

The *Autorité de la concurrence* clears, subject to the divestiture of 11 stores, the acquisition of 200 former Casino group stores by the Intermarché group

Published on November 28, 2024

Background

On 8 February 2024, Intermarché notified the *Autorité de la concurrence* of its plan to acquire 200 food retail stores operated under the Casino group banner^[1].

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^[2]. In accordance with the applicable rules, this derogation, which enabled Intermarché to complete the transaction without waiting for the *Autorité* to issue its decision, was without prejudice to the final decision to be taken by the *Autorité*, which, at the end of its investigation and competitive analysis, could call into question certain acquisitions by considering that remedies were necessary in areas where there would be insufficient competition for consumers after the transaction.

After examining the transaction, the *Autorité* has cleared Intermarché to acquire control of the stores in question, subject to divesting 11 stores to competing banners in order to ensure that consumers have access to sufficient alternatives and can benefit from competition when buying mass-market products.

The examination of the transaction concerned stores other than the 61 stores operated under the Casino group banner whose acquisition by Intermarché was previously examined and cleared by the *Autorité* on 11 January 2024, subject to the divestiture of three stores that have already changed banners in Lons-le-Saunier (39), Plouaret (22) and Vals-près-le-Puy (43). The three stores were divested to the Carrefour group^[3].

The parties to the transaction

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 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 former Casino group stores acquired by Intermarché. The *Autorité* also found that the transaction was not likely to place the parties' suppliers in a situation of economic dependency^[4].

Risks to competition to the detriment of local consumers identified in 11 local areas

However, at the end of its analysis, the *Autorité* concluded that the transaction was likely to hinder competition in the market for the retail distribution of food products in 11 catchment areas surrounding the former Casino group stores in Arc-lès-Gray (70), Bagnères-de-Luchon (17), Blanzac-lès-Matha (17), Boé (82), Charlieu (42), Lambesc (13), Lorgues (83), Revel (31), Solliès-Pont (83), Susville (38) and Valence-d'Agen (82).

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, to regulate is competitive behaviour. This situation risked leading, in particular, to a reduction in the diversity of the offering, to the detriment of consumers in the areas concerned.

Intermarché proposed commitments, consisting of the divestiture of 11 stores, to resolve the competition-related concerns identified, which the *Autorité* accepted

To address the risks to competition, Intermarché has undertaken to divest, to one or more competitors, the target stores or, in Lambesc, at its discretion, another store in its group. These commitments will ensure that a sufficient level of competition is maintained and that the interests of consumers are safeguarded in the markets concerned.

The stores concerned are the following:

	Area	Address	Post code	Town	Pre-transaction banner
1	Arc-lès-Gray	Avenue Charles Couyba	70100	Arc-lès-Gray	Hyper Casino

	Area	Address	Post code	Town	Pre-transaction banner
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2	Bagnères-de-Luchon	43 avenue du Maréchal Foch	31110	Bagnères-de-Luchon	Casino
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3	Blanzac-lès-Matha	139 rue de Saint-Jean d'Angély	17160	Blanzac-lès-Matha	Casino
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4	Boé	Route de Layrac	47550	Boé	Casino Hyper Frais
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5	Charlieu	Chemin de la Montalay	42190	Charlieu	Hyper Casino
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6	Lambesc*	2 avenue Jean Monnet, ZAC Bertoire	13410	Lambesc	Casino
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	Area	Address	Post code	Town	Pre-transaction banner
		3 route d'Aix	13410	Lambesc	Intermarché

7	Lorgues	Avenue de Toulon	83510	Lorgues	Casino
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8	Revel	Chemin des Bordes	31250	Revel	Casino
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9	Solliès-Pont	Centre commercial Midi Multiple, 389 ZA des Plantades	83210	Solliès-Pont	Casino
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10	Susville	ZI de Villaret La Mure	38350	Susville	Casino
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	Area	Address	Post code	Town	Pre-transaction banner
11	Valence-d'Agen	44/44 bis boulevard Victor Guilhem	82400	Valence-d'Agen	Casino

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?

While the effective conclusion of a merger is subject to clearance by the *Autorité de la concurrence*, in certain exceptional circumstances, duly argued by the parties, the *Autorité* may grant a derogation enabling the parties to finalise part or all of the transaction without waiting for the clearance 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 acquired business 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] Since the planned transaction was notified and after Intermarché informed the *Autorité*, several target stores have been transferred back to the Casino group or removed from the scope of the acquisition.

[2] Derogation granted under Article L. 430-4 of the French Commercial Code (*Code de commerce*) by letter dated 1 March 2024.

[3] *Autorité* decision 24-DCC-02 of 11 January 2024.

[4] As noted by the *Autorité*, prior to the planned transaction, Intermarché, Auchan and Casino entered into new alliances in 2024. The possible effects on competition of these purchasing alliances, which fall within the scope of Article L. 420-1 of the French Commercial Code (*Code de commerce*), did not fall within the scope of the examination of this transaction.

* In Lambesc, the new entity has undertaken to divest either of the two stores identified, at its discretion.

DECISION 24-DCC-255 OF 28 NOVEMBER 2024

on the acquisition of full control of 200 stores
formerly operated under the Casino banner by ITM
Entreprises

See the full text of the
decision (in French)

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