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French Competition Authority fines Sony for abusing its dominant position in the market for the supply of PS4 controllers

In its decision no. 23-D-14 of 20 December 2023, the French Competition Authority fined Sony (four group companies, including the Japanese parent company) 13.5 million EUR for abusing its dominant position in the market for the supply of PS4 controllers (from November 2015 to April 2020).

Initiation of procedure

The procedure was initiated in 2016 by a French competitor (Subsonic). This was followed by a litigation procedure before the French Competition Authority during which Sony proposed commitments. However, the Authority rejected them in 2020 on the grounds that they did not adequately address the competition concerns identified by its investigation teams. After that, the latter resumed the investigation. In the end, the procedure lasted seven years since Subsonic's referral.

Relevant market

The French Competition Authority began by pointing out that the relevant market was the French market of 'video game controllers for PS4', on the basis that there are no interchangeable products – from competitors or from other generations of Sony consoles.

Sony's market share on the relevant market would have been well in excess of 50% and would probably have exceeded 70% over the entire period 2015-2020.

Sony was notified of two grievances relating to this market.

Technical countermeasures

There were three categories of PS4 controllers on the market: those designed and sold by Sony (known as 'Dual Schock 4'), those licensed by Sony (under the so-called 'OLP programme') and those from third parties not benefitting from an OLP licence (e.g. Subsonic, Suza, etc.).

Sony made it compulsory for its own controllers and those of its licensees to be fitted with a microchip containing a unique identification number. Sony used regular PS4 operating system updates to disconnect controllers from unlicensed third parties that do not have this identification number. With these technical countermeasures, these third parties were unable to resolve the problem immediately, so consumers could assume that their controllers had a manufacturing defect.

To justify these technical countermeasures, Sony claimed that they were taken to combat the infringement of its intellectual property rights. While the French Competition Authority considers that Sony was pursuing a legitimate objective in taking measures to combat counterfeiting, it points out that these measures were not proportionate.

Opaque licensing policy

To avoid disconnections, unlicensed manufacturers had only one choice: join the ‘OLP programme’ in order to obtain an identification number from Sony for their consoles.

The French Competition Authority considered that the criteria for access to this programme were opaque (no criteria were communicated to all manufacturers who requested them), imprecise and discretionary. For example, Sony systematically refused to communicate its accession criteria to Subsonic and other manufacturers.

The French Competition Authority has considered that the combination of these two practices significantly damaged the brand image of the third-party manufacturers affected, thus resulting in an abuse of a dominant position under Article 102 of the Treaty on the Functioning of the European Union and Article L. 420-2 of the French Commercial Code.

Market with high barriers to entry

Through its behaviour, Sony created barriers to entry and expansion for third-party manufacturers in the relevant market. Sony's control of the PlayStation ecosystem, and the fact that its own model is sold with the consoles and is perceived as the 'reference controller' by users, strengthens Sony's market power vis-à-vis its current and potential competitors.