16 December 2011: Retail distribution

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The *Autorité de la concurrence* makes commitments proposed by Carrefour concerning a Parisian supermarket franchised under the *Champion* name binding

Carrefour commits to adapt the standard *Carrefour Market* franchise agreement with regards this supermarket

> Version française

Following a complaint filed in August 2010 by the companies **Marcadet Distribution 75** and **Marcadet Exploitation 75** (which operate a supermarket under the brand name Champion in the 18th arrondissement of Paris) regarding practices implemented by **Carrefour SA**, the Autorité de la concurrence today issues a decision whereby it accepts and renders mandatory commitments made by Carrefour towards the complainant companies.

In this same case, the Autorité de la concurrence had already issued a decision on 23 February 2011 **(No. 11-D-04)**, by which it rejected the complainant companies' request for conservative measures for lack of urgency, but decided to continue the investigation on the merits of the case, considering that the practices examined were liable to constitute anticompetitive practices.

Competition concerns

As the Autorité had indicated to Carrefour in July 2011, in its preliminary assessment, the possible replacement of the Champion franchise agreement of

the Marcadet shop by a Carrefour Market franchise agreement[1] under more restrictive conditions (notably concerning an increase in the membership term from 3 to 7 years, the introduction of a non-renewal of membership and post-contractual non-competition clause, of a post-contractual right of priority on the business in favour of Carrefour and a deferred initial franchise fee) was in fact liable to represent an abuse of economic dependence.

The commitments proposed by Carrefour are made binding by the *Autorité*

In order to address competition concerns raised by the Autorité, Carrefour submitted to it, on 29 July 2011, commitments proposals[2].

In the decision issued today, the Autorité makes these commitments mandatory, by which Carrefour commits to offer complainant companies the signing of a new franchise agreement under the brand name Carrefour Market, of which some clauses have been relaxed in relation to the standard Carrefour Market agreement initially put forward to complainant companies and this to prevent the replacement of the brand name Champion by the brand name Carrefour Market being an opportunity to introduce more restrictive clauses into the agreement than those provided for in the Champion franchise agreement.

Carrefour will have to send a new Carrefour Market franchise agreement proposal to complainant companies within one month, in which notably:

- the initial agreement term will be reduced to 3 years (renewable by 3 year periods), instead of the 7 years renewable by periods of 7 years initially suggested;

- any post-contractual non-renewal of membership and non-competition clause will be deleted;

- the right of priority will be organised, to ensure it is only exercised during the agreement term;

- the deferred initial franchise fee will be deleted.

The commitments made by Carrefour are in line with the analysis carried out by the Autorité in its ***Opinion No. 10-A-26 of 7 December 2010 relating to affiliation agreements of independent retailers and the terms for acquiring commercial land in the food retail sector,*** in which it had denounced the restrictive clauses encompassing commercial relations between food retail groups and their affiliated shops. It had notably pointed out, in its opinion, the excessive duration and the overlapping of agreements and the multiplicity of post-contractual restrictive clauses.

(1) The franchise agreement proposed fell within the context of shops under the brand name Champion moving to the brand name Carrefour Market, this gradually replacing the brand name Champion throughout the network of franchised supermarkets of the Carrefour group.
(2) These commitments proposals were published on 7 September 2011 on the Autorité's website, in the context of a ***market test*** *open to all potentially interested third parties.*

> Full text of Decision No. 11-D-20 of 16 December 2011 relating to practices implemented by Carrefour in the food retail sector

> Press contact: André Piérard - Tel. +33 (0)1 55 04 02 28



> See decision of the Paris court of appeal (24th January 2013)