

10 July 2013: Guidelines on Merger Control

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The Autorité de la concurrence publishes its revised guidelines on merger control and a guide on submitting economic studies to the Autorité

> *Version française*



The Autorité de la concurrence has published the finalised text of its new guidelines on merger control. Revision of the guidelines adopted in December 2009 has enabled the experience acquired over nearly four years of merger control by the Autorité de la concurrence to be taken into account. Between 22 February and 22 April, a public consultation was held to consider a draft interim text. The consultation resulted in a wealth of comments and suggestions from competition law practitioners and economic stakeholders (see link to the contributions received), which helped to enrich the text and clarify certain points.

The additions to the new text

The new text has benefited from the wide decision-making practice of the Autorité, from its dialogue with companies and their legal counsels while analysing their notification file, and the Conseil d'Etat case law since 2009. The active involvement of the Autorité within the European Competition Network (ECN) has further strengthened its experience through interactions and dialogue with the European Commission and other national competition authorities.

- *Facilitating pre-notification*

The first four years of merger control have demonstrated the advantages of a flexible and, where circumstances so require, fast process.

The Autorité's new guidelines emphasise the importance of the informal "pre-notification" phase, enabling the company and the Autorité to discuss, prior to notification, any potential problems related to the eligibility criteria of the review of the operation or to particularities of the companies or markets involved, even going as far as to anticipate any possible competition problems.

- *Specifying the criteria for the simplified procedure*

The Autorité has also published eligibility criteria for a simplified examination procedure that, since January 2011, has enabled companies whose merger operation is not likely to raise competition problems, to benefit from a simplified decision within fifteen working days.

- *Specifying the conceptual framework of the analysis of relevant markets and the role of this analysis*

The public consultation has highlighted a need for clarification concerning the approach adopted by the Autorité with regard to the definition of relevant markets and the place given to this definition in the analysis, for example with regard to agricultural markets. These points have therefore been specified, with the benefit of the Autorité's recent practice, in particular for markets involving companies in the food processing and supermarket sectors.

- *Standard models for transfer of assets and trustee mandates*

The examination of a number of notification files also led the Autorité to refine its analysis on the definition of relevant markets, competitive analysis and remedies for identified competition problems.

Drawing inspiration from models developed by the European Commission and other competition authorities, the Autorité now offers two standard models for the transfer of assets and the trustee mandate, aimed at relevant parties contemplating structural remedies, which can be adapted on a case-by-case basis. The standard model for divestiture commitments lists the legal requirements and defines the terms of the commitment. It also contains a pre-formulation of the transfer procedure, as well as some basic guarantees, which

the Autorité deems necessary to retain the viability of the assets transferred. The role of the trustee, tasked with monitoring the commitments or the transfer procedure, has moreover been specified: its status, the terms of its independence towards the companies and, more generally, the conditions for obtaining the Autorité's approval, and the tasks of the trustee, are set out in a model contract. By using these models, the Autorité wishes to facilitate, secure and standardise companies' practices during the crucial commitment phase. Experience has indeed shown that it is necessary to anticipate any potential transfers of assets very early in the process when a merger operation raises competition problems, particularly for the acquisition of a competitor firm or a merger between competitors.

The Autorité has also published a guide on economic studies

Furthermore, the annex to the previous guidelines on submitting economic studies has been removed. It has been replaced by a general guide to merger operations, contentious proceedings and to opinions. This guide can be consulted on the Autorité's website.

The new guidelines on merger control will enter into force on July 2013. They are aimed at providing companies with an informative presentation of the scope of the regulations relating to merger control on a national level, of the notification procedure before the Autorité and of the objectives, criteria and methods for analyses on the merits. With a view to guaranteeing as much legal security as possible to companies, the Autorité undertakes to apply the guidelines to each merger review, unless some circumstance specific to the case or some issue of general interest justifies departing from these guidelines.

> [See the new guidelines on merger control \(in French\)](#)

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