ADVOCACY FOR AN
AGILE ECONOMY

Autorité de la concurrence
Mobile telephony, gas, standardisation, certification, transporting parcels, dairy products, hearing aids, **COMPETITION**, driving licences, regulated professions, hotels industry, coach travel, bank guarantees, **IS**, taxis, private passenger cars with drivers, poultry, fishing quotas, **EVERYWHERE**, trains, purchasing offices, TV and radio broadcasting.
CONTENTS

02 / 30 seconds to understand the Autorité
04 / Interview with Bruno LASSERRE
08 / Key figures 2015
10 / 2015 landmark cases
12 / The Autorité’s latest missions
14 / The European competition network

16 / A FAST-MOVING ECONOMY
18 / Opportunity for everyone
32 / In an ever-advancing world
40 / With openness and confidence
44 / Towards an economy without borders

48 / FAST-CHANGING SECTORS
50 / Distribution and consumer goods
58 / Transport
64 / Telecommunications and Internet
72 / Media
74 / Services

80 / AN EXPERT TEAM
82 / The Board of the Autorité
84 / Organisation of the Autorité de la concurrence
86 / Developing a competition culture

ADVOCACY FOR AN AGILE ECONOMY ● 2015 SUMMARY
TO UNDERSTAND THE AUTORITÉ

<table>
<thead>
<tr>
<th>STATUS</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Independent Administrative Authority</td>
<td></td>
</tr>
<tr>
<td>17 Members of the Board</td>
<td></td>
</tr>
<tr>
<td>174 Agents</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>BUDGET</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>19.8 Million Euros</td>
<td>The Autorité's budget for 2015</td>
</tr>
<tr>
<td>1.25 Billion Euros</td>
<td>The total amount of fines levied by the Autorité in 2015</td>
</tr>
</tbody>
</table>
MISSIONS

**REVIEW** mergers

**PUNISH** anticompetitive practices

**PROVIDE EXPERT ADVICE** to the public authorities and economic stakeholders

---

**KEY DATES**

3 APRIL 2015
Revision of the leniency procedural notice

14 APRIL 2015
Winner of European Competition Authority of the Year of the GCR Awards

6 AUGUST 2015
Adoption of the Law for Growth, Activity and Equal Economic Opportunities, also known as the “Macron Law” [following recommendations issued by the Autorité: legal professions, coach transport, motorways, distribution]

JUNE 2016
5 stars rating in the Global Competition Review
The Autorité maintains its ranking among the world’s leading antitrust authorities for the 5th consecutive year.

---

**KEY EVENTS**

13 JANUARY 2015
Opinion on regulated legal professions

11 MARCH 2015
Fines for the dairy products cartel

1 APRIL 2015
Opinion on joint agreements by purchasing offices

21 APRIL 2015
Commitments from Booking.com

17 NOVEMBER 2015
Opinion on standardisation and certification

15 DECEMBER 2015
Fines for two anticompetitive agreements in the delivery service industry

17 DECEMBER 2015
Fine for the Orange group

---

**EUROPEAN NETWORK**

The Autorité de la Concurrence is the most active national authority (in terms of number of investigations undertaken and decisions adopted).
Interview with Bruno LASSERRE, President of the Autorité de la concurrence

INSTIL A COMPETITION CULTURE

Coach transport, regulated professions, driving licences, online sales of non-prescription medicinal products; the Autorité seems to be a laboratory of ideas for public authorities. How do you define its position?

Bruno Lasserre: We aim to be a source of proposals that invite public authorities on the path of reforms, stimulating them to identify potential for growth and innovation. We do not however seek to impose our point of view. For the Autorité to be legitimate, it is essential that we take an educational stance. However it is up to political authorities to make the decision and arbitrate between competition’s needs and other public policy objectives.

The 2008 Law strengthened the Autorité’s powers by allowing it to investigate a matter at its own initiative. As a result, every year we give priority to one or two major subjects. For 2016, we have selected the hearing aid sector and online advertising. At the same time, the government or the parliamentarians ask us for sector inquiries or for prior considerations on draft texts, such as the “Macron Law”.

The Autorité’s advisory role is, in short, a combination of work initiated on its own and government-assigned projects.

Our wish is to instil a culture of competition, even in the most conservative sectors. Let us take the example of regulated professions: they are of course essential to our economy, in that they guarantee legal security and reinforce trust. However, they are governed by rules that reflect equilibriums from the past. The topic of the rates charged by notaries provides a fine illustration: these had not undergone any in-depth review for 40 years, even though the context had changed profoundly. It was essential that action was taken to bring rates into line with costs, while at the same time guaranteeing a minimum return on human and capital investments. This forms part of the necessary modernisation of a profession which, we must not forget, holds a monopoly!

Above and beyond rates, it is also important that young people have the opportunity to take over. The Macron Law means that we will have an important role to play in helping them get settled. Other work in relation to notaries has involved the drafting of a map highlighting the areas where needs are not being met. Interested applicants will be able to submit a plan and set up a new office from scratch where it will be most needed. This is a fantastic opportunity to enhance the profession’s demographic renewal while at the same time improving the services provided to the French people. It is the first stage of a process that will then be rolled out to bailiffs and judicial auctioneers.

Digital technology is becoming increasingly central to the economy. The Autorité took an early interest in data-related concerns. How are you currently involved with this issue?

B.L.: The digital revolution has a profound effect on production processes and on the daily lives of the French people. It leads to the emergence of new professions and throws the former economic balance into disarray by disruptively redistributing value between incumbent operators and new players.

The public authorities are, by nature, often more sensitive to the voices of the ‘advocates of the old order’. It is our role to raise awareness among politicians about the benefits of these new equilibriums, even if the transition may be onerous. It is essential to trust those who are taking risks, being entrepreneurial and bringing new ideas. What strikes me about this new digital economy is that it is being built by young people for young people. What would we think if the political authorities were to turn their backs to them, signalling that they are protecting the old status quo?
Digital technology brings opportunities: it harnesses energies and pushes companies to surpass themselves. More interesting still, it creates value by opening up new markets. This is what is known as the induction effect. The BlaBlaCar example is an excellent illustration of this phenomenon: it has provided a meeting point between fragmented offer and demand that was previously unable to find expression.

At the same time, however, while it empowers consumers, digital technology creates very strong market positions, occupied by a handful of stakeholders (GAFA). This is clearly a source of concern to the Autorité. To this end, it has for example taken an interest in hotel reservation platforms. Its Booking.com decision will allow the stimulation of competition between platforms and give hoteliers more commercial freedom.

We have also taken part in an extensive reflection on Big Data-related questions with the aim of assessing major issues and identifying in advance the competition concerns generated by this new economy. An initial phase began with the conducting of a joint study in 2015 with the German Bundeskartellamt. It will be extended in 2016 by a sector inquiry into online advertising. The aim is to achieve an in-depth study of this complex ecosystem, characterised by growing integration and risks of conflicts of interest.

Data has become an essential input and even the principle according to which new economic activities are organised. However, is it a transparent market? Who can access the data? What are the new professions? What are the real market powers? All these are questions that are raised.

“It is our role to raise awareness among the political powers about the benefits of these new equilibriums, however onerous the transition may be.”
Health is one of French people's priorities and represents a significant expense item. What actions is the Autorité taking in this area?

B. L.: The healthcare sector is at the heart of our concerns. For financial reasons, health insurance will be increasingly concentrated on major medical risks and will leave more benign risks to be covered by supplementary health insurance, in other words by the market. In this context, the Autorité took interest in several issues.

First, access to generics. We must verify that companies are not discouraging generics’ entrance onto the market. This is even more of a fundamental competition issue considering that the competition generated by generics can lead to a fall in the cost of collective coverage of medicinal products. The Autorité has fined laboratories on several occasions and, after several years, results are beginning to improve for generics, even if some cultural obstacles remain within both the medical profession and the patients’ minds. The substitution rate is rising, in particular because pharmacists are given a financial incentive to this end.

Second important subject: the opening up of the distribution of non-prescription medicinal products. On this point, we regret that the recommendations arising from our 2013 sector inquiry were not followed, when a reform could have been implemented without disrupting the pharmacy network. Today, the price of these medicinal products varies between one and four times more the price from one pharmacy to another. An opening up of distribution accompanied by guarantees would allow patients to better arbitrate the prices based on transparency. The Autorité is also heavily involved in the question of the development of online sales. It is a wonderful opportunity for pharmacists, as it is reserved for them and represents a chance to expand into this new sector. Paradoxically, the huge number of obstacles set out in the implementing regulations suppresses all incentive to take action. Why not encourage the most innovative pharmacists to develop this activity, which could be extremely useful, particularly in more remote areas?

The final major issue concerns the healthcare networks. Currently, supplementary health insurance favours a network of professionals providing services for their members in order to, for example, ensuring lower optician’s or dentistry costs. Even if the establishment of these networks may have led to some fears, the Autorité considers that it favours competition rather than hampering it. Indeed, anything a patient cannot obtain through individual negotiation can thereafter be obtained, in terms of quality and of prices, by collective demand.

“ONLINE SALE OF MEDICINAL PRODUCTS IS A GREAT OPPORTUNITY FOR PHARMACISTS. WHY NOT ENCOURAGE THE MOST INNOVATIVE OF THEM?”
2015 was a big year for mergers, with almost 200 transactions reviewed. What is your assessment of this? What projects does next year hold?

B. L.: This number has been fairly stable year on year. By contrast, the nature and scope of transactions are changing and the mergers unit is becoming increasingly involved. In fact, the first half of 2016 sees us already at a record high in terms of the number of simultaneous transactions having reached the in-depth examination phase. These include the takeover of Darty by Fnac and the de facto merger of Auchan and Système U. As every year, we will also be reviewing compliance with respect of the commitments made by companies, in particular those made by Numericable during its takeover of SFR.

From our point of view, the high number of mergers is an encouraging economic sign. It demonstrates a return of confidence with ambitious external growth strategies and new opportunities to be seized by companies. Traditionally there are also sectors in need of restructuring, such as agrifood and transport.

Major future transactions will be an opportunity for the Autorité to consider renewing its doctrine and modernising its approach, particularly in order to take account of new distribution methods. In this light, the Fnac/Darty case will be an occasion to reflect on how online sales should be taken into account within the relevant market, while the Auchan/ Système U case provides an opportunity to look more closely into “drive stores”.

The European competition network is an example of successful cooperation. After 12 years is there still room for improvement?

B. L.: More and more cases are now dealt with by capital cities. For me it is an example of the success of a system that effectively combines decentralisation and convergence. The growing part of national authorities does not represent a threat to the coherence of the Europe’s institutional edifice, but quite the opposite. It is now time to move on to a second more pragmatic, practical stage. Competition law is not an abstract law. One should be able to implement it effectively to change behaviours on a given market. The question today is to determine whether, as an authority, we have the means to do so.

While there has been progress thanks to model programmes or alignment of practices, the portfolio of tools still differs from one country to the next. From a personal point of view, I would support harmonisation of applicable criteria in matters of interim measures and fines, and more generally the creation of common standards that do not yet exist. This reform would not change the French situation in any way. It would simply mean that French companies, when active in other European markets, would be subject to homogenised law across the whole European territory.

In addition, we have recently seen authorities threatened by political initiatives. It is paradoxical that there is nothing in the European framework to protect competition authorities by guaranteeing them independent status and resources. Does our effectiveness not depend on a guarantee of independence?

2015 will have been a record year in terms of fines, which amounted to 1.25 billion euros. Is this an underlying trend? How will these sums be allocated?

B. L.: Our aim is not always to exceed the previous year’s figure - we don’t seek to break any records. The amount of these fines is linked to a sustained activity and our case portfolio. In fact, two decisions essentially contributed to this exceptional amount: first, the fine handed out in the delivery service industry (672.3 million euros) and secondly, the fine imposed on Orange (350 million euros), a case to which we applied for the first time, and at an early stage, the new settlement procedure introduced by the Macron Law.

The fines’ recovery rate is very high (more than 98%). This money is quickly moved into the general State Budget and is used to finance expenses in the general interest of the French people (education, justice, etc.). One billion euros, this is for instance the approximate cost of the strengthening of security policy after the terrorist attacks.

“MAJOR ACTIVITIES TO COME WILL BE THE OCCASION FOR THE AUTORITÉ TO REFLECT ON THE OPPORTUNITY TO RENEW ITS DOCTRINE AND MODERNISE ITS APPROACH”
KEY FIGURES 2015

ACTIVITY REPORT

- 250 DECISIONS ON THE MERITS OF THE CASE (ANTICOMPETITIVE PRACTICES)
- 192 MERGER REVIEW DECISIONS
- 16 WITHDRAWALS/DISMISSALS
- 22 OPINIONS

ONGOING CASES

Case load (excluding mergers)

Workload at 31 December 2015

ECONOMIC SECTORS

Economic sectors in which the Autorité has been most active in 2015, in terms of responding to complaints and consultations. (excluding merger review decisions)

Agriculture: 2
Electricity: 3
Hotels and accommodation: 2
Media: 4
Healthcare: 4
Business services: 4
Other: 4
Transport: 6
Telecoms: 7
Distribution and consumer products: 9
**Mergers**

<table>
<thead>
<tr>
<th>Clearances</th>
<th>186</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clearances subject to commitments</td>
<td>6(1)</td>
</tr>
<tr>
<td>Clearances subject to injunctions</td>
<td>0</td>
</tr>
<tr>
<td>Inapplicability decisions</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>192</strong></td>
</tr>
</tbody>
</table>

1 These decisions were reached at Phase 1.

**Fines**

**Development of fines since 2008**

<table>
<thead>
<tr>
<th>Year</th>
<th>Total amount of fines (in millions of euros)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>631.3(1)</td>
</tr>
<tr>
<td>2009</td>
<td>206.6</td>
</tr>
<tr>
<td>2010</td>
<td>442.5(2)</td>
</tr>
<tr>
<td>2011</td>
<td>419.8(3)</td>
</tr>
<tr>
<td>2012</td>
<td>540.5(4)</td>
</tr>
<tr>
<td>2013</td>
<td>160.5(5)</td>
</tr>
<tr>
<td>2014</td>
<td>1,013.6(6)</td>
</tr>
<tr>
<td>2015</td>
<td>1,252.3(7)</td>
</tr>
</tbody>
</table>

(1) Including € 575.4 million in fines in the steel products trading sector (decision revised by the Paris Court of Appeal in relation to the amount of the fines). / (2) Including € 384.9 million in fines in the banking sector (decision revised by the Paris Court of Appeal; the French Supreme Court quashed the appeal ruling and referred the case once again to the Paris Court of Appeal). / (3) Including € 367.9 million in fines in the laundry detergent sector (decision full and final). / (4) Including € 242.4 million in fines in the packaged flour sector (decision partially revised by the Paris Court of Appeal; an appeal is pending before the French Supreme Court). / (5) Including € 79 million in fines in the sale of commodity chemicals sector (decision subject to appeal before the Paris Court of Appeal). / (6) Including € 951.2 million in fines in the sale of home and personal care products sector (decision subject to appeal before the Paris Court of Appeal). / (7) Including € 672.3 million in fines in the dairy products sector (decision subject to appeal before the Paris Court of Appeal; € 192.7 million in the delivery service and express delivery service industry (decision subject to appeal before the Paris Court of Appeal) and € 350 million in the electronic communications sector (business market).

**Appeal Court Proceedings**

**Situation at 28 May 2016**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of appeals filed</td>
<td>25</td>
<td>12</td>
<td>12</td>
<td>8</td>
<td>6</td>
<td>10</td>
<td>10</td>
<td>14</td>
<td>8</td>
</tr>
<tr>
<td>Number of decisions upheld:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• appeal dismissed, inadmissible or withdrawn</td>
<td>18</td>
<td>11</td>
<td>11</td>
<td>5</td>
<td>6</td>
<td>7</td>
<td>8</td>
<td>12</td>
<td>2</td>
</tr>
<tr>
<td>• partial revision/decision upheld on the merits of the case</td>
<td>16</td>
<td>7</td>
<td>9</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>7</td>
<td>9</td>
<td>2</td>
</tr>
<tr>
<td>Total appeals examined</td>
<td>25</td>
<td>12</td>
<td>12</td>
<td>8</td>
<td>6</td>
<td>10</td>
<td>9</td>
<td>12</td>
<td>2</td>
</tr>
<tr>
<td>Cases pending</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>% decisions upheld/total appeals examined *</td>
<td>72</td>
<td>91</td>
<td>91</td>
<td>62</td>
<td>100</td>
<td>70</td>
<td>88</td>
<td>100</td>
<td>NS</td>
</tr>
</tbody>
</table>

1 Decisions 07-D-15 and 07-D-50
2 Decisions 08-D-12, 08-D-25, 08-D-30 and 08-D-32
3 Decisions 09-D-19 and 09-D-36
4 Decision 11-D-02
5 Decision 12-D-23
6 Decision 13-D-03
7 Decisions 14-MC-01 and 14-MC-02

* These statistics are likely to evolve according to the rulings handed down by the French Supreme Court and the relevant Court of Appeal, as applicable. The rulings subsequent to appeals filed against 2015 decisions are not yet fully known at the date of writing this report.
2015
LANDMARK CASES

13 JANUARY

Fine for the dairy products cartel
Decision 15-D-03

Opinion on the regulated legal professions
Opinion 15-A-02

11 MARCH

Opinion on joint purchasing agreements in the mass retail distribution sector
Opinion 15-A-06

31 MARCH

ADVOCACY FOR AN AGILE ECONOMY • 2015 SUMMARY
Sector inquiry: opinion on standardisation and certification
Decision 15-A-16

Fine for an anticompetitive agreement in the poultry sector
Decision 15-D-08

Fines for two anticompetitive agreements in the delivery service industry (transporting parcels)
Decision 15-D-19

Booking.com Commitments decision
Decision 15-D-06

Fine for the Orange group for abuse of a dominant position (business market)
Decision 15-D-20
THE AUTORITÉ’S LATEST MISSIONS

The Law of 6 August 2015 for Growth, Activity and Equal Economic Opportunities gave the Autorité new competences in terms of regulating certain legal professions. The Autorité must now give an opinion on regulated rates and make proposals on the establishment of professionals. A new dedicated unit has recently been established to fulfil these missions.

HOW IS THE UNIT STRUCTURED?

The team, headed by Thomas Piquereau since 1st April 2016, is made up of 7 case officers, lawyers and economists, all with solid experience in regulatory matters and familiar with how the concerned professions operate. The unit is part of the investigation services which operate under the authority of the General Rapporteur.

HOW WERE THE FIRST STAGES ROLLED OUT?

As part of the task of providing the relevant Ministers with a map identifying the areas of France where the establishment of new offices could improve supply or proximity of services, the Regulated Professions Unit has analysed around 500 contributions resulting from the public consultation, held in March 2016. The team’s work is based on a number of economic and demographic criteria aimed at assessing, at a local level, the supply and demand fundamentals of the legal services in question. This stage is essential in the drafting of the proposed map and making recommendations on the pace of the creation of future offices in areas where needs have been identified.

In June 2016, the Autorité submitted its opinion comprising a proposed map and recommendations on the pace of creation of offices.
**REGULATED PROFESSIONS**
The Autorité’s role in the reform

---

### RATES

- **Mandatory opinion by the Autorité on the method for setting rates of 7 professions**
  - Opinion on draft decrees before the French administrative Supreme Court

- **Non-mandatory opinion of the Autorité on rates for the services of 7 professions**
  - The government informs the Autorité of a project on revising the rates at least 2 months before it takes place
    - Referral from government for opinion
    - Opinion at own initiative
    - No opinion
    - Public consultation
    - Opinion submitted to the Ministers of Justice and the Economy on the joint draft regulations

---

### ESTABLISHMENT

- **Mandatory opinion on freedom of establishment of notaries, bailiffs and judicial auctioneers**

---

**EVERY 2 YEARS**

- Public consultation
  - Opinion on the freedom of establishment + recommendations to the Minister of Justice
  - Proposal for a map of areas where a priori needs have been identified, submitted to the Ministers of Justice and the Economy
  - Publication of the map by a joint regulation

  - In “free-establishment areas”
    - Establishment at the recommended pace
    - Autorité’s public opinion
    - The Minister accepts establishment

  - In “regulated-establishment areas”
    - The Minister of Justice refers the matter to the Autorité if it is planning to refuse an establishment
    - The Minister refuses establishment on reasoned grounds

---

*Judicial auctioneers, court registrars, bailiffs, court-appointed administrators and liquidators, notaries, lawyers in certain fields.*
THE EUROPEAN COMPETITION NETWORK...

... PROVIDES ASSISTANCE

The Autorité has provided assistance to investigations on 7 occasions in 2015: assisting the European Commission on 2 occasions and 3 competition authorities on 5 occasions (Austria, Germany and Luxembourg).

The Autorité has also, on 3 occasions, asked to receive documents collected by its German, Spanish and Dutch counterparts. It has also received 4 requests for information from the Commission and the German and British authorities.

Since the network was set up, the Autorité has ranked highest among national competition authorities in terms of taking up new cases, with 249 investigations launched.

... PROVIDES EFFECTIVE COORDINATION

At the start of the procedure, the authorities inform each other, via the network, of a case being opened, when European law is liable to be applied. This mutual information system allows for the optimum allocation of the cases between them and also gives them visibility on their respective activities. In certain cases, the authorities work in close collaboration throughout the investigation in order to apply the law homogeneously within the European Union (such as in the Booking.com case, see p.78).

... IMPROVES THE APPLICATION OF COMPETITION POLICIES

In 2015, 24 meetings were held between the European Commission and national competition authorities, in which the Autorité played an active role:

- meetings between managing directors in relation to the steering of ECN work;
- “horizontal” expert working groups (procedural cooperation and guarantees, tackling cartels, mergers review, determining fines and computer-based methods of investigation);
- “sector-specific” expert working groups (agrifood, energy, pharmacy and healthcare, telecommunications, transport and regulated professions).
...DELVES DEEPLY

In a joint paper, the Autorité de la concurrence and the German Bundeskartellamt analysed the implications and challenges for competition authorities arising from data collection in the digital economy as well as in other sectors. The paper offers a full overview of the decision-making practice, jurisprudence and doctrine to date. It allows both stakeholders and competition authorities to identify the key issues and parameters that need to be taken into account when assessing the relevance of data collection in the application of competition law. It likewise provides a contribution to the debate on the economic role of “digital platforms”.
Make progress... and always look ahead! An ‘agile’ economy is one that recognises the need to give innovative players a chance, keeping up with developments while building confidence. All the Autorité’s action are led with these dynamics in mind.
OPPORTUNITY FOR EVERYONE
IDEAS THAT ARE MAKING HEADWAY...

Expertise at the service of a dynamic vision of the economy

The Autorité’s expertise is frequently called upon to provide the government with insight upstream from the preparation of a reform or the drafting of a proposed law or decree. It then evaluates the impact of a reform on the functioning of competition in a particular sector or identifies the possible risks of distortion of competition that the new legal text could bring.

More modern

Early this year the Autorité submitted an opinion to the government on the reform of the regulated legal professions (Opinion 15-A-02 of 9 January 2015), in which it recommended greater freedom of establishment for professionals in this sector, as well as a revision of their rates (for more details, see page 24).

More freedom

The Autorité has likewise submitted two opinions on private passenger cars with drivers. Its guiding principle? Enhancing competition between these two types of stakeholders by, on one hand, recommending measures allowing new entrants to be treated on the same footing as taxis in the prior reservation market, and on the other, by supporting measures that give taxis the means to restore their competitiveness in the face of this new competition (possibility of charging flat-rate fares).

Opinions 14-A-17 of 9 December 2014 and 15-A-07 of 8 June 2015 (for more details, see pages 30 and 62)

More open

The Autorité has also been asked by the government to examine three draft legislative texts on driving licences. In its opinion, it focused on the need to ensure greater equality of opportunity for candidates regarding the test and in competition between driving schools. In particular it expressed its reservations with regard to the planned method for allocation of test places between driving schools, a process that has a tendency to hamper market dynamics to the detriment of new entrants.

Sector inquiries: targeting challenging issues

Above and beyond the opinions that it gives on referral from the public authorities, the Autorité regularly issues opinions at its own initiative, on subjects that it proactively selects, in the form of wide sector inquiries. It then seeks to identify areas of dysfunction in a market and draws up recommendations for tackling them: as a result, over the last few years it has taken a particular interest in the sector of the distribution of medicinal products, car maintenance and repair, standardisation and certification process, etc.

Its recommendations give the government and the public authorities food for thought and have directly inspired several reforms, such as the reform on coach transport (Opinion 14-A-05 of 27 February 2014 and Opinion 16-A-01 of 15 January 2016 for more details, see page 22). Since the opening of the sector, the entry of new players has heavily contributed in stimulating competition and creating jobs.

In February 2016, the Autorité announced that it was launching an investigation in the hearing aid sector. Having observed low levels of hearing aid use among French citizens and the high cost of devices, it decided to look into the state of competition within the sector and to identify any obstacles to the lowering of prices. Opinion expected in late 2016 (for more details, see page 31)

Guidelines for economic stakeholders

In some cases, the opinion of the Autorité de la concurrence can be a useful guide for economic stakeholders as it provides them with a general analytical framework for competition risks and stakes in a particular sector.

In its opinion on joint purchasing agreements in the mass retail distribution sector, the Autorité provided operators with a certain number of tools, so they could carry out their own assessment of their draft or current agreements. Opinion 15-A-06 of 31 March 2015 (for more details, see page 54)

The Autorité’s recommendations give the government and public authorities food for thought. They have directly inspired some reforms.
### Distribution and consumer products
- 15-A-06 Joint purchasing arrangements between purchasing offices
- 15-A-11 Fair trade

### Telecommunications
- 15-A-10 Audiovisual broadcasting

### Transport
- 15-A-01 Rail reform
- 15-A-07 Taxis
- 15-A-15 Driving licences
- 15-A-20 National register of availability of taxis

### Media
- 15-A-13 Appointment of a cinema mediator

### Healthcare
- 15-A-03 Medical biology laboratories
- 15-A-05 Veterinary medicinal products
- 15-A-08 Medical biology laboratories
- 15-A-12 Medical biology laboratories

### Agriculture
- 15-A-19 Fishing quotas

### Electricity
- 15-A-17 Regulated sales tariffs for electricity and natural gas
- 15-A-18 Regulated sales tariffs for electricity

### Other
- 15-A-02 Regulated legal professions
- 15-A-09 Bank guarantees
- 15-A-16 Standardisation and certification

### SECTOR INQUIRIES SINCE 2012
<table>
<thead>
<tr>
<th>Year</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>To come in 2016 &amp; 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Car repair</td>
<td>Medicinal products</td>
<td>Coach transport</td>
<td>Standardisation and certification</td>
<td>Hearing Aids, Online advertising and Big Data</td>
</tr>
</tbody>
</table>

- **2012**: Car repair, E-commerce
- **2013**: Medicinal products
- **2014**: Coach transport
- **2015**: Standardisation and certification
- **To come in 2016 & 2017**: Hearing Aids, Online advertising and Big Data
Realising that this means of transport was abnormally underdeveloped, in 2014 the Autorité issued an opinion at its own initiative following a large-scale sector inquiry. Following a diagnosis of Malthusian regulation and poorly satisfied demand, it recommended opening up the market by softening the current regulatory framework and allowing consumers to benefit from this cheap, practical means of transport. These recommendations were adopted by the legislator in the Law for Growth, Activity and Equal Economic Opportunities (the Macron Law), which organised the opening up of competition in the sector. Currently, operators can open freely new coach lines for distances of more than 100 km. For lines of less than 100 km, the new law plans for checks to be made by ARAFER, which must ensure there is no economic risk to other means of transport.

Very positive initial results
Inland coach transport along regular long-distance lines has long been restricted in France. It used to be literally impossible to catch a coach from one town to another within the country. In 2009, legislation evolved and transporters were authorised to carry out cabotage on international lines. An initial measure aimed at opening up the sector was, however, insufficient to create a real market and had many constraints for operators. Between two stops on national territory, the number of passengers on the given domestic route had to be less than 50% of the total number of passengers on the service, even if the coach was not full. Additionally, the stops in question could not be located within the same region.

Reducing restrictions in the public coach transport sector will act as a lever for long-term growth. Potential in terms of job creation and territorial coverage was identified by the Autorité in its 2014 sector inquiry. The new supply also responds to a demand, which until then had not been met, and to the mobility requirements of consumers on limited budgets. Largely inspired by the approaches explored by the Autorité, the legislator proceeded to an opening up of the market, the results of which quickly benefited the economy. Analysis & explanation.

1,300 direct jobs created*

1.5 M passengers carried*
(the equivalent of 1.9% of the number of passengers on SNCF’s major lines)

TANGIBLE BENEFITS

COACH TRAVEL

A FAST-MOVING MARKET

Very positive initial results
Inland coach transport along regular long-distance lines has long been restricted in France. It used to be literally impossible to catch a coach from one town to another within the country. In 2009, legislation evolved and transporters were authorised to carry out cabotage on international lines. An initial measure aimed at opening up the sector was, however, insufficient to create a real market and had many constraints for operators. Between two stops on national territory, the number of passengers on the given domestic route had to be less than 50% of the total number of passengers on the service, even if the coach was not full. Additionally, the stops in question could not be located within the same region.

Reducing restrictions in the public coach transport sector will act as a lever for long-term growth. Potential in terms of job creation and territorial coverage was identified by the Autorité in its 2014 sector inquiry. The new supply also responds to a demand, which until then had not been met, and to the mobility requirements of consumers on limited budgets. Largely inspired by the approaches explored by the Autorité, the legislator proceeded to an opening up of the market, the results of which quickly benefited the economy. Analysis & explanation.

1,300 direct jobs created*

1.5 M passengers carried*
(the equivalent of 1.9% of the number of passengers on SNCF’s major lines)

TANGIBLE BENEFITS

COACH TRAVEL

A FAST-MOVING MARKET

Very positive initial results
Inland coach transport along regular long-distance lines has long been restricted in France. It used to be literally impossible to catch a coach from one town to another within the country. In 2009, legislation evolved and transporters were authorised to carry out cabotage on international lines. An initial measure aimed at opening up the sector was, however, insufficient to create a real market and had many constraints for operators. Between two stops on national territory, the number of passengers on the given domestic route had to be less than 50% of the total number of passengers on the service, even if the coach was not full. Additionally, the stops in question could not be located within the same region.

Reducing restrictions in the public coach transport sector will act as a lever for long-term growth. Potential in terms of job creation and territorial coverage was identified by the Autorité in its 2014 sector inquiry. The new supply also responds to a demand, which until then had not been met, and to the mobility requirements of consumers on limited budgets. Largely inspired by the approaches explored by the Autorité, the legislator proceeded to an opening up of the market, the results of which quickly benefited the economy. Analysis & explanation.

1,300 direct jobs created*

1.5 M passengers carried*
(the equivalent of 1.9% of the number of passengers on SNCF’s major lines)
The Autorité’s sector inquiry highlighted the success of this means of transport in neighbouring European countries (30 million travellers in the United Kingdom in 2012, for example) and emphasised that coaches were likely to interest travellers who prioritised cost over speed, such as young people or retired persons. The Autorité also stressed that its development would help meet the mobility needs of households in regions poorly served by transport.

These conclusions have been fully borne out: traffic has sharply increased (around 1.5 million passengers in comparison with 100,000 in 2013) and the prices offered by the operators are extremely attractive. The direct creation of jobs is substantial (1,300 positions) and territorial coverage has massively increased (the network is continuing to expand, with 734 pairs of towns already being connected).

Opinion 14-A-05 of 27 February 2014

Coach station: on the road to reform

The Autorité’s opinion also recommended that the regulatory framework regarding coach stations should be renewed, given that it is an essential element of the reform’s success. In practice, these facilities are little developed in France, even though they are a key component of the transport service in terms of comfort, safety and inter-connection with other modes of transport and networks. In addition to the low number of coach stations in France, another detrimental factor is that coach operators have difficulties to identify the entities responsible for the stations’ management or the established access conditions (particularly pricing conditions). After referral by the government on a draft ordinance, which followed every point of the recommendations that the Autorité had made following its sector inquiry, the latter has welcomed this reform, which encourages the development of stations and harmonises access conditions for coach companies.


On average, prices recorded for coach travel (4.5 centimes per km) are lower than car-sharing (around 6 centimes per km) and much lower than the train (10 centimes per km for the cheapest tickets available to everyone).

Information from France Stratégie report, 1 March 2016

*France Stratégie report, 1 March 2016
notaries and bailiffs may grant up to 10% reduction on part of their fees. This progress has been welcomed by the Autorité who would however have wished the ceiling to be higher, up to 20%. From now on, all real estate transactions above 150,000 euros may qualify for this reduction, namely almost half of all such transactions.

Considerable efforts have also been made with regard to real estate transactions for low amounts (a few thousand euros): rates have gone down significantly, by up to 70%, because the total amount of notarial fees will henceforth be capped at 10% of the value of the property (with a 90-euro minimum). This measure will facilitate small real estate transactions, in particular sales of small plots in rural areas, too often subject to high rates in comparison with the property’s value.

For some rates, the Autorité additionally felt that greater flexibility was desirable: the power to grant reductions would be a competitive factor between professionals and would allow some of their efficiency gains to be passed on to users. This pricing method was specified by decree of the French Administrative Supreme Court, adopted in February 2016 after an opinion from the Autorité.

Several regulations set out the new rates, which will be of application from 1 May 2016. More concretely, the rates of commercial court registrars will decrease by 5%; those of notaries and bailiffs by 2.5%. These rates will be revised every two years. For the first time, notaries and bailiffs may grant up to 10% reduction on part of their fees. This progress has been welcomed by the Autorité who would however have wished the ceiling to be higher, up to 20%. From now on, all real estate transactions above 150,000 euros may qualify for this reduction, namely almost half of all such transactions. Considerable efforts have also been made with regard to real estate transactions for low amounts (a few thousand euros): rates have gone down significantly, by up to 70%, because the total amount of notarial fees will henceforth be capped at 10% of the value of the property (with a 90-euro minimum). This measure will facilitate small real estate transactions, in particular sales of small plots in rural areas, too often subject to high rates in comparison with the property’s value.

Can I negotiate with my notary?

The Autorité found that on the whole, setting the regulated rates of notaries, bailiffs, judicial auctioneers, commercial court registrars, court-appointed administrators and liquidators, was based on old data. It did not take into account productivity gains or actual costs and was in need of a complete overhaul. The Macron Law provided for a new way of proceeding: as the Autorité had recommended, rates would now be fixed taking costs into account, while at the same time ensuring that the professionals in question received reasonable remuneration.

The aim of the Law for Growth, Activity and Equal Economic Opportunities of 6 August 2015 (Macron Law) is to boost competition in a strongly regulated sector. This ambitious reform will be of benefit both to consumers, who will see fairer, clearer and more intelligible rates freely applied, and newly qualified professionals who may now establish a practice in areas where there is a shortfall. The general principles of this law have been supported by the Autorité; some of them are even directly inspired by recommendations presented in the opinion issued in January 2015. The aim is clear: to encourage regulated legal professions to modernise and renew themselves.
Regulated freedom of establishment

For the Autorité, the freedom for establishment is a major factor in modernising legal professions, making them more efficient and reducing territorial inequalities related to the imperfect coverage of the French territory. The system that has prevailed until now led to insufficient renewal within the professions of notary, bailiff, and judicial auctioneer. The *numerus clausus* placed barriers to entry for newly-qualified professionals hoping to enter the profession. There has thus been one out-going notary for every five newly-qualified ones.

In the light of this situation, the Autorité considered it was no longer possible to leave the development of supply at the sole initiative of the professions. It advocated the implementation of a regulated freedom of establishment; all candidates for the professions of notary, bailiff or judicial auctioneer meeting the required conditions of nationality, aptitude, good repute, experience and insurance must be able to set up on their own behalf.

However, the pace of establishment must be modulated, to ensure that practices are established progressively, without endangering the economic balance of professionals who are already practising, as well as the continuity of their general-interest missions.

The Law of 6 August 2015 provides that every two years the Autorité proposes a map to the Ministers of Justice and of the Economy, setting out areas where the establishment of practices would seem useful in terms of strengthening the proximity or supply of services. In other areas, where no need for establishment has been identified *a priori*, establishment will by no means be prohibited in principle. In such areas it will be conditional upon an in-depth, local examination; and it will only be after an opinion from the Autorité (made public), that the Minister of Justice may refuse the establishment of an office. The reasons for this decision must be stated, they must take into account the area’s characteristics and the level of economic activity of the professionals concerned.

**Opinion 15-A-02 of 9 January 2015**

---

**THE FREEDOM TO ESTABLISH PRACTICES IS A MAJOR FACTOR IN MODERNISING THE LEGAL PROFESSIONS.**

---

**NEW REGULATED RATES**

<table>
<thead>
<tr>
<th>Service</th>
<th>Rate</th>
<th>Across the Board</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notary’s rates</td>
<td>- 2.5%</td>
<td></td>
</tr>
<tr>
<td>For real estate transactions</td>
<td>10%  of property’s value</td>
<td></td>
</tr>
<tr>
<td>above €150,000 up to</td>
<td></td>
<td></td>
</tr>
<tr>
<td>For real estate transactions</td>
<td>- 10%</td>
<td></td>
</tr>
<tr>
<td>for small amounts, notary’s</td>
<td></td>
<td></td>
</tr>
<tr>
<td>rates are capped</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Court bailiffs’ rates</td>
<td>- 2.5%</td>
<td></td>
</tr>
<tr>
<td>Commercial court registrars’</td>
<td>- 5%</td>
<td></td>
</tr>
<tr>
<td>rates</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: French Ministry of Justice
Modernising the method to allocate test places

In France, driving test places are allocated to driving schools by each local prefecture (except for independent candidates not enrolled in any driving school). The draft regulation submitted to the Autorité retained a system by which the allocation of places was based on the driving schools’ past activity. On the basis that this method distorts market dynamics to the detriment of new entrants, the Autorité recommended that the actual activity of driving schools on a monthly basis be taken into account (the number of candidates ready to sit their driving test). The Autorité also recommended, in the medium-term – as already existing in the UK – the implementation of a system allowing candidates to register directly on their own, without the Too long waiting periods and high cost

Every year in France, 1.3 million candidates take their “permis B” (private vehicles) test and 800,000 licences are issued. However, the French system is characterised by long waiting periods before candidates are able to sit their test. Despite an increase in the number of examiners, the system remains under pressure, with a waiting time, in 2015, of 72 days in comparison with a European average of 45 days. These waiting periods increase the overall cost of obtaining a driving licence and impede access to the job market, as many jobs require applicants to hold a driving licence. Indeed it is a recruitment requirement for 65% of employers. It can also cause problems in terms of road safety: it is estimated that around 500,000 people currently drive without a licence in France.

“The foreign examples demonstrate that there are plenty of models other than ours that work very well, often at less cost to candidates.”

Emmanuel Combe
Vice-President of the Autorité de la concurrence,
Le Figaro, 11 March 2016
that different pricing caps are set for the A/B and C/D categories, given that the duration of the practical test is different for the two categories.


Fixed rates for driving test fees

Furthermore, a decree has prohibited application fees and set fixed rates for the “support fees” (frais d’accompagnement) that candidates are charged to take their tests. As candidates are more or less dependent on their driving school for the opportunity of obtaining a test place. The Autorité held that capping support fees would constitute a suitable measure for bringing the excessive pricing previously observed to an end. The draft text proposes to set a cap that is not of a fixed value but rather is based on the prices charged by a driving school for a one-hour lesson: this would allow room for competition in terms of pricing between various driving schools.

The Autorité has expressed a favourable opinion of the draft decree, on condition that the final text specifies that the support services provided to the candidate for the theory test are entirely optional, and

In favour of outsourcing the administration of the driving theory test

The Law of 6 August 2015 also envisaged the driving theory test being delegated to certified operators. By outsourcing the administration of the driving theory test to operators able to compete with one another, and by freeing up examiners from this activity (which does not require any specific qualification) the reform moves in the direction of greater economic effectiveness. The Autorité has given an overall favourable opinion on the texts that were submitted. However, it noted that the awarding of third-party contracts by geographical area - rather than nationally - would have made this new market more accessible to greater numbers of operators.

As regards the setting of prices by public authorities, the Autorité held that it was not justifiable and recommended that the cost of the test could vary up to a capped amount in order for candidates to benefit from this opening up to competition.


DRIVING THEORY TEST: AN OPPORTUNITY FOR LA POSTE

The texts specify that in order to achieve certification, operators must be present in all French departments. This represents a diversification opportunity for the French postal service (La Poste). The concept of a public-owned utility, already equipped with a diverse and wide-reaching network, diversifying its activities into a competitive market is not in itself problematic; rather, it simply implies that steps must be taken to ensure the operator is competing fairly with other service providers. In similar cases, the Autorité has always recommended a degree of separation, at least on a fiscal level, between the public utility’s central operations and its diversification initiatives.
A feeling of déjà vu

The Autorité had already issued an unfavourable opinion on an initial draft regulation in 2013. Having identified a significant set of prohibitions and restrictions not justified by public health considerations, it issued numerous recommendations, which the government only partially followed in its regulation of 20 June 2013. In March 2015, the French Administrative Supreme Court (Conseil d’état) finally annulled this regulation, on the basis that it contained rules that exceeded the scope of authority granted to the Minister and had not been notified to the European Commission.

After a further referral by the government on two new draft regulations, the Autorité noted that not only did they perpetuate a number of restrictions on which it had already expressed opinions but also introduced new provisions creating additional disproportionate constraints in terms of the aim of protecting public health. This proposed mechanism seems aimed at restricting the scope of the already limited freedom granted under the ordinance of 19 December 2012 to French pharmacists wishing to establish an online sales website and makes the regime established under the previous regulation of 20 June 2013 yet more onerous. The Autorité stressed that, if brought into effect, these draft texts would in addition introduce a discriminatory regime in comparison with the conditions required for over-the-counter sales, effectively removing all interest in the sale of medicinal products on the internet, for both patients and pharmacists.

For several years, the Autorité has shown its support for the wider use of online sales of medicinal products by pharmacists. This new form of sale allows them to revitalise and modernise their professional activity, giving it more visibility. At the same time patients benefit from the greater flexibility of online sales (extended working hours, lower travel costs, lower prices and better information on prices). In response to a further referral on draft texts aimed at organising online sales, the Autorité has issued an unfavourable opinion to the government on the planned measure, noting that it only made the constraints on online pharmacists more onerous. The Autorité stressed that, if brought into effect, these draft texts would in addition introduce a discriminatory regime in comparison with the conditions required for over-the-counter sales, effectively removing all interest in the sale of medicinal products on the internet, for both patients and pharmacists.
New, highly dissuasive constraints

Very exacting requirements in terms of pharmaceutical analysis

It was already a requirement for patients to fill out a full health questionnaire prior to making an initial order. The new draft text now envisages that the pharmacist may have to request a great deal of information from the patient, some of which is covered by medical confidentiality. The information may include the results of biological analyses, disease history or a doctor’s diagnosis. The text also “invites”互联网 pharmacists to draw up a "pharmaceutical intervention" for each order, namely a written report that sets out the basis and details of the pharmaceutical analysis. Finally, for each new order of the same medicinal product, the pharmacist must gather information from the patient (i.e. whether there have been any undesirable effects) and assess the risk-benefit ratio of continuing the treatment. The level of detail of the information to be requested from the patient does not seem relevant in terms, first, of the limit of online sales to solely non-prescription medicinal products, and secondly, the information usually requested in the context of over-the-counter sale of these same products.

The implementation of a quality management system

This level of requirement is comparable to the requirements to be met in order to obtain ISO 9001 certification. For example, internet pharmacists must establish a quality review system with a "periodic quality management system performance review" and a "dispensing practices self-assessment", as well as an "external assessment" and "the implementation of quality indicators". This set of formalities creates numerous administrative constraints and additional management costs, thus discriminating against this means of dispensation in comparison with over-the-counter sales, which are not subject to "quality system" obligations. These conditions seem even more restrictive given that they render licensed pharmacists liable: consequently, were legal actions to be taken against them, they could be charged with not having done all they could to guarantee the quality of the dispensing of the medicinal product.


SLOW DEVELOPMENT OF ONLINE PHARMACIES IN FRANCE

Since the regulation was passed on 20 June 2013, the development of online sales of medicinal products in France remains very limited: of 22,401 pharmacies surveyed as of 1 January 2015, only 301 had developed a website for the online sale of medicinal products, i.e. a rate of only 1.34%, ten times lower than in Germany. Furthermore, the rate of refusal of authorisation for the creation of sites for online sales of medicinal products is high. In 2013, of 259 applications, 80 were refused by regional health agencies (ARS - agences régionales de santé): a refusal rate of almost one third.
The Autorité therefore issued a favourable opinion with regard to fixed fares for taxi trips between the Parisian airports and Paris, with a view to Parisian taxis regaining their attractiveness for consumers and allowing them to compete with VTCs by means of a fare-setting system that is popular among consumers.

Opinion 15-A-07 of 8 June 2015

The Autorité has also issued a largely favourable opinion on the implementation of the Le.taxi platform. This platform is an interface that will centralise the information transmitted by the taxis on their availability and geo-position. The information will then be used by mobile apps or search engines to allow users to “electronically hail” a taxi. The Autorité as well stressed the need to make sure that no distortion of competition occurs as a result of the provision of a tool reserved for taxis and financed by the public purse.

Opinion 15-A-20 of 22 December 2015

VTCs have developed considerably on the competitive prior reservation market with the use of several apps for smartphone, including Uber, SnapCar, AlloCab, Chauffeur-privé, etc. allowing consumers to book a car in a few clicks.

A place for VTCs
Following a referral by the government, the Autorité issued several recommendations that VTCs should be treated on an equal footing with taxis, particularly opposing the introduction of an obligatory 15-minutes delay between the booking and passenger pick-up.


Modernising the taxi trade
At the same time, the Autorité applauded initiatives aimed at modernising the taxi trade by allowing it to seize the opportunities offered by new technology and to compete on a level playing field with the VTCs.

The Autorité therefore issued a favourable opinion with regard to fixed fares for taxi trips between the Parisian airports and Paris, with a view to Parisian taxis regaining their attractiveness for consumers and allowing them to compete with VTCs by means of a fare-setting system that is popular among consumers.

Opinion 15-A-07 of 8 June 2015

The Autorité has also issued a largely favourable opinion on the implementation of the Le.taxi platform. This platform is an interface that will centralise the information transmitted by the taxis on their availability and geo-position. The information will then be used by mobile apps or search engines to allow users to “electronically hail” a taxi. The Autorité as well stressed the need to make sure that no distortion of competition occurs as a result of the provision of a tool reserved for taxis and financed by the public purse.

Opinion 15-A-20 of 22 December 2015

CHAUFFEUR-DRIVEN CARS (VTCS) AND TAXIS

A ROCKY ROAD

Technological revolutions have changed the order of play and shifted the existing balance, before key players have a chance to prepare themselves. The eruption of smartphones in the world of VTCs (chauffeur-driven cars) and taxis is one such example. Faced with such upheavals, the reaction of incumbent stakeholders is often to defend the status quo, pushing the State to adopt protective measures. However, rather than bringing regulation to the service of the defence of established players, the Autorité is pushing to support stakeholders through their modernisation process.

VTCs have developed considerably on the competitive prior reservation market with the use of several apps for smartphone, including Uber, SnapCar, AlloCab, Chauffeur-privé, etc. allowing consumers to book a car in a few clicks.

A place for VTCs
Following a referral by the government, the Autorité issued several recommendations that VTCs should be treated on an equal footing with taxis, particularly opposing the introduction of an obligatory 15-minutes delay between the booking and passenger pick-up.


Modernising the taxi trade
At the same time, the Autorité applauded initiatives aimed at modernising the taxi trade by allowing it to seize the opportunities offered by new technology and to compete on a level playing field with the VTCs.

The Autorité therefore issued a favourable opinion with regard to fixed fares for taxi trips between the Parisian airports and Paris, with a view to Parisian taxis regaining their attractiveness for consumers and allowing them to compete with VTCs by means of a fare-setting system that is popular among consumers.

Opinion 15-A-07 of 8 June 2015

The Autorité has also issued a largely favourable opinion on the implementation of the Le.taxi platform. This platform is an interface that will centralise the information transmitted by the taxis on their availability and geo-position. The information will then be used by mobile apps or search engines to allow users to “electronically hail” a taxi. The Autorité as well stressed the need to make sure that no distortion of competition occurs as a result of the provision of a tool reserved for taxis and financed by the public purse.

Opinion 15-A-20 of 22 December 2015

According to Insee, turnover across the whole sector (taxis and VTCs) increased by 10% between 2010 and 2015. Technological innovation has opened up new opportunities, a major stake in terms of competition that is leading to increased employment.

A GENUINE IMPACT ON EMPLOYMENT

According to Insee, turnover across the whole sector (taxis and VTCs) increased by 10% between 2010 and 2015. Technological innovation has opened up new opportunities, a major stake in terms of competition that is leading to increased employment.
The questions raised by the Autorité
The Autorité decided, at its own initiative, to issue an opinion aimed at evaluating the state of competition within the sector and identifying any obstacles to the lowering of prices. Is competition between manufacturers satisfactory? Are the margins on hearing aids justified? Is the numeros clausus appropriate? Are consumers given adequate information? How can competition be encouraged between different types of hearing-aid provider networks?

Next steps
The Autorité will consult all the stakeholders (including manufacturers, intermediaries, distributors, prescribers and consumers). A public consultation on preliminary findings will be organised and the opinion should be issued in December.

Opinion 16-SOA-01 of 3 February 2016
IN AN EVER-ADVANCING WORLD
Safeguarding the market

Plans for joint purchasing agreements and external growth often form part of strategies that generate innovation and growth within companies. The Autorité supports this process by performing detailed case reviews within very tight time-scales. Every year, it reviews around 200 transactions. While the majority of them do not pose any difficulties, some require specific conditions (remedies). In 2015, it was the case for six of them. Drafting these remedies is then based on an in-depth collaboration between companies parties to the operation and the Autorité.

The parties can propose structural remedies (assets divestiture) and/or behavioural remedies to the Autorité. The latter will then establish whether they suffice in terms of maintaining a satisfactory state of competition. The Autorité adopts a pragmatic and innovative approach in the matter. It is open to proposals tailored to the specific nature of each sector and, in certain cases, has accepted innovative behavioural commitments (such as the creation of a fund for “stimulating competition” for non-winning bidders of tenders in order to stimulate the number of bids made in the Véolia/Transdev case in 2010). The agency’s pragmatism is still evident in the significant and increasing use of simplified decisions. Pledging to carry out its activities at a pace in step with the business world, it issued 79 simplified decisions within an average period of 15 days in 2015.
First application of “fix-it-first”

Guidelines on merger review provide the ability for parties to notify the transaction by presenting a buyer in advance for the activity or part of the activity for which the acquisition is likely to pose competition issues and which they offer to divest (the solution known as “fix-it-first”). When this happens, the Autorité assesses the effects of the transaction, taking into account the planned divestiture.

For the first time in 2015, the Autorité applied this mechanism in the context of the acquisition of Totalgaz by UGI. As part of its commitments, UGI proposed to transfer its stake in Norgal’s capital to Butagaz, thus allowing the latter to become the third shareholder in the depot, alongside the new entity and Vitogaz, a minority shareholder. This solution helped maintain the competitive situation that prevailed prior to the merger, by retaining three competing LPG distributors within the Norgal site.

IDENTIFICATION OF A BUYER FOR THE TAKEOVER OF ASSETS TRANSFERRED UNDER STRUCTURAL COMMITMENTS CAN TAKE PLACE BEFORE THE AUTORITÉ ADOPTS ITS DECISION.

MERGERS AND ACQUISITIONS IN FIGURES

A VERY ACTIVE YEAR

192
CLEARANCE DECISIONS

79 SIMPLIFIED DECISIONS, were issued within 15 days, representing more than 40% of clearance decisions

3 TRANSACTIONS REFERRED BY THE EUROPEAN COMMISSION TO THE AUTORITÉ

• Système U / Auchan
• Vitalia / Vedici Holding (CVC Capital Partners)
• Davigel / Bain Capital

A BREAKDOWN OF TRANSACTIONS BY SECTOR

RETAIL TRADE 39.5%
WHOLESALE TRADE 12%
BANKING INSURANCE 4%
INDUSTRY 9%
SERVICES TO BUSINESSES 5%
AGRIFOOD 0.5%
MISCELLANEOUS 30%

CLEARANCES ISSUED SUBJECT TO REMEDIES

<table>
<thead>
<tr>
<th>Reference</th>
<th>Date</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>15-DCC-54</td>
<td>13 May 2015</td>
<td>Société Anonyme de la Raffinerie des Antilles (SARA) / Rubis</td>
</tr>
<tr>
<td>15-DCC-104</td>
<td>30 July 2015</td>
<td>Société Réunionnaise de Produits Pétroliers (SRPP) / Rubis</td>
</tr>
<tr>
<td>15-DCC-115</td>
<td>18 September 2015</td>
<td>Société Audika / William Demant</td>
</tr>
<tr>
<td>15-DCC-170</td>
<td>10 December 2015</td>
<td>Société Financière Quick / société Burger King France</td>
</tr>
</tbody>
</table>
What about the first contact with the Autorité when companies are planning a merger?

Before notifying a merger or acquisition transaction, companies generally make contact with the Autorité in an informal and confidential manner: this is known as the “pre-notification” phase. While optional, this stage is very important for an optimal investigation. It is an opportunity for companies to discuss any uncertainties about the control of their transaction with the mergers unit, and in the case of complex transactions, companies can gain an initial overview of the acceptability of their plan and anticipate any fine-tuning that may be required.

This contact, if taking place sufficiently upstream of the notification, also allows companies to minimise the risk of their file being found incomplete when formal notification takes place and speeds up the Autorité’s investigation of the transaction. Specifically, when parties submit their transaction presentation, the Autorité will, within five working days, send an initial response with the name of the case officer(s) responsible for dealing with the notification and assessing whether the file is complete. Informal meetings may then be organised between the parties when required.

What forms does dialogue with the Autorité take during the investigation?

The Autorité does all that it can to foster a frank and constructive dialogue with companies throughout the cases investigation. Updates on the progress of cases are organised at key moments, meetings are held on specific aspects such as economic studies and direct dialogue with the parties is the preferred means of communication. These steps can help the Autorité to ensure it has all the information it needs and allow companies to get on with preparation for subsequent stages of the procedure.

How and why does the Autorité consult stakeholders?

When the transaction so requires, the mergers unit conducts a market test, namely a consultation of the economic operators who are liable to be affected by the transaction. Questionnaires are sent to the main clients, suppliers and competitors of the companies concerned, and specific meetings or telephone updates may be organised. This market test can be undertaken as soon as pre-notification has taken place, with the express agreement of the notifying parties. Upon request of the parties, a summary of responses from third parties can be sent to them, eventually taking account of any requests for confidentiality that may have been issued.

This interface mechanism allows the Autorité to gather a large amount of data and numerous points of view that will enrich its reflection. This process means it can be as well informed as possible before taking its decision.

Merger review

DIALOGUE AT EVERY STAGE OF THE PROCESS

30" TO UNDERSTAND
DIALOGUE AS A LEVER FOR ACTION

The commitments procedure allows companies to devise solutions, on a voluntary and negotiated basis, in response to the Autorité’s competition concerns. Its implementation allows competition to be re-established quickly and constructively and frees up resources for the examination of more serious offences. This procedure benefits companies, the market and the Autorité itself, successfully contributing to the effectiveness of competition regulation.

Fast and tailor-made solutions

Use of the commitment procedure enables equilibrium to be re-established on the market in a rapid and flexible manner. Whether there are concerns of a technical, legal or commercial nature, the company agrees to change its behaviour, in order to restore a stable framework for the future.

The quality of the proposed commitments is analysed in detail by the Autorité which checks that they are “relevant, credible and verifiable” and also ensures that they are proportionate to the competition concerns expressed by the investigation during the preliminary assessment.

BOOKING.COM CASE: A SYMBOLIC DECISION

In April 2015, the Autorité, in coordination with the European Commission, the Italian and Swedish competition authorities obtained particularly extensive commitments from Booking.com to stimulate competition between online reservation platforms, and to give hotels more freedom in commercial and pricing matters.

Decision 15-D-06 of 21 April 2015
(for more details, see page 78)

A flexible tool of variable duration

The commitment decision may be adopted for an unspecified duration when it is addressing long-term concerns or, alternatively, for a limited duration, when reinstatement of competition is anticipated in the near future. It is subsequently up to the Autorité to assess the need to revise the commitments in view of changes, if any, in the market in question.

REVIEW OF COMMITMENTS IN THE EVENT OF MAJOR CHANGE ON THE MARKET

In 2015, the Autorité held that certain commitments made three years before by the Fédération française de golf (FFG) were now superfluous, as the competition concerns identified at the time were no longer relevant.

Decision 15-D-16 of 27 November 2015
Effective from all points of view

The commitment procedure is a solution that, in fine, is to everyone’s advantage. The market is the first beneficiary, as this procedure enables certain situations to be addressed far upstream. It relieves the Autorité of the onerous task of an investigation, meaning it can spend its time and resources on other cases. Finally, the company avoids the identification of a breach and the risk of a fine.

Commitments under strict supervision

The commitments taken by the parties become mandatory as of their validation by the Autorité, and if a company fails to respect them, it could face financial penalties. The maximum amount of this fine is 10% of the global pre-tax turnover of the company in question.

HOW DOES IT WORK IN PRACTICE?

PREPARATORY STEPS BY THE COMPANY

A company whose behaviour is the subject of a referral to the Autorité may, as soon as it is aware of it and as long as there has not yet been any statement of objections, approach the investigation services with a view to exploring the possibility of embarking on the commitments procedure.

PRELIMINARY ASSESSMENT BY THE AUTORITÉ

If the company’s initial commitments’ proposal is likely to reach a satisfactory conclusion, the case officer draws up a preliminary assessment specifying how the anticompetitive effects on competition are liable to constitute a prohibited practice.

FORMALISATION OF COMMITMENTS

The company must, within the given term (which may not be less than one month), formalise its initial request.

POSTING THE “MARKET TEST” ONLINE

The General Rapporteur posts a notice on the Autorité’s website, setting out a summary of the case and the commitments’ proposal so as to allow interested third parties to submit their observations.

EXAMINATION OF THE PROPOSALS BY THE BOARD

The board of the Autorité examines the commitment proposals. It can decide to make their acceptance subject to certain amendments or reject them if it decides they do not address the competition concerns.

CLOSURE OF CASE OR STATEMENT OF OBJECTIONS

If they are accepted, these proposals allow the case to be closed before any notice of breach. If they are not, the investigation procedure continues.

FINES FOR NON-COMPLIANCE WITH THE COMMITMENTS

In February 2015, the Autorité de la concurrence fined GIE Les Indés Radios 300,000 euros for failing to respect several commitments made during a previous procedure. Decision 15-D-02 of 26 February 2015

5 COMMITMENT DECISIONS ACCEPTED IN 2015

<table>
<thead>
<tr>
<th>SECTOR</th>
<th>MARKET TEST</th>
<th>DECISION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consumer products in the French overseas territories</td>
<td>13 May 2015</td>
<td>15-D-14, 10 September 2015</td>
</tr>
<tr>
<td>Refuge du Goûter and access to Mont Blanc</td>
<td>7 May 2015</td>
<td>15-D-12, 30 July 2015</td>
</tr>
<tr>
<td>Hosting of mobile telephony equipment (TDF)</td>
<td>3 February 2015</td>
<td>15-D-09, 4 June 2015</td>
</tr>
<tr>
<td>Hotel booking platform (Booking.com)</td>
<td>15 December 2014</td>
<td>15-D-06, 21 April 2015</td>
</tr>
<tr>
<td>Urban Transport (SNCF)</td>
<td>18 November 2014</td>
<td>15-D-05, 15 April 2015</td>
</tr>
</tbody>
</table>
Voiding the irreversible

Investigation on the merits of a file consumes resources and time: understanding how the market works and assessing the economic issues, hearing the interested parties, respecting the stages of the comprehensive procedure, etc. It takes at least 12 to 18 months before a decision can be reached. In the interval, the practices in question keep provoking adverse effects on competition (for example, it could cause companies to disappear and lead to a long-term reduction of competition on the market). This is why the law provides the Autorité with the possibility to act swiftly by ordering interim measures while waiting for a decision on the merits of the case, after having allowed the complainant and the respondent to submit their points of view both in writing and orally. These measures ensure that the threat of harm to competition is held off and the future preserved through the avoidance of irreversible damages. In general, the Autorité reaches a decision in three or four months.

**After interim measures are pronounced...**

When the Autorité pronounces interim measures against a company, the latter must change its behaviour consequently, within the time limits set out in the decision. If the chosen measures are not respected, the Autorité can hand out fines.

The parties can lodge an appeal against the Autorité’s decision before the Paris Court of Appeal, within ten days of receiving notification. The court will make a ruling within a month as of the appeal.

---

**WHAT IS AN INTERIM MEASURE?**

It is a provisional decision that the Autorité may make on an urgent basis at the request of the parties, when it believes that the practices reported pose serious and immediate harm to competition.
GAS SECTOR
ENGIE CALLED UPON TO AMEND THE PRICES OF ITS MARKET OFFERS

Having ordered interim measures in late 2014, the Autorité again used this tool in the gas sector in 2016, ordering Engie to amend the prices of its market offers.

Direct Energie referred several complaints to the Autorité in October 2015, especially in reference to Engie’s market offers which were, according to Direct Energie, liable to be anticompetitive.

The Autorité found that Engie had fixed the prices of its individual market offers (namely those that are non-catalogued and reserved for business customers) without taking its real costs into account, at the risk of establishing predatory or exclusionary pricing.

The Autorité held that this could be qualified as serious and immediate harm to the sector. Indeed, alternative suppliers today exercise limited competitive pressure and their market shares remain stagnant. The practices in question deprive them of the development opportunity represented by these market offers. It noted that there was a risk of foreclosure, thus leading to impoverishment of the competitive environment, which in the future would have an effect on all companies’ energy supply prices.

Consequently, while its opinion on the merits of the case is pending, the Autorité has ordered Engie to set the prices of these individual market offers in such a way as to take into account all the costs that it must bear in the short-term for the sale of these offers.

Decision 16-MC-01 of 2 May 2016

ONLINE ADVERTISING
DISMISSAL OF INTERIM MEASURES, BUT PURSUING INVESTIGATION ON THE MERITS

One advertiser, the company Gibmédia, complained that Google had without warning, in January 2015, suspended the AdWords account that it used to broadcast adverts for its sites info-meteo.fr, pages-annuaire.net, annuaires-inverse.net and info-societe.com. It complained that the procedure followed by Google and the grounds for suspension lacked objectivity as well as transparency, and were discriminatory. The Autorité did not issue interim measures against Google, holding that there did not appear to be the possibility of any serious and immediate harm to consumers, the sector or the complainant, but it continues investigation on the merits of the case.

Decision 15-D-13 of 9 September 2015

FRANCE LEADS THE WAY IN INTERIM MEASURES

The Autorité’s wide breadth experience in matters of interim measures is rare among the European Union authorities. It has used this tool some thirty times since 2000 while only half a dozen other competition authorities have used it at all, and that the European Commission has not issued any interim measures since 2001. Recent reforms introduced by Member States, particularly in the United Kingdom and Belgium, bear witness to a growing interest in this tool which allows intervention to be made in step with the pace of economic realities: a pace that is ever increasing with the move towards a digital economy.

The fact still remains however that reconciliation between conditions on the merits of the case and the applicable standard for interim measures to be granted on a European scale could facilitate the development of this procedure. A European legislative initiative, the first steps of which were taken by the Commission in its communication of July 2014 marking 10 years of implementation of EC Regulation 1/2003, followed by a vast public consultation in 2015, could provide such an occasion.
WITH OPENNESS AND CONFIDENCE
A CONTROLES RISK OF FINE FOR THE COMPANIES

Since 2001, the Autorité already made use of a procedure similar to the settlement: the settlement procedure, or ‘non-contestation des griefs’. After more than 10 years of implementation, it seemed to practitioners that some improvement was required, particularly in terms of greater visibility as to the final amount of the fine. The Law for Growth, Activity and Equal Economic Opportunities addresses this concern by introducing a genuine transaction procedure. Presentation.

The reasons for change

After almost 15 years of implementation of the settlement procedure, the results are positive. In fact this procedure is attractive for companies since a third of sanction decisions adopted by the Autorité follows a settlement procedure. However, there is still room for further progress. Companies complained of a lack of predictability with regard to the amount of the fine and sometimes hesitated to embark on this course. And while the Autorité, for its part, saved time and resources due to the reduction of the burden associated with the investigation procedure, it still bore the same burden in terms of monitoring the appeals brought against its decisions.

A step forward for everyone

In order to gain effectiveness, it was therefore essential that action was taken regarding the predictability of the final amount of the fine. This is precisely the aim of the introduction of a "real" transaction by the legislator. Until this point, negotiation was not about how much a fine should be reduced in terms of absolute value, but in terms of reduction percentage [between 10 and 25%] of a fine of which the amount was not yet known and difficult to predict.

Implementation of this new procedure is therefore a real step forward for the company, which will now benefit from a degree of security, since it will be in a position to anticipate the maximum amount of the fine incurred. The possibility of extending the discussion to the quantum of the fine should allow companies to settle for past conduct, while removing the risks for the Autorité to have challenges brought before courts, on how the fine has been calculated.

The new procedure envisages that companies could commit to amending their behaviour in the future. The General Rapporteur can then take this into account in the transaction proposal. There are three different types of commitment: structural commitments [separation of accounts, conversion into subsidiaries, etc.], behavioural commitments [changes of contractual clauses, general conditions of sales or price schedule, etc.] and compliance commitments.

KEY STAGES OF THE NEW PROCEDURE

The Autorité investigates an anticompetitive agreement or abuse of a dominant position

The General Rapporteur informs the company of the general scope of the objections and the possibility of reaching a compromise around 1 month before the sending of the statement of objections

After sending the statement of objections, if the company states that it wishes to negotiate a compromise, the General Rapporteur submits a proposal to the company, setting out the range of fines envisaged

If they reach agreement, the General Rapporteur proposes to the Board that the fine is pronounced in accordance with the limits established by the transaction

ADVOCACY FOR AN AGILE ECONOMY • 2015 SUMMARY
More communication for better information

Following the lead of numerous competition authorities, the Autorité will now systematically publish a press release following a dawn raid, in order to reinforce equality of information between companies that are visited and those that are not, thus ensuring equality of access to the leniency programme.

Revision of the leniency programme

TRANSPARENCY BREEDS TRUST

In its fight against anticompetitive agreements and cartels, the Autorité has a particularly effective tool: leniency. While the procedure is now well established - with a dozen decisions issued - some companies still hesitate to embark on this path. On 3 April 2015, the Autorité published a new procedural notice, consolidating its decision-making practice and clarifying certain points with a view to enhancing transparency and predictability for companies.

Explanation.

“LENIENCY IS A RACE WHERE IT IS BEST TO ARRIVE FIRST.”

Virginie BEAUMEUNIER
General Rapporteur of the Autorité de la concurrence, L’Usine Nouvelle, 15 October 2015.

This step was much welcomed during the public consultation, although contributors called for the proposed text to be clearer with regard to the content of the press release that would be published. In response to these legitimate comments, the Autorité specified that press releases would not give the identity of the companies visited and that the content would be worded with strict respect for the presumption of innocence principle. If the Autorité decides there are no grounds to pursue the investigation or closes the case to the benefit of the companies visited, it will be communicated to the public as well in a further press release.

In accordance with the new provisions of the procedural notice, the Autorité has twice issued press releases following dawn raids, in the compote sector [September 2015] and the fire safety systems sector [February 2016].

Ranges for partial leniency

The majority of participants in the public consultation stressed that the current system did not offer sufficient predictability to applicants who approached the Autorité at a second stage [known as “type 2”] in terms of the level of reduction that they are likely to receive.

<table>
<thead>
<tr>
<th>ORDER OF ARRIVAL</th>
<th>RANGES OF POSSIBLE REDUCTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st company to provide significant added value</td>
<td>25 to 50%</td>
</tr>
<tr>
<td>2nd company to provide significant added value</td>
<td>15 to 40%</td>
</tr>
<tr>
<td>Other company to provide significant added value</td>
<td>max 25%</td>
</tr>
</tbody>
</table>

“Type 2” leniency applications concern companies who contact the Autorité only as a second stage [the 1st applicant is able to claim immunity].

PARTIAL LENIENCY (TYPE 2)
To remedy this, several contributors suggested that the Autorité establish ranges of predetermined reductions depending on the ranking of type 2 applicants as per the European Commission model.

The Autorité took account of these comments while seeking to ensure that a balance was maintained between the two criteria applicable to determining the level of conditional reduction of the fine (the ranking of the application’s deposit and the added value of the information contributed).

Consequently, the procedural notice provides for companies increased transparency by publishing ranges of reduction, while ensuring that they partially overlap, in order to preserve a flexibility that makes it possible to reward the quality of the information provided.

Procedural notice, 3 April 2015

A LENIENCY OFFICER TO SUPPORT COMPANIES

Given the growing number of leniency requests received by the Autorité, a Leniency Officer has been appointed, an expert dedicated to the implementation of the leniency program, who will guide companies along the way.

Since 2011, the Leniency Officer has provided a point of contact for potential candidates for leniency, who can consult the Officer informally, and even anonymously, with questions on the procedure and steps to be taken. The information exchanged on this occasion will not be used against a company that requests information. Fullest confidentiality is guaranteed.

When the procedural notice was revised, the Autorité also increased the visibility of the Leniency Officer. He is the entry point for companies wishing to submit a leniency request. There is a special phone number for making appointments regarding the submission of leniency applications (+33 (0)1 55 04 02 00).

At the end of the call, the Leniency Officer confirms receipt with the date and time by email and arranges a meeting for the submission of the leniency application with the General Rapporteur or a member of the team.

Since 2013, the Autorité has, alongside chambers of commerce or interested unions, organised workshops aimed at presenting its action in relation to anticompetitive practices and raising companies’ awareness of the tools at their disposal for limiting the risk of fines, in particular the leniency procedure. The Leniency Officer travels all around France for meetings with numerous companies.

A NOW WELL-ESTABLISHED PROCEDURE

2006
Door manufacturing

2007
Removals

2008
Plywood
Steel trading

2011
Laundry detergents

2012
Flour

2013
Commodity chemicals

2014
Cleaning and hygiene products
Wallpaper

2015
Dairy products
Transporting parcels
TOWARDS AN ECONOMY WITHOUT BORDERS
France, a driving force in Europe

Joint reflection, sharing experiences, cooperation in the field... the European Competition Network (ECN) is a real success story and owes its success to the vitality of the participating authorities.

An encrypted network

How does it work in practical terms? The national competition authorities inform each other, before or just after their first step towards an investigation, of new cases of cartels or abuses that are likely to affect trade between Member States. This pooling of information makes it possible to detect any cross-border anticompetitive practices and optimises allocation of cases by entrusting their investigation to the best-placed authority. It also allows upstream identification of files with common issues, thus helping to guarantee consistent application of competition law within the European Union.

This early communication gives each authority greater visibility on the activity of its counterparts and offers the opportunity for case officers to discuss live cases with each other and share their experiences.

The Autorité is one of the ECN’s most active participants. Indeed, since the ECN was established, it has been the national authority that has handled the most new cases on the basis of European law.

Coordination and assistance

The network also allows authorities to coordinate in the field. The Autorité has thus been able to seek help from its counterparts, and lend them a hand in return when required. In 2015 for example, it helped three competition authorities (Austria, Germany and Luxembourg) on five occasions with requests for information or dawn raids. It also cooperated on two occasions with the European Commission, providing it with assistance in relation to investigations on the French territory.

A forum for the exchange of information

The ECN is also a forum for discussion and in-depth reflection on specific legal or economic questions (tackling cartels, mergers reviews, establishing fines, etc.) In some cases, these exchanges result in the drafting of common texts that can have a real knock-on effect throughout the whole network.
This is the case with the adoption of a framework leniency program, for example. In 2015, representatives of the European Commission and the national competition authorities met on 24 occasions in the ECN context, in Brussels or other European capitals: the frequency and number of participants in these meetings illustrate the sustained activity of the competition authorities in matters of cooperation in Europe. The work's steering has particularly stressed consistency in matters of procedural guarantees, merger law, tackling cartels and penalties.

Connected all over the world

The Autorité has a strong, visible, influential presence within the international competition community. It is very active in the International Competition Network (ICN) comprising over 130 authorities. It holds the vice-presidency of the Steering Group and since April 2015 has been co-chair of the Mergers Working Group, having previously co-chaired the competition Advocacy Group for four years. The Autorité is also particularly active within the OECD competition committee and its Global Forum on Competition, an event that brings together many representatives of non-members of the OECD in association with the Forum’s works. It is an active participant, both through written contributions - in 2015 on the relationship between public and private action in competition law, and on inter-platform parity agreements - and speaking at sessions. It is a continuous presence as part of the Intergovernmental Group of Experts (IGE) on Competition at Unctad which meets annually in Geneva, and is also associated with a training cycle that brings together a public where half of the competition authorities are from the African continent. The Autorité is also very active in bilateral

HARMONISATION AND APPLICATION OF COMPETITION LAW IN EUROPE

A year ago, the European Commission celebrated the positive results of ten years of application of the ECN. However, the time has come for the network to deepen and widen the scope of its implementation of competition law. ECN can only retain its position as a model of effective cooperation for its counterparts across the world if it permanently seeks to go further.

The Commission looked into strengthening the competences of national competition authorities to implement European competition rules. On this basis, it held a public consultation, between November 2015 and February 2016, on proposals aimed at strengthening the tools for the implementation of competition rules and penalties and rectifying differences between national systems. Indeed, several national competition authorities do not have the power to accept commitments, carry out ‘home’ visits or seize paper and/or electronic documents. There are also significant differences in terms of penalties, particularly with regard to the applicable ceiling or the person to whom the practices are likely to be attributed.

The envisaged scenarios aim to provide all national competition authorities with suitable tools for detecting and fining breaches of competition rules and ensuring the effectiveness of leniency programmes. They likewise target the national competition authorities’ conditions of independence based on their status, but also on the resources and staff required for what they do.


Figures from 1 May 2004 to 31 December 2015. Information published on the European Commission website (http://ec.europa.eu)
cooperation and has responded to requests from many agencies around the world wishing to build their capacities, develop their institutional structure, implement internal rules and guidelines, and establish priorities for action.

Traditionally engaged in North or French-speaking African countries, the Autorité’s activities stretch out into the Middle East, the Mediterranean rim and the major emerging countries (Brazil and China). It has also recently branched out into other countries, namely Ecuador and Canada.

Finally, the Autorité has engaged in dialogue with the authorities of overseas territories in New Caledonia and French Polynesia, providing them with support in launching independent institutions in charge of competition regulation. On 23 July 2015, a technical assistance agreement was signed with the Polynesian competition authority, marking the start of targeted cooperation activity between the two agencies.

THE AUTORITÉ HAS A STRONG, VISIBLE AND INFLUENTIAL PRESENCE WITHIN THE INTERNATIONAL COMPETITION COMMUNITY.

BOOKING.COM
AN EXAMPLE OF SUCCESSFUL ENHANCED COOPERATION

In the context of a procedure initiated before the Autorité de la concurrence by the leading French hotel trade association and the Accor group, Booking.com, the French market leader, proposed particularly wide-ranging commitments which revived competition between platforms and gave hotels more freedom in commercial and pricing matters.

The handling of this case was the subject of enhanced European cooperation: France, Sweden and Italy worked together, in close coordination with the European Commission, to obtain similar commitments from Booking.com in these three countries.
Movement towards consolidation, growing power of the digital economy, new methods of consumption... the Autorité takes action, day after day, to shape tomorrow’s economy and to open it up to future generations.

FAST-CHANGING SECTORS
DISTRIBUTION AND CONSUMER GOODS
Concerted practices in the poultry sector

AN INTER-BRANCH ORGANISATION TAKES OFF

Demonstrating pragmatism and tailoring the amount fined to take into account an industry’s specific situation: this is the stance adopted by the Autorité in sanctioning an anticompetitive agreement in the poultry sector. Exceptionally, the Autorité held that the collective commitment to establish an inter-branch organisation was likely to be more effective than high fines in establishing long-lasting compliance with competition rules in the sector.

Innovating in the search for solutions

Given the very particular circumstances of this case, and the crisis the sector was experiencing, the Autorité decided that the collective commitment to establish an inter-branch organisation in a tight schedule (3 years), made by manufacturers representing most of the market, was likely to be more effective than simply handing out fines calculated by the usual method, in terms of long-lasting compliance with competition rules in the poultry meat sector. With better organisation, the profession would be in a better position to negotiate with mass retail distributors.

By departing from its usual guidelines, the Autorité has taken a gamble on the future, but in no way has it written a blank check, as a trustee is responsible for monitoring respect of the commitment.

Decision 15-D-08 of 5 May 2015
Thanks to the leniency programme, the Autorité dismantled and fined a cartel 192.7 million euros in the sector of dairy products sold under own brand labels (yoghurts, fresh cheeses, fresh creams and milk-based desserts). Producers were colluding on the prices and allocating volumes between themselves.

For almost six years, a nationwide cartel operated among the major dairy-product manufacturers representing 90% of the market for dairy products sold under own-brand labels: Yoplait, Senagral (Senoble), Lactalis, Novandie (Andros group), Les Maîtres Laitiers du Cotentin, Laïta, Alsace Lait, Laiterie de Saint Malo, Yeo Frais (3A group) and Laiteries H. Triballat (Rians).

The products involved were everyday goods which consumers buy on price grounds and to which, therefore, they are relatively captive. The practices were staggered over the 2006 to 2012 period with differing time lengths depending on the companies.

The leniency programme revealed the existence of a cartel

The leniency programme once more demonstrated its formidable effectiveness in dismantling cartels. In this case several companies have again stolen a march on their competitors by successively reporting the existence of a cartel. As first leniency applicant, Yoplait benefited from total immunity. Senagral’s application, which came a few days after dawn raids had taken place, enabled it to achieve “rank 2” and as a result the company saw a 35% reduction of its fine. (See p.42 on the leniency procedure).

Sophisticated concealment techniques

The cartel’s tight knot bound together the four sector leaders, namely Yoplait, Novandie, Lactalis and Senoble. Meetings would generally take place in hotels reserved by each participant in turn. The location changed each time in order to ensure discretion, and some meetings even took place at the home of one of the participants.

There were also regular, even daily, telephone conversations, made from secret mobile phones used only for the purposes of the cartel. The lines were not officially assigned to the users and their names did not appear on the bills. Senoble’s representative even used a telephone registered in his companion’s name.

Yoplait’s representative wrote down all the decisions reached during these various discussions in a “secret notebook”, true dashboard for the cartel. Yoplait submitted this file to the Autorité de la concurrence in support of its declarations, at the time of its leniency application.

Anticompetitive agreement on prices and volumes

The competitors informed each other of any price rises made and reached agreement on the increases they wanted to announce to distributors, as well as the arguments they would use to justify them.

The companies also concluded non-aggression pacts consisting of distributing volumes and freezing their positions in relation to each other. This was achieved in particular by distorting submissions in response to tenders launched by the major retailers. In total, 18 tender procedures were distorted by the use of these practices.
Proportionate fines

The total amount of fines handed out in this case may seem to be high. But as for any decision, the fines are proportionate to the seriousness of the practices, and the extent of the damage caused to the economy, thereafter they were tailored on the basis of each company’s individual circumstances.

Consequently, the fact that Lactalis belongs to a large group was taken into account (25% increase in the fine). In view of mitigating circumstances, the Autorité granted Novandie a reduction of its fine for having adopted a “maverick” competitive behaviour for one year, which disrupted the functioning of the anticompetitive agreement.

The Autorité always strives to find a good balance between the desired deterrent effect and the need to maintain the viability of the company fined. In accordance with its procedural notice on the setting of fines, the Autorité systematically considered whether the companies being sanctioned were suffering financial difficulties, and substantially reduced the fines when it was the case. Thus, the financial difficulties of Senagral (formerly Senoble) and Novandie were taken into account in the reduction of the fine, as well as the small size and economic fragility of SME Alsace Lait (- 30% for each company).

Finally, the companies in question, with the exception of the applicants for leniency - who disclosed the practices - and Laiterie de Saint Malo, did not contest the facts and consequently had their fines reduced as a result of the settlement procedure.

Decision 15-D-03 of 11 March 2015
Purchasing offices

JOINT PURCHASING AGREEMENTS UNDER CLOSE SCRUTINY

Three major joint purchasing agreements between retailers (Système U/Auchan; Intermarché/Casino; Carrefour/Cora) raised concerns among manufacturers and could have destabilised a number of operators, leading to the particular vigilance of the public authorities regarding the trade negotiations proceedings. Following a referral from the Minister of Economy and the Senate’s Economic Affairs Committee, the Autorité looked into these agreements, mapping associated risks and making several recommendations.

A specific context

Since 2013, the food retail sector has operated against a deflationist backdrop that puts pressure on distributors’ margins. The trend was accentuated in 2014 and distributors entered into cooperation agreements to improve their purchasing terms and restore their competitiveness. Following these agreements, the market was basically split between four major purchasers who together represented more than 90% of the market.

Identification of risks

While this type of agreement can have pro-competitive results, in particular in terms of prices of consumer goods bought by consumers, the Autorité de la concurrence nevertheless identified several competition risks both on the downstream market (exchanges of information, symmetry of purchasing conditions which could favour collusion on the retail market, reduction of inter-brand mobility) and on the upstream market (limitation of supply, reduction in quality or in the incentive for some suppliers to innovate or invest, foreclosure of some suppliers).

The Autorité has particularly highlighted the existence of practices that called for vigilance: numerous cases of delisting or threats to delist, demands for advantages without any compensation in return such as for example demands for “margin guarantee”, whereby a retailer, without any compensation and during execution of the contract, asks its suppliers to offset any loss of margin that this retailer may incur due to a decrease in the consumer retail price of the product in question, in response to a more competitive offer by a competitor.

Prior recommendations

The Autorité’s opinion also provided operators with a number of solutions for carrying out their own assessment of their planned or current agreements. Alongside this self-assessment exercise, the Autorité stressed that this was an opportunity to make partial adjustments to the legislative framework.
– It urged operators to pay particular attention to the way in which they choose the suppliers concerned by the scope of the agreements.

– It emphasised the importance of enhancing competition in the mass retail distribution sector and reducing barriers to entry by relaxing store set-up conditions and increasing inter-brand mobility. (see Opinions 07-A-12 on commercial facilities and 10-A-26 on inter-brand mobility).

– The Autorité advocated the establishment of a legal obligation to give prior notification of any new joint purchasing agreements. The Law for Growth, Activity and Equal Economic Opportunities of 6 August 2015 followed this recommendation. Henceforth, the Autorité de la concurrence must be informed of any joint purchasing agreement between purchasing offices at least two months before its implementation. 

Opinion 15-A-06 of 31 March 2015

MAP OF THE DIFFERENT LEVELS OF RISK BY TYPE OF AGREEMENT

<table>
<thead>
<tr>
<th>RISKS ON THE DISTRIBUTION MARKETS (DOWNSTREAM)</th>
<th>AUCHANT/ SYSTÈME U</th>
<th>INTERMARCHÉ/ CASINO</th>
<th>CARREFOUR/ PROVERA</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Exchange of sensitive information</strong></td>
<td>Significant risks relating to all information subject to negotiations [increased risks due to the fact that there is no structural guarantee and difficulties linked to the distinction between negotiations of triple net and compensations].</td>
<td>Significant risks in particular regarding compensations.</td>
<td></td>
</tr>
<tr>
<td><strong>Collusion linked to increased symmetry of costs</strong></td>
<td>Significant risks given that the agreements relate to variable costs and represent a significant percentage of retailers’ costs.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Limitation of inter-brand mobility</strong></td>
<td>Risks that cannot be excluded [the level of which is linked to behavioural considerations].</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

RISKS ON THE SUPPLY MARKETS (UPSTREAM)

<table>
<thead>
<tr>
<th>Limitation of supply Reduction in quality or of the incentive for certain suppliers to innovate or invest Risks of foreclosure</th>
<th>Risks that cannot be excluded, particularly in relation to the following categories of goods, for which retail distribution represents the principal outlet:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hardware products DRY goods Perfumery/personal care</td>
<td>Hardware products DRY goods Liquids Perfumery/personal care Self-service perishable goods</td>
</tr>
</tbody>
</table>
Fishing quotas

IN COMPETITION’S NETS

Following a referral for an opinion from Cobrenord, a maritime cooperative, the Autorité de la concurrence considered that the collective management of quotas as it is practiced in France is inefficient and constitutes a threat to fair competition. The Autorité stated that it was in favour of a reform, and proposed the introduction of individual transferable quotas directly allocated to producers, following the example of CO₂ emissions quotas management.

“Race-to-fish vs. regulation”

Fish stocks are a limited natural resource shared by the entire fishing industry. While access to the resource is entirely free, the incentive for each fisherman is to supply himself as quickly as possible while fish stocks last, a phenomenon known as the “race-to-fish”. In the medium term, however, it is in the collective interest of fishermen that fish stocks be managed as rationally as possible, in order to maintain stock renewal conditions.

What are the risks for competition?

First, the Autorité found that there was a risk of discrimination regarding new entrants to the market, who would have to join a PO in order to gain access to the shared resource. Secondly, the distribution of sub-quotas among members of a PO using a fixed priority criterion allows better endowed vessels to enjoy an undue competitive advantage.

In favour of an individual-quota system

In order to respond to environmental, economic and competitive concerns relating to this issue, the Autorité is in favour of introducing individual transferable quotas (ITQs), following the example of the system used to manage quotas for CO₂ emissions, at least for overstretched species. This system would see operators receive the right, individually, to catch a certain quantity of fish within a given timeframe. Producers would therefore be able to adapt their production operations to their entitlements, and transfer unused quotas to competitors. The implementation of individual transferable quotas would thus lead to the disappearance of the opaque commodification of fixed priority rights, and would encourage producers to invest in more modern production facilities.

EXCLUSIVE RIGHTS: A SYSTEM INTENDED TO DISAPPEAR

Following an opinion carried out at its own initiative, the Autorité de la concurrence obtained agreements from several mainland manufacturers to end the exclusive distribution of their products overseas and establish a tender process for the selection of their wholesale importers.

Consumer goods distributed by retailers in the overseas territories are not generally produced or packaged by local companies but by manufacturers from mainland France and then shipped from continental Europe. To do so, the manufacturers use the services of intermediaries, known as “wholesale importers” or “brand agents”, who perform various logistical (storage, delivery) and commercial operations and resell the goods purchased to retailers.

The Autorité’s investigation has shown that, in most cases, distribution of a given brand, or even all of a manufacturers’ goods and brands, is provided by a single wholesale importer per territory who, de facto or de jure, enjoys exclusive rights.

Four manufacturers (Bolton Solitaire, Danone, Johnson & Johnson Santé Beauté France and PernodRicard) have made commitments to remove all exclusive rights in the distribution of their products in the overseas territories, in accordance with the new provisions of the French Commercial Code arising from the Lurel Law of November 2012.

Commitments that enhance competition

The companies have proposed that they will from now on select, on non-exclusive basis, their wholesalers on grounds of transparent, non-discriminatory tenders or competitive procedures.

These commitments, which have been accepted by the Autorité, should make it possible to enhance competition between wholesale importers, or even to bring new operators into the market.

The Autorité continues to investigate similar practices implemented by other companies in the consumer goods retail sector.

Decision 15-D-14 of 10 September 2015

COMMITMENTS TO:

- ENHANCE competition between wholesalers
- FAVOUR the entry of new operators
- STIMULATE price-based competition
ON THE ROAD TO REFORM

Following a referral for its opinion on draft decrees on the implementation of the law on rail reform, the Autorité has once again expressed its reservations and reaffirmed its recommendations, aimed particularly at enhancing the independence of railway infrastructure management.

In 2014, the government adopted a law reforming the governance of railway infrastructure management. The draft law was referred to the Autorité, which recommended the reform be accompanied by guarantees, particularly in relation to the infrastructure management’s independence from the incumbent operator SNCF, and equality of access to the network for SNCF’s competitors (Opinion 13-A-14 of 4 October 2013). Although several of the Autorité’s recommendations were taken into account by the government, those regarding the role of the controlling state-owned industrial and commercial institution (known by the abbreviation ‘EPIC’) in the railway system, in terms of areas of responsibility, tasks and governance, were not included.

Following a referral by the government of four draft decrees made under this law, the Autorité again noted that the independence of infrastructure management, essential to the development of fair competition, wasn’t sufficient. It recommended reinforcing the independence of SNCF Réseau, particularly for “core functions”, namely the tasks of distributing train paths (the right for a train to use the railway network within a given timetable and route) and pricing of access to the rail network. It stressed that SNCF representatives should not take part in the voting of decisions made by SNCF Réseau’s Board of Directors on these subjects. It also recommended ensuring that management of passenger stations was carried out under genuinely independent conditions, in particular by making the Station Director’s appointment and dismissal subject to the same guarantees of independence as those set out for the directeur de la Direction des circulations ferroviaires (Director of Rail Traffic Management). The Autorité’s recommendations were partially followed on this point.

There was provision for a simple notice from Arafer on the appointment (and dismissal) of Directors of Station and the obligation to establish “internal anti-discrimination organisation measures between rail companies”.

The Autorité considered that it was indispensable that the scope of the controlling EPIC be clarified by setting out a finite list of its tasks and keeping strict control of the possibilities of “pooling” competences with SNCF Mobilités and SNCF Réseau.

It also stressed the need to strengthen the tools and resources of the sector regulator, Araf (now known as Arafer). Opinion 15-A-01 of 6 January 2015

THE NEW ORGANISATION (PUBLIC RAILWAY GROUP)

- SNCF (controlling EPIC)
- SNCF Réseau (infrastructure)
- SNCF Mobilités (operation)

The new governance structure provides vertical integration, within the public railway group, of infrastructure management and railway company activities.
BREAKING RULES CAN COST DEAR

In 2015, the Autorité issued fines for two anticompetitive agreements in the delivery service industry totalling 672.3 million euros. The principal agreement has been subject to a fine of 670.9 million euros and involved 20 companies as well as the parcel delivery trade association TLF. It involved repeated anticompetitive agreements on annual price increases that the companies requested from their respective customers in the period between 2004 and 2010.

A case revealed thanks to the leniency programme

These agreements were brought to the attention of the Autorité by the Deutsche Bahn group (in relation to the conduct of its subsidiary Schenker-Joyau now known as Schenker France) at the end of 2008 and during 2010, and by Alloin (Kuehne+Nagel Group) in 2010. These companies in turn applied for leniency.

For the record, the leniency procedure enables companies participating or which have participated in an anticompetitive agreement, to reveal its existence to the Autorité and obtain, under certain conditions, the benefit of complete or partial exemption from financial penalties, based in particular on the order in which they approach the Autorité, the added value of the documents provided and their cooperation with the investigation.

Illegal “fishing for information”

Specifically, the companies were secretly exchanging commercially sensitive information during roundtables organised upstream and downstream of price revaluation campaigns. Each company would describe its planned increases in front of its competitors or inform them of how negotiations with their clients were proceeding. What was the aim of these “collusive” discussions? To enable companies to harmonise upwards the pricing demands sent to their clients, thus securing their business negotiations.

It is of particular note that these concerted agreements were made during meetings of the trade association TLF which, rather than performing its oversight role in relation to competition rules, participated actively both in the organisation of illegal discussions and in keeping them confidential.

Discussions were taking place between certain companies both bilaterally and multilaterally, as witnessed by a seized email in which a Dachser Sales Director says to several of his company’s managers: “I’ve just been fishing for...”
Million euros in fines imposed in the delivery service sector

Heavy but proportionate fines
When calculating the penalties, the Autorité took into account the seriousness of the facts and the harm caused to the economy.

Having applied for leniency, the Deutsche Bahn (Schenker-Joyau) and Kuehne+Nagel (Alloin) groups obtained reductions in penalties. It should be noted however that the first applicant for leniency did not obtain total immunity because it did not fully cooperate with the investigation. By omitting to inform the investigation services of an anticompetitive meeting in which it had again participated in September 2010, it failed to satisfy one of its obligations. Consequently, the Autorité fined it 3 million euros.

The majority of companies fined were backed by big groups with large contribution capacities. However, several companies (Ciblex, Heppner, Lambert et Valette, XP France, Transport Henri Ducros and Ziegler) had their financial difficulties taken into account and as a result received substantial reductions of fines between 90 and 99.9%.

Decision 15-D-19 of 15 December 2015

Almost the whole French industrial sector affected
Given the fact that the eight main members of the arrangement - Geodis, Chronopost/Exapaq (now known as DPD France), DHL, TNT, Mory, Dachser, Heppner and GLS - represented over 71% of the market at the time of the events, it was difficult for companies to escape the impact of the anticompetitive agreement.

Parcel delivery services are used by a very large number of companies at all stages of the production process. Delivery service companies transport raw materials, components and industrial parts as well as finished products intended for household consumption. Therefore, almost the whole French industrial and business sectors were affected by the practices, including the rapidly expanding e-commerce sector.

While the largest clients had a certain negotiating power enabling them to reject or renegotiate the price increases notified in the circulars, this was not the case for small and medium-sized businesses who were directly impacted by the price increases without any opportunity to negotiate, thus impacting on their competitiveness.

Consumers have also been affected, as transport represents an important component of the cost price of goods sold online.

While the companies demonstrated strict respect for the agreed increases. By way of example, during 2006-2007 trade negotiations, the majority of companies that had initially envisaged a price increase of approximately 5%, after sharing information, increased their demands to a higher level – around 7%.

Information from our fellow [parcel delivery] service companies”.

Given the fact that the eight main members of the arrangement - Geodis, Chronopost/Exapaq (now known as DPD France), DHL, TNT, Mory, Dachser, Heppner and GLS - represented over 71% of the market at the time of the events, it was difficult for companies to escape the impact of the anticompetitive agreement.

Heavy but proportionate fines
When calculating the penalties, the Autorité took into account the seriousness of the facts and the harm caused to the economy.

Having applied for leniency, the Deutsche Bahn (Schenker-Joyau) and Kuehne+Nagel (Alloin) groups obtained reductions in penalties. It should be noted however that the first applicant for leniency did not obtain total immunity because it did not fully cooperate with the investigation. By omitting to inform the investigation services of an anticompetitive meeting in which it had again participated in September 2010, it failed to satisfy one of its obligations. Consequently, the Autorité fined it 3 million euros.

The majority of companies fined were backed by big groups with large contribution capacities. However, several companies (Ciblex, Heppner, Lambert et Valette, XP France, Transport Henri Ducros and Ziegler) had their financial difficulties taken into account and as a result received substantial reductions of fines between 90 and 99.9%.

Decision 15-D-19 of 15 December 2015
Faced with ever-increasing competition from chauffeur-driven cars, which have successfully taken advantage of the boom in smartphones by offering new services to consumers, taxis must react and reinvent themselves. But for this to happen, modernisation of the regulatory context in which they operate must occur. With the introduction of fixed fares between Paris and the Parisian airports and the setting-up of a geo-location platform, the response is gaining momentum! The Autorité supports this movement and has issued two broadly favourable opinions on these draft texts to the government.

Fixed fares, where price caps are established, provide consumers - especially foreign tourists - with a strong guarantee; they are certain of paying a fixed amount, established in advance, whatever the route taken by the driver or any traffic jams they might encounter. In addition, it will enable taxis to be more attractive in comparison with chauffeurs-driven cars (known in French as VTCs). The Autorité noted that this principle could be extended to trips between the two Parisian airports and the communes close to Paris, including major tourist destinations such as Disneyland Paris, as well as to rides to or from the airports of other major provincial cities.

The “call-out fee” (known as "course d’approche" in French, literally "approach ride"), which was previously charged by the kilometre, will likewise become a set fee: 4 euros for an immediate reservation, 7 euros for a deferred one. The Autorité considered this to be a positive development for both consumers and taxis. It is likely to contribute to re-establishing the popularity of taxis on the pre-booking market, in the context of competition with chauffeurs-driven cars (VTC). With an eye to simplification, the Autorité simply recommended that the government establish a single set call-out-fee in the medium-term. Finally, instead of the current complex pricing system in place until now, the government has implemented an additional 4 euros per passenger applicable beyond four passengers.

The Autorité is in favour of this simplification measure which it deems consistent, given that carrying more than four passengers requires a larger vehicle. However, it would have preferred a single supplement for the transport of more than four passengers, since carrying six passengers rather than five does not entail any additional investment.

Opinion 15-A-07 of 8 June 2015
The “Le.taxi” platform

The Autorité issued a favourable opinion to the government on the implementation of the “Le.taxi” platform, a key element in the sector’s modernisation.

As the law presupposes that it is possible to transpose the principle of hailing taxis to electronic hailing, the Autorité has in particular insisted on the necessity of ensuring that all rules and obligations applicable to hailing taxis that may be transposed to electronic hailing are indeed transposed. The pursued objective is to avoid distortion of competition in the market of prior booking as a result of a tool exclusively reserved for taxis and financed by public funds.

The Autorité’s recommendations were followed on several points: no charge for journey to the pick-up point when hailed [the driver starts the meter running when the passenger gets into the vehicle], the universality of the service [customer can see all geo-located taxis, without discrimination as to which company they belong to] and a ban on the refusal to take certain rides. As a result, drivers will not be entitled to refuse to pick up customers who hail them electronically.

Opinion 15-A-20 of 22 December 2015

“THIS PLATFORM SHOULD STIMULATE ALL TAXI COMPANIES AND PROVIDE THEM ALL WITH A BOOST.”

André GARCIA
President of the Hérault’s Taxi Operators’ Federation,
Le Figaro, 22 March 2016

“The “Le.taxi” platform

A State-operated register, which enables information to be collected, on a voluntary basis, on the real-time availability and geo-location of taxis. The information is then used by mobile applications or search engines to enable their users to order a taxi by electronic means.
TELECOMMUNICATIONS AND INTERNET
Mobile Telephony in La Réunion and Mayotte

SFR FINED FOR ITS LINE OF ACTION

Following a fine in 2014 for abusive pricing differentiation practices on the household mobile telephony market, the Autorité has again fined SFR, and its La Réunion subsidiary SRR, 10 million euros for the same practices on the business market.

**Unjustified price difference**

For 12 years in La Réunion and 6 years in Mayotte, the dominant operator SRR established and maintained unfair pricing differences between calls made within its network (on-net calls) and those made to competitor’s networks (off-net calls).

Although the existence of a pricing differentiation is not in itself an infringement, it does become so when the pricing difference exceeds the differences in costs actually borne by the operator and is implemented by the dominant operator. In this case, pricing differences in La Réunion were up to 10 times greater than the differences in costs. In Mayotte, they represented up to almost 3 times the difference in costs.

**Serious practices for the vitality of small and medium-sized businesses**

These offers were a strong incentive for companies to join the biggest network in order to maximise the chances of calling and being called at attractive rates. These practices also tarnished and degraded the image of SRR’s competitors by making their offers appear more costly. Almost all small and medium-sized businesses were involved. For all these businesses, already subject to the specific additional costs implied by insularity, such foreclosure tactics, which curb the development of competition and consequently any reduction in the price of mobile communications, meant their costs stayed at a high level, limiting their possibilities in terms of investment in their production facilities.

Decision 15-D-17 of 30 November 2015

**PRICING DIFFERENTIATION: PRECEDENTS IN THE SECTOR**

Over the last few years, the three operators Orange, SFR and Bouygues Télécom have one by one reported implementation by their competitors of pricing differentiation practices between on-net calls and off-net calls which they unanimously considered abusive.

2009: Orange Caraïbe and France Télécom fined for the implementation of abusive practices in the Antilles-Guiana area (Decision 09-D-36).

2012: Orange and SFR fined 183 million euros for similar practices in mainland France (Decision 12-D-24).

2014: SFR and SRR fined 46 million euros for abusive pricing differentiation practices on the household mobile telephony market (Decision 14-D-05).
NUMERICABLE PAYS THE PRICE FOR NON-COMPLIANCE WITH ITS COMMITMENTS

The Autorité tackles merger and acquisition files with pragmatism, an open mind and responsiveness. However, this pragmatism has another side to it, namely the need to be vigilant and firm in respect of the word given. It thus carefully monitors the compliance with the commitments made by companies about the conduct of their business.

The fine of 15 million euros handed to the Altice/Numericable group for failure to respect some of the commitments linked to the divestiture of Outremer Telecom’s mobile telephony activities, made at the time of its acquisition of SFR, is a good illustration.

The commitment to divest Outremer Telecom’s mobile telephony activities

On 30 October 2014, the Autorité cleared the acquisition of sole control of SFR by the Altice/Numericable group (decision 14-DCC-160). In order to address the significant market power that the new group would acquire in mobile telephony in the Indian Ocean (66% market share in La Réunion and 90% in Mayotte), Altice and Numericable committed to divesting their Outremer Telecom (OMT) mobile telephony activities in La Réunion and Mayotte.

During the transition period, the commitments were clear: to maintain the economic viability, market value and competitiveness of these activities until they were divested (see box to side). Altice and Numericable also made a commitment not to interfere with the management of the divested activities concerned.

Price increases that impacted the attractiveness of the divested asset

Just after the Autorité’s decision to clear the acquisition of SFR by Altice/Numericable subject to conditions, OMT suddenly increased the price of some subscriptions, including the most widely sold (between +17% and +60%). These price increases put the competitiveness of Outremer Telecom’s offer at considerable risk, by giving customers the opportunity to terminate their current subscription without any charge (in January 2015, cancellation rates were three times higher than those recorded on average in 2014) at a time when competitors, SRR and Orange, had just repositioned their pricing to a lower level. The price increases, which had a negative impact on OMT’s image, constituted a reversal in the divested activity’s commercial strategy, which until then had always been geared towards capturing new customers on the basis of aggressive pricing.

This breach of the commitments was aggravated by the fact that the Autorité was never informed of the decisions to increase prices and that they were only cancelled after the procedure for non-compliance with commitments was initiated. Furthermore, these changes in commercial policy were decided while Altice/Numericable had committed to appointing an independent manager for the period prior to the divestiture of the company and was aware that, in the meantime, the divested concerns had to be managed as though by this independent manager.

Practices of unprecedented scope

The price increases were of an unprecedented form and extent for an operator in OMT’s situation in La Réunion and Mayotte as they did not only affect new customers but also existing customers - an extremely rare practice from a commercial point of view.

Decision 16-D-07 of 19 April 2016
In June 2015, the Autorité approved the sale of OMT’S mobile operations to the Hiridjee group. At the same time, ARCEP accepted OMT’s application for the divestiture of its frequencies to Telco Ol, the holding company for the assets that will be sold to the Hiridjee group.

The buyer satisfied the conditions set by the two authorities: the Hiridjee group, which carries out telecommunications activities in Madagascar, has the proven competencies required to take control of the divested assets. The company is also independent from the Altice group and its Numericable subsidiary, and has provided sufficient financial guarantees.

The formal completion of this sale should create an opportunity to develop the capacity of the activities sold to compete actively with SRR and Orange in La Réunion and Mayotte, thus stimulating the market.

ARCEP and the Autorité will continue to keep a close watch over the development of this new competitor, particularly during the transitional phase when it will need to rely on provisions of service from the Altice group, before its own operations are up and running.

Press release of 15 June 2015

ONGOING MONITORING OF OTHER COMMITMENTS

Another commitment made by Numericable at the time of the acquisition of SFR was not to create any obstacles to the deployment and use of the fibre optic networks deployed in the context of agreements that SFR had entered into with other telecommunications operators. More precisely in relation to an agreement entered into with Bouygues Telecom, Numericable undertook to perform the connection of the deployed horizontal network to the vertical network of buildings within a specific time limit. However, Bouygues Telecom considered that the pace of these connections slowed down significantly after the acquisition of SFR, giving rise to concerns that Numericable could not achieve its objectives within the set deadlines. On 12 October 2015, the Autorité decided at its own initiative to look into the compatibility of Numericable-SFR’s behaviour with its obligations.

In addition, the Autorité decided to investigate whether SFR and Numericable had started to work together before receiving the Autorité’s final go-ahead. In such a case, the new operator would be liable for a fine amounting to up to 5% of its turnover. Raids were carried out at the group’s headquarters in April 2015. The case is currently under investigation.

BUYER APPROVED

In June 2015, the Autorité approved the sale of OMT’S mobile operations to the Hiridjee group. At the same time, ARCEP accepted OMT’s application for the divestiture of its frequencies to Telco Ol, the holding company for the assets that will be sold to the Hiridjee group.

The buyer satisfied the conditions set by the two authorities: the Hiridjee group, which carries out telecommunications activities in Madagascar, has the proven competencies required to take control of the divested assets. The company is also independent from the Altice group and its Numericable subsidiary, and has provided sufficient financial guarantees.

The formal completion of this sale should create an opportunity to develop the capacity of the activities sold to compete actively with SRR and Orange in La Réunion and Mayotte, thus stimulating the market.

ARCEP and the Autorité will continue to keep a close watch over the development of this new competitor, particularly during the transitional phase when it will need to rely on provisions of service from the Altice group, before its own operations are up and running.

Press release of 15 June 2015
As the incumbent operator, the Orange group has a particular responsibility in the electronic communications sector on both the wholesale and retail markets. A responsibility that it failed to respect by abusively hindering the development of competition on the business market for almost 10 years. The Autorité fined the group 350 million euros, the largest fine that a company has ever received. Analysis.

Foreclosure as a result of multiple discounts

Orange abused its dominant position in the mobile services market by implementing, over an extended period of time, various mechanisms aimed at ensuring the loyalty of its clients.

The “change mobiles” programme

Particularly at issue was the “change mobiles” programme which enabled customers to automatically accumulate points, each month, based on their seniority as customers and their consumption volume in order to get a cheaper price when renewing their mobiles. The catch was that the points acquired could only be used if they took out a new 12- or 24-month subscription. This practice crystallised market share in favour of the Orange group by dissuading companies from changing operators and deferring the time when contracts would once again be subject to competition.

The “privilege” and “fleet” discounts

The Autorité also considered that the system of discounts would lead to foreclosure of the market and competitors being driven out.

Thus, the “privilege” discount locked the companies in through the cumulative effect of extension of the initial period of the commitment - increasing it from 12 to 24 or 36 months -, the automatic renewal mechanism at the end of this period and the possible application of early-exit charges that were more often than not deterrent. At the same time the “fleet” reduction provided an incentive for companies to concentrate the maximum number, if not all, their lines with Orange.

These abusive loyalty practices, which were applied cumulatively and could only be achieved on the basis of commitments on duration or volume, could have prevented the fair play of competition and dissuaded companies from entrusting part of their demand to another operator.

Discriminatory practices

Orange, as the incumbent operator, is alone in owning a copper network (the part of the telephone line going from the distributor to the subscriber’s telephone wall jack) to which operators offering electronic communication services on the retail market must have access to.

As operator of the copper local loop, Orange has particular network information at its disposal in various different technical databases. Access to this information is

“THIS IS THE HIGHEST AMOUNT A COMPANY HAS BEEN FINED IN THE AUTORITÉ’S HISTORY”

Bruno LASSERRE
President of the Autorité de la concurrence,
Les Échos, 15 December 2015
indispensable to third-party operators, particularly in terms of their ability to prospect and offer services on the retail market (especially concerning the identification of available lines and eligibility conditions). The Autorité established that since the mid-2000s, the Orange group’s commercial services could have had access, by faster processes, to a more comprehensive scope of information regarding the copper local loop than the one available to third-party operators.

This discrimination in access to crucial information has had an impact on the “fixed” business services retail market by artificially protecting, and even strengthening, the Orange group’s position. This practice has also affected the commercial relationship of third-party operators with their customers, making them appear less reactive and less informed than the incumbent operator, which may have feasibly led to a drop in competitive intensity in the sector.

A fine accompanied by injunctions

The Autorité fined the Orange group 350 million euros. In addition to the fine, it imposed several injunctions aimed at the immediate restoration of a satisfactory competitive environment on these markets and allowing client companies to benefit from the reinvigoration of competition. Orange has chosen to cooperate: it has not contested the practices or their anticompetitive nature, or the outcome of the case, whether fine or injunctions.

Decision 15-D-20 of 17 December 2015
Overseas DTT: a troubled launch

In the context of the overseas launch of DTT (Digital terrestrial television), in 2010 France télévisions published nine calls for tender. Three operators responded to these calls for tender with a view to submitting bids, including TDF and OMT, the later being the leading alternative operator overseas for telecommunications.

Before and during the competitive dialogue required under tender regulations, TDF did not publish any technical and pricing information on access to its infrastructures. This information was however absolutely necessary for its competitors to respond to the calls for tender. This behaviour led OMT to forego the submission of any tenders for the territories where it was a candidate. The nine contracts were awarded to TDF.

TV and radio broadcasting

BETTER ACCESS FOR BETTER COMPETITION

TDF is the incumbent operator in the TV and radio broadcasting market and as a result, owns the vast majority of infrastructures. Following referrals from alternative operators, the Autorité fined TDF on two occasions in 2015 for having implemented practices aimed at foreclosing its competitors from calls for tender. It also accepted commitments from TDF aimed at improving hosting contracts on its pylons signed with mobile operators in order for alternative hosts to be able to compete effectively with TDF.
The Autorité confirmed that TDF’s behaviour had foreclosed the overseas territories to competition, both in terms of the provision of broadcasting services and access to infrastructures throughout the duration of the broadcasting contracts (five years). As a consequence, it fined TDF 4.2 million euros.

Decision 15-D-01 of 5 February 2015

Foreclosure practices on the Eiffel Tower

Among the main audiovisual broadcasting sites, the Eiffel Tower site stands out for its particularly widespread coverage due to its height. It can reach 11 million inhabitants in the Île-de-France region, namely 18% of the mainland population. The site is used to broadcast all terrestrial DTT services and 30 radio stations. Access to this site is thus essential for broadcasters if they are to be in a position to make broadcasting offers to stations.

In 2007, following a referral from TowerCast, the Conseil de la concurrence (the Autorité’s predecessor) ordered TDF to make a new FM radio broadcasting hosting offer for the Eiffel Tower site so that alternative operators could compete effectively with the offers made by TDF to radio stations. The investigation was then extended into the merits of the case: it was found that information that was indispensable to TowerCast in terms of responding to the City of Paris’s call to tender for the renewal of the main occupancy agreement for the Eiffel Tower site and the construction of its radio broadcast offer had been provided belatedly and only partially by TDF. These practices deprived alternative operators of the power to compete effectively with TDF and radio broadcasters were unable to take advantage of the decrease in prices that they could have expected after the market was opened up to competition.

Decision 15-D-10 of 11 June 2015

Mobile telephony: improving hosting conditions for operators

In order to cover large areas of territory, mobile telephony operators use a network of antennas installed in high places, such as rooftop terraces, water towers and pylons. In some cases they rent sites from pylon owners known as “tower companies”. TDF is the dominant operator in this market in which FPS, Itas Tim and TowerCast are also present. Following a referral from FPS, who claimed anticompetitive practices were implemented by TDF, the Autorité confirmed that the combination of very long contracts and the inclusion of highly restrictive early termination clauses were likely to foreclose the market by making it more difficult for TDF’s competitors to sign hosting contracts with mobile operators.

With a view to addressing the competition concerns, TDF undertook to review its contracts with mobile telephony operators by henceforth limiting both their duration and compensation for early termination and increasing the annual quota of sites that can be subject to early termination.

Decision 15-D-09 of 4 June 2015
Audiowision and advertising

ACTION IN THE MEDIA

Bustling with life, the audiovisual sector is every year at the heart of the Autorité. It provides support to consolidation processes, monitors compliance with commitments previously made by stakeholders and also gives careful consideration to issues likely to arise in the future.

Joint control of Newen by TF1 and FIFL

Following far-reaching consultation with television channels and stakeholders in the production sector, as well as a detailed analysis of the characteristics of the markets in question, the Autorité cleared joint control of the FLCP group by TF1 and FIFL, for which the principal company, Newen, produces television programmes such as the TV series Plus Belle la Vie or the programme Les Maternelles. This operation is part of a global context of concentration of the sector, with the consolidation of production companies, or even their affiliation to large audiovisual groups.

The Autorité considered that the transaction was not likely to cause horizontal effects on the audiovisual rights market insofar as the parties’ combined market shares remained limited on all these markets. The vertical effects were also discarded given Newen’s limited position on markets for rights to the broadcasting stock and fiction programmes referred to as “original French language” ("OFL").

Decision 16-DCC-10 of 21 January 2016

Mobile telephony

SECTOR INQUIRY ON DATA IN THE ONLINE ADVERTISING SECTOR

The growth of online advertising is significant, to the point that the Internet has become the top medium in Europe for advertising campaigns. Further to its 2010 opinion and the study published with the Bundeskartellamt, the Autorité, at its own initiative, decided to issue an opinion assessing the state of competition in the online advertising sector and the importance of data processing. It will in particular examine the degree of substitutability between the different forms of advertising targeted and will pay particular attention to advertising on social networks. It will analyse issues of the market power of the different categories of stakeholders, in particular the weight and strategies of companies such as Google and Facebook. It will assess to what extent certain commercial practices might be liable to hinder the development of competition on merits. The inquiry will also look into conditions of access to advertising platforms by advertisers with the most attractive advertising inventories. Finally, the Autorité will examine the conditions under which data providers can gather information on the behaviour of Internet users on sites and applications.

A far-reaching public consultation will be organised to gather the observations of all interested stakeholders. The opinion should lead to a sectoral diagnosis and recommendations aimed at improving the state of competition on the market.

Decision 16-SOA-02 of 23 May 2016

Canal Plus future exclusive distributor of BeIN Sports?

The Autorité is examining the compatibility of an exclusivity agreement entered into between Canal+ and BeIN Sports in the light of the injunctions imposed in 2012 on Canal+ at the time of the examination of the acquisition of TPS.
Real estate bank guarantees

IMPROVING CLIENT INFORMATION

The Autorité has recommended that borrowers of real estate loans should be better informed on guarantee rates. It notes that separating loan offers and guarantee offers appears difficult to implement in practice.

A structurally limited choice

When obtaining a real estate loan, banks put guarantees in place aimed at reducing and covering at a maximum any risk of insolvency on the part of the borrowers. Currently, more than 56% of them opt for the guarantee to be paid by specialised establishment rather than allow the bank to take a mortgage on their home, which would often be a more costly option.

The Autorité found a heterogeneity in the offers from different guarantee financial institutions, making it difficult to perform a simple, immediate comparison of available rates. From one institution to the next, commission rates can vary by 0.5 percentage points, which is equivalent to an absolute difference of 1,000 euros on a 200,000 euros loan.

Despite this price variability, borrowers are not free to use the guarantee company of their choice to guarantee their loan. This choice is, in fact, limited solely to the credit institution’s partner guarantee bodies, as such institutions generally favour their own subsidiaries. However, the Autorité considered that separation was not appropriate in this case. The guarantee exclusively benefits lending institutions. It is therefore legitimate that it should be their task to select the guarantee institution on the basis, in particular, of its risk management, financial rating, methods of compensation and collection as well as the price offered.

The need for consumers to be better informed

However, the Autorité noted that it is essential for borrowers to have full pricing information if competition is to operate effectively. An opportunity to set out this pricing transparency would be provided by the transposition of the Mortgage Credit Directive of 28 February 2014. Furthermore, it would seem desirable that credit offers not only include information regarding the annual percentage rate - which is the best tool available to borrowers to compare the overall costs of different credit offers - but also a breakdown of the overall cost, including the different cost items: credit interests, additional costs, insurance costs and guarantee fees.


BANK GUARANTEES ARE THE LEADING FORM OF GUARANTEE IN FRANCE

SEPARATING BORROWER INSURANCE AND REAL ESTATE LOANS

In 2009, the Autorité de la concurrence recommended separating real estate loan offers from insurance offers (Opinion 09-A-49 of 7 October 2009). The Consumer Law of 17 March 2014 (known as the “Hamon Law”) followed this recommendation. As a result, borrowers can contract insurance with an institution other than the one from which they have obtained a loan.
Standardisation and certification

A NON-STANDARD INVESTIGATION

How can the process of developing a standard be simplified?
How can accreditation procedures not be deterrent to certain companies?
What measures could be envisaged to oversee document production in the Construction and Public Works sector? In its opinion of 16 November 2015, the Autorité analysed competition issues related to these procedures and recommended improvements to the competitive process.

The Autorité recommends that COFRAC should publish a list of fields and sectors on its website for which accreditation is compulsory, as well as estimated costs, which should be regularly compared with those of their European counterparts.

Certification and accreditation: clarifying the processes

Who can certify?

While certification operations are open to competition, in certain sectors they may only be carried out by accredited organisations, known as "Conformity Assessment Bodies" (in French, Organismes d’Evaluation de la Conformité, or OECs), whose ability to carry out such activity is validated in France by the COFRAC (French Accreditation Committee).

Several responses to the public consultation mentioned costs that were excessive, or even prohibitive, for moderately-sized certification bodies.

The Autorité recommends the implementation of a mandatory step that will validate the envisaged added value of a new draft standard (advantages and disadvantages for the market, etc.).

Better downstream control of validation of the draft standard

Once the usefulness of launching standardisation works has been verified upstream, AFNOR must confirm the reality of the "consensus" obtained. The Autorité considers that this stage is indispensable in guaranteeing the neutrality of the draft standard vis-à-vis the economic operators concerned, who are often competitors.

Upstream assessment of the usefulness of the standard

An inadequate standardisation process may affect economic efficiency and restrict competition. For example, this would be the case with useless standards whose economic cost/benefit ratio has not been proven, or if a standard is biased towards certain market operators who may then be able to use it as a barrier to prevent competitors or innovators from entering the market.

The Autorité recommends greater harmonisation in committees’ working methods and an extension of the time limit for response by companies to public enquiries.

The Autorité recommends that COFRAC should publish a list of fields and sectors on its website for which accreditation is compulsory, as well as estimated costs, which should be regularly compared with those of their European counterparts.

“CONSTRUCTION AND PUBLIC WORKS HAVE A VERY SPECIFIC PLACE IN THE STANDARDISATION FIELD.”

Thierry DAHAN
Vice-President of the Autorité de la concurrence, Les Échos, 19 November 2015.
AFNOR, standardiser and certifier

AFNOR, which plays a central role in the French standardisation framework, is also involved in the field of certification and training via its subsidiaries AFNOR-Certification and AFNOR-Compétences.

→ The Autorité invites AFNOR to take some simple measures to prevent situations from arising that could advantage its subsidiaries or harm competing operators.

The NF mark, source of confusion

The NF acronym is currently a source of confusion. Accompanied by an identification number indicating an AFNOR-approved standard, it stands for "Norme française", or "French standard". However, it is also used to signify that a product conforms to a frame of reference developed by the subsidiary body AFNOR-Certification, which may not be connected to any approved standard but is nonetheless presented as a selling point for consumers.

→ The Autorité invites the public authorities and AFNOR to make a quick decision on positioning for the NF brand.

Too many documents in the Construction and Public Works sector!

The Construction and Public Works sector is characterised by the production of a huge amount of documents with poorly identified status: "quasi-standards" that have not been approved by AFNOR but have, in practice, a compulsory nature.

→ The Autorité recommends that public authorities should complete their progressive approval work on these documents so they can be gradually integrated into the common legal standardisation process.

In a similar way, technical opinions in a broad sense — technical opinions [ATs for Avis Techniques] and technical application documents (DTAs for Documents Techniques d’Application) which apply to innovative products, are not legally compulsory but are required in practice by project managers and insurers.

Given that they place conditions on access to the market, these "advice documents" require analysis from a competition stance in terms of their cost and capacity to establish non-price related obstacles to the entry of new operators.

→ Consequently, the Autorité has recommended that investigation of these "technical advice documents" be opened up to certifiers other than the CSTB, in particular through the use of accredited certification bodies.


CONSTRUCTION AND PUBLIC WORKS

THE CSTB’S MULTIPLE ROLES BEING POINTED OUT

The Autorité has highlighted the potential risks arising from the central role of the Centre scientifique et technique du bâtiment (Scientific and Technical Centre for Building, or CSTB) in the standardisation and certification process, where it plays an administrative role, as well as acting as an expert and a test laboratory.

During the opinion review session, the CSTB’s Chairman stated that he was prepared to give up the secretariat role of GCNorbat which is responsible for updating Unified Technical Documents.
It has increased competition between hotels while enabling them to achieve visibility throughout the world, thus enabling them to dispense with traditional tourist guides and travel agencies. In return, these platforms, and especially Booking.com, deduct a commission from the hotelier that is proportionate to the cost of the reservation (between 10 and 30% of retail price, inclusive of tax).

For a hotel, especially in France, the world’s leading tourist destination, it is essential to be present on these platforms: they ensure great visibility and are widely used by Internet users all over the world. Booking.com occupies a key position vis-à-vis French hoteliers. It holds the leadership position, with more than 60% of the online booking market made via the platforms. Out of the 17,000 French hotels, the vast majority is also referenced on its website.

**Commitments that enhance competition**

Following a referral from the main French hotel trade associations and the Accor group, challenging the Booking.com clauses aimed at obtaining automatic alignment on the best pricing conditions which the hotels are obliged to respect if they wish to be listed, the Autorité obtained significant commitments from the leading booking platform. From 1 July 2015, Booking.com had to remove all parity clauses related to the availability of rooms or commercial conditions. Hotels may consequently manage their availabilities and capacities and allocate Booking.com room quotas that may be lower than those offered to other platforms, with more advantageous conditions than those offered on Booking.com.

**Hotel booking platforms: a vital channel**

The sale of accommodation on the Internet has experienced a remarkable increase over the last decade. Today, almost all hotel guests use the Internet to find a hotel, although the vast majority of reservations are made offline. Online booking platforms (Booking.com, Expedia, HRS being the three main sites for French hotel bookings) serve as intermediaries between clients (tourists, business travellers) and hotels.

Their development constitutes remarkable progress for consumers as it enables them to research, compare and book hotels on the same site, benefiting from information available in their own language, as well as from comments by other customers and photographs.

French hotels now have the freedom to define their commercial and pricing policy as they see fit. The commitments obtained by the Autorité de la concurrence and the new legal provisions of the Law for Growth, Activity and Equal Economic Opportunities (known as the “Macron Law”), now allow them to display room prices that are different from those offered on Booking.com.
In particular, these commitments give hotels the power to offer lower prices on platforms in competition with Booking.com’s website but also via their direct offline sales channels (on-site bookings, by telephone, fax, email, instant messaging, physical sales outlets of travel agencies, etc.). The Law for Growth, Activity and Equal Economic Opportunities of 6 August 2015 has gone further in allowing hotels to offer prices on their website that are lower than those on the online booking platforms. These new provisions apply wherever the reservation platform is established, as long as the booking is made for a hotel located in France. These measures will strengthen competition between booking platforms, favour a drop in commission for hotels and give greater commercial freedom and an enhanced power of negotiation in relation to the platforms.

Decision 15-D-06 of 21 April 2015

---

The Fédération française des clubs alpins et de montagne (French Federation of Alpine and Mountain Clubs) and four mountain guides companies have made commitments to bring an end to the preferential booking terms they previously enjoyed. Since April 2015, all guides are guaranteed equal access when booking beds. In addition, the securing of mountain refuges market has been opened up to all guiding structures: a new agreement for the 2015 season was concluded with 8 guides companies, setting out financial payment (rather than payment in kind) for providing securing services for mountain refuges.

Decision 15-D-12 of 30 July 2015
AN EXPERT TEAM

Selecting the greatest talent, fostering team spirit, incorporating different disciplines to encourage debate...
For a modern, 360-degree vision.
THE BOARD OF THE AUTORITÉ

AN ENRICHING DIVERSITY
The Autorité’s Board is made up of 5 permanent members (the President and 4 Vice-Presidents) and 12 non-permanent members. The legislator wanted to ensure they came from very different backgrounds: barristers, university law and economics professors, economic executives, chairs of professional or consumers associations, share their points of view during deliberations.

This diversity enhances debate and the neutrality of deliberations and as such, is a guarantee of their richness and legitimacy. The Board does more than its fair share in demonstrating its commitments to parity with 11 women and 6 men.

17 members

President and Vice-Presidents (permanent members)

© Bruno LASSERRE, President, Senior Judge at the Conseil d’État (French Administrative Supreme Court)
© Élisabeth FLURY-HÉRARD, Vice-President, former member of the CSA (French media regulatory authority)
© Claire FAVRE, Vice-President, Honorary Chamber President at the Cour de Cassation (French Supreme Court)
© Emmanuel COMBE, Vice-President, Professor of Economics at the University of Paris I
© Thierry DAHAN, Vice-President, Senior Magistrate at the Cour des Comptes (French Court of Auditors)
PREVENTING CONFLICTS OF INTERESTS

The French Commercial Code and the Autorité’s internal rules and code of ethics provide a full set of measures aimed at preventing any risk of conflict of interest. On taking up their position, members make a solemn oath to carry out their duties independently, impartially and in all conscience, as well as to respect the obligations attached to them, particularly regarding ethics. They regularly inform the President of the Autorité of the updated list of interests they may hold directly or through an intermediary, as well as provide details of their current or recent positions and mandates. Failure to observe these obligations can result in compulsory resignation. A specific obligation to step down, at the initiative either of the member concerned or the President of the Autorité (who guarantees the institution’s ethics), exists in cases where such information may lead to the possibility of a conflict of interest. Members are also subject to the obligations set out in the Law of 2013 on transparency in public life, as are all members of independent administrative authorities with economic competence.

THE DIVERSITY OF BOARD MEMBERS’ PROFILES FOSTERS A VARIETY OF VIEWPOINTS, RICH DEBATES AND THE PRINCIPLE OF COLLEGIALITY.
ORGANISATION OF THE AUTORITÉ DE LA CONCURRENCE

ANTITRUST UNIT 1
Umberto Berkani

ANTITRUST UNIT 2
Nicolas Deffieux

ANTITRUST UNIT 3
Joël Tozzi

ANTITRUST UNIT 4
Juliette Théry-Schultz

ANTITRUST UNIT 5
Eric Cuziat

REGULATED PROFESSIONS UNIT
Thomas Piquereau

INSPECTION UNIT
Sophie Bresny

INVESTIGATION SERVICES
Virginie Beaumeunier
General Rapporteur

LENIENCY OFFICER
Anne Krenzer

MERGERS UNIT
Simon Geneuaz

CHIEF ECONOMIST’S TEAM
Etienne Pfister
The purpose of Entrée Libre is to keep competition stakeholders (practitioners, academics, public authorities, etc.) up to date with the latest decision-making practice, economic and institutional news. It also fosters national and international debate by opening up its pages to competition law specialists.

Available at www.autoritedelaconcurrence.fr in the “Publications” section
Free subscription: entreelibre@autoritedelaconcurrence.fr

This Guide is available online in French and English and shows how compliance with competition rules can be a winning investment for companies, whether SMEs or multinationals. It presents some of the “good practices” to be implemented and offers practical suggestions for action companies can take.

Available at www.autoritedelaconcurrence.fr in the “Les procédures négociées/la politique de clémence” section

An educational guide explaining the leniency procedure to companies and encouraging them to take action, if appropriate. The Autorité sets out the procedure and how companies can benefit from it.

Available at www.autoritedelaconcurrence.fr in the “Le contrôle des pratiques anticoncurrentielles/la prévention des infractions” section

This Guide is available online in French and English and shows how compliance with competition rules can be a winning investment for companies, whether SMEs or multinationals. It presents some of the “good practices” to be implemented and offers practical suggestions for action companies can take.

Available at www.autoritedelaconcurrence.fr in the “Le contrôle des pratiques anticoncurrentielles/la prévention des infractions” section

The Autorité’s Newsletter
"Entrée Libre"

The purpose of Entrée Libre is to keep competition stakeholders (practitioners, academics, public authorities, etc.) up to date with the latest decision-making practice, economic and institutional news. It also fosters national and international debate by opening up its pages to competition law specialists.

Available at www.autoritedelaconcurrence.fr in the “Publications” section
Free subscription: entreelibre@autoritedelaconcurrence.fr

- 57 press releases in 2015
- 1,839,573 visits to the Autorité de la concurrence website
- 1,925 Twitter followers
The Autorité has published three issues of its “Déclic” collection on the subjects of the overseas territories, the media and transport. These publications bring together the opinions and decisions issued in recent years on the subjects, providing a comprehensive overview of the competition issues identified, the solutions provided by the Autorité de la concurrence and recommendations that it has made to public authorities to support the sector while respecting its specificities.

The works are published by La Documentation française and are also available at www.autoritedelaconcurrence.fr in the “Publications” section.

The Autorité organises conferences several times a year. These generally bring together around ten specialists or stakeholders to speak on a current topic, draft guidelines, how a particular economic sector operates or a more general theme related to competition analysis.

The last “Rendez-vous” was held on 8 March at the ENA graduate school on the theme of: “Data and competition in the digital economy”, attended by Axelle Lemaire, Secretary of State for Digital Affairs.

All the discussions are available on the Autorité’s website.

The Autorité de la concurrence lays its cards on the table. An A to Z of competition that defines the rules of the competition game and tackles the big issues in relation with the Autorité’s action (growth, competitiveness, employment, purchasing power, etc.). Flipped over, the booklet sets out 25 cases that provide specific illustrations of how competition affects us on a daily basis.

The guide is available on the Autorité’s website: www.autoritedelaconcurrence.fr in the “Publications” section.

The Autorité has published three issues of its “Déclic” collection on the subjects of the overseas territories, the media and transport. These publications bring together the opinions and decisions issued in recent years on the subjects, providing a comprehensive overview of the competition issues identified, the solutions provided by the Autorité de la concurrence and recommendations that it has made to public authorities to support the sector while respecting its specificities.

The works are published by La Documentation française and are also available at www.autoritedelaconcurrence.fr in the “Publications” section.
Any full or partial reproduction, in any form whatsoever, is prohibited without the prior written consent of the Autorité de la concurrence. The sole purpose of this document is to inform the public about the Autorité de la concurrence’s activities. It shall not be binding upon the institution on any grounds whatsoever.
The 2015 Autorité de la concurrence annual report can be consulted on the website www.autoritedelaconcurrence.fr or ordered from La Documentation française:
29, quai Voltaire - 75344 Paris cedex 07
Tel: +33 (0)1 40 15 70 00 - Fax: +33 (0) 1 40 15 72 30
www.ladocumentationfrancaise.fr