

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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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.”

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