



Press release
15 October 2018

Healthcare/Launch of a public consultation

Within the framework of its sector-specific inquiry into the distribution of medicinal products and chemical pathology, the *Autorité de la concurrence* is publishing an interim assessment, which it is submitting for public consultation in order to collect the opinions of the relevant professionals (pharmacists, doctors, nurses, intermediaries in the medicinal products distribution sector, chemical pathology laboratories, etc.)

The submissions will contribute to the *Autorité*'s preliminary findings and help it to put forward recommendations to improve how competition works in these sectors for the benefit of professionals and patients.

Scope of the sector-specific inquiry

On 21 November 2017, the *Autorité de la concurrence* decided at its own initiative to issue an opinion on the healthcare sector, and more specifically on how the medicinal products and chemical pathology markets function. Within the framework of this sector-specific inquiry, the Investigation Services met dozens of stakeholders from the public and private sectors, to whom a large number of questionnaires were sent.

The *Autorité* is today launching a broad-ranging public consultation designed to contribute to the preliminary assessment drawn up by its services following this initial investigation phase with a view to adopting a final opinion in early 2019. The first opinion will analyse the fields of distribution of medicinal products in urban areas and chemical pathology. It will be followed, in summer 2019, by a second opinion on setting the price of medicinal products.

A sector at the heart of public policies

This inquiry is an opportunity to recall the importance that public authorities attach to maintaining a high level of public health protection in our country. This objective has always been - and must continue to be - the focus of our concerns, particularly as regards the distribution of medicines in urban areas and the laboratory testing field. French excellence in these fields is based on a network of qualified healthcare professionals who are fully committed to their missions of general interest.

The distribution chain in urban areas, as stipulated and governed by European and national regulations, is thus organised in such a way as to limit the risks of shortages and effectively combat drug counterfeiting.

This high level of public health protection is also reflected in the proximity and highly dense geographical coverage of healthcare provision, with around 21,500 pharmacies and 4,000 chemical pathology laboratories nationwide.

The healthcare sector is nevertheless confronting new competitive and economic challenges that require the assistance of public authorities.

Tailoring regulations to the challenges in the sector

Healthcare professionals are currently faced with the need to adjust their economic model, particularly as a result of the major technological changes that have taken place in French society in recent decades and which are now part and parcel of patients' habits.

The widespread use of the internet has led to the emergence of new delivery options, such as telemedicine and the development of online sales of medicinal and other healthcare products.

These new services, some of which have already reached maturity in many neighbouring countries, are struggling to take off in France. They nonetheless meet a growing demand from patients, particularly those living in regions where healthcare delivery is becoming less accessible and those with reduced mobility.

The chemical pathology field has also experienced major technological changes, for example through the miniaturisation of robots and the emergence of increasingly innovative examination techniques (genetic screening for example). These changes, which require significant funding, could in the long term help to enhance the quality of chemical pathology products and services, particularly by reducing delivery times and the intrusive nature of certain examinations. They also meet the legitimate aspirations of patients by providing cutting-edge products and services nationwide.

A new mode of economic regulation would address a triple challenge: meet patient demand for quality healthcare throughout the country, continue to maintain a high level of public health protection in France, and enable companies in France in the pharmacy and laboratory testing sectors to take advantage of economic opportunities offered by the European Union.

At present, companies in France are all too often at a disadvantage compared to their foreign counterparts, which benefit from less stringent legislation and greater access to financing, thus enabling them to expand more easily in other countries, including France. This is true, for example, of the online sale of medicines, where the leader in the French market is currently a Belgian company, as well as in the chemical pathology sector, where the biggest laboratories are often owned by foreign companies.

The first assessment drawn up by the Autorité highlights barriers to the economic development of companies in the healthcare sector

Several obstacles have been identified by the ongoing inquiry.

- Difficulties are of an economic nature

The main obstacle is economic in nature and stems from the inability of certain companies to find the necessary funds to adapt to these changes and modernise their activity. Thus, although it would appear increasingly necessary to diversify the activities of pharmacies in order to strengthen the role of the pharmacist as a healthcare professional, the investments required (new equipment, staff training, etc.) cannot be made due to difficulties in finding appropriate financing, which is hampering their development potential.

Similarly, private chemical pathology laboratories can be confronted with difficulties in finding financing for the very sizeable investments required to implement technological changes. These difficulties can also be exacerbated by the current regulatory framework, which provides for a two-speed system for share capital ownership of these laboratories.

Lastly, intermediaries in the medical distribution chain in urban areas are experiencing difficulties resulting from sluggish competition in the sector, particularly the weakness in price competition. Since they lack countervailing purchasing power, these intermediaries are finding it difficult to assert themselves in their negotiations with the pharmaceutical laboratories, which is to the detriment of pharmacies and patients, especially in the market for medicines that are not reimbursed by the social security system.

- A regulatory framework that is sometimes outdated and unsuitable

The second obstacle concerns the outdated nature of applicable regulations, which are not always suited to the economic changes that these sectors are currently experiencing

- For example, **community pharmacies** cannot effectively compete with supermarkets, hypermarkets and health and beauty stores when it comes to products that do not have to be sold in retail pharmacies due to the restrictive regulations governing advertising of these products.

Even though the new missions of pharmacists have been enshrined in law, their implementation is slow due to the time required to adopt the necessary provisions.

- **Intermediaries in the distribution chain** are finding it difficult to offset the regulatory burdens imposed upon them through additional revenue (examples: public service obligations for intermediaries, unbundling obligations for intermediaries with multiple status, etc.).
- **Chemical pathology laboratories** are subject to many regulatory requirements relating to their location, the conditions for exercising their activities and the terms of their share capital ownership which unnecessarily hamper their development.

Consequently, while the regulatory framework was able in the past to address real public health concerns, it appears that it is no longer appropriate for current issues, as the solutions adopted often appear outdated or disproportionate to the goal sought. This finding therefore advocates for a more flexible sector-specific mode of regulation.

How can you take part in the public consultation?

As part of the ongoing sector-specific inquiry, the Investigation Services have compiled a summary of the legal framework applicable to the affected sectors and drawn up preliminary findings for the following three segments of activity:

- a. Community pharmacies;
 - [Online sales of medicines](#)
 - [Advertisement by community pharmacies](#)
 - [Turnover of the pharmacy](#)
 - [Monopoly of pharmacies](#)
- b. [intermediaries in the medicines distribution chain](#);
- c. [chemical pathology laboratories](#).

These summary documents have been compiled on the basis of a large number of exchanges with the relevant public and private stakeholders and information from existing reports and studies. They constitute an interim assessment, but need to be expanded with contributions from a public consultation that encompasses all of the stakeholders covered by the inquiry.

A public consultation that is open to everyone

This public consultation is intended for all stakeholders covered by this sector-specific inquiry. These stakeholders are invited to take part in the consultation by selecting the link that corresponds to their situation from the list below.

Responses must be sent to the *Autorité* by **18 November 2018**, which is the date on which this public consultation will end.

- a. If you are a pharmacist, [click here](#);
- b. If you are an intermediary in the medicinal products distribution chain (wholesale redistributor, consignment services provider, central pharmaceuticals purchasing body (CAP), group purchasing body (SRA), etc.), [click here](#);
- c. If you are a company that is active in the mass retail distribution sector and/or over-the-counter personal hygiene and beauty products sector, [click here](#);
- d. If you are a chemical pathology laboratory, [click here](#);
- e. If you are a doctor or a nurse, [click here](#);
- f. If you do not belong to any of the above categories, [click here](#).

> If you have any question or need information on the sector-specific inquiry, you can send an email to the *Autorité* at avis.sante@autoritedelaconcurrence.fr

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