

The Belgian Competition Authority has partially accepted the request of Kinopolis to lift the conditions imposed in 1997 and modified in 2010, as from 25 March 2019

On 31 March 2017 Kinopolis has filed a request to lift the conditions 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 lift the conditions which resulted in minor changes by the judgement of the Court of Appeal of Brussels of 11 March 2010.

Given the then market structure, the Competition College of the Belgian Competition Authority (BCA) had decided on 31 May 2017 to lift 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 conditions (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.

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.

The College has then again decided on 26 April 2018 to lift 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 referred only to the Fourth Condition regarding new initiatives by Kinopolis (organic growth). For procedural reasons, this decision was annulled by the Market Court by judgment of 21 November 2018. A new College was then established.

The Market Court further ruled that, before the BCA could take a new decision, the complete judicial procedure as provided for in book IV, article 58, §1 et seq. of the CEL had to be observed and that all steps of the decision-making had to be updated at least.

On 28 January 2019 Kinopolis submitted an updated request for lifting all conditions. The competition prosecutor then updated its investigation and submitted a reasoned draft decision to Kinopolis and the College on 4 March 2019.

The decision of the College of 25 March 2019 again only concerns the partial lifting of the fourth Condition for the establishment of new complexes. The decision of the College of 31 May 2017, partially confirmed by

the Market Court on 28 February 2018, continues to apply in full for the First Condition, the Second Condition and the Fourth Condition regarding acquisitions.

In the decision of 25 March 2019, the College judges, based on the updated investigation by the competition prosecutor, that for complexes with 7 film theatres or fewer and 1,125 seats or less, a new Kinopolis complex will have pro-competitive consequences, including the promotion of cinema visits by creating new offerings and a wider choice for consumers, as well as an additional incentive for competitors to invest in new complexes and to renew the film experience. On the other hand, the risk of anticompetitive consequences of such a complex, such as the expulsion from the market of existing complexes resulting in a loss of choice, is limited and the impact on the strengthening of Kinopolis's dominant position on the national movie screening market remains limited. For such complexes, prior approval by the BCA is no longer required.

In order to prevent Kinopolis from circumventing this limitation, an additional condition is imposed that new complexes may not be within a radius of 10 km from an existing or newly to be established Kinopolis complex and that Kinopolis cannot enlarge such new complexes when the threshold of 7 film theatres or 1,125 seats would be exceeded without the prior approval of the BCA.

Finally, the notification to the BCA of a possible creation or expansion of new complexes by Kinopolis can be done according to a simplified procedure.

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:

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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)