The Autorité de la concurrence fines Chocolats De Neuville for hindering its franchisees’ commercial freedom

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Background

Following a report prepared by the local network of the Minister of the Economy and submitted by the Directorate General for Competition Policy, Consumer Affairs and Fraud Control (DGCCRF), the *Autorité de la concurrence* has fined De Neuville for implementing practices aimed at restricting the online selling of De Neuville brand chocolates by its franchisees, on the one hand, and sales by the latter to professional customers, on the other.

The *Autorité* found that, from 2006 to 2019, the contractual framework between the franchisor and its franchisees prevented the latter from freely selling their products online, with De Neuville reserving exclusive rights to online sales.

The *Autorité* also found that, from 2006 to 2022, De Neuville restricted its franchisees’ commercial freedom in prospecting business customers.

The *Autorité* has imposed a fine of €4,068,000 on De Neuville (jointly and severally with its parent company, Savencia Holding), together with a communication and publication injunction.

The distribution model for De Neuville chocolates

De Neuville specialises in the wholesale and retail sale of chocolate products. Operating exclusively in France, it has 154 outlets [1] and is the third-largest specialised chocolate distribution network in the country. Around 90% of De Neuville stores are operated as franchises, making the brand France's leading chocolate franchise network.

The relationship between franchisor and franchisee is based on a contract that is valid for seven years and cannot be tacitly renewed. The *Autorité* found that, since 2006, there have been 17 different versions of the franchise contract, some of which have even overlapped.

When franchisees sign the contract, they receive an operating manual. This manual includes provisions relating to the use of the brand name, De Neuville, the description of the products sold, the characteristics of the offer, product sales methods, merchandising techniques and outlet management. The manual also contains the code of conduct referred to in the franchise contract, with stipulations on online selling and commercial prospecting outside stores. There have been five versions of the franchisee code of conduct since 2006.

Both the operating manual and the contract are binding on franchisees, and failure to comply may lead to the early termination of the franchise contract.

De Neuville restricted online selling by its franchisees

The *Autorité* found that, from 2006 to 2014, franchise contracts included a clause explicitly prohibiting franchisees from online selling: "*The Franchisor holds the exclusive rights to sell its products and services by mail order or online*". While there were exceptions for franchisees, they were required to obtain the express agreement of the franchisor and could only market their products on their own websites within their zone of territorial exclusivity.

From 2014, this clause was no longer included in the contract itself but remained in an appendix. It was not until 2019 that De Neuville modified its contractual framework, giving its franchisees the option of online selling.

In its exchanges with franchisees during its investigation, the *Autorité* found that many of them considered that, before 2019, the stipulations in question represented a *de facto* ban on online selling. The *Autorité* also found that, since

2019 (when the restrictions ended), some franchisees have launched their own websites.

De Neuville restricted its franchisees' commercial freedom in prospecting business customers

The *Autorité* found during its investigation that, from 2006 to 2022, the contractual framework between De Neuville and its franchisees created a system whereby sales to business customers were allocated between franchisees.

The code of conduct provided a broad framework for the commercial methodology to be followed by franchisees in identifying potential customers and planning canvassing campaigns.

Franchisees first had to canvass business customers in their own catchment area. They could only prospect other territories when the contractually allocated catchment area had been fully prospected.

Furthermore, franchisees could only honour unsolicited requests from business customers if those requests complied with the methodology applicable to active solicitations, which provided for the allocation and coordination of these contracts between franchisees according to the geographical areas concerned.

The *Autorité* fines De Neuville €4,068,000

Given the duration of the practices (13 and 16 years respectively), and the fact that De Neuville is part of a group, the *Autorité* has fined De Neuville (jointly and severally with its parent company, Savencia) €4,068,000.

In addition, the *Autorité* has ordered De Neuville to send the summary of the decision to all its franchisees, and to publish this summary on its website and in the newspaper *Le Monde*.

[1] February 2022.

Compliance

While a supplier is free to organise its distribution network as it sees fit, this organisation must not give rise to a restriction of competition.

The principle of the free organisation of the network cannot authorise a manufacturer to restrict the commercial freedom of its resellers. Prohibiting its retailers from selling its products online distorts the competition in which resellers should normally engage, not only between themselves but also with regard to the manufacturer in the online sales distribution channel. This rule remains valid even if, as in this case, the products concerned are distributed exclusively or almost exclusively through a network of independent retailers.

Similarly, a franchisor cannot impose a sales allocation system on its franchisees that applies to both active and passive sales.

DECISION 24-D-02 OF 6 FEBRUARY 2024

regarding practices implemented in the chocolate distribution sector

See full text of the decision (in French)

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