

26 February 2013: Network of authorised healthcare professionals

Published on February 27, 2013

Kalivia was not in breach of competition rules when it set up its network of authorised opticians

> **Version française**



The Autorité de la Concurrence was informed by a professional body of opticians (the SynOpE) and two manufacturers of ophthalmic lenses (Optiswiss and Balou Holding) of practices implemented by the Kalivia company in creating a network of authorised opticians for two supplementary health insurance bodies (OCAMs).

This is not the first time that the Autorité de la concurrence has studied the issue of authorised healthcare networks. In its Opinion 09-A-46, it specified the conditions in which the development of networks of authorised healthcare professions could favour competition and the interests of patients. In this opinion, the Autorité examined a selection of the professionals who were members of this type of network. The decision it issues today focuses on the selection of suppliers whose products can be sold by healthcare professionals and who provide services to those insured with OCAMs that have set up a network.

The development of networks of authorised healthcare professionals

In order to respond to the dual aim of better regulation of health expenditure and improved standards of care for insured persons, the OCAMs, which consist of health insurance institutions, insurance companies and benefit institutions,

have been developing authorised networks of healthcare professionals for several years. These include opticians, dentists, hearing-aid specialists, etc. These partnerships are based on a combination of mutual commitments: approved healthcare professionals undertake to supply a certain level of quality in the services they provide to the insured, to set up direct payment by insurers and observe a pricing moderation. In exchange, the OCAM policy holders concerned will be directed to the professional members of the network with the aim of ensuring that the latter have a regular flow of customers.

The Kalivia opticians' network was set up in June 2010 for a period of 2.5 years and arose from a partnership between Malakoff-Médéric and the Union Harmonie Mutuelles. During the relevant period, the network consisted of about 2,300 partner opticians who undertook to observe a pricing moderation and to comply with certain rules concerning services and products provided to the policyholders and beneficiaries using the network. In this context, Kalivia chose suppliers whose products would be referenced and could be sold to these beneficiaries.

The informants condemned the selection process implemented by Kalivia in order to reference suppliers

The initiating parties were critical of Kalivia for operating an opaque and discriminatory process when selecting suppliers of ophthalmic lenses, as well as for the lack of objectivity in the criteria adopted for this selection, namely the holding of a significant market share and the fact that a supplier had to own a design laboratory and a production site.

In view of the very limited sales of glasses to policyholders using the Kalivia network, the selection process could not give rise to competition problems

The Autorité considers that it is legitimate for the network managers, who provide substantial financial cover for the goods concerned, should choose the network's suppliers in order to offer policyholders quality products and services at competitive prices. The Autorité recalls the principles confirmed in its [Opinion 09-A-46](#) and, especially, the importance of a selection process based on

competition on the merits, thanks to the application of objective, transparent and non-discriminatory criteria.

In the present case, while the criteria adopted may appear to be vague or unsuited to the specific nature of the sector (the criterion of possessing a "significant market share" is vague, and market share is difficult to assess in this sector, but the criteria of "owning a production facility" also proves to be unsuitable in view of the diversity of the manufacturing channels in this sector), the Autorité nevertheless notes that, due to the very limited importance of the Kalivia network (less than 5% of glasses sold in France during the relevant period), no restrictive effect on competition – such as market foreclosure– were likely to occur.

Thus, Kalivia not referencing a supplier was not likely to constitute a significant obstacle to the latter's access to or development in the market for the supply of optical lenses. Furthermore, certain suppliers who were not referenced originally were so subsequently, so that by the end of 2012, almost all the products made by suppliers present in the market could be sold by partner opticians. Finally, the Kalivia network was set up for a limited period (of 2.5 years) and, in the context of renewal of its network in early 2013, Kalivia reviewed its supplier referencing procedure and criteria. Kalivia invited suppliers to tender for referencing to and abandoned its market share criteria and the requirement to own a design laboratory and production site. All the suppliers who tendered to be referenced were approved, representing virtually all the suppliers of ophthalmic lenses.

Furthermore, the Autorité stresses that Kalivia's pricing policy, also challenged by SynOpE, complied with competition rules. The pricing mechanism implemented by Kalivia did not constitute price-fixing, since the pricing levels for the network were the maximum prices mainly determined by the opticians themselves in the competitive tender for joining the network.

> Full text of Decision 13-D-05 of 26 February 2013 on practices implemented by the Kalivia company in the optics and eyewear sector

> Press contact: André Piérard – Tel.: (+33) 1 55 04 02 28 / Contact by email