The General Rapporteur of the Autorité de la concurrence indicates that hearings and observations have been conducted in Martinique as part of a verification of the commitments made by the Parfait group in connection with a merger

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When the *Autorité* issued its decision on 22 December 2022 on the acquisition of sole control of the Géant Casino La Batelière hypermarket by the Parfait group, the Parfait group undertook to divest the business of the La Batelière hypermarket. The purpose of the divestitutre commitment was to prevent a duopoly in the hypermarket sector in the "Plaine Foyalaise" area. The Parfait group also undertook to maintain the value of the business to be divested and that of the shopping centre in which the business is located.

In December 2023, the *Autorité de la concurrence* decided to start proceedings *ex officio* to examine whether the commitments are being met.

The decision to start proceedings *ex officio* opened a phase of the investigation, during which the Investigation Services examine whether the commitments made to the *Autorité* are being met within the timeframes agreed. To that end, two case officers from the *Autorité* went to Martinique to conduct on-site observations and take statements, and to hold hearings with the various players

concerned. At the end of its examination, the Investigation Services may conclude the commitments are not being met (non-compliance with commitments) or advise the Board not to pursue the case.

The examination does not prejudge the guilt of the Parfait group. Only an *inter partes* investigation, respecting the rights of defence of the parties concerned, would enable the Board to determine, after exchanging written observations and following an oral hearing, whether the commitments made in 2022 are being met.

In the event of non-compliance with commitments made as part of a merger

In accordance with Article L. 430-8 IV of the French Commercial Code (*Code de commerce*), in the event of non-performance of a commitment within the timeframe agreed, the Board of the *Autorité* may:

- withdraw the decision clearing the transaction (for an example of clearance being withdrawn, see Decision 11-D-12 of 20 September 2011 on the fulfilment of the commitments made in the decision clearing the acquisition of TPS and CanalSatellite by Vivendi Universal and Canal Plus Group). Unless they return to the pre-merger situation, the parties must renotify the transaction within one month of the withdrawal of the decision, or face a fine;
- enjoin, under penalty payment, the parties that were subject to the commitment to implement the commitments set out in the decision, within a timeframe set by the *Autorité*;
- enjoin, under penalty payment, the parties that were subject to the commitment to implement injunctions or obligations in lieu of the unfulfilled comitment, within a timeframe set by the *Autorité* (for an example of alternative assets being subject to divestment in lieu of the original assets, see Decision 18-D-16 of 27 July 2018 on the fulfilment of the commitments annexed to Decision 16-DCC-111 of 27 July 2016 on the acquisition of sole control of Darty by Fnac).

In addition, the *Autorité de la concurrence* may impose a fine on the parties that were subject to the unfulfilled commitment, which may not exceed 5% of their revenue for entities and €1.5 million for individuals.

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