18 September 2012: Findings of the sector inquiry into e-commerce

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E-commerce often offers consumers lower prices and more choice than the traditional retail sectors.

Manufacturers and traditional retailers should therefore ensure that their marketing agreements
(selective distribution, different purchase prices or shipping terms, etc.)
do not curb the development of on-line sales and the resultant increase in competitive pressure.

> Version française

In 2011, 30 million French people purchased goods or services on-line from a total of 100,000 webshops referenced on the Internet, spending a total of €37 billion (+ 88% since 2008). In view of the rapid growth of this sector, the Autorité de la concurrence decided to conduct a sector inquiry to examine the competitive operation of e-commerce. The findings of this sector inquiry are published today.
The Autorité decided to focus on three sectors: electrical domestic appliances (TVs, sound systems, washing machines, computers, cameras, etc.), cosmetic and personal care products, and luxury perfume and beauty products.

ON-LINE PRICES ARE SUBSTANTIALLY LOWER THAN PRICES CHARGED IN RETAIL OUTLETS FOR ELECTRICAL DOMESTIC APPLIANCES AND COSMETIC AND PERSONAL CARE PRODUCTS

In each of the three sectors, the Autorité de la concurrence recorded and compared on-line and off-line prices charged for a selection of best-selling

products[1] . It observed that on-line prices, excluding shipping costs, are generally lower than prices charged in physical retail outlets.

Even when shipping costs are factored in, it is often cheaper to buy on the Internet. Some webshops apply shipping charges in addition to the displayed prices. These charges may vary depending on the type of item purchased, the value of the item or the order, or the shipping method (to buyer's address, to a collection point, express shipping, etc.). However, with the exception of very large electrical domestic appliances (for which the shipping costs reduce or even cancel out the price benefit) and small orders for cosmetic and personal care products or perfumes, it is still cheaper to buy on-line.

· Electrical domestic appliances

For all the products examined (see table below), the most popular models are sold on-line at prices, excluding shipping, that are lower than the prices observed in physical retail outlets. Price differences vary, however, depending on product type:

Brown goods (TVs, digital cameras, etc.) are generally some 10% cheaper on the Internet.

Price differences for ***white goods*** vary from less than 5% for washing machines and fridges to 10% or more for dishwashers and microwave ovens.

Lastly, in the case of ***grey goods***, although prices are substantially the same for laptop computers, the average prices charged for printers are more attractive on the Internet (more than 10% lower).

The price benefits of on-line shopping

Flat screen televisions	Camcorders	Digital cameras	DVD players	Digital music players	Dishwashers
10,4 %*	13,2 %	8,5 %	11,3 %	6,4 %	9,8 %

Microwave ovens	Washing machines	Fridges	Multifunction printers	Laptop computers	
12,9 %	4,0 %	2,1 %	10,6 %	1,1 %	

* *Key: the average on-line price is 10.4% lower than the average off-line price for flat screen television sets*.

• Cosmetic and personal care products

Price differences for cosmetic and personal care products vary by 8% to 10% on average. In addition, sites operated by authorised distributors may offer large discounts on certain products, meaning that for a given product the lowest on-line price is often as much as 25 or 30% lower than the average price observed in physical retail outlets.

• Luxury cosmetics and perfumes

On the contrary, in this sector there is no significant difference between prices charged on-line and off-line.

PRICE COMPARISON TOOLS, MARKETPLACES AND "PURE PLAYER" RETAILERS PUSH PRICES DOWNWARDS

This downward price trend is compounded by the emergence of new Internet players.

• **Price comparison sites** (e.g. Shopzilla, Leguide.com, Google Shopping, Ciao.fr, Twenga, etc.) exert further downward pressure on sales prices by allowing consumers to easily compare product prices. Several surveys have found that more than half of on-line shoppers use a price comparison tool before making a purchase.

• Likewise, **marketplaces** (e.g. eBay, Price Minister, Fnac.com, Amazon, RueDuCommerce, etc.), which allow sellers to display their products in the same way as a shopping centre or mall in the physical world, also boost competition. They enable retailers with low visibility to benefit from the high profile of well-

known sites, making them more accessible to consumers, as a result of which consumers benefit from an extended range of offers and stronger competition between operators.

• Lastly, **"pure player"** retailers, which possess only a very small number of physical retail outlets, or none at all, and often operate exclusively through on-line webshops, can also push prices downwards. Their economic model, which is based on lower distribution costs than those of the traditional retailers (particularly personnel expenses and costs relating to commercial property), means they can offer more competitive prices. Such pure players are common in the electrical domestic appliances sector, offering the main products in the inquiry's sample at prices that are on average 5 to 10% lower than those observed in retail outlets.
Theoretically, the "Click & Mortar" brands, which operate both on-line and physical retail sites, could allow on-line shoppers to benefit from their reduced distribution costs for on-line sales, but they tend to adopt a different approach: to prevent their retail channels from encroaching on each other's sales, and to retain a coherent price image vis-à-vis consumers, these brands tend to implement a similar pricing policy in their retail outlets and their webshops for products available through both channels.

IN VIEW OF THE IMPORTANT ROLE OF E-COMMERCE, IT IS ESSENTIAL THAT MANUFACTURERS DO NOT IMPLEMENT PRACTICES DESIGNED TO RESTRICT ITS DEVELOPMENT OR, MORE SPECIFICALLY, TO UNJUSTIFIABLY OBSTRUCT THE EXPANSION OF PURE PLAYER RETAILERS.

The sector inquiry conducted by the Autorité found that manufacturers are increasingly imposing a range of conditions on on-line retailers wishing to join their selective distribution networks. The Autorité also found that operators with a strong on-line presence may be offered less attractive terms of purchase than those offered to the traditional retail brands.

In the opinion it has issued, the Autorité has set out a reminder of the applicable principles of competition law, which can be seen as “red lines”.

• Terms and conditions imposed by manufacturers when their products are sold on-line must not unjustifiably curb the development of e-commerce

Each manufacturer is free to organise its distribution methods, provided they do not harm competition. A large number of manufacturers in different sectors have set up selective distribution networks, reserving the sale of their products for certain retailers selected on the basis of specific criteria. Selective distribution enables manufacturers to impose certain terms and conditions on the sale of their products in physical retail outlets and on-line, and this can usually be justified by a desire to protect the high-end image of the product or in view of the product's technical characteristics (high-tech products). A manufacturer may justifiably demand that a retailer's website comply with certain quality standards in the same way as its physical retail outlets in order to ensure that the consumer receives a sufficiently high quality service (secure websites, pages dedicated to products, limits placed on number of items sold to consumers to prevent parallel trade, etc.).

This does not mean off-line distribution methods should be favoured over the Internet. EU legislation and the decisions of the Autorité de la concurrence uphold the principle that the terms and conditions relating to on-line sales of products must be similar to those relating to their sale in physical retail outlets. A manufacturer cannot, under any circumstances, prohibit an approved distributor from selling its products on-line on principle.

• Manufacturers are free to impose different commercial terms and conditions (including prices) on on-line and off-line retailers, provided this does not lead to insufficient competitive pressure in the market in question

Manufacturers are free to offer different ranges of products and to apply different commercial terms and conditions to on-line and off-line operators. More specifically, different terms of purchase may be offered to reflect, for example, volumes ordered or services provided, or, more generally, individual operators' negotiating power.

However, operators' freedom to negotiate does not entitle them to agree to

terms and conditions of purchase or supply that might unjustifiably reduce the competitive pressure exerted by on-line operators on traditional retailers. For example, a manufacturer who is a leading player in the market because of the attractiveness of its products or its market share must not use this position to unduly penalise on-line retailers by imposing clearly unjustifiable pricing or commercial terms and conditions. Such practices could put on-line retailers at a disadvantage, restricting the competitive pressure they are able to exert on traditional retailers, and could be found to be anti-competitive in litigation proceedings.

THE AUTORITÉ WILL CONTINUE TO KEEP A CLOSE EYE ON THE DEVELOPMENT OF COMPETITION ON AND THROUGH THE INTERNET

Anti-competitive measures and practices by manufacturers or retailers can be identified and sanctioned only on an individual basis through litigation proceedings.

The Autorité de la concurrence was one of the first competition authorities in Europe to issue decisions on practices obstructing the development of e-commerce (more specifically concerning on-line sales of watches, sound systems and home cinemas, and cosmetic and personal care products)[2], and will continue to monitor the e-commerce sector closely to ensure that the need for specific distribution methods for certain types of product does not limit the opportunities for competition created by the Internet.

[1] For more information, please refer to paragraphs 30 and 31 of the Opinion.
[2] Please refer to decisions 06-D-24, 06-D-28, 07-D-07 and 08-D-25

> For further information, please refer to the full text of Opinion of 18 September 2012 on the competitive operation of e-commerce (in French)

> To find out more about e-commerce:

Fact Sheet 1: E-commerce in figures (in French)

Fact Sheet 2 : E-commerce sales by sector (in French)

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