

28 February 2013: Online transmission of tax and accounting data

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The Autorité de la concurrence fines the *Ordre des experts-comptables*, as well as the association it has created, for implementing a strategy aiming to drive competitors of "*jedeclare.com*" – online accounting and tax return portals – from the market

> *Version française*



Following a referral from the *Fédération nationale des associations de gestion agréées* (French Federation for Chartered Management Associations – FNAGA), the Autorité de la concurrence fines the *Ordre des experts-comptables*¹ a total amount of €77,220 and the ECMA Association² a total amount of €1,170,000, for trying to make their online filing portal, "*jedeclare.com*", the indispensable portal for professional accountants and *Organismes de Gestion Agréés* (Chartered Management Bodies – hereinafter OGA).

The online tax and accounting data transmission portal created by the *Ordre des experts-comptables*

Beyond a specific turnover threshold, companies are obliged to report specific taxes, such as VAT and corporate taxes, to the tax administration via remote transmission.

In matters of data filing, companies usually commission either their chartered accountants – who certify their accounts and/or tax returns – or the OGAs, tasked with the certification of tax returns. In practical terms, the latter use an online portal, which they can access via data entry accounting software.

There are several portals, including "*jedeclare.com*" that was created by the *Ordre des experts comptables* and marketed through the ECMA Association.

In order to make their portal indispensable, the *Ordre des experts-comptables* and ECMA have entered into partnerships with accounting software publishers and with OGAs, and they proposed to the latter a pricing offer for portal services, in breach of competition rules

Through the signature of a charter, "*jedeclareexclusive*", accounting software publishers had to undertake to promote and recommend exclusively the "*jedeclare.com*" portal to their chartered accounting customers and not to propose competitor portals. They also undertook to technically integrate, in their software packages, the interface and solutions of the "*jedeclare.com*" portal with as much incentive as possible "*to convey all reporting flows through jedeclare.com*".

Some OGA federations, on the other hand, signed partnership contracts and a charter stating that the signatory federation "*undertook to promote the use of the jedeclare.com portal, above any other, to its members (...)*". In return, the OGAs that were members of a signatory federation benefitted with no objective justification, from more favourable tariffs than those proposed to OGAs members of a non-signatory federation. A flat-rate pricing offer, which constituted tied selling, was also provided for, so that OGAs, as soon as they received flows from the "*jedeclare.com*" portal (incoming flows: accounting and tax returns), would use the same portal to send their own flows (outgoing flows: certificates and mission summary reports).

A strategy aiming to foreclose the demand of the portal's users

The investigation showed that these clauses, which aimed at restricting competition at the expense of other portals and users, fell within a deliberate strategy to drive these portals from the market.

The preamble to the contracts concluded with software publishers stated indeed that the contract had a view, notably, to "*prevent multiple other offers from emerging, as it would create confusion for accounting professionals*".

In the same way, the *Conseil Supérieur de l'Ordre des Experts-Comptables* (National Association of Chartered Accountants – hereinafter CSOEC) wrote, in the November 2009 internal magazine for chartered accountants, that the “*jedecclare.com*” portal had been created “*in order to make chartered accountants simply indispensable, to keep full control over the value-added information generated within their practices and to complement a legal monopoly with a de facto monopoly*”.

As it was, because contracts were signed with the three main accounting software publishers, the unified action of the *Ordre des experts-comptables* and the ECMA was most efficient: access to about 75% to 85% of the market for software users – including most of the chartered accountants' costumers – was made more difficult for the portal's competitors.

Moreover, access, by competitors, to the OGAs' demand, became more difficult (and expensive) because of the fixed pricing policy.

The parties, that did not challenge the facts, obtained a fine reduction

Neither the *Ordre des experts-comptables* nor the Association challenged the facts that were reproached to each of them. Moreover, they made various commitments. Here are the main ones:

- To put an end to the promotion and use exclusivities that bind them to accounting production software publishers within the framework of the “*jedecclareexclusive*” charter's application on the one hand, and within the framework of bilateral contracts on the other.
- To stop applying the partner pricing offer to the promotion of the “*jedecclare.com*” portal, but instead link it with the implementation of a training plan, laid out over three years, on the development of dematerialisation, for chartered accounting practices and for the OGA's employees.
- To redress the tied selling practices, by subjecting partner tariffs, applicable to certificates and mission summary reports issuance services, to separate invoicing.

- The Ordre des experts-comptables will not grant any more subsidies, whatever their nature, to the ECMA for its business linked to the "*jedeclare.com*" portal.
- Finally, the CSOEC and ECMA undertook to adopt an antitrust compliance programme in order to prevent the rise of new anticompetitive practices (appointment of a "competition representative" entrusted with the mission to set up the programme; training and increasing staff awareness to competition rules; internal prevention and warning mechanisms against anticompetitive practices).

Since they did not challenge the objections and, more particularly, because they undertook to set up an antitrust compliance programme, the *Ordre des experts-comptables* and the ECMA obtained a fine reduction of 22% respectively.

(1) *French Association of Chartered Accountants.*

(2) *Expert Comptable Média Association (Media Chartered Accountants Association – hereinafter ECMA): the ECMA Association is derived directly from the Ordre des experts comptables; it markets the online portal, "jedeclare.com", as well as other services for chartered accounting and OGA professionals.*

> Full text of Decision 13-D-06 of 28 February 2013 on practices implemented in the sector of teletransmission of tax and accounting data in EDI format to the tax administration (in French)

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> See Judgement of the Paris court of appeal (26th February 2015)

> See Judgement of the Court of Cassation (Supreme Court of Appeal) - 8th February 2017