

Abuse of dominance:

Decision of 20 February 2014 dealing with
the exclusionary conduct of Amaury
Group against *Le 10Sport.com*
on the French sports dailies market

Gautier DUFLOS, Chief Economist Team
French Competition Authority

Introduction

- **December 2008:** the company *Le Journal du Sport...*
 - = a joint venture between the founder of a classified ad newspaper and a media company, announces the launch of a 24-page color sports daily focusing on football : *Le 10Sport.com*
- ... filed a complaint against **Editions Philippe Amaury (EPA)**
 - = the owner of the historical sole French sports daily : *L'Equipe*
- **The complaint alleges the following practices:**
 - ✓ Exclusionary strategy against *Le 10Sport.com*
 - ✓ Pressures exercised by EPA against *Le 10Sport.com*'s publishers
 - ✓ Unfair commercial practices
 - ✓ Denigration of *Le 10Sport.com*

Procedural aspects

- **2009**: Dawn raids in several premises belonging to EPA
- **2009-2013**: Litigation on the lawfulness of the dawn raids
 - Paris court of appeal judgment of **4 September 2013**
 - French Supreme Court’s judgment of **11 December 2013**

↔ **Conclusions**: dawn raids were **fair and lawful**
- **2013-2014**:
 - Statement of objections sent on **18 February 2013**
 - Hearing on **18 December 2013**
 - Decision adopted on **20 February 2014**

↔ **Documents seized during dawn raids were crucial**

Overview of the presentation

I. Facts of the case

- a) Chronology
- b) Retort plan of EPA to the entry of *Le 10Sport.com*

II. Relevant market and dominant position of EPA

- a) Relevant market
- b) Dominant position of EPA on the relevant market

III. The demonstration of the abuse

- a) Exclusionary purpose of a new entrant on the market
- b) Lack of economic rationality of the chosen strategy by EPA
- c) Simultaneous start of an identical newspaper to *Le 10Sport.com*
- d) Fleeting purpose of the brand new newspaper
- e) Exit of the market of *Le 10Sport.com*

IV. Fine

I. a) Facts of the case: chronology

- 5 months after its launch: *Le 10 sport.com* exits the market

⇔ Not enough readers...

- Context:

- Historical monopoly of *L'Equipe* on the French sports daily market since 1948 (Price: **1€ week days / 1,10 € Sunday-Monday and 2 € on Saturday**)
- November 2008: *Le 10Sport.com* entered the market (Price: **0,50 €**)
- Tit-for-tat, the same day, Amaury Group launched an identical sports daily (same format, focused on football) : *Aujourd'hui Sport* (**0,50 €**)
- March 2009: *Le 10 sport.com* exits the market
- June 2009: *Aujourd'hui sport* also exits the market

⇔ **Back to the monopoly of *L'Equipe***

I. a) From monopoly to oligopoly...

The French sports dailies market: from 1 to 3



I. a) ... to duopoly, then back to monopoly!

March 2009



June 2009



I. b) EPA's retort plan (1/5)

- According to EPA: incoming *Le 10Sport.com* :
 - « *a very serious competitor* » and
 - « *a substantial threat given the profiles of its managers* »
- At the end of September 2008, several meetings are held to sketch out a **retort plan** to the entry of *Le 10Sport.com*
 - Internally, the operation has a code name: « **Shanghai project** »
 - It becomes a **top priority for EPA**
 - Several « **Shanghai meetings** » are held to set up this retort operation (at least 4 between September and October 2008)
 - **Different scenarios are envisaged during these meetings...**

I. b) EPA's retort plan (2/5)

- **On September 24th**, 6 scenarios are discussed for challenging the entry of *Le 10 Sport.com* on the market:
 - i. Launch of a new sports daily similar to *Le 10Sport.com*
 - ii. Reworking of *L'Equipe* to make it more attractive
 - iii. Reworking of *L'Equipe* to make it more competitive
 - iv. Change *L'Equipe* into two sports dailies with one focused on football
 - v. Launch of a new original sports daily focused on football
 - vi. Change *France Football* into a daily newspaper instead of a weekly one

- **On October 2nd**, 2 of these scenarios are finally retained:
 - **Scenario 1** : Launch of a new sports daily similar to *Le 10Sport.com*
 ⇔ focused on football (it's called « Z » or « T10 » at this stage)
 - **Scenario 2** : reworking *L'Equipe* to make it more attractive

I. b) EPA's retort plan(3/5)

- **On 6 October 2008**, after balancing the pros and cons, EPA chooses **scenario 1**: the launch of a sports' daily similar to **Le 10Sport.com**
 - The project is managed by an EPA's entity producing another newspaper: **Le Parisien**
 - **Aujourd'hui Sport** start is announced by EPA and it will be **the same date** as the start of **Le 10Sport.com**
 - The choice of this retort scenario is based on **several business plans** made by EPA between end of September - early October
 - **Those business plans were seized during the dawn raids**
 - During the meeting of **14 October**, EPA assesses the competition impact that **both Le 10Sport.com** and **Aujourd'hui Sport** should have on **L'Equipe**, its historical sports daily, over a 2-month period
- ⇔ **Indeed, there will be two new competitors for L'Equipe!**

I. b) EPA's retort plan (4/5)

- These business plans assessed the **costs** / **benefits** expected by EPA depending on the scenarios retained :
 - ✓ **Scenario 0**: Not to respond to the entry of *Le 10Sport.com*
 - ✓ **Scenario 1**: To launch a new sports daily similar to *Le 10Sport.com*
 - ✓ **Scenario 2**: To reshape *L'Equipe*
- **Something interesting**:
 Financial projections not only assessed the **costs** / **benefits** expected for EPA but **also** the anticipated impacts of these different scenarios on the **diffusion and on the operating profit of *Le 10Sport.com***, the plaintiff

I. b)

Example of a seized document

S0 Pas de riposte			
----------------------	--	--	--

2 mois 2008			
-------------	--	--	--

		Equipe	FFM	FFV	Total
Diffusion NMPP estimé 2008	ex	248 261	83 586	48 250	
Perte à la vente	ex	-27 353	-10 556	-5 375	
Perte à la vente / jour	ex	-27 353	-3 016	-1 536	-31 905
% de baisse	%	-11,0%	-12,6%	-11,1%	
% vs nouveaux arrivants	%	-30,2%	-3,3%	-1,7%	-35,2%
Perte de RO SNC Equipe	M€		-1,1		

Diffusion " Z" RO "Z"	ex M€				
--------------------------	----------	--	--	--	--

Perte RO Groupe Equipe	M€		-1,1		
-------------------------------	----	--	-------------	--	--

Diffusion " 10 Sport" RO "10 Sport"	ex M€		90 591		
			-0,2		

Nouveaux arrivants Accroissement net du marché	ex ex		90 591		
			58 686		

12 mois 2009			
--------------	--	--	--

		(*) Equipe	(*) FFM	(*) FFV	
Diffusion NMPP estimé 2008	ex	279 276	86 071	60 730	
Perte à la vente	ex	-22 143	-10 000	-5 000	
Perte à la vente / jour	ex	-22 143	-2 857	-1 429	-26 429
% de baisse	%	-7,9%	-11,6%	-8,2%	
% vs nouveaux arrivants	%	-33,0%	-4,3%	-2,1%	-39,4%
Perte de RO SNC Equipe	M€		-9,3		

Diffusion " Z" RO "Z"	ex M€				
--------------------------	----------	--	--	--	--

Perte RO Groupe Equipe	M€		-9,3		
-------------------------------	----	--	-------------	--	--

Diffusion " 10 Sport" RO "10 Sport"	ex M€		67 143		
			1		

Nouveaux arrivants Accroissement net du marché	ex ex		67 143		
			40 714		

S1 Lancement "Z"			
---------------------	--	--	--

2 mois 2008			
-------------	--	--	--

		Equipe	FFM	FFV	Total
Diffusion NMPP estimé 2008	ex	248 261	83 586	48 250	
Perte à la vente	ex	-39 692	-14 667	-8 500	
Perte à la vente / jour	ex	-39 692	-4 191	-2 429	-46 311
% de baisse	%	-16,0%	-17,5%	-17,6%	
% vs nouveaux arrivants	%	-33,5%	-3,5%	-2,1%	-39,1%
Perte de RO SNC Equipe	M€		-1,9		

Diffusion " Z" RO "Z"	ex M€		71 404		
			0,2		

Perte RO Groupe Equipe	M€		-1,7		
-------------------------------	----	--	-------------	--	--

Diffusion " 10 Sport" RO "10 Sport"	ex M€		47 044		
			-0,5		

Nouveaux arrivants Accroissement net du marché	ex ex		118 448		
			72 137		

12 mois 2009			
--------------	--	--	--

		(*) Equipe	(*) FFM	(*) FFV	
Diffusion NMPP estimé 2008	ex	279 276	86 071	60 730	
Perte à la vente	ex	-30 000	-12 000	-6 000	
Perte à la vente / jour	ex	-30 000	-3 429	-1 714	-35 143
% de baisse	%	-10,7%	-13,9%	-9,9%	
% vs nouveaux arrivants	%	-32,8%	-3,8%	-1,9%	-38,4%
Perte de RO SNC Equipe	M€		-13,2		

Diffusion " Z" RO "Z"	ex M€		53 571		
			2,7		

Perte RO Groupe Equipe	M€		-10,5		
-------------------------------	----	--	--------------	--	--

Diffusion " 10 Sport" RO "10 Sport"	ex M€		37 857		
			-2,3		

Nouveaux arrivants Accroissement net du marché	ex ex		91 429		
			56 286		

S2 Vaisseau Amiral			
-----------------------	--	--	--

2 mois 2008			
-------------	--	--	--

		Equipe	FFM	FFV	Total
Diffusion NMPP estimé 2008	ex	248 261	83 586	48 260	
Perte à la vente	ex	0	-10 556	-5 375	
Perte à la vente / jour	ex	0	-3 016	-1 536	-4 552
% de baisse	%	0,0%	-12,6%	-11,1%	
% vs nouveaux arrivants	%	0,0%	-4,7%	-2,4%	-7,0%
Perte de RO SNC Equipe	M€		-2,7		

Diffusion " Z" RO "Z"	ex M€		0		
			0		

Perte RO Groupe Equipe	M€		-2,7		
-------------------------------	----	--	-------------	--	--

Diffusion " 10 Sport" RO "10 Sport"	ex M€		64 810		
			-0,3		

Nouveaux arrivants Accroissement net du marché	ex ex		64 810		
			60 258		

12 mois 2009			
--------------	--	--	--

		(*) Equipe	(*) FFM	(*) FFV	
Diffusion NMPP estimé 2008	ex	279 276	86 071	60 730	
Perte à la vente	ex	10 000	-10 000	-5 000	
Perte à la vente / jour	ex	10 000	-2 857	-1 429	5 714
% de baisse	%	3,6%	-11,6%	-8,2%	
% vs nouveaux arrivants	%	26,4%	-7,5%	-3,8%	15,1%
Perte de RO SNC Equipe	M€		-4,6		

Diffusion " Z" RO "Z"	ex M€		0		
			0		

Perte RO Groupe Equipe	M€		-4,6		
-------------------------------	----	--	-------------	--	--

Diffusion " 10 Sport" RO "10 Sport"	ex M€		37 857		
			-2,3		

Nouveaux arrivants Accroissement net du marché	ex ex		37 857		
			43 571		

(*) Hors effet de baisse lié au Budget 2009 vs Estimé 2008, à la baisse pour l'Equipe, à la hausse pour France Foot

I. b) EPA's forecast of the 3 scenarios on its own results

		Scenario S0 : <i>no reply</i>	Scenario S1 : <i>launch a new sports daily</i>	Scenario S2 : <i>reshape L'Equipe</i>
Favorable hypothesis	November-December 2008	-1,1 M€	-1,7 M€	-2,7 M€
	2009	-9,3 M€	-10,5 M€	-4,6 M€
	14 months between November 2008 - end 2009	-10,4 M€	-12,2 M€	-7,3 M€
Unfavorable hypothesis	November-December 2008	-1,1 M€	-1,7 M€	-3,5 M€
	2009	-9,3 M€	-11,7 M€	-14,8 M€
	14 months between November 2008 - end 2009	-10,4 M€	-13,4 M€	-18,3 M€

I. b) EPA's forecast of the 3 scenarios on its rival's results

		Scenario S0 : <i>no reply</i>	Scenario S1 : <i>launch a new sports daily</i>	Scenario S2 : <i>reshape L'Equipe</i>
Favorable hypothesis	November-December 2008	- 0.2 M€	- 0,5 M€	- 0,3 M€
	2009	1 M€	- 2,3 M€	- 2,3 M€
	14 months between November 2008 - end 2009	0.8 M€	-2.8 M€	-2.6 M€
Unfavorable hypothesis	November-December 2008	- 0.2 M€	- 0,2 M€	- 0,3 M€
	2009	1 M€	- 0,5 M€	0 M€
	14 months between November 2008 - end 2009	0.8 M€	-0.7 M€	- 0.3 M€

I. b) EPA's retort plan (5/5)

- EPA's business plan analysis

- Two aspects, whatever the hypothesis :

1. Scenario 1 was **never** the best reply for **EPA**

⇔ **Implies a financial sacrifice**

= Cost of launching a new daily + Cannibalization of *L'Equipe*

2. Scenario 1 was **always** the worst reply for **Le 10Sport.com**

⇔ **Minimizes the number of buyers it could develop**

= The population of readers is shared between 3 instead of 2

- **Despite the financial and avoidable cost it implies, EPA thus chose the most damaging reply for its competitor**

II. a) The relevant market

- **Products involved:** Paying sports' dailies
- EPA alleged the existence of a large market of information on sports that includes TV, Radio, Internet, free newspapers etc. on which EPA would not have a dominant position
- **But, among other clues, we found that:**
 - The **price** of sports dailies did not decline with the development of Internet and free newspapers
 - There is **no clear correlation** between the sales of *L'Equipe* and the development of sports websites
 - Consumers consider **Sports dailies as specific** in the way they treat information ⇔ there is **no equivalent** amongst other medias
- **Conclusion:** there is a market of sports dailies in France so that consumers do not consider that sports newspapers are substitutable with other media devices

II. b) The dominant position of EPA

- On the sports dailies market **EPA has been dominant before, during and after** the practice:
 - Before 3 November 2008: Monopoly of EPA with *L'Equipe*
 - Between 3 November 2008 and 28 March 2009: Duopoly with *L'Equipe + Aujourd'hui Sport* and *Le 10Sport.com*
 - ↔ EPA had more than 90% of market shares
 - After 28 March 2009 : Monopoly of EPA with *L'Equipe + Aujourd'hui Sport*
 - After 30 June 2009 : Monopoly of EPA with *L'Equipe*

III. Legal assessment of the conduct (1/2)

- Once the dominant position of EPA is established, its conduct can be qualified as an abuse
- EPA's behavior has been considered as **abusive** because its conduct **departed from a competitive reaction** based on the legitimate ground for any company to respond to competition...

... Its conduct was a deliberate exclusionary strategy aimed at protecting *L'Equipe* monopoly to the detriment of consumers' choice and lower prices

≠ Competition on the merits

↔ Abuse of dominance

III. Legal assessment of the conduct (2/2)

- Amongst all the alleged anticompetitive practices denounced by the plaintiff, **only the exclusionary conduct** was retained

↔ Insufficient evidence of :

- Pressures against *Le 10Sport.com*'s publishers,
- Unfair commercial practices or
- Denigration of *Le 10Sport.com*

➤ Only the abuse is prohibited:

- ✓ The monopolistic situation of *L'Equipe* is not unlawful
- ✓ The possibility to respond to an entry is not unlawful
- ✓ But the fact for *Aujourd'hui Sport* to be set up for the sole purpose to drive out *Le 10Sport.com* is unlawful...

III. Why is there an abuse?

A body of evidence proves the abuse:

- a) **Exclusionary purpose** of a new entrant on the market
- b) **Lack of economic rationality** of the chosen strategy
- c) **Simultaneous start** of an identical newspaper to *Le 10Sport.com*
- d) **Fleeting purpose** of the brand new newspaper
- e) **Exit of the market** of *Le 10Sport.com*

III. a)

Exclusionary goal

➤ On several seized documents, the commercial goal of EPA is explicitly mentioned : **to drive its rival out of the market**

➤ Handwritten note taken by the COO during one of the *Shanghai* meeting

« **Strategy of EPA**

=> TO KILL 10Sport.com » :

Strategie Groupe Armanay
=> Tue 10 Sport

➤ First slide displayed during the 4th *Shanghai* meeting :

« **Objective: to defeat
10 Sport » :**

Objectif : Mettre en échec 10 Sport

➤ When the **Le 10 Sport.com** stops being published, **Aujourd'hui Sport** should with « **no doubt** » also stop, the owner of EPA said to a press agency...

⇔ When launching **Aujourd'hui Sport**, EPA had in mind the exit of **Le 10Sport.com** as an exclusionary goal

III. b) Lack of economic rationality of the response

- 1) According to seized documents, the launch of a new sports daily was **never** optimal from EPA's viewpoint
 - ⇔ **The financial sacrifice was systematic**
 - = Consequence of a **cannibalization effect** upon the sales of **L'Equipe (> 1€)** by the cheaper **Aujourd'hui Sport (= 0.50€)**
 - 2) The launch of a new sports daily was **always** the most damaging response for **Le 10Sport.com**
 - ⇔ **Minimize the demand** thanks to which it could develop
- ⇔ EPA thus chose the **most damaging response to its rival** even though it implied a financial (avoidable) sacrifice for itself...
- ... and this was **perfectly anticipated by EPA** as demonstrated by seized documents!

III. c) Simultaneous start of an identical sports daily

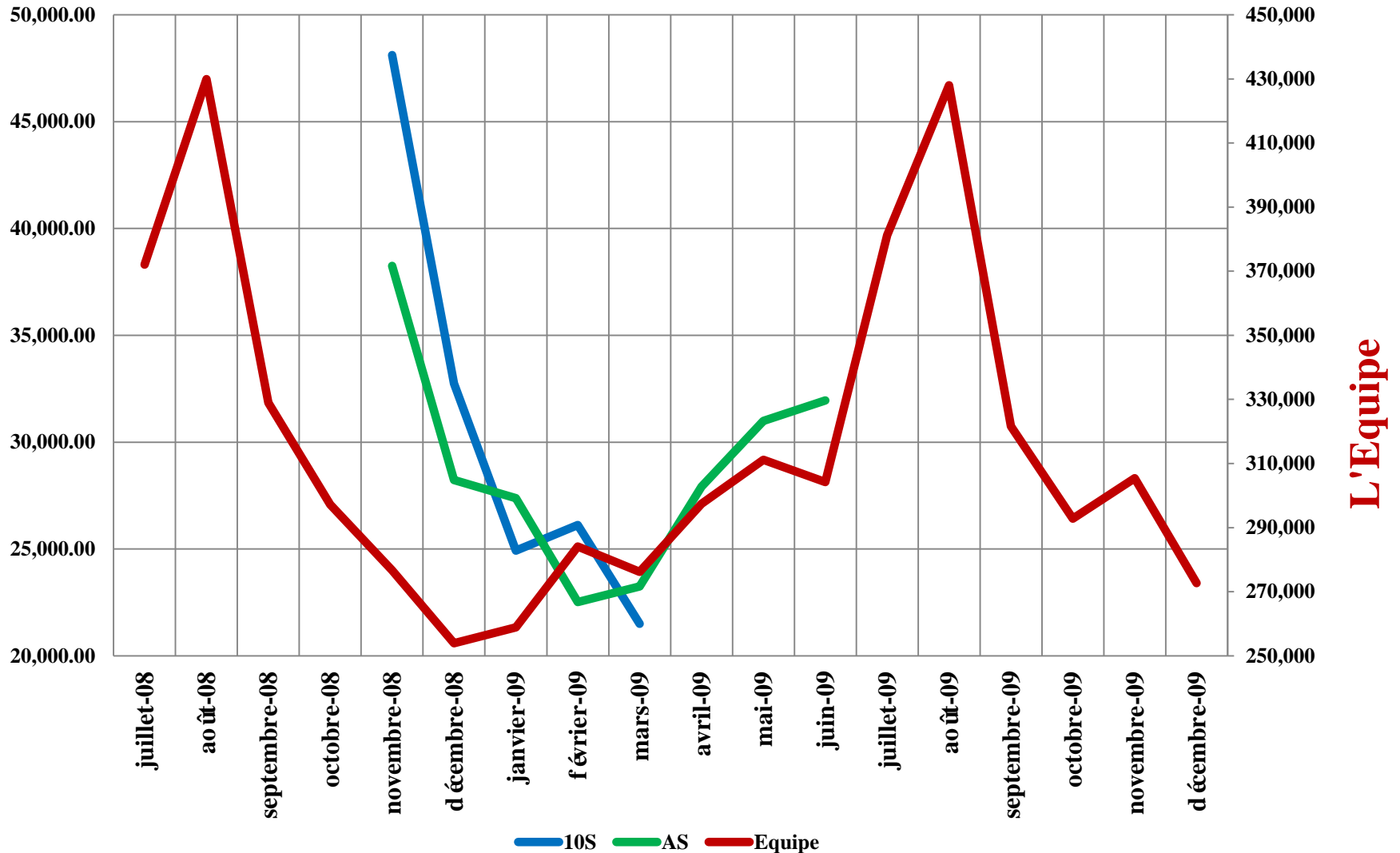
- EPA launched a **duplicate** of *Le 10Sport.com*, although it claimed that it had thought **for a long time** about starting another sports daily
- ⇔ **If so, EPA could have differentiated itself from the new entrant**
 - The choice it eventually made only served the purpose of a **head-on attack**
 - The impact of the response was thus **maximal**
 - ✓ On the edition of *Le 10Sport.com*
 - ✓ On the financial income of *Le 10Sport.com*
- ⇔ **Additional facts in order to characterize the exclusionary conducted by EPA (not sufficient however)**

III. d) Short-lived goal of *Aujourd'hui Sport*

- Several elements show that *Aujourd'hui Sport* was not meant to remain on the market:
 - ✓ EPA's business plans did not go beyond **14 months...**
... *Aujourd'hui Sport*'s profitability was never contemplated, neither how, nor when it could happen
 - ✓ *Aujourd'hui Sport* was launched thanks to both **internal staff posting**, with a date of return to their workplace, and the recruitment of **short-term contract** employees
 - ✓ *Aujourd'hui Sport* stopped being distributed **before the usual sales peak** of the summer
... even though its sales were going up for the 1st time
- ⇔ Short-lived goal confirms *Aujourd'hui Sport* was part of an exclusionary strategy

Edition of *L'Equipe*, *Aujourd'hui Sport* and *Le 10Sport.com*

10Sport.com and Aujourd'hui Sport



III. e) Causal link between the abuse and the ousting of *10Sport.com*

➤ Consequences of the conduct:

- ✓ *Le 10Sport.com* could not expand
- ✓ The small size of its readership, partly geared towards *Aujourd'hui Sport*, forced it to exit the market in March 2009

↔ **Actual** and **potential** effects

- ✓ The fact that *Le 10Sport.com* would have (or not) had the opportunity to be profitable in the absence of the abusive conduct is irrelevant for the demonstration of an exclusionary strategy

➤ In the end, only one sports daily remains on the market: *L'Equipe*

↔ **A supply-side drying-up conduct detrimental to the readership**

- An exclusionary conduct that reduces consumers' choice in the nation-wide paper-based sport newspaper market
- Large size of the relevant market...

***L'Equipe* has an annual turnover > 130 millions euros**

... but the economic context is difficult

↔ Like the EU Commission, the French Competition Authority takes into account the ***inability to pay factor*** in the setting of the fine

- ✓ Basic amount: 8 786 745 euros
- ✓ Inability to pay claim: 60% reduction granted
- ✓ Final amount of the fine: **3 514 000 euros**

The decision is being challenged before the Paris Court of appeal

Thank you for your attention!

gautier.duflos@autoritedelaconcurrence.fr