13 April 2015: Standardisation/certification

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The Autorité de la concurrence launches a public consultation on the diagnosis and initial recommendations designed to better reconcile the standardisation and certification processes with the proper functioning of competition

> Version française 

In brief

In January 2014, the Autorité de la concurrence decided to open a sector-specific inquiry to assess the extent to which competition was operating in the standardisation and certification sectors.

Before adopting its final conclusions, the Autorité publishes today an initial assessment that will be opened to public consultation. The various interested parties are invited to submit their observations as regards any sticking points and the initial recommendations proposed by the Autorité de la concurrence.

Three points in particular have attracted the attention of the Autorité de la concurrence:

- The Autorité firstly believes that it is necessary to take greater account of the general interest in the standardisation process, which in practice relies on the technical skills and financial capabilities of private operators. This private sector intervention could however result in risks of collusion and lead to a formulation of the standard that would contribute to erecting artificial barriers for new entrants;

- The Autorité then indicates the risks of confusion that could exist between the standardisation and certification activities of certain operators;

- Finally, the Autorité examined the construction and public works sector in particular, for which the existence of specific standard documents may firstly explain the difficulties experienced by certain companies in gaining entry into the industry and secondly contribute to increased costs of construction.

46 questions are asked to those interested in the framework of a public consultation held between 13 April and 1 June 2015.

> Consult the public consultation document

STANDARDISATION ACTIVITY: AN ACTIVITY OF GENERAL INTEREST LARGELY DELEGATED TO THE PRIVATE SECTOR

Standardisation is by its very nature an activity that is outside the marketplace, as are generally all activities of a legislative or regulatory nature, since the aim is to set a common rule. In France, AFNOR, an association recognised by the public authorities, organises the standardisation process, but the actual creation of norms is performed by AFNOR's Standardisation Committees and the Sectoral Standardisation offices, which bring together companies interested in the creation of standards applicable to their sector of activity.

- **The risk of anti-competitive agreement**

While private sector intervention in standardisation is often justified by the technical expertise of companies, it inevitably raises concerns since companies in competition with each other discuss and agree upon the standards to be imposed on all. Under such conditions, the question also arises of the extent to which the parties involved in the process are representative since their interests may be different to those of other companies in the sector.

- **The risk of creating barriers to entry**

Standardisation has positive effects with respect to safety, compatibility and the interoperability of various products and services; these would appear to favour the development of economic activity on the merits. Indeed, standards such as NF, CE or ISO guarantee that consumers will be receiving safe, reliable and good quality products and services. As an example, the NF standard can be applied to consumer products (electrical sockets, refrigerators, taps, etc.) or services (tourist offices or passenger transport, for the quality of their services, etc.).

However, if poorly controlled or operated, the standardisation as currently organised may be presenting a risk of a multiplicity of standards without adequate justification and of the risk of using them for purely private purposes. Such inflation of standards could weaken competition in a particular sector, in particular by creating artificial barriers to entry.

- **Questions of competition raised**

The Autorité notes that:

- draft standards are issued by standardisation committees without their added value first being examined, and this is liable to lead to duplication in the creation of standards, or the coexistence of contradictory standards;
- a standard is generally adopted without taking account of all the interested parties and without a vote, and this can have the effect of excluding certain companies or categories of companies;
- the classification of categories of interest may be unsuitable for certain economic sectors and more generally SMEs are not adequately represented;
- the public inquiry is not always completed;
- the complex and hardly controllable organisation of the standardisation committees dependent upon AFNOR or standardisation bureaux does not promote the efficiency of the process.

>> In conclusion, the relative lack of transparency within this standardisation work increases the risks of collusion. Furthermore, in the current process, the standard may be a reflection of the expertise or the decisive influence of a particular party involved. The standard could thus be used to protect the positions of such company by creating artificial barriers, such as by increasing the costs incurred by its competitors.

This set of developments raises questions as to the measures that, on the one hand, would allow public authorities to fully play their role in the process of the creation of standards and, on the other hand, facilitate access for all operators, and in particular small and medium-sized companies, to the standardisation process affecting their businesses.

CERTIFICATION, A COMMERCIAL ACTIVITY THAT IS OPEN TO COMPETITION

Certification is a procedure whereby a third party certifies that a product or service provided by an company or body meets a certain number of

characteristics defined in a reference document, called Certification Rules, and to which consumers, and even customers in general, are likely to attach decisive importance.

Unlike standardisation, certification is a naturally competitive activity, since it consists of requiring an expert to check that a certain level of quality has been achieved or that there is compliance with a set of standards. This service may be provided by numerous companies and is thus unlikely to create monopolistic situations.

Certification is voluntary and is a marketing tool similar to a label. Separate from the business of standardisation, it may or may not correspond to a standard, or only correspond to part of a standard or to several standards, and may be accompanied by additional specifications.

It should thus be distinguished from a statement of compliance with a standard, which is performed by the supplier or producer on its sole responsibility, and with the CE mark affixed to the marketed product by the company itself as evidence of its compliance with the essential requirements of a European directive, necessary for entitlement to sell the product throughout the European market.

Even though the certification business is open to competition, this can only be exercised in certain sectors by accredited bodies known as “conformity assessment bodies” (hereinafter CABs), whose competence to perform this activity is monitored in France by COFRAC [Comité français d’accréditation].

- **The competition concerns raised**

Several observations can be made concerning the competition situation in the certification market. These concern:

- the cost and length of time taken for accreditation procedures to become a CAB, which could constitute an obstacle to access to the certification market;
- confusion as to whether or not certification is compulsory, and the additional cost that systematic recourse to the process could represent;
- confusion between non-competitive standardisation and competitive

certification, which can be illustrated by the case of the AFNOR group. Indeed, access to the NF [norme française] network and its eponymous trademark developed by AFNOR Certification might introduce distortions in competition, due to the high reputation of this acronym, to the detriment of other certifying bodies who are new entrants into the market or those not authorised to use the acronym, and this could contribute to an increase in the cost of certification.

>>These developments lead to the question of measures that would make it possible to control the costs for the CABs themselves, to make customers aware of the actual added value of certification in cases where products and services already comply with a standard, and to ensure undistorted competition between those involved in the certification market, especially by reducing distortions resulting either from the intervention of public authorities in certain processes, or a reputation derived from a former public trademark.

SPECIFICS OF THE BTP (CONSTRUCTION AND PUBLIC WORKS) SECTOR

- **A derogatory standardisation process**

This sector contains specific features due to the existence of standardisation documents that are unique to the construction sector and the fact that the production of the said documents departs from the traditional standardisation process. The construction sector is thus characterised by the significant production of “quasi-standards”, which have not been validated by AFNOR and are not certified, but that have nevertheless, in practice, assumed a compulsory nature. In fact, failure to comply with these documents results in forfeiture of the insurance cover, pursuant to article 243-1 of the Insurance Code.

Unified technical documents (UTDs) covering the so-called “traditional” field and today known as NF-DTU have been produced by standardisation committees combined under the aegis of AFNOR or the BNSs (Sectoral Standardisation Offices). Unlike traditional standards, the creation of such documents partially escapes the control of the State because they are not subject either to public inquiry or certification by the Interministerial Delegate for Standards. The public authorities cannot check whether they are in the general interest nor whether

they are seeking to reach a real consensus.

Similarly, technical opinions concerning innovative products, as required by insurers, may only be formulated by the CSTB (Centre Scientifique and Technique du Bâtiment – Scientific and Technical Construction Centre), the only body empowered to issue them by the state. Investigations are handled by one of 14 Specialist Groups appointed by the Commission Chargée de Formuler les Avis Techniques (C.C.F.A.T.) [Commission Responsible for Formulating Technical Opinions]. The list of members of this body is confidential, which means that it is not excluded that applications by a particular enterprise might be examined by a competitor.

- **The competition concerns raised**

The risks identified in the normal standardisation process are exacerbated in this case. The UTDs could be the means of imposing products that meet demands that exceed the standard. Professionals have indeed indicated that these documents could sometimes contain, in addition to industry standards, references to particular certification or manufacturer marks that might be of such a nature as to favour some players.

The variety of standardisation documents specific to the construction sector is matched by the multiplicity of bodies involved in the sector. In AFNOR, no fewer than three out of the 15 Strategic Sectoral Committees are competent in construction matters, but also at least six BNSs. These are BNTEC (techniques and equipment in building construction), BNCM (construction metalwork), BNA (steel), BNBM (wood and furniture), BNC (ceramics) and BNB (concrete). This established multiplicity of structures, lacking any harmonisation procedure for issuing a standard, can lead to overlaps and the "overstandardisation" of certain items, thus making construction work unnecessarily complex and expensive. Yet, some economic studies have shown that an increase in the number of standards in a sector and the perception of producers as to the effects of the standard on innovation have a negative effect on competition.

Finally, the CSTB is dedicated, across the construction sector, to the activities of standardisation, certification and testing. Its operations, which are partially competitive, partially monopolistic (issuing technical opinions) and sometimes

fulfilling public service missions (research and study in the construction sector) are liable to generate distortions in competition. Thus, the separation of standardisation and certification activities provided by the 2011 decree amending article R142-1 of the Construction Code that defines the tasks of the CSTB, is not always fully effective.

>> **These developments lead to the question of measures that would make it possible to avoid a proliferation of quasi-standards, which in practice become compulsory to prevent the forfeiture of the insurance cover. It seems appropriate that these documents should remain temporary and that they are replaced by true standards, with the formalities and warranties attached thereto. Similarly, measures making it possible to align the sector with principles governing the general standardisation and certification activities would appear to be useful (separation of the activities, guarantees to prevent possible distortions) and ought therefore to lead to the question of whether it is necessary to maintain such a large number of different structures, which is not the case in any other equally complex sector**.

> Consult the public consultation document

> Observations should be sent to the Autorité de la concurrence before 1 June 2015 to the following email

Press contact:
Rebecca Hébert Tel.: +33 1 55 04 01 81 / Email