Consumer product and services rating systems: the Autorité de la concurrence provides guidance in the light of competition rules

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Background

Last February, the *Autorité de la concurrence* decided to start inquires *ex officio* to analyse the competitive functioning of the rating systems sector, which aims to provide consumers with information on the sustainability-related characteristics of consumer products and services.

As part of the inquiry, the *Autorité* then launched a public consultation in April 2024 and consulted a large number of stakeholders directly or indirectly involved in the development or operation of rating systems: rating system publishers, companies and civil society players (NGOs and consumer associations).

In this opinion, the *Autorité* finds that rating systems are booming in many sectors. Although the systems cover a wide range of sectors, products and services and are therefore extremely diverse, all the systems share the same objective of providing a graded assessment of a product or service in order to make a range of information available to consumers.

In particular, the *Autorité* stresses that, by providing simplified, educational information to consumers on sustainability-related characteristics, the systems meet certain consumer expectations, encourage companies to innovate, and can help to stimulate competition in the product or service markets assessed.

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 the light of competition rules.

Conditions governing the design of rating systems

For several years, consumers have been receiving a growing volume of information on the sustainability-related characteristics of consumer goods and services. The information is provided predominantly by rating systems that deliver information – in the form of numbers, letters or colours – to help consumers to understand the sustainability-related characteristics of the products and services they intend to buy.

Due to their simplicity, rating systems are particularly useful for providing consumers with a range of information on the sustainability-related characteristics of products or services in a simplified, aggregated form. The systems can therefore help consumers to make their purchasing choices and can encourage companies to stand out by innovating and offering more environmentally friendly products and services. As such, rating systems can influence one or more competitive parameters related to product quality or innovation.

The intensity of the rating parameter may vary according to the sustainability consideration assessed by the rating system, the sector concerned and consumer sensitivity to other parameters, such as price.

Insofar as the publisher of a rating system provides information on a product or service that may influence consumers' purchases, the publisher must ensure the soundness of the rating system calculation method and the reliability of the data used. The development of a rating system involves the selection of the rating criteria and the weighting applied to those criteria. In this respect, the more the rating helps to differentiate the products or services rated, the more the consumer will be able to compare products and, consequently, the more the rating system will help to stimulate competition. However, the *Autorité* has reservations about rating systems developed or built jointly by competitors, when those systems result in the vast majority of their products receiving a

similar rating on a given product, other than on merit. In particular, the *Autorité* stresses that the rating must be based on objective characteristics and not be the result of concerted action by companies to avoid competing on the rating parameter, which could contravene competition law.

The *Autorité* also draws publishers' attention to the preparatory work undertaken for a rating system, when that work involves bringing together competitors (page 42). It recalls the rules governing the exchange of information and the risks of collusion in such context, and underlines the importance of ensuring the representativeness of the participants in the meetings, particularly when the companies involved manufacture or distribute the products to be rated, or when the rating system is issued by a public authority or is of a binding nature.

Lastly, to enable consumers to make informed choices, the *Autorité* recalls the need for publishers to provide users with transparent information on the governance and operation of the system.

The *Autorité* recommends that rating system publishers:

- demonstrate transparency with regard to companies whose products or services are rated and with regard to consumers concerning the governance of the rating system (sources of funding and, where applicable, remuneration of the rating system, any links with third-party entities or any other element likely to have an impact on the choice of the rating system calculation method) and concerning the parties involved in the design of the rating system (companies rated, scientific team, public authorities, etc.);
- inform companies whose products or services are rated and consumers of the sustainability-related characteristics assessed, as well as all the factors used in taken into account to generate and update the rating (data, criteria, weighting). The information must be clear, legible, and quickly and easily accessible;
- ensure the soundness of the method (rating criteria and the weighting given to each criterion) and the reliability (precision and accuracy) of the data used,

by checking data sources and allowing for a correction mechanism (change in product composition or error) within a reasonable timeframe.

The implementation of rating systems

- ***Access to databases and inputs***

The rating system publishers consulted during the inquiry indicated that the data required to rate the products or services concerned is widely available and mainly free of charge. However, it cannot be ruled out that certain databases may not be made accessible to rating system publishers, or may only be provided under certain restrictive conditions. The question of access to data, and more broadly to the inputs needed to operate in a market, raises competition law concerns (page 47).

The *Autorité* points out that, under competition law, refusal of access to an input by a company holding an individual dominant position, or by a group of companies holding a collective dominant position, may be abusive in certain circumstances. This type of practice may also raise competition concerns when implemented by several independent companies acting together, for example within the framework of a professional organisation holding a database.

- ***Possible defamation practices***

The opinion also looks at an issue raised by several companies in their contributions, namely the practice of a rating system giving low ratings to

products containing substances considered harmful by that system, even though those substances are authorised by the health authorities. The opinion proposes an analysis grid for assessing such practices from the point of view of defamation under competition law and specifies that the *Autorité* most often approaches defamation cases from the point of view of abuse of a dominant position (page 48).

Several conditions must be met to demonstrate defamation on the grounds of abuse of a dominant position. In addition, the opinion highlights the importance of the freedom of expression granted by the courts in examining the practice of defamation when the disputed speech aims to contribute to a debate on health.

- ***Possible lobbying practices***

Public rating systems are subject to lobbying to the public authorities that created them or are responsible for their operation. While such lobbying is entirely legitimate, it may raise competition law concerns. This could be the case, for example, when a professional body or companies agree to communicate misleading information in an attempt to win over a public authority to its opinion by leading that authority to make a decision based on erroneous or partial facts.

The *Autorité* reminds companies that while lobbying is a legitimate action in itself, it may raise competition concerns in certain circumstances.

Furthermore, to meet the above-mentioned robustness requirements, a rating system issued by a public authority must not be based on considerations unrelated to the sustainability objective pursued, either in its calculation method or in its mode of operation.

- ***Selective ratings disclosure***

The selective disclosure of ratings by a rating system is when the system does not display results that are not entirely satisfactory. This could be the case, for example, because of the rules governing the use of a rating system or due to the commercial policy of retailers that do not want to penalise their suppliers.

This type of practice risks reducing the informative power of rating systems and, hence, the possibility for consumers to effectively compare products based on the ratings generated by the rating system and, potentially, to switch their purchases to more virtuous products (page 51).

Under competition law, while the practice of allowing companies to communicate only on the products they select – and, *a fortiori*, on those with a good rating – can be understood as encouraging companies to adopt a virtuous approach by gradually moving to a rating system, it must not be the result of coordination between companies. Coordinating to avoid healthy, undistorted competition on the rating parameter by refraining from highlighting products with an unfavourable rating could, in fact, be likely to constitute an anticompetitive practice.

- ***Imposing a rating system on a business partner***

Imposing a rating system on a business partner may also, in certain cases, raise competition law concerns if the publisher holds a dominant position in the market concerned (page 53). For example, some retailers have developed their own rating systems, which they may impose directly or indirectly on their manufacturers. The *Autorité* specifies the circumstances in which such practice could be qualified as the imposition of unfair trading conditions.

Furthermore, if a publisher active in the retail sector applies different rules to its own brands than to those of its competitors, uses its rating system to obtain advantageous information about its suppliers, or discriminates against suppliers in similar situations, this could constitute abuse of a dominant position.

Abuse of a dominant position is when an operator holding a dominant position in a market imposes unfair trading conditions on its partners or engages in discriminatory practices. For a practice to be qualified as abuse of a dominant position, a demanding standard of proof must be met, as defined in case law to date.

Lastly, the *Autorité* recalls the conditions that must be met for any practices that are contrary to competition law to be justified or exempted, taking into account the objective of consumer protection or sustainability pursued (page 54).

OPINION 25-A-01 OF 9 JANUARY 2025

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

See the full text of the opinion

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