

23 February 2009: Payment timeframes

Published on September 21, 2009

The Conseil de la concurrence has issued a favourable opinion regarding the derogating agreements signed in the toy, DIY and watch making-jewellery sectors.

> *Version française*



Referred to by the Minister of the economy, industry and employment, the *Conseil de la concurrence* has recently handed down a favourable opinion regarding three derogating inter-professional agreements relative to the new rules on payment timeframes, established by the law on the modernization of the economy (LME), that normally took effect on 1st January 2009.

Article 21 of the LME makes an opinion from the *Conseil de la concurrence* mandatory relative to sector derogations, as a result of the potential competitive distortion to which they can lead.

The LME reduced the payment timeframes to 45 days from month end or 60 days as of the issuing of the invoice, in order to ease the financial constraints that notably weigh on SME.

To allow certain economic sectors some time to adapt, the LME provided the possibility for a business sector to set, by means of an inter-professional agreement, timeframes that would depart from the legal payment timeframe for a transitional period of three years at most, under two conditions: that this derogation would be motivated by an objective economic reason, specific to this sector, and that a progressive reduction of the derogating timeframes would be implemented.

These agreements must be validated by a decree, which can also decide to extend the mechanism's application to all companies in the sector in question. Regarding the principle of the extension, the *Conseil* is in favour of it so as to avoid differing treatments for companies in a comparable situation with regard to the conditions for carrying out their activity.

In the three opinions that it has just provided to the government, the *Conseil* has indicated that there are objective and specific economic reasons for granting more time to companies in the toy, DIY and watch making-jewellery sectors to comply with the new provisions, and it recommended the agreement's extension by decree.

DIY sector: the *Conseil* issues a favourable opinion but obtains the deletion of one article that would result in serious difficulties

A derogating agreement has been signed between the Fédération des magasins de bricolage (FMB) and, up to the present time, five professional industrial organisations (UNIBAL, SECIMPAC, FIPEC, FFB, GIFAM).

The *Conseil* has indicated that the level of stocks and supplier credits was particularly high in this sector, whether in absolute value or relative to the overall retail trade, notably in the case of independent distributors, whose maintenance is beneficial to the sector's competitive stimulation.

It issued a favourable opinion after having obtained the deletion of article 4 that introduced an unacceptable asymmetry between distributors and suppliers, with the former demanding, as of 1st January 2009, the payment of their invoices for commercial cooperation services by suppliers at 45 days from month end, with the latter having to wait until 1st January 2012 in order to benefit from this maximum timeframe.

Specialized distribution sector of toys and games: the *Conseil* has issued a favourable opinion but suggests an acceleration of the calendar.

A derogating agreement has been signed between the specialized distributors

and the manufacturers and importers of toys, through the intermediary of their respective professional organisations: the Fédération des commerces spécialisés du jouet et des produits de l'enfant (FCJPE) and the Fédération française des industries du jouet-puériculture (FJP).

The *Conseil* is of the opinion that the sector meets the conditions required to justify a transitional derogation relative to the legal payment timeframe, as a result of the extreme seasonality of the sales, combined with the existence of an extremely specialized distribution circuit. On the other hand, the significant nature of the effort to reduce payment timeframes that is still required elicited reservations with regard to the actual possibility of attaining this objective: the Conseil suggested a more proactive initiative, notably for the first year.

Watch making, jewellery and silverware sector: the Conseil issues a favourable opinion after having obtained margin improvements

A derogating agreement has been signed between seven professional organisations, representing specialized distributors and suppliers.

The *Conseil* considered that the conditions for a derogation had been met: indeed, in this sector, maintaining a diversified offer throughout the year and the seasonality of sales impose a need for high levels of stock for retailers, who had up until now been largely financed by supplier credit.

The *Conseil de la concurrence* will soon consider other agreements that have just been submitted to it. Six are currently being analysed in sectors including stationery goods, books, building and civil engineering materials and products, plumbing and heating fixtures, tyres and tinned foods.

> For more details: see the full text of opinions [09-A-02](#), [09-A-03](#), [09-A-04](#)