The Autorité launches a public consultation on self-preferencing in connection with the SREN law

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Background

Following the publication of Opinion 23-A-08 of 29 June 2023 on competition in the cloud sector and the enactment on 22 May 2024 of the French law to secure and regulate the digital space (SREN), the *Autorité de la concurrence* is launching a public consultation on the practice of self-preferencing, as part of the preparation of the report to be submitted to the French parliament and government by 22 November 2025.

As required under the SREN law, the report will present – subject to the confidentiality of investigations – the work of the *Autorité* in the area of self-preferencing and any procedural or legislative improvements.

The contributions to the public consultation will not be published and the contributors will not be cited in the report. Stakeholders are invited to submit their responses to the public consultation by 30 June 2025 to the following address: RAPPORTAUTOPREFERENCE@autoritedelaconcurrence.fr.

Self-preferencing

French law 2024-449 of 21 May 2024 to secure and regulate the digital space (hereinafter the "SREN law") aims in particular to lift commercial and technical barriers to data portability and the interoperability of services between cloud computing service providers. According to Article 26 of the SREN law, the *Autorité* is competent with respect to self-preferencing practices, defined as follows: "*the supply by a cloud computing service provider, that also supplies software, of software to a customer through the services of a third-party cloud computing service provider under pricing and functional conditions that differ materially from those under which the provider supplies the same software through its own cloud computing service, where such differences in pricing and functionality are not justified*".

If implemented by a dominant operator, self-preferencing – as defined, for example, by the SREN law – may be found to be anticompetitive. In the "Google Shopping" case, the abusive conduct consisted in the more favourable positioning and display, in Google's general results pages, of its own comparison shopping service compared to competing comparison shopping services. The Commission considered that Google's self-preferencing practice constituted an abuse of dominant position prohibited by Article 102 TFEU, a decision mostly upheld by the General Court of the European Union.

Moreover, the SREN law provides that "*the Autorité may investigate any report made regarding self-preferencing*" and can "*sanction those practices or adopt any measures necessary*".

Report on self-preferencing practices to be submitted by the *Autorité* to the French parliament and government

Under the SREN law, the *Autorité* must submit a report to the French parliament and government within 18 months of the enactment of the law (i.e. by 25 November 2025). In the report, the *Autorité* will present – subject to the confidentiality of investigations – its work in the area of self-preferencing and any procedural or legislative improvements.

Public consultation open until 30 June 2025

The purpose of the public consultation is to gather feedback from stakeholders on any self-preferencing practices they may have observed in the sector. Stakeholders can also propose, if they so wish, procedural or legislative improvements in connection with self-preferencing.

The questions submitted to public consultation are the following:

- Question 1: Have you observed or are you aware of any self-preferencing practices as defined in Article L. 442-12 of the French Commercial Code (*Code de commerce*)? If that is the case, please provide details and, if applicable, any document you may find relevant.
- Question 2: Would you like to bring to our attention any procedural or legislative improvements in the cloud computing sector and, more specifically, to combat self-preferencing?

The *Autorité* will not publish the contributions and the contributors (names of companies or organisations) will be not be cited in the report.

PUBLIC CONSULTATION

on self-preferencing in connection with the SREN law

Read the document (in French)

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