22nd April 2009: No territorial monopoly for dispensing pharmacists

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The *Autorité de la concurrence* condemns the Regional Council of the *Ordre des pharmaciens de Basse-Normandie* for urging a retirement home to use the pharmacies that are closest to it

> Version française

Referred to by a pharmacist of the city of Caen (the '*Grâce de Dieu'* pharmacy), the *Autorité de la concurrence* has just issued a decision whereby it condemns the Regional Council of the *Ordre des pharmaciens de Basse-Normandie* (Lower-Normandy Association of Pharmacists) for having intervened at the '*Les Hauts de Monceaux*' retirement home at Missy in the Calvados region, urging it to use its nearest pharmacies rather than choose a pharmacist further away, who may possibly be more competitive.

Retirement homes must remain free to put pharmacies in competition in order to seek out the best prices, benefits and services

When comparing pharmacies one may consider the quality of the services (accuracy, timeliness, range of products stocked...) and the price of certain non-refundable products as well as other refundable products for which the pharmacists retain the ability to vary their profit margin.

The pressure exerted by the Basse-Normandie Regional Council on the '*Les Hauts de Monceaux*' retirement home in urging it to obtain its supplies from the nearest pharmacies, prevents this retirement home from carrying out a

legitimate search for the best priced pharmaceutical products and services by putting several pharmacies in competition.

Although the French Public Health Code (*Code de la santé publique*) aims at ensuring an adequate "territorial network" of pharmacies in order to respond to the needs of the population, it does not establish a territorial monopoly and does not imply that a retirement or care home cannot make competition play and request the pharmacist of its choice to satisfy the requirements of its residents.

An practice resulting in a fine of 5,000 euro

The *Autorité de la concurrence* has deemed that the practice reproached to the Regional Council of the *Ordre des pharmaciens de Basse-Normandie* is serious since it is carried out by an institution which has been assigned a responsibility of public service. Furthermore, although an isolated conduct, this approach illustrates a position in principle tending to encourage a division of the clientele of the pharmacies into immediate proximity markets.

This tends to restrict competition between the dispensing pharmacists and to cause damage to the economy in as much as it disrupts the economic order.

This is why the *Autorité de la concurrence* has levied on the Regional Council of the *Ordre des pharmaciens de Basse-Normandie* a fine of 5,000 euro.

In order to inform pharmacists and managers of retirement homes about the prohibited nature of this practice, the *Autorité de la concurrence* has asked the Regional Council of the *Ordre des pharmaciens de Basse-Normandie* to publish a summary of the decision in the review "*Le Moniteur des pharmaciens*" and in the issues of the "*Ouest France*" newspaper distributed in Basse-Normandie.