Meat-cutting sector: for the first time, the Autorité examines, under antitrust law, mergers below the national notification thresholds, and dismisses the case

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Background

For the first time, the *Autorité de la concurrence* examined, under antitrust law, mergers below the national notification thresholds that had not been subject to an *ex ante* review. The *Autorité* applied the CJEU *Towercast* judgement of 16 March 2023, under which it can now examine, under certain conditions, whether a merger below the judicial review thresholds constitutes an anticompetitive practice contrary to the Treaty on the Functioning of the European Union (TFEU) – in this case, an agreement contrary to Article 101.

In this case, the *Autorité* dismissed practices involving Akiolis, Saria and Verdannet, which consisted of creating and implementing an agreement to allocate the French meat-cutting market, by geography, through 21 cross-divestitures of business assets in 2015.

First, the *Autorité* found that the information in the case did not establish the existence of an overall geographic market allocation plan, insofar as the exchanges between the parties took place solely as part of preparatory discussions for the mergers.

In addition, the *Autorité* took the view that the merger agreements did not have an anticompetitive purpose and that the information in the case did not allow for an analysis of the effects of the agreements on the market concerned by the practices.

Business divestiture agreements

The meat-cutting business consists of collecting, handling, storing after collection, processing or disposing of animal carcasses and matter. The sector has been facing new challenges for several years, due in particular to the decline in cattle and pig herds.

On 26 June 2015, after preliminary discussions, Akiolis, Saria and Verdannet, three major groups in the sector, signed several agreements constituting five mergers. As they did not exceed the thresholds for *ex ante* review set out in Article L. 430-1 of the French Commercial Code (*Code de commerce*), the transactions were not subject to an *ex ante* review under merger control regulations by the *Autorité de la concurrence*.

The divestitures between the parties did not result from an overall market allocation plan that could be separated from the mergers and did not constitute an unlawful agreement

The *Autorité* found that, although exchanges had taken place between the parties, they constituted discussions in preparation for a merger. In its view, the information in the case did not establish the existence of a tripartite market allocation plan outside the scope of a merger.

In application of the case law resulting from the *Towercast* judgement of the Court of Justice of the European Union (CJEU) of 16 March 2023 (C-449/21), the *Autorité* therefore analysed whether the mergers, which had not been notified *ex ante* under European or national merger control, were likely, on their own, to constitute an anticompetitive agreement contrary to Article 101 TFEU and Article L. 420-1 of the French Commercial Code.

In this respect, the *Autorité* considered that, in view of the content and objectives of the merger agreements, and the economic and legal context in which these agreements were signed, the mergers did not have an anticompetitive purpose. In addition, the *Autorité* took the view that the documents in the case did not allow for an assessment of the potential effects of the transactions.

DECISION 24-D-05 OF 2 MAY 2024

regarding practices implemented in the meat-cutting sector

See full text of the decsion (in French)

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