

Minutes of the ECCG Competition Subgroup meeting *Brussels, 20 October 2009*

The ECCG Competition Subgroup (hereinafter "Subgroup") was held in presence of representatives the national competition authorities (hereinafter "NCAs")

1) State aid and Digital cinema

The Commission (Mr. Obhi CHATTERJEE¹, Unit C 4, DG COMP) presented an overview of the transition from traditional 35mm projection towards digital projection of films in cinemas. The presentation focused on the doubts expressed by the Commission in July 2009 about the proposed Italian tax credit for cinemas installing digital projection equipment. The related public consultation continues until 31 October 2009². The Commission suggested that consumers may be concerned about the potential impact of projection equipment costing €100,000 per screen on the 30,000 cinema screens across the EU, which some have suggested may lead to widespread cinema closures. The Commission would be interested to hear which type of cinemas consumers think should be supported by public funding: the Italian scheme would appear to support multiplexes rather than the smaller cinemas. A survey of UK consumers had suggested that they preferred smaller cinemas to multiplexes.

IT welcomed the presentation on a subject that it said it was unaware of and had therefore not been working on – also having concentrated its efforts on online commerce. IT consequently regretted having only ten days left to respond to the public consultation organised by the Commission on the subject.

The Commission replied that indeed the consultation on the Italian case expired on 31 October, but that a general consultation had just been launched on the subject, running until 16 December 2009³.

The French NCA underlined the difficulty that such aid schemes were likely to encounter to be authorised under State aid rules.

The Commission replied that some Member States (UK, FI) had already put such schemes in place, and that the *de minimis* rule allowed for any financial support to an undertaking under the threshold of € 200.000 in a three year period.

NL depicted the digital revolution as an inevitably leading to the decline of cinemas in general, and small cinemas or art houses in particular, to the benefit of more individual ways of watching movies – notably referring to home cinemas. NL therefore questioned the necessity of any State support. The Commission accepted that there has been a major trend but cited a 2007 consumer survey made in the UK showing that people enjoyed going to the movies as a social and atmospheric experience. It added that cinema attendance had even grown in some countries since the beginning of the crisis.

UK expressed scepticism about any change pushed for by business in general, and by distributors in particular.

The Commission replied that indeed digital cinema was an example of a set of specifications (called "DCI") originally developed by a group of businesses becoming an ISO standard, possibly without

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² See http://ec.europa.eu/competition/consultations/2009_digital_cinema/index.html

³ See http://ec.europa.eu/information_society/media/overview/consultations/index_en.htm

significant input from consumers. However, a way they could be involved would precisely be to monitor the evolution of such standards closely.

BE raised the issue of the real price of the digital conversion, asking whether it would not be more expensive than expected, with the material needing regular updates, resulting in higher prices for cinema owners who would pass them on to consumers.

The Commission replied that an ever growing proportion of films are made digitally anyway – to be converted back to analogue format in order to be shown in cinemas. It was added that traditional cinemas are quiet 75% of the time, with peak activity at the weekends. Digital cinemas could make better use of their capacities with alternative programming, potentially attracting new clients. Nevertheless, as the Commission asked in its Italian decision, would cinemas which could not afford the equipment without State aid be able to meet the potentially higher running costs of digital projection equipment and replace it at the end of its useful life.

AT stated that it had been following the impact of digital cinema in Austria. It expressed the concern that cinema programming today is in the hands of film distributors not consumer choice, and that it would be worth looking into the structure rigidities imposed by them, such as contractual terms.

The Commission answered by underlining the new possibilities offered by digital cinema in terms of consumer choice, thanks to the multiplication of available content. Given that a digital film copy costs about € 100 to 150, which is much cheaper than the traditional 35 mm print (€ 1.500 to 2.000), week-long bookings for a single film may no longer be appropriate. Additional cost savings could stem from transmitting films to cinemas using broadband schemes that are supported across Europe.

IT stated that the issues at stake were broader than cinema, but concerned cultural diversity and technological neutrality (i.e. would cinemas be induced by the State aid to invest in one digital standard in preference to another?). Dealing with them concretely would imply assessing the sustainability of established models, also bearing in mind that consumers are in most cases taxpayers. Therefore, if small cinemas are in fact condemned and only multiplexes are viable in the long run, why not embed cultural diversity in these cinemas, by imposing them a share of cultural programming?

The Commission noted in response that public support to cinema in Europe was widespread for film-making. Given that these films are often not distributed in multiplexes but they are in smaller cinemas, abandoning them could have radical consequences. This comes back to collective preferences, and this is precisely what the Commission expects to know more about from the responses to its public consultation (see link above).

ES declared that, in Spain, multiplexes were prevalent. However, it asked whether the Commission was expecting consumer groups to consult their members. If so, a questionnaire could have been aimed at consumer groups – the ones included in the 16 October consultation were mostly designed for business or administrations.

The Commission replied suggesting that the survey of cinema-going carried out by Which? could perhaps offer an appropriate set of questions for such a consumer survey. The Commission would welcome any contributions from consumer groups which could offer an insight into consumer preferences in the new, digital landscape.

2) Inquiring into the pharmaceutical industry

The Commission (Mr. Benjamin VAN ZEVEREN⁴, Pharma Task Force, DG COMP) presented the results of the pharmaceutical sector inquiry that was conducted from January 2008 until July 2009 on the behaviour of pharmaceutical companies.

BEUC thanked the Commission for the good collaboration experienced in this matter all along the process. It asked what the situation was regarding the establishment of a single Community patent, and wondered why marketing accounted for 23% of expenditures of the originator pharmaceutical firms covered by the Sector inquiry.

The Commission answered that the Swedish presidency was in favour of a Community patent and had put it on their agenda, but that this proposal still had a number of obstacles to overcome. As to marketing expenditures, they were described as crucial to spread the knowledge about novelties to doctors and pharmacists, thus involving intensive – and expensive – work at the local level.

Spain enquired about the % that litigation costs represented in the pharma industry total expenditure and if such litigation costs were part of the marketing expenditures. The Commission replied that they were not part of the marketing expenditure but that they were not higher than R&D expenditures.

The gap in such expenditure with generic products can be easily explained, for when the latter come to the market, the product which they replicate has already benefited from the promotional efforts by the originator. Still, although the pharmaceutical sector is [one of]the most R&D intensive of all, one could worry that R&D expenditures are inferior to marketing ones; but even more concerning is the fact that some companies introduce follow-on products, which do not show any incremental innovation, to medicines whose patents are about to expire. This allows these firms to pre-empt the subsequent arrival of a generic equivalent to a product which they can say has become obsolete – whereas in fact it was just replaced by an almost identical one.

3) How can consumer organisations work together with NCAs?

The Commission proposed to have one meeting per year between the ECCG and the ECN (European Competition Network, composed of the Commission and the NCAs).

UK (Which?) said it had frequent contacts with the OFT, while the French NCA stressed that the synergies between competition and consumer policies were inherent to these two complementary areas, but that contacts between them were not frequent enough, especially on subjects of common interest like damages actions and other policy consultations. It added that it remained to be seen how to organise such cooperation.

The Commission proposed to regularly hold a joint review of ongoing or projected initiatives, which would involve some degree of preparation of the meetings.

The French NCA suggested joining up also with the national authorities part of the Consumer protection network (CPN).

AT underlined the importance of raising awareness of consumer issues among NCAs, to the point of proposing to meet only with them in the future.

FI asked ECCG Subgroup documents to be transmitted also to each NCA's "Consumer correspondent".

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The Commission replied that it was unclear whether such Correspondents actually existed today in most NCAs, since they had been part of an informal network, the revival of which could be discussed at the next ECN plenary meeting.

IT stressed the need to know more about the way the ECN works in order to be able to work together, notably pointing to the degree of secrecy of its discussions. It also expressed the importance of discussing cases with the ECN, while considering that these may vary from one country to another.

The Commission replied that ECN discussions could not be public, but that *ad hoc* meetings could be organised with the ECCG.

The Commission concluded this part of discussion by informing the Subgroup members and the NCAs of its intention to consult the ECN plenary about the proposal to hold one joint meeting between the ECCG Subgroup and NCA representatives per year, after which the Subgroup will be informed. The topics that will be proposed for discussion during the joint ECCG-ECN meeting will be chosen by common agreement between the two bodies.

ES asked to be informed more in advance about consultations, taking the example of the one on Italian digital cinema, for which there remain only ten days to make a contribution.

BE demanded that the Subgroup be able to emit formal opinions.

The Commission replied that only the ECCG plenary was entitled to do so, but that the Subgroup could certainly address a report to the Plenary, which in turn could endorse the proposals contained in it.

ES then raised the point of the future Subgroup 'working dossiers', asking what they should be exactly: should they express a position, concern a specific case? It also warned about the workload involved.

The Commission replied that the dossiers could describe a situation and suggest the best practice to be followed or only contain a case study with a general conclusion – the form of the dossier depending on the theme chosen.

BE suggested consulting also the other members of the Subgroup on the possible theme(s) for the working dossier(s) to be opened in the next year before deciding on which to retain.

UK suggested testing remedies as an area of work that might be of common interest for consumer organisations and NCAs.

BEUC proposed to work on the situation of private enforcement in each country.

The French NCA agreed that private enforcement was a timely subject, and also pointed to digital cinema as a good example of consultation where consumer organisations could be involved from the outset. It also added that market testing by consumer organisations was important and as yet underdeveloped, notably in the field of remedies.

BEUC added that it would be able to contribute to the Subgroup's work only if the working themes chosen are in relation with its own priorities.

In addition to the list of potential working themes (see minutes of 09/07/2009 Meeting) the Subgroup identified the following new topics: situation of private enforcement in EU MSs, market testing of remedies, and potentially digital cinema.

The Commission will establish a very short list of working themes (dossiers) and will send it for final consultation to the Subgroup members. The Commission already alerted the Subgroup that the deadline for react to the consultation will be very short.

The meeting was closed at 17.15