Launch of a public consultation on the status, role and resources of monitoring trustees

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Merger control: The *Autorité de la concurrence* launches a public consultation on the status, role and resources of the trustees appointed to monitor the corrective measures taken by or imposed on companies in order to obtain clearance for a merger that is likely to raise competition concerns

Background

The contributions received as part of the public consultation launched today will feed into the work of the ***Autorité de la concurrence*** on the framework applicable to the trustees appointed to monitor the corrective measures – whether commitments or injunctions, behavioural or structural – taken by or imposed on companies when mergers are likely to affect competition. The measures must address the competition concern identified by the ***Autorité*** and therefore facilitate clearance for a merger that would otherwise have been prohibited.

Responses to the public consultation should be sent **no later than 11 April 2025** to the following email address: consultation.concentrations@autoritedelaconcurrence.fr.

The corrective measures monitored by the trustees are of two types and do not entail the same constraints for the *Autorité*, companies and trustees. The measures may be structural (for example, the sale of an asset) or behavioural (for example, a commitment not to bundle discounts for a minimum of period of five years). In the first case, the role of the trustees is to ensure the continued viability of the assets sold and their effective sale. The trustees examine potential buyers and can take action to find buyers themselves and to facilitate the sale to a third party approved by the *Autorité*. In the second case, the trustees monitor – during a fixed period – the effective implementation of the corrective measures by the companies concerned, which may take several forms: interoperability, separation of advertising departments, non-application of commercial discounts, etc. In both cases, the trustees submit reports on their work to the *Autorité*, which may lead to antitrust proceedings for non-compliance with commitments or to significant fines (see, for example, the SFR/Numéricable[1] or Fnac/Darty[2] decisions).

While the status of monitoring trustees is not defined in any regulation, the trustees perform their mandate in accordance with the Merger Control Guidelines of the *Autorité*, which establish – in addition to a model mandate contract – general principles as regards the role and appointment of the trustees and the monitoring of remedies[3]. The guidelines are inspired, in particular, by the principles defined by the European Commission and widely adopted by national competition authorities.

The questions in the consultation concern the status of monitoring trustees, their appointment procedure, their role in the execution of the injunctions or commitments made by companies, and the term of their mandate.

The consultation is open to trustees approved by the *Autorité* since 2009, to interested trustee candidates and to companies that have been subject to monitoring by a trustee in the implementation of behavioural or structural remedies. Any interested third parties are also invited to respond to the consultation.

Responses to the public consultation should be sent to the following email address: consultation.concentrations@autoritedelaconcurrence.fr.

The contributions received as part of the public consultation will be made public, subject to business secrecy. The contributions will feed into the work of the *Autorité*, which may lead to legislative or regulatory proposals or to changes to its Merger Control Guidelines.

[1] *Decision 16-D-24 of 8 November 2016.*

[2] *Decision 16-DCC-111 of 27 July 2016.*

[3] *Merger Control Guidelines*.

PUBLIC CONSULTATION

Public consultation on the status, role and resources of monitoring trustees

See the document (in French)

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