# Takeover of Casino stores by Intermarché: the Autorité de la concurrence clears the transaction subject to the divestiture of three stores

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## Background

On 13 July 2023, Intermarché notified the *Autorité de la concurrence* of its plan to acquire 61 food retail stores operated under the Casino group banner.

To take account of the stores' difficult economic situations, the *Autorité* granted the Intermarché group, at its request, a derogation from the suspensive effect of merger control[1]. In accordance with the applicable rules, this derogation, which enabled Intermarché to complete the transaction without waiting for the *Autorité* to issue its decision, is without prejudice to the final decision of the *Autorité*, which, at the end of its investigation and competitive analysis, could call into question certain acquisitions by considering that remedies would be necessary. Intermarché completed the transaction in September 2023.

After careful examination of the takeover, the *Autorité* has cleared the acquisition of the target stores, subject to commitments presented by Intermarché, including the divestiture of three stores.

## The parties to the acquisition

Intermarché operates various banners in the food retail sector, including Intermarché, Netto (hard discount) and Les Comptoirs de la Bio.

Intermarché and the target stores are active in the downstream food retail markets. Intermarché is also a supplier, notably through its subsidiary Agromousquetaires, and as a buyer in the markets for the supply of everyday consumer goods, where the target stores are also present as buyers.

### The *Autorité* was able to rule out any competition concerns in the supply market

The *Autorité* considered that the transaction was not likely to significantly strengthen Intermarché's purchasing power in the upstream markets for the supply of everyday consumer goods, given the low purchasing share of the 61 target stores. The *Autorité* also found that the transaction was not likely to place the parties' suppliers in a situation of economic dependency.

The *Autorité* also examined the vertical effects[2] of the transaction, given the link created between Intermarché's everyday consumer goods production business and the target stores' food retailing business. Any risk was ruled out given Intermarché's market shares and the purchasing shares of the 61 target stores.

### Risks to competition to the detriment of local consumers identified in three catchment areas

However, at the end of its analysis, the *Autorité* concluded that the transaction was likely to hinder competition in the catchment areas surrounding the target stores in Lons-le-Saunier (39), Plouaret (22) and Vals-près-le-Puy (43).

The *Autorité* considered that in these areas, where Intermarché would significantly strengthen its market power following the transaction, there would be no credible and sufficient alternatives to Intermarché. This situation risked leading to price rises and a reduction in the diversity of the offering, to the detriment of consumers in the areas concerned.

### Intermarché has presented commitments, consisting of the divestiture of three stores, to resolve the competition-related concerns identified

To address these competition-related concerns, Intermarché has undertaken to divest the former Casino stores in Lons-le-Saunier (39), Plouaret (22) and Vals-près-le-Puy (43) to one or more competitors. These commitments will ensure that a sufficient level of competition is maintained and that the interests of consumers are safeguarded in the relevant markets.

The stores concerned are the following:

| Area | Store | Address |
|---|---|---|
| Lons-le-Saunier | Intermarché Hyper | Rue des Salines, Lons-le-Saunier (39000) |
| Plouaret | Intermarché Contact | Rue du Général de Gaulle, Plouaret (22420) |
| Vals-près-le-Puy | Intermarché Hyper | Avenue Jeanne d'Arc, Vals-près-le-Puy (43750) |

**The *Autorité* will ensure that these commitments are correctly implemented, so as to maintain effective competition and the**

### continued operation of the stores concerned

The proposed buyers will need to be approved by the *Autorité*, which will ensure that they are able to provide a credible food retailing alternative in each of these areas. The *Autorité* will ensure that the buyers have the skills and financial capacities to operate and develop the target stores on a long-term basis. The divestitures must include all the components required to maintain the viability of the business and include the staff employed in the stores concerned prior to their takeover by Intermarché.

### Store divestitures do not mean store closures, but takeovers with a change of banner to avoid the risk of price rises and/or a reduced offering to the detriment of consumers

The commitments are intended to safeguard adequate local competition.

The aim is to allow a competitor to take over the stores and their activities in order to safeguard competition in the area concerned, thereby ensuring that consumers have a diversified offering in terms of prices and products. The store divestiture process is closely monitored by the *Autorité* in the months following the decision to clear the transaction. The party cleared to carry out the transaction must present to the *Autorité* buyers capable of ensuring a valid takeover and then providing effective competition. Once these buyers have been examined, the *Autorité* can issue an approval, which will clear the effective divestiture of the store in question

The divestitures do not therefore entail the closure of the stores, but a takeover with a change of banner.

### What is a derogation from the suspensive effect?

If the effective conclusion of a merger is subject to approval from the *Autorité de la concurrence*, in certain exceptional circumstances, duly argued by the parties, the *Autorité* may grant a derogation enabling them to finalise part or all of the transaction without waiting for the approval decision, in order to allow for the continuation of the business activities.

The granting of such a derogation is exceptional. A derogation may be granted in cases where the target is experiencing significant difficulties, such as financial difficulties, which jeopardise its viability, as was the case here.

However, the granting of a derogation by the *Autorité* is without prejudice to the final decision taken at the end of the investigation, as the *Autorité* may impose remedies (e.g. divestitures) or even prohibit the transaction if it is detrimental to competition.

[1] Derogation granted under Article L. 430-4 of the French Commercial Code ( *Code de commerce*) by letter dated 9 August 2023.

[2] Vertical effects are studied when a transaction brings together players present at different levels of the value chain. The *Autorité* examines whether the transaction could enable the entity to exclude competitors or penalise them by increasing costs.

**DECISION 24-DCC-02 OF 11 JANUARY 2024**

relating to the acquisition of full control of 61 stores formerly operated under the Casino banner by ITM Entreprises.

Read the full text (in French)

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