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Conseil de la concurrence in favour of a thorough reform of Royer / Raffarin laws on commercial facilities

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In December 2006 the European Commission sent a detailed notice, which challenges the legislation relative to commercial facilities, considering that certain aspects are contrary to the principles of freedom of establishment and supply of services and to the Directive relative to services. In this context, the committee on the modernization of commercial facilities chaired by Renaud Dutreil issued a list of reform proposals. The Government wished that the Conseil analysed these proposals in the light of a more general competition assessment of current legislation.

Today the Conseil de la concurrence gives its opinion to the Government and publishes it on the internet website (www.conseil-concurrence.fr). The Conseil considers that the Dutreil committee's proposals are simply adjusting a system, which should be much more thoroughly called into question, given the negative competition assessment, which can be drawn from the legislation concerned (opinion 07-A-12 of 11 October 2007, relative to the legislation on commercial facilities).

The Conseil recommends to abandon the current system, which submits the opening or the extension projects of sale areas to an economic licence: competition distortions caused by the system are indeed too important to be able to remain

The Raffarin and Royer laws have created and strengthened barriers to entry on distribution markets, protecting current operators from competition. According to the OECD, France is the country with the strongest regulation barriers to entry in the retail sector. This infringement to the free entry on the market encouraged mergers in the sector and contributed to strengthen the distributors' position in the relations with their suppliers. The major four distribution groups totalize 66% of market shares and two central buying offices supply 52.1% of total hypermarkets sale area. This situation encouraged price increases to the detriment of consumers. The context also penalizes employment, given the sector's important role in jobs creation. In the light of a study, an increase of 1% of authorized sale areas rate leads to a significant increase of the sector's employment (0.1%), which means that the opening of hypermarkets creates more jobs than it destroys them.

The removal of such a licence would in itself favour competition.

These negative effects have to be considered in the light of the regulation's mitigated success compared with the objective to maintain the balance between different forms of trade.

The opening of the sector to competition should be accompanied by measures dedicated to strengthen the control of risks linked to the creation of local dominant positions

Current thresholds for merger control are ill-adapted to the competition issues on limited customer catchments' areas and could thus be reduced in order to take the distribution specificity and consumers interests into account.

Moreover, the implementation of appropriate structural remedies by the Conseil de la concurrence, for example the obligation to sell shops, would enable to challenge the dominant positions acquired in cases where behavioural remedies alone prove inefficient to fight the abuses made possible by the dominant positions.

Given the high externalities generated by the opening of a hypermarket, regulation remains necessary to fulfil a number of objectives, such as the protection of small-scale businesses, the protection of the environment and the quality of town planning

However, the protection of small-scale businesses would be made more efficient with the setting up of an incentive transfer system aimed at encouraging the creation and the preservation of small businesses than through a quantitative regulation of sale area. Moreover, town planning and environment issues could be analysed on the sole basis of building permit, in accordance with their aim. The provisions of town planning projects relative to commercial facilities could be strengthened to that end.