25 February 2010: Mass retail distribution

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Clauses in contracts of affiliation signed between independent stores and major mass retail distribution groups and management provisions of distributors relative to commercial real estate : new obstacles to competition in the distribution sector ?

> Version française

On its own initiative, the *Autorité de la concurrence* has decided to issue an opinion on two questions involving mass retail distribution, which can have an impact on the operation of competition in this sector.

The first relates to the contractual clauses between the distributor members of a franchise network and a franchisor group heading the network.

In its opinion, the *Autorité* will examine the various types of applicable contracts, notably franchise contracts or the contracts signed by independent retailers in order to join a cooperative, as well as other contracts between a retailer and a legal person representing the network (supply contract, facilities management, lease contract, pacts between partners, etc.). It will also assess the strength of the link between the companies at the head of the network and the affiliated retailers, and the real degree of independence of the latter. The impact of these vertical relations will be assessed for each of the main retail formats (hypermarkets, supermarkets, local stores, specialized shops)on the basis of the nature and regulatory framework of the links between the network members. The examination will also consider the duration of the contract between an independent retailer and its network, the obstacles hindering any change of a store's chain and the entry barriers that may be faced by new operators.

The characteristics of the relations between an independent store and its network of affiliation will then be assessed in view of their potential competitive effects, which are themselves dependent on the rarity of commercial lands available within trade areas and on the weight of the operators bound by these contracts within the identified relevant markets.

The second matter involves the management of commercial real estate.

The *Autorité* intends to study the purchase and resale behaviours of distributors with regard to commercial real estate.

Certain food distribution groups apparently own unused commercial real estate, which could potentially decrease the possibilities for new stores to enter some areas. The *Autorité* will therefore study how long it takes for acquired lands to be put into service, the restrictive clauses introduced in purchase and sale

contracts, as well as their positive and negative effects on the intensity of competition within trade areas, particularly the most concentrated ones.

The two aspects of this referral are complementary in more ways than one. Firstly, the relations between affiliated stores and the companies at the head of the group can hinder the arrival of new operators through the acquisition of existing stores (external growth), while the acquisition of commercial real estate or restrictive clauses included in purchase and sale contracts are intended to prevent the establishment of new stores (internal growth). Secondly, in both cases, the competitive challenges related to these matters are on the level of the local trade area: indeed, the various paths by which a new operator might wish to enter a market, and the market power that a distributor may be striving to protect, if relevant, will have to be analyzed at the local level. Finally, the contractual clauses between the store and its franchisor may have only a limited impact in the event of considerable available commercial real estate. Inversely, the pre-emption of commercial real estate will have little effect if, in other ways, the mobility of stores between networks is not hindered and if the latter have a significant weight within the trade area in question.

> *For further informations, please consult the full text of the decision 10-SOA-01 of 25 February 2010, relative to a self-referral for an opinion regarding the affiliation contracts of independent stores and the commercial real estate acquisition provisions within the food distribution sector*