

Merger control

As the market competition watchdog, the *Autorité de la concurrence* reviews all proposed mergers and acquisitions above a certain size. It thus ensures in advance that such transactions will not restrict competition and, if there is a risk to competition, only clears them on condition that appropriate solutions are implemented.

Since 2009, the *Autorité* has been responsible for reviewing mergers, and takes action before a merger between two or more companies is completed, by studying the impact of the transaction on the competitive dynamics of a market. The aim of the review is to prevent the creation of overly strong positions or monopolies.

What is a merger?

A merger can take several forms. It can mean that two previously independent companies are merging, that a joint venture is being created, or that one company is taking control of another.

What transactions have to be reviewed by the *Autorité*?

Notification to the French authority

The *Autorité de la concurrence* does not decide on all mergers that take place in France.

It only reviews transactions above a certain size, when the following three conditions are met:

- the total global pre-tax turnover of all the companies or groups of legal persons or individuals that are party to the merger is greater than €150 million;
- the total pre-tax turnover generated in France by at least two of the companies or groups of legal persons or individuals concerned is greater than €50 million;
- the transaction is not within the European Union's jurisdiction.

Notification to the European Commission

Where the transaction concerns the territory of several Member States and the turnover of the companies concerned is very large (particularly if the global turnover is greater than €5 billion for all parties to the transaction and €250 million is generated by at least two of the companies within the EU), the European Commission has jurisdiction. However, it can choose to pass the review to the *Autorité de la concurrence* if it believes the *Autorité* is best placed to review the case. This tends to be the case where the transaction will mainly have an effect in France. To date, the European Commission has passed more than 20 cases to the *Autorité*, including the review of the Colruyt/Metro deal and the review of the creation of a joint venture by the France Télévisions, Métropole Télévision and TF1 groups, named Salto (2019).

Specific thresholds for transactions affecting retail and the French overseas territories

For retail and the French overseas territories, there are special lower thresholds allowing the *Autorité* can examine transactions that would otherwise escape its control

2,700 transactions have been reviewed by the *Autorité* since 2009

What happens in the event of failure to notify?

Any company that meets the conditions to notify a transaction to the *Autorité* but fails to do so risks a fine for failing to notify, as in the case of the Colruyt France SAS/Metro AG deal.

Find out more about the takeover of Colruyt France SAS by Metro AG (in French)

How long does a review take?

When reviewing a merger, the *Autorité* carries out a prospective analysis of the deal's impact on competition in the various markets affected (new entity's market share, effects on competition in the sector, on suppliers and on customers, impact on prices and quality, etc.).

Time limits

If the deal does not pose any major competition issues, the *Autorité* may clear the transaction unconditionally or subject to conditions at the end of a rapid review, known as **Phase 1 (25 working days maximum)**.

If doubts remain as to the potential risks to competition after the first review, the *Autorité* opens an in-depth examination, known as **Phase 2 (a further 65 working days)**.

A rapid review in the majority of cases

Most mergers do not pose a problem and are the subject of a simplified procedure that takes approximately 3 weeks (potentially 70% of cases).

Almost all other cases are dealt with in less than 5 weeks (Phase 1/simple review). It is only in a very small number of cases (complex cases, identified risks of serious harm to competition) that the Autorité conducts a more detailed examination (Phase 2/in-depth examination).

Possible control even under the thresholds: use of Article 22

The European Commission now accepts referrals by national competition authorities under Article 22 of the EU Merger Regulation of transactions that do not have a European dimension, including those that do not meet national notification thresholds.

The new approach, which is part of a revised interpretation of Article 22, is a response to the requests expressed – in particular by the *Autorité* – to more effectively mobilise the merger control tool at the European level.

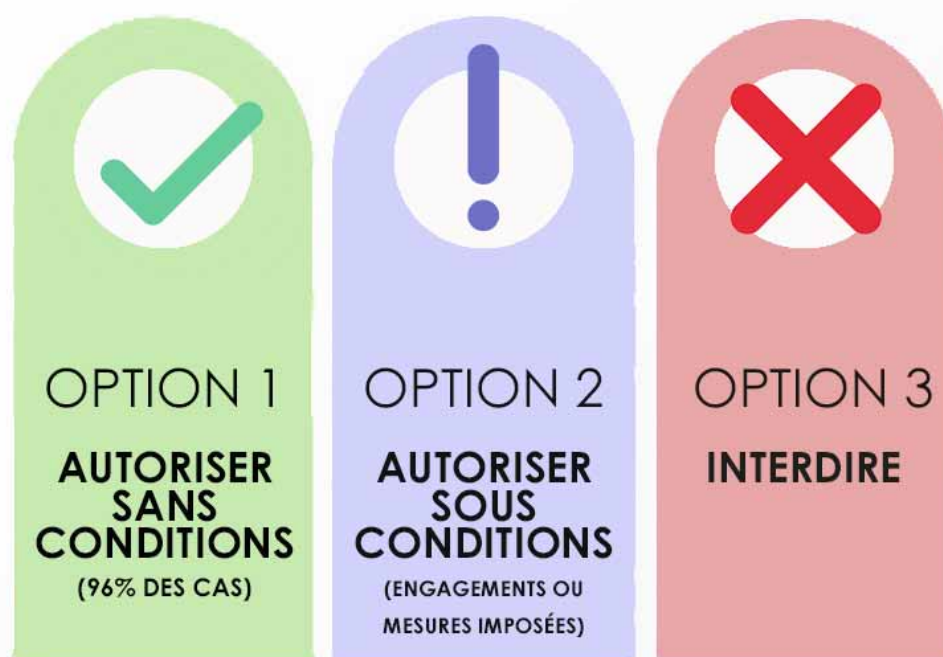
The aim is to better control acquisitions of innovative companies in the digital economy, health and biotech fields, which can consolidate the market power of already powerful companies or significantly affect competition in the markets concerned.

[See the press release of 15 September 2020](#)

Following the referral request made by the *Autorité de la concurrence*, which was joined by several Member States of the European Economic Area (Belgium, Greece, Iceland, the Netherlands and Norway), the Commission decided to open a procedure to examine the takeover of Grail by Illumina. The Commission prohibited the transaction in September 2022, as it would have stifled innovation and reduced choice in the emerging market for blood-based early cancer detection tests ([European Commission press release](#)).

What different outcomes are possible?

At the end of its review, the *Autorité* can take three decisions:



The parties to the transaction must await the final decision of the *Autorité*. If they start the merger before the *Autorité* gives the green light (behaviour known as “gun jumping”), they risk a fine. This is what happened in 2016, when the Altice group was fined for gun jumping on two transactions (acquisition of SFR and of Virgin Mobile).

Remedies

Different categories

Where a transaction presents particular difficulties, the *Autorité* works with the companies to find the most suitable solution to resolve the competition issues and enable the transaction to go ahead.

Commitments can be of two types:

- **structural**, i.e. relating to the market structure, e.g. asset divestitures (retailers, brands, companies, factories);
- **behavioural**, i.e. relating to the new entity's actions, e.g. its commercial policy.

In the event of disagreement with the companies or if the proposed commitments would not address the competition concerns, the *Autorité* can impose remedies by issuing injunctions.

Market consultation

When remedies appear to be necessary, the *Autorité* consults the market via questionnaires and meetings/hearings to gather the views of interested third parties (competitors, suppliers, customers) on the solutions envisaged.

Mandatory nature of remedies

Any commitments made or injunctions issued are binding on the company. In the event of non-compliance with these commitments or injunctions, the *Autorité* can record a breach and withdraw the decision clearing the deal, hand out a fine

or order the parties to implement the remedies under penalty payment.

This is what happened in 2011, when the *Autorité* imposed a fine on Canal Plus and ordered the group to renotify the takeover of TPS.

This was also the case in the 2018 decision concerning Fnac Darty (fine and injunction to divest itself of two stores instead of two assets that were originally supposed to have been sold).

Prohibition as a last resort

In the case of certain proposed mergers, the *Autorité* may have to prohibit a transaction when the proposed commitments are insufficient or injunctions cannot be issued.

This was the case in the proposed takeover of Pipeline Méditerranée-Rhône, a 760 km long pipeline network supplying refined products to depots in south-east France (2021), and in the proposed acquisition of joint control of a Géant Casino hypermarket in the Troyes area by Soditroy and the Association des Centres Distributeurs E. Leclerc (2020).

In some cases, the parties decide to withdraw the transaction even before the *Autorité* issues its decision. This was the case in the proposed acquisition of sole control of Trakil by Pisto (2020) and the proposed acquisition of sole control of the Métropole Télévision group by Bouygues (TF1/M6 in 2022).

Call-in of a case by the French Minister of the Economy

Exceptionally, the French Minister of the Economy may request that a case be subject to a Phase 2 review or “call-in” the case, i.e. override the decision of the *Autorité* by issuing a decision based on public interest reasons other than

upholding competition (industrial development, international competitiveness of the companies in question, job creation or protection).

To date, this power has been used only once, in the case of the takeover by Cofigéo of certain assets of the Agripole group (William Saurin, Panzani, Garbit) in 2018.

Find out more about the Cofigeo/William Saurin case

Avenues for appeal

The parties and any interested third parties have two months to file appeal against a decision by the *Autorité de la concurrence* before the French Administrative Supreme Court (*Conseil d'État*).



FIND OUT MORE

See the Merger Control Guidelines (revised on 23 July 2020)

See the Guidelines
(PDF)