7 December 2010: The Autorité de la concurrence issues an opinion on the competitive impact of a new practice: the category management between suppliers and retailers in the mass retail distribution for food products sector

Published on December 07, 2010

**It warns the economic operators about the risks for competition entailed by the
implementation details of these practices and pleads for the drafting of a best practices code**



> Version française

The *Autorité* has started proceedings at its own initiative on category management practices. It issues today an opinion in which it puts into light several potential risks for competition and sets up a general framework to guide the behaviors of the sectors actors.

What is category management ?

Category management describes a partnership (that is more or less close) between a retailer and a supplier aiming at stimulating a product category.

A common example is that of the “breakfast” category where can be included, depending from the retailers, coffees, teas, powder chocolates, cereals, toasts,

brioches, juices, etc… Category management consists in presenting the whole product category as a coherent and harmonious whole and not as single coexisting products.

Concretely speaking, the retailer will ask the "partner" supplier (often named "category captain") to make recommendations, notably on the assortment, the merchandising, and the special offers policies regarding the products of its category, including the captain's competitors' products.

Category management practices have been developing on the French market since 2000. They do not meet the same success such as in the Anglo-Saxon countries – perhaps because of the tensed relations between retailers and suppliers – but have indeed developed : in the recent years, several economic operators have started, formalized or developed that kind of commercial partnerships.

The *Autorité* has identified numerous potential risks for competition linked to these partnerships

- Shelf space eviction risks for the competitors

The category captain sometimes participates in the introduction, placement and positioning of products in stores, may seek to take advantage from this privileged relationship with the retailer in order to influence the assortment and the merchandising to the detriment of its competitors especially when they have not the same market power (such as SMEs).

Moreover, the specificity of category management lies on frequent product comparisons. When making presentations to the retailer, the category captain could be tempted to denigrate competing products by providing false data or by interpreting in a wrong way real elements.

Finally, category management partnerships provide partnering suppliers with exclusive information exchanges : on one hand, the partnering supplier has access to certain quantitative data provided by the supplier (data stemming from

fidelity programmes, data on sales, on resale prices, on stocks, data by store, by reference on a weekly basis) and on the other side, the category captain will have the possibility to anticipate, in a privileged manner, the retailer's commercial strategy evolutions.

- Collusion risks notably between retailers

Category management may favor horizontal agreements between retailers. In the case where a same supplier is simultaneously category captain with several retailers, there is a risk that he serves as cartel cornerstone by facilitating information exchange between retailers. A partner supplier could then inform its partner retailers of their respective plans and permit the implementation of a concerted practice like for example : price increases and/or reduction of the variety of marketed products.

The *Autorité* points out the lack of clarity within the current system and invites the sector operators and the *Commission d'examen des pratiques commerciales* (commercial practices review panel) to start considering these questions to publish a best practices code

At this current stage of the development of category management practices, and taking into account all the collected elements and assessing its effects, the Autorité de la concurrence considers that the implementation of the Code de commerce provisions regarding abuses of a dominant position and collusion is sufficient to prevent the anticompetitive risks identified.

The opinion issued today will serve as "analyze grid" and will permit the operators to check if their practices comply with competition law and to help them drafting this best practices code.

In its assessment, the *Autorité* underlines three points:

- Firstly, the *Autorité* wishes that the **appointment of a category captain is made public for example through a call for application** which would describe the means dedicated, so that the competitors will have the

possibility to assess these nomination effects on their presences on the partner retailer shelves. The effectiveness of competition law depends on the amount of information a company can gather regarding the potentially anticompetitive practices implemented by its competitor.

- Secondly, the *Autorité* calls for more clarity and more formalization of this kind of partnerships. **Contracts or agreements could precise the tasks falling within the category captain remit and those coming within the exclusive remit of the partner retailer**. This latter competence area, which varies a lot from a retailer to another - is the most questioned today. The fact that it is currently not formalized, which also has as consequence that category management services are not paid – makes it suspect.

- Thirdly, the *Autorité de la concurrence* considers that the **commercial practices review panel could play a very useful role in defining the best practices and monitor the development of these collaborations at a time when the general framework lacks in clarity**. The effects of these partnerships on competition are function of their implementation details but also of the number of retailers using that kind of partnerships. Special attention has to be paid to the coming developments of category management practices so as to assess whether stricter recommendations – or even legislative provisions – have to be issued to ensure category management compliance with competition rules.

> For more details, Please consult the full text of the opinion 10-A-25 of 7 December 2010 relative to category management agreements in the food retail sector