Opinion 25-A-01 of January 09, 2025

on rating systems designed to provide consumers with information on the sustainability-related characteristics of consumer products and services

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Summary

On 8 February 2024, the *Autorité de la concurrence* (hereinafter "the *Autorité*") decided to start inquiries *ex officio*, on the basis of Article L. 462-4 of the French Commercial Code (*Code de commerce*), into the competitive functioning of rating systems designed to provide consumers with information on the sustainability-related characteristics of consumer products and services, with a view to issuing an opinion.

For several years, consumers have been receiving a growing volume of information on the sustainability-related characteristics of consumer goods and services. This information is provided predominantly by rating systems that deliver simplified information – in the form of numbers, letters or colours – to help consumers understand the sustainability-related characteristics of the products and services they intend to buy. By providing a graded assessment of a product or service, the systems make a range of information available to

consumers, who can then compare products or services in the same category.

Rating systems vary considerably in their design and scope, covering a wide range of sectors, products and services and assessing various sustainability-related considerations. Their ratings are delivered through multiple channels (mobile applications, product packaging, websites, etc.). Depending on whether the publisher is a public or private entity, the systems may be mandatory or voluntary.

As part of its inquiry, the *Autorité* conducted interviews with a wide range of stakeholders that are directly or indirectly involved in the development or operation of rating systems, including: rating system publishers, companies whose products or services are rated, and representatives of civil society, such as consumer associations and non-governmental organisations.

Overall, the stakeholders consulted recognised the benefits of rating systems, which – by providing simplified and educational information on sustainability-related characteristics – meet certain consumer and wider public expectations, while also encouraging companies to improve their offerings and helping to stimulate competition in the markets for the products or services rated.

In this opinion, and without prejudice to the European Commission Guidelines on Horizontal Cooperation Agreements, the *Autorité* provides guidance to help stakeholders understand rating systems in light of competition rules. The development and operation of rating systems may, in certain circumstances, present competition risks, where the systems affect the information provided to consumers and the incentives for companies to compete with each other.

Firstly, the *Autorité* identifies a number of design conditions that are likely to ensure the effective competitive functioning of rating systems.

Insofar as rating systems provide information on a competitive parameter within a given market, publishers must ensure the soundness of the calculation method (rating criteria and the weighting assigned to each criterion) employed and the reliability (accuracy and precision) of the data used. Similarly, publishers have a responsibility to be transparent with users about the operation of their systems

(governance, calculation method, data used, etc.), so that users can make an informed choice, both about using the rating system itself and about purchasing products or services based on the rating.

The opinion then draws publishers' attention to the selection and weighting of rating criteria. The more a rating system helps to differentiate between the products or services rated, the more effectively consumers will be able to compare products and the more the system will help to stimulate competition. Conversely, rating systems developed or built jointly by competitors, where those systems result in a large majority of their products receiving a similar rating for a given product category, which does not arise from objective characteristics or from an improvement in the product or service, but instead from concerted action between companies, could constitute a practice contrary to competition law.

Lastly, the *Autorité* draws publishers' attention to the preparatory work undertaken in developing a rating system, in particular when that work involves bringing together competitors. The *Autorité* recalls:

- the rules governing the exchange of information and the associated risks of collusion in such context; and
- the importance of ensuring the representativeness of the participants in any meetings, especially when the companies involved manufacture or distribute the products that will be rated by the system under development, or when the rating system has been issued by a public authority or is of a binding nature.

Secondly, the *Autorité* identifies several watchpoints for stakeholders regarding the implementation of rating systems.

The opinion examines the issue of access to inputs, such as databases, required to operate a rating system. The *Autorité* notes that, under competition law, the refusal of access to an input by an undertaking holding an individual dominant position, or by a group of undertakings holding a collective dominant position, may constitute abusive conduct in certain circumstances. Similar competition concerns may arise where several independent undertakings act collectively, for

example within a professional organisation holding a database.

The opinion also addresses an issue raised by several stakeholders in their contributions, namely the legality, under competition law, of a rating system giving low ratings to products containing substances considered harmful by that system, even where those substances are authorised by health authorities. The opinion proposes an analytical framework for assessing such practices from the point of view of disparagement.

In addition, public rating systems are subject to lobbying by interest groups vis-à-vis public authorities concerning their creation or operation. While such lobbying is legitimate, it may give rise to competition concerns.

Furthermore, the selective disclosure of ratings by a rating system may give rise to competition concerns, insofar as such practice reduces the informative value of rating systems. The opinion notes that an agreement between companies to avoid competing with each other on sustainability-related performance by withholding mediocre or low ratings is likely to be contrary to competition law.

Moreover, imposing a rating system on a commercial partner may also give rise to competition concerns if the publisher holds a dominant position in the market concerned. For example, some retailers have developed their own rating systems, which they may impose directly or indirectly on their manufacturers. The opinion specifies the circumstances in which this practice could be qualified as the imposition of unfair trading conditions or discriminatory practices.

Lastly, the *Autorité* recalls the conditions that must be met for any practices that may be contrary to competition law to be justified or exempted, taking into account the objective of consumer protection or sustainability pursued.

Stakeholders may also request informal guidance in the area of sustainability, in accordance with the procedural notice of 27 May 2024.

Information about the notice

Origin of the referral	Ex officio
Device(s)	Refer to the opinion

Read

Full text in French
1.72 MB

Full text in English
1.13 MB

Press release