

12 July 2012: Press distribution

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The Autorité de la concurrence has obtained commitments from Presstalis, a press distribution service, that improve the functioning of competition in various press distribution markets.

> *French version* 

At the conclusion of a procedure negotiated with the *Autorité de la concurrence*, Presstalis (formerly NMPP) has provided press wholesalers with guarantees regarding the terms of their business relationships. These commitments improve the functioning of competition at different levels of the press distribution supply chain.

The press distribution sector

Newsstand distribution operates at three levels. Press distribution services, which distribute the press on behalf of publishers, first distribute titles to press wholesalers (level 1). The press wholesalers then distribute the titles to retailers (level 2), which sell them to the final consumers (level 3). The Presstalis press distribution service, which has a strong presence at level 1, also operates depots at level 2. It may hold a dominant position in the newsstand distribution market. Furthermore, the press wholesalers that do business at level 2 may be economically dependent on Presstalis.

Summary of the procedure

In its referral, the *Syndicat national des dépositaires de presse* (National Press Agents' Association, hereinafter "SNDP") complained of certain clauses in contracts between Presstalis and independent press wholesalers and of

operating practices which, in its opinion, could constitute an abuse of a dominant position. Specifically, the SNDP complained of press wholesalers' terms of remuneration; the restrictions imposed on press wholesalers that wish to establish a direct relationship with publishers; the imposition of an at-will termination clause in press wholesaler contracts; and the manner in which Presstalis participates in approval procedures concerning sales and mergers of press depots, which may promote its own expansion at level 2.

Pursuant to decision [09-D-02](#), the *Conseil de la concurrence* dismissed SNDP's application for urgent interim measures on the grounds that it had not been shown that the practices alleged were the direct and certain cause of a serious and immediate harm to the structure of the sector. Furthermore, it had not been proved that press wholesalers' remuneration was discriminatory and unfair. Nevertheless, the *Conseil* requested that the investigation on the merits be continued with respect to other issues.

Competition concerns: the ambiguity of certain contractual provisions and operating practices in the sector

The *Autorité's* Investigation Services found, firstly, that some provisions of the contracts governing relations between Presstalis and the press wholesalers might constitute an abuse of a dominant position.

Therefore, a clause in Presstalis' contracts with press wholesalers could be understood, in principle, as a prohibition on those press wholesalers preventing them from establishing a direct relationship with a publisher for the distribution of one or more titles within their catchment area. Such a clause could restrict the ability of independent press wholesalers to compete with press distribution services in the press distribution market.

Similarly, the at-will termination clause in the contracts between Presstalis and the press wholesalers could be interpreted as entitling Presstalis to terminate the contract of a press wholesaler on very short notice (48 hours), without compensation, even if the press wholesaler has not committed any breach. This termination provision might enable Presstalis to abuse its dominant position in

the newsstand distribution market and in the related depot sales market, by threatening to terminate the contracts of press wholesalers that seek to establish a partnership with a company other than Presstalis.

The Investigation Services then found that in connection with sales of depots, which must be approved by the *Conseil supérieur des messageries de presse* (Press Distribution Supervisory Commission, hereinafter "CSMP"), the CSMP may, through its *Commission du réseau*, ask press distribution services to provide clarifications or submit an opinion. It cannot be excluded that through this procedure, Presstalis, the press distribution service that may be dominant in the market, may attempt to favour its own projects to the detriment of those of independent press wholesalers. Although the CSMP is required to conduct such proceedings inter partes, the form in which Presstalis chooses to submit its position on a particular project to the CSMP should enable the CSMP to reach a decision on the basis of objective and verifiable factors. Presstalis' failure to submit its positions in writing may make the process less transparent and verifiable, which may make it easier for Presstalis to submit positions that are not objective.

To address these competition concerns, Presstalis proposed certain commitments to the Autorité, which were submitted to the companies in this sector for consultation, and which were improved at the hearing before the *Autorité's Board*.

Presstalis' commitments

- Presstalis undertakes not to terminate its contracts with press wholesalers that directly distribute a publisher's titles if such direct distribution does not significantly jeopardise the proper performance of the distribution services that are the subject of the contract with the press wholesaler in question.

- Except in the case of a material breach by a press wholesaler, Presstalis undertakes not to terminate any press wholesaler contract without giving three months' notice in the event it wishes to terminate a contract with a press wholesaler. The press wholesaler will be entitled to claim compensation.

- Presstalis undertakes to record in writing all information it may submit to the Commission du réseau in connection with any press distribution level 2 project

(press wholesalers), during the sales approval procedure.

- Lastly, Presstalis has undertaken to inform press wholesalers who have concluded or may conclude a contract with it of the commitments it has made.

The Autorité de la concurrence considers that these commitments address its competition concerns and, therefore, has made them mandatory and decided to close the procedure.

> Full text of decision no. 12-D-16 of 12 July 2012 on practices in the press distribution sector and full text of Presstalis' commitments.

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