# 24 February 2006: Press distribution

Published on March 23, 2006

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**The Conseil de la concurrence orders NMPP and SAEM-TP to temporarily suspend the application of a new interprofessional protocol reached with press distributors**

>Version française

In September 2005, the Conseil de la concurrence received a complaint from the companies “Messageries Lyonnaises de Presse” (MLP) and “Agora Diffusion presse”, regarding practices implemented by “Nouvelles Messageries de Presse Parisienne” (NMPP) and the company “Auxiliaire pour l’Exploitation des Messageries Transport Presse”. Following that complaint, the Conseil has just handed down a decision, ordering the companies concerned, temporarily whilst awaiting a full ruling on the merits, to suspend application of both the new interprofessional protocol on the one hand, and the amendment to the interprofessional protocol dated 18th September 2001 on the other hand, which they signed with UNDP and SNDP respectively on 30th June 2005. These agreements were set to come into effect on 2nd March 2006.

## Background

For several years, press distributors have been experiencing problems caused by increasingly difficult working conditions, insufficient remuneration and low goodwill.

Since the distributors’ rates of remuneration were proving inadequate to cover costs, an initial revaluation plan was introduced, leading to a number of interprofessional agreements (30th September 1994 and 18th September 2001),

which are still in force today. The agreements are based on the principle that distributors who meet certain qualification criteria should receive additional remuneration.

Since the initial plan proved inadequate, and so a second plan to revalue the remuneration paid to distributors was created. On 30th June 2005, NMPP and SAEM-TP signed two interprofessional protocols with UNDP and SNDP. In addition, an amendment to the original interprofessional protocol dated 18th September 2001 was also signed, on that same date, in an effort to adjust the qualification criteria contained in the initial plan.

**The complaint by MLP and Agora Presse**

MLP and Agora claim that the qualification criteria contained in the second plan to revalue the remuneration paid to distributors have a discriminatory nature, since their aim is to unfairly favour distributors linked to the NMPP group (such as "Maisons de la Presse" and "Presse Mag"), to the detriment of other distributors.

They also claim that several of the new criteria intend to make distributors loyal to NMPP and SAEM-TP. They will therefore have the effect of encouraging distributors to focus their marketing efforts on NMPP and SAEM-TP products, to the detriment of MLP products. Consequently, the complainants believe the criteria are likely to force them out of the single issue press distribution market.

**The Conseil de la concurrence's analysis**

Having examined the clauses of the agreement and the amendment concerned, the Conseil considered that the general economics of the new system of remuneration for distributors proposed by NMPP and SAEM-TP, which combines several criteria inducing loyalty is likely to have the purpose or effect of evicting the only competing press distribution service (MLP) from the market, and therefore is likely to constitute an abuse of dominant position.

Due to the large number of publications currently vying for space in press depots and on newsagency shelves, it is not possible to display all of them.

Under the protocol and the amendment, distributors are effectively paid extra for giving prominence to publications belonging to the two press distribution services who dominate the market between them (NMPP and SAEM-TP are both part of the Hachette group and together hold a market share of 85%). The extra prominence given to these publications can only come at the expense of publications belonging to other press distribution services, in this case MLP.

The Conseil's decision to order the suspension of the protocol shall remain in effect as long as the loyalty system remains in its current form, and until the Conseil has issued a full decision on the merits. However, it does not preclude any attempt to revalue the remuneration paid to press distributors on the basis of other criteria, as permitted by the Decree of 25th November 2005. That particular piece of legislation authorises surcharges, provided they are subject "to transparent, objective fair and non-discriminatory criteria, likely to guarantee compliance with the principle of neutrality as defined in Article 11 of Law n° 87-39 dated 27th January 1987".

***> Decision 06-MC-01, relative to a request for interim measures filed by the companies Messageries Lyonnaises de Presse and Agora Diffusion Presse***



***> See decision of the Paris Court of Appeal (9th May 2006)***