Consulted for the first time at the request of the French employment platforms social relations authority (ARPE), the Autorité de la concurrence issues a conditional opinion on a collective agreement in the PHV sector and recommends that an impact study be carried out before the agreement is approved

Published on February 20, 2025

Background

The *Autorité de la concurrence* received a request from the Minister of the Economy, Finance and Industrial and Digital Sovereignty, on the basis of Article L. 462-1 of the French Commercial Code (*Code de commerce*), for an opinion on a collective agreement signed on 19 December 2023 as part of the social dialogue framework specific to the private-hire vehicle services sector (hereinafter "PHV").

Under the law, the French employment platforms social relations authority (*Autorité des relations sociales des plateformes d'emploi* – ARPE) is responsible for approving each agreement signed, i.e. for approving whether or not each agreement is extended to all players in the sector. The ARPE can refuse to do so " *for reasons of general interest, in particular excessive harm to free competition*". In that context, and in accordance with Article L. 7343-50 of the French Labour Code (*Code du travail*), the ARPE asked the Minister of the Economy to refer the matter to the *Autorité de la concurrence*, which was asked to issue an opinion on a collective agreement of this type for the first time.

Under the agreement in question, platforms will have to implement a system enabling each driver to choose a minimum income per kilometre of travel, from which the platform will make journey proposals ranked by preference. Signed by a single professional platform entity (whose main member is Uber, a player with a very strong position in the market) and by two of the seven driver trade unions that took part in the negotiations, the agreement – once approved – would lead to the widespread application of a system that only Uber seems able to implement.

The *Autorité de la concurrence* considers that while the agreement does not in itself undermine free competition, many questions remain unanswered. As things stand, it is impossible to say whether the acquisition of such a system could constitute exclusionary conduct or whether the working conditions of self-employed PHV drivers would actually be improved.

For these reasons, the *Autorité* calls on the ARPE to be vigilant as the *Autorité* cannot rule out the possibility that extending the agreement to the entire sector could undermine competition, which would trigger the liability of the State. The *Autorité* advises that an in-depth impact study of the economic, social and financial consequences of the agreement be carried out prior to any approval. As the *Autorité* is not in a position to carry out such a study, the *Autorité* calls on the French government to provide the ARPE with the necessary legal and financial resources.

The social dialogue framework specific to the PHV intermediated transport services sector

- **The introduction of social dialogue in the PHV sector**

To provide self-employed PHV drivers with guarantees and rights similar to those of salaried employees and thus help to calm relations between platforms and drivers, the legislator has made social dialogue compulsory between contact platforms and these self-employed workers via their representative professional entities.

Under the negotiations – conducted under the aegis of the ARPE – several agreements and amendments have been signed since the start of 2023 (notably concerning the introduction of minimum earnings per journey and per hour of activity). The agreement submitted to the *Autorité* for its opinion is part of those negotiations.

- **The 19 December 2023 agreement**

Under the agreement submitted to the *Autorité* for its opinion, each platform will have to implement a system enabling each driver to choose a minimum income per kilometre of travel, from which to receive journey proposals from the platform ranked by preference. Signed by a single professional platform entity (whose main member, Uber, has a particularly significant presence on the French market, and by two of the seven driver trade unions that took part in the negotiations in 2023), the agreement meets the conditions of Article L. 7343-29 of the French Labour Code and applies to the signatories.

The ARPE plans to approve and thus to extend the agreement to all platforms and self-employed PHV drivers. As the decision to approve an agreement, like the decision to extend an industry-wide agreement under labour law, is taken only after a legal review of the text of the agreement, the ARPE is responsible for ensuring the agreement does not undermine free competition.

The 19 December 2023 agreement does not in itself harm competition

While the agreement provides for platforms to implement a system enabling each operator to choose a minimum income per kilometre of travel, this type of system is currently only offered by Uber.

For the *Autorité*, the fact that a single market operator owns technology that its competitors do not have, that its acquisition represents a significant cost or that an operator has taken a significant lead in the design and development – even if the technology is not yet fully operational at the time of the analysis – does not in itself constitute an infringement of competition law rules.

The *Autorité* recommends that an impact study be carried out before the agreement can be approved

While the agreement itself is not anticompetitive, its widespread application raises a number of unanswered questions that could have anticompetitive consequences. Firstly, the different players are not in a position to confirm the cost of developing the system. It is therefore impossible, as things stand, to avoid the possibility of the agreement enabling Uber to oust its competitors. It should also be noted that Uber has access to volumes of data unmatched by its competitors for developing and testing technologies, due to the number of PHV drivers who use its contact service in France and the number of journeys they make.

In addition, the *Autorité* invites the ARPE to ensure the agreement is sufficiently balanced between its social objectives and the consideration of potential competition risks. In the case at hand, as the social benefits of the agreement for drivers have not been established, an impact study is required. The *Autorité de la concurrence* is unable to carry out such a study, due to a lack of sufficient information to make a decision.

Recommendations

- The *Autorité* recommends the ARPE only make its approval decision after a thorough consultation on the technical feasibility of each agreement and the real expected benefits for drivers in terms of social progress.
- The *Autorité* calls on the legislator and the regulatory authorities to give the ARPE the ability to appoint an expert to assess the economic, financial, social and technological impact of each agreement, in order to limit the risk of a decision to approve an agreement making the State liable for an infringement of the principles of free competition in the market.

OPINION 25-A-03 OF 21 JANUARY 2025

on the agreement of 19 December 2023 ehancing the freedom for PHV drivers using a contact platform to choose their journeys

See the full text of the decision (in French)

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