

PRESS RELEASE

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The Belgian Competition Authority has approved the request of Kinopolis to lift the limitation on organic growth imposed in 1997: as from 12 August 2021 Kinopolis will be free to operate new cinemas without prior authorisation

The decision of the Belgian Competition Authority (BCA) concerns the termination over time of the limitation of the organic growth of the Kinopolis Group on the Belgian market. Until now, Kinopolis may not establish new single- or multi-hall complexes in Belgium without the preliminary authorisation of the BCA. This limitation was imposed in 1997 by the Competition Council as part of the approval of the concentration between the Bert and Claeys groups creating the Kinopolis Group. The limitation on organic growth had already been modified following a judgment of the Court of Appeal of Brussels in 2010 and was the subject of subsequent decisions of the BCA and judgements of the Market Court. Most recently, by judgment of 23 October 2019, the Market Court, instructed the BCA to establish a transitional period for the termination of the fourth Condition regarding organic growth "which is proportionate, appropriate and effective taking into account the considerations made by the Market Court and the BCA's own policy margin, the exercise of which implies a balance between economic and social data".

In its considerations, the BCA finds that the imposition of a condition of conduct on a merging party constitutes a far-reaching limitation of market freedom, which should preferably not last long, also in view of the possibilities offered by common competition law to take action against any abuse of a dominant position by a dominant party.

A competition authority should not be expected to maintain or create local cinema monopolies by prohibiting one market player from growing organically. Market operators should be able to withstand competition as long as it is conducted fairly and without abuse of a dominant position. However, according to the Competition College, the purpose of a transitional period may be to support competitors of Kinopolis who (a) have taken the initiative to enter into competition or to be better able to compete but (b) whose projects are not yet at a stage where there is sufficient certainty as to their actual implementation. By on the one hand helping these projects which are still in their early stage to reach that stage of greater certainty of implementation, without on the other hand restricting more than necessary the possible arrival of an organically growing player, the Competition College aims to promote free competition which presupposes freedom of choice, variety of supply and a sufficiently large number of efficient players on the market.

Since the publication of the judgment of the Market Court on the BCA's website on 7 November 2019, competitors know that only one transitional period will be applied before Kinopolis will be able to grow organically in an unrestrained way. Moreover, the BCA only wishes to protect projects that had already started and had made minimal progress at the time of the Court's judgment.

As an appropriate, effective and proportionate transitional period, the BCA lays down a period of 18 months ending on 11 August 2021. After this period, Kinopolis will be free to put new single- or multi-room complexes into effective operation in Belgium even without the prior authorisation of the BCA. Before that, Kinopolis is free to carry out preparatory activities.

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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)