

2 October 2012: New Caledonia

Published on October 04, 2012

The Autorité de la concurrence publishes its recommendations to the *Gouvernement de la Nouvelle-Calédonie* (New Caledonian government authorities) regarding the food retail sector and the competition control bodies.

The Autorité particularly advocates strengthening competition upstream by taking action towards the market structure, rather than control retail prices, and the Autorité also suggests creating a competition authority for the *Collectivité de Nouvelle-Calédonie* (Collectivity of New Caledonia).

> [Version française](#)



Under the technical assistance agreement concluded between the Autorité de la concurrence, the New Caledonian government and the High Commissioner of the French Republic on 14 February 2012, with an aim to increase the level of expertise of the overseas collectivity and to enhance its tools in the field of anticompetitive practices, the Autorité has just published two reports, one of them relating to the mechanisms for importing and distributing consumer goods and the other relating to strengthening the competition control bodies of New Caledonia. These reports provide an assessment of the competitive situation within the territory and issue a number of recommendations.

To draw up these two reports, the Autorité sent a mission to New Caledonia during the first half of 2012. With the backing of local government departments, three Case Officers from the Autorité heard the main distributors, importers and producers, economic partners and representatives of the various political, administrative and social institutions.

Their findings:

• *Local oligopolies in several consumer goods sectors*

Given the narrowness of the Caledonian domestic market, which limits possible economies of scale in local activities, there are oligopolies or even natural monopolies in certain markets. These oligopolies are in some instances strengthened by rules such as tariff barriers and import quotas imposed to protect local businesses from foreign competition. They tend to bring about price increases on numerous imported goods.

• *Highly concentrated retail distribution sector*

At the same time, the retail distribution of consumer goods (food or household goods) is highly concentrated in New Caledonia. In the area of Greater Nouméa, which accounts for 90% of the turnover of large food outlets, two operators own more than 80% of the retail space. This situation is exacerbated by regulatory barriers preventing entry into this sector, which make the opening of outlets of more than 300 m² subject to the authorisation of the president of the provincial assembly, and by a definition of the loss-leader threshold which prevents discounts that were not invoiced or acquired at the time of sale from being passed on to consumers. The market situation has led the New Caledonian government to regulate the prices or resale margins of hundreds of goods.

Recommendations made by the Autorité:

Although it is not up to the Autorité de la concurrence to analyse the economic relevance of political and economic choices reflected in the quantitative measures for protecting local businesses based in New Caledonia, it nevertheless reiterates that competition and employment are not incompatible, insofar as the increase in purchasing power achieved through greater competition fuels demand for other services, which themselves create jobs. Moreover, the Autorité believes that by adjusting existing rules, competition would be strengthened without necessarily increasing unemployment in New Caledonia, thereby benefitting consumers and their purchasing power.

The Autorité has made a number of recommendations:

- ***Modify quantitative protection measures to make them more favourable to competition***

Because of the lack of competitiveness among local businesses, any sudden and far-reaching abolition of existing quantitative protection measures might threaten the very viability of local agricultural or industrial businesses. However, the following measures would offset their negative impact on prices and competition while improving efficiency to ensure growth in New Caledonia:

- > **Change quantitative market protection measures (import quotas or bans) into tariff protection measures (customs duties).** This is because, compared to customs duties, quotas lead to a loss in tax revenue and contribute to freezing the market, insofar as import quotas are imposed, in particular, on the basis of the past positions of each importer.

- > **Abolish additional customs duties imposed on imports from countries that are not part of the European Union.** This is because these duties deprive consumers and local importers from making savings on transport costs due to the geographical proximity of New Zealand and Australia, which currently represent 45% of imported food products in terms of volume.

- > **Be more selective when providing protection measures,** by reserving them to key industries in terms of employment or activity, by increasing the transparency of their allocation and by making them conditional upon better quality or lower prices in return.

- ***Stop regulating prices and margins and favour action on market structures in order to increase competition in the retail distribution market***

The regulation of prices and margins of a significant number of goods in New Caledonia raises several risks: unavailability of goods (given its sometimes dissuasive effect on distributors), upward pressure on prices (the maximum price also becoming a minimum price), "transfer of margins" to unregulated goods

(where the distributor increases the prices of these unregulated goods to offset the low margin achieved on regulated goods). These risks justify the need, as in the majority of countries, for this regulation of prices or margins to be used only in markets where, for economic or structural reasons, competition has effectively broken down. However, this is not the case as far as the retail distribution market in New Caledonia is concerned, where at least one new retail brand has tried to gain a foothold.

The Autorité therefore advocates, in order to increase competition and reduce prices, that this regulation of prices and margins stop and that priority be given to altering market structures by introducing three complementary mechanisms:

> **a mechanism for controlling mergers** to prevent future buyouts between competitors. This mechanism, which should apply to all sectors of activity, is essential given the high level of concentration of several economic sectors on the island (where supermarkets are emblematic).

> a predictable and transparent **mechanism for controlling the opening of stores** exclusively based on measuring the market share of competitors already present and wishing to open a new store ("competition test"). This is because the establishment of new players should be facilitated;

> **a structural injunction mechanism** along the lines of the draft bill relating to economic regulation overseas adopted by the Senate on its first reading and currently being examined by the French National Assembly, making it possible to order the divestiture of assets of an undertaking or a group of undertakings holding a dominant position and whose prices or margins are high compared to average prices or margins in the sector.

Finally, given the industrial or agricultural activities that are concentrated and/or relatively protected from foreign competition, the Autorité recommends simplifying the legal framework for trade negotiations and allowing supermarkets to pass on to consumers all discounts granted to them by manufacturers.

• **Create an independent competition authority responsible for antitrust and merger control**

Since the organic law of 19 March 1999 came into force, New Caledonia has competence in competition law. However, the legal and practical tools for combating anticompetitive practices are inadequate.

The Autorité recommends, in its report on competition control bodies, in light of its own assessment, that the legal provisions on competition applicable in New Caledonia be amended:

> In addition to introducing mechanisms for controlling mergers and for structural injunctions mentioned above, it is recommended that breaches of competition law (anticompetitive agreements and abuses of a dominant position) be subject to administrative penalties, as is already the case in France and overseas departments.

> The Autorité de la concurrence also recommends setting up an authority responsible for ensuring the proper implementation of competition rules in New Caledonia. This authority would be responsible for controlling anticompetitive practices and mergers.

In its report, the Autorité points out that there are a number of possible options, in particular the creation of an independent authority¹ (which requires the passing of an organic law) or else, under the existing organic law, the creation of an authority having greater consultative powers, the power of decision still being devolved to the New Caledonian government.

(1) Following the example of several other small island countries like Mauritius or Iceland.

> Full text of the "Rapport de l'Autorité de la concurrence relatif aux mécanismes d'importation et de distribution des produits de grande consommation en Nouvelle-Calédonie" (in French)

> Full text of the "Rapport de l'Autorité de la concurrence relatif aux structures de contrôle en matière de concurrence en Nouvelle-Calédonie" (in French)

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