

Treatment and disposal of potentially infectious medical waste in La Réunion: for the first time, the Autorité imposes fines under the rules prohibiting anticompetitive agreements in relation to a merger falling below the national notification thresholds

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Background

The *Autorité de la concurrence* has, for the first time, imposed a fine under Article L. 420-1 of the French Commercial Code (*Code de commerce*), which prohibits anticompetitive agreements, on companies that carried out a merger falling below the mandatory notification thresholds and which, as a result, was not subject to an *ex ante* review by a competition authority.

The transaction involved the acquisition by Drapkoc of sole control of Point Net in the sector for the management of potentially infectious medical waste in La Réunion. Following the transaction, the new entity – Ecostrill – became the sole operator in the medical waste treatment market and the leading operator in the medical waste collection and transport market, with a market share of almost 80%.

The transaction was examined under the provisions prohibiting anticompetitive agreements, in the light of the *Towercast* judgment of 16 March 2023 of the Court of Justice of the European Union, which clarifies the relationship between competition law and merger control. This case law recognises, under EU law, the possibility of applying the provisions prohibiting anticompetitive practices to mergers falling below the mandatory notification thresholds, in order to prevent distortions of competition that may arise from mergers between undertakings.

The *Autorité* therefore examined whether the transaction resulted in a significant impediment to effective competition, by assessing the degree of harm by reference to its anticompetitive effects, while drawing on the analytical framework used in merger control for the in-depth examination of a transaction.

The *Autorité* concluded that the merger, which resulted in the creation of a monopoly, had anticompetitive effects on the medical waste treatment market in La Réunion. This monopoly was, moreover, likely to be reinforced and entrenched by the many regulatory barriers to entry in this market. The *Autorité* further considered that the anticompetitive effects on this market were exacerbated by the fact that La Réunion is an island, with no alternative treatment methods and export opportunities available.

The *Autorité* also took the view that the merger was likely, at the very least, to have potential anticompetitive effects on the medical waste collection and transport market in La Réunion, leaving customers dependent on Ecostrill, whether they were medical waste producers, such as hospitals, or collection and transport operators.

The *Autorité* has imposed a symbolic fine of €1 on both the buyer and the seller. It further notes that the parties to the transaction, which must have known that the merger would create a monopoly in the medical waste treatment market and substantially increase their market share in the medical waste collection and transport market, thereby significantly restricting competition in those markets, had at no point sought to mitigate the consequences.

According to the President of the *Autorité*, Benoît Cœuré:

“This decision sends a clear message to companies that a merger not subject to notification but which has anticompetitive effects falls under competition rules. Although cases involving abuse of a dominant position or unlawful agreements are likely to remain exceptional, companies must take this risk into account at an early stage of their transactions; falling below the thresholds does not confer immunity where competition is significantly harmed.”

The treatment and disposal of potentially infectious medical waste in La Réunion

The disposal of potentially infectious medical waste is governed by the French Public Health Code (*Code de la santé publique*) and overseen by the La Réunion Regional Health Agency (ARS La Réunion). The medical waste disposal process comprises several stages: sorting, packaging, storage, collection and transport, and treatment. The practices in question relate to the treatment, collection and transport of medical waste (to treatment sites).

Until 2020, medical waste treatment in La Réunion was provided by two competing companies: Point Net, which held around 80% of the market prior to the transaction, and Ecolys, which controlled the remaining 20%. Since the acquisition of sole control of Point Net by Drapcoc (the parent company of Ecolys) in 2020, followed by the merger by absorption of the two companies in 2021, the new entity – Ecostrill – is now the only company that can provide medical waste treatment services in La Réunion.

The many regulatory barriers to entry in the medical waste treatment market (including administrative authorisation, which can take several years to obtain, access to non-hazardous waste storage facilities and traceability from production to disposal) in La Réunion are likely to reinforce and entrench this monopoly position. The fact that La Réunion is an island, where alternative treatment methods and export opportunities are non-existent, is another factor exacerbating the effects of the transaction on competition.

Moreover, the medical waste collection and transport market became highly concentrated following the transaction. The new entity now holds a market share of more than 80%, while smaller rival waste collectors and transporters are forced to entrust the treatment of their medical waste to their competitor Ecostrill, as there is no alternative solution.

The *Autorité* may examine mergers falling below the notification thresholds under competition law

The transaction in question was executed through a written agreement between the Nicollin group (which owned Point Net) and Drapkoc, signed on 8 November 2019 and providing for the sale of all the shares in Point Net to Drapkoc.

The transaction was not subject to review by a competition authority under merger control rules, as the mandatory notification thresholds were not met at either European or national level.

In the light of the *Towercast* judgment of 16 March 2023 of the Court of Justice of the European Union (C-449/21), the *Autorité* examined the transaction under Article L. 420-1 of the French Commercial Code, which prohibits anticompetitive agreements.

The *Autorité* took the view that, when asked to review a merger falling below the mandatory notification thresholds, there can be no conflict between the provisions of the French Commercial Code governing *ex ante* merger control and Articles L. 420-1 and L. 420-2.

As merger control could not be applied, the *Autorité* concluded that competition law – and, more specifically, the prohibition of anticompetitive agreements – was applicable to sanction anticompetitive conduct.

In this case, the *Autorité* considered that the sale agreement of 8 November 2019 constituted direct and sufficient evidence of a meeting of minds between the parties, giving rise to an anticompetitive agreement within the meaning of Article L. 420-1 of the French Commercial Code.

Analysis of the anticompetitive effects of the transaction

The *Autorité* then examined whether the transaction resulted in a significant impediment to effective competition, by assessing the degree of harm by

reference to its actual or potential anticompetitive effects.

To that end, it conducted a counterfactual analysis to demonstrate the significant deterioration in competition resulting from the merger, compared with the situation that would have prevailed in the absence of the agreement in question.

In this context, when assessing the anticompetitive effects of a transaction not subject to mandatory notification, the *Autorité* considered it appropriate to draw on the analytical framework used in merger control for the in-depth examination of a transaction under Article L. 430-6 of the French Commercial Code, as further developed in its merger control guidelines, which provide useful guidance in this regard.

The merger had anticompetitive effects on the medical waste treatment market

The acquisition of Point Net by Drapkoc had anticompetitive effects on the medical waste treatment market, eliminating all forms of competition in that market and giving the new entity – Ecostrill – a monopoly position.

In particular, the *Autorité* noted that customers of the new entity, whether medical waste producers or collection and transport operators, were unable to hold the new entity to account. Consequently, the effects of the transaction on treatment prices were particularly pronounced since they were unlikely to be offset by any significant countervailing power on the demand side, which appears to be fragmented.

The *Autorité* also noted that the monopoly situation was likely to persist due to barriers to entry resulting from the regulatory constraints in this market (administrative authorisation, access to suitable facilities and traceability) and that the anticompetitive effects were particularly acute given the lack of alternative medical waste disposal solutions on the island.

The merger had at least potential anticompetitive effects on the medical waste collection and transport market

The transaction also significantly reduced competition in the medical waste collection and transport market on the island, leading to a high degree of concentration. The new entity – Ecostrill – now holds a market share of over 80%, while two other waste collection and transport operators hold 11% and 5% and four smaller operators together hold the remaining 1%.

The fact that Ecostrill offers both medical waste treatment and medical waste collection and transport is therefore likely to produce vertical anticompetitive effects, as the new entity holds a monopoly in the medical waste treatment market and competing collection and transport operators have no alternatives for the treatment of the waste. Their dependence is even greater since treatment services account for a very high proportion of their costs and their relative weight in the upstream market is limited compared with Ecostrill.

The *Autorité* imposes a symbolic fine

The infringement appears exceptional, not only because the agreement in question eliminated all competition on the market, resulting in the creation of a monopoly, but also because certain features of the case, such as the strong barriers to entry, public health concerns and the fact that La Réunion is an island, make these distortions of competition particularly significant.

The *Autorité* also notes that the parties to the agreement, which must have known that the creation of a monopoly would significantly impede competition in the markets concerned, had failed to take any measures to mitigate the consequences.

As this is the first time the *Autorité* has imposed a fine under the provisions of Article L. 420-1 of the French Commercial Code in relation to a merger, it has imposed a symbolic fine of €1 on both the buyer and the seller.

DECISION 26-D-10 OF 22 OCTOBER 2026

regarding practices implemented in the sector for
the treatment and disposal of potentially infectious
medical waste in La Réunion

The full text of the
decision (in French)
will be available soon

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