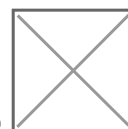


6 May 2013: Press Distribution

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The Autorité de la concurrence does not have jurisdiction over decisions made by the Conseil supérieur des messageries de presse (CSMP).

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The Autorité de la concurrence today issued a decision whereby it declares to be inadmissible most of the referral (accompanied by a request for interim measures) submitted by *Messageries Lyonnaises de Presse* (hereinafter MLP) because it falls outside the scope of its jurisdiction. The complaint concerned two decisions made by the *Conseil supérieur des messageries de presse*¹ (hereinafter CSMP) relating, firstly, to the procedures governing newspaper transfer times between delivery services (the “advance notice” decision) and, secondly, to the introduction of a system of rate equalisation between delivery services (the “rate equalisation” decision).

The law of 20 July 2011 introduced a new regulation for the press sector

The law of 20 July 2011², amending the 1947 Bichet Law covering press distribution, reinforced the powers of the CSMP, in particular enabling it to take any measures necessary to guarantee optimal press distribution and assigning it a conciliatory role in the settlement of disputes between the delivery services, the press wholesalers and the retailers. This law also created the *Autorité de régulation de la presse*³ (ARDP) which is tasked with bringing the decisions of a general nature taken by the CSMP into force.

The practices stated in the complaint

As part of its missions, the CSMP took two decisions that were disputed by the MLP in its submission to the Autorité de la concurrence. The first⁴ concerned the newspaper transfer times between delivery services. In concrete terms, the disputed decision extends the notice period that an editor abide by when it takes any of its title's distribution away from a delivery service. The second⁵ introduces a rate equalisation⁶ between delivery services that is designed to require magazine publishers (MLP) to cover certain charges involved in the distribution of daily papers and supported by Presstalis, the sole distributor of the national daily press.

MLP claims that Presstalis exploited its position within the CSMP's decision-making bodies so that the regulator would take decisions in its favour.

Since the CSMP is not an economic operator, the Autorité de la concurrence cannot inquire into its decisions

The steps taken by MLP, in disputing the CSMP's decision-making process, challenge the very decisions taken by the CSMP. To the extent, however, that, as laid down in law, the CSMP has a role confined to regulation and standardisation of the organisation of the press distribution sector, it cannot be considered as intervening in a particular market, since it neither offers nor provides goods or services. Since it is not an economic operator, the Autorité de la concurrence cannot inquire into its decisions. Indeed, French and European competition law only applies to economic operator involved in a particular market.

The Autorité has thus declared most of the complaint to be inadmissible. Only the Paris Court of Appeal, appointed by the legislator to hear and judge the decisions of the CSMP, and which, in fact, was also notified by the MLP in two appeals against the decisions in question, is competent to hear these appeals.

Furthermore, the Autorité rejected, through lack of evidence, the other part of the complaint regarding allegations involving price-fixing, disparagement, price discrimination and abuse of the right to take legal action against Presstalis (for more details concerning these points, please consult pages 28 to 35 of the

decision).

(1) *Conseil supérieur des messageries de presse: National Press Distribution Council*

(2) *The law partially took the same line as the “Rapport Lasserre”, a report covering proposals for reform of the Conseil supérieur des messageries de presse (CSMP), which was requested from the President of the Autorité de la concurrence by the President of the Republic as part of the États généraux of the press sector.*

(3) *Autorité de régulation de la presse: Press Regulatory Authority*

(4) *Decision no. 2012-01 of 21 February 2012. This decision was the subject of an appeal by the MLP, brought before the Paris Court of Appeal.*

(5) *Decision no. 2012-07 of 3 October 2012. This decision was the subject of an appeal by the MLP, brought before the Paris Court of Appeal.*

(6) *In opinion 12-A-25, the Autorité was invited to rule on the inclusion of historic overcharging in the rate equalisation system (see press release).*

> Full text of decision 13-D-10 of 06 May 2013 on practices implemented by the Presstalis Group and the Conseil supérieur des messageries de presse.

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