a preliminary authorisation by the BCA in respect of expansion by organic growth as from 26 April 2020, at the end of a transitional period of 2 years.

This decision refers only to the Fourth Condition regarding new initiatives by Kinopolis (organic growth) and includes a comprehensive motivation taking into account the judgement of the Court of Appeal of Brussels of 28 February 2018.

The College has examined whether each of the remedies is still required in order to avoid a significant restriction of competition. It applied a proportionality test by balancing the anti- and pro-competitive consequences of each of the remedies in the light of the present market structure. The College relied on an extensive investigation by the Investigation and Prosecution Service (based *i.a.* on a postcode-research,

and an extensive market and consumer survey) analysing the impact on the national and local markets for the showing of films in cinemas, taking into account the position of consumers, suppliers and competitors).

The College deemed the requirement of a preliminary authorisation for new initiatives no longer necessary, *i.a.* in view of significant changes of the market structure, of the impact of such restriction on organic growth, and of the pro-competitive effects of new initiatives. The College considered that the competitors of Kinopolis are no longer the smaller local actors (often family owned businesses) as in 1997, but stronger well established players with a wider geographic presence, that are in some cases part of international groups with similar or more important financial resources than Kinopolis. The digitalisation of films has also lowered the barriers for expansion or market entries because the limitation of copies that are brought into circulation by distributors is no longer an issue.

The College decided, however, to lift the condition in respect of organic growth only as from 26 April 2020. The College considers that this transitional period does not prevent Kinopolis from already preparing preparatory acts for the creation of new facilities. However, Kinopolis can not operate these until April 26, 2020 as this is the moment at which the new complex will have an effect on the market. The transitional period of two years aims at avoiding possible market disruptions and allows competitors of Kinopolis to plan investments and to develop viable projects on markets that are not yet saturated.

In order to allow Kinopolis to inform all concerned, the BCA refers for more information to the spokespersons of Kinopolis.

For further information, please contact:

David Szafran, president of the Competition College
Belgian Competition Authority
Tel. +32 2 277 52 72
E-mail: pres@bma-abc.be
Website: www.belgiancompetition.be

The Belgian Competition Authority (BCA) is an independent administrative authority that contributes to the definition and implementation of competition policy in Belgium. Concretely, the BCA pursues anti-competitive practices, such as cartels and abuses of a dominant position, and reviews the main merger operations. The BCA cooperates with the other competition authorities of the member states of the European Union and the European Commission within the European Competition Network (ECN)