The Autorité de la concurrence launches a thematic study on trade union and professional bodies

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The directive No. 2019/1 (known as "ECN +"), published in the OJEU on 14 January 2019, aims to provide competition authorities with the means to implement the competition rules more effectively and thus to contribute to the good functioning of the internal market.

The ECN + directive will be a game-changer for trade unions and professional bodies engaged in anti-competitive practices

This directive, which will have to be transposed into our national law in the next two years, includes a measure that will induce a very important change for professional bodies and trade unions. So far in France, the amount of the fine to which an association of companies was exposed could not exceed 3 million euros, the upper limit of the fine incurred has been raised to 10% of the sum of the member companies' turnover.

Practices which are still too common

A certain number of files show that trade unions and professional bodies may have to play a pivotal or "facilitator" role in the development and organisation of anti-competitive practices. In this regard, we can mention, for example:

- the delivery case (decision 15-D-19 of 15 December 2015 regarding practices implemented in the standard and express delivery service industry) which led the Autorité to sanction the transport and logistics trade association (TLF) for having actively participated both in the organization of

illicit exchanges and the protection of their confidentiality.

- the so-called " floor covering cartel" case (decision 17-D-20 of 18 October 2017, regarding practices implemented in the PVC and linoleum floor covering), which notably led the Autorité to sanction the trade union SFEC (Syndicat Français des Enducteurs Calandreurs et Fabricants de Revêtements de Sols et Murs) for having played an active role in the organisation of information exchanges between the 3 main manufacturers and in the elaboration of a non-competition agreement concerning the environmental performance of their products.
- the case of the Côtes du Rhône wines (decision 18-D-06 of 23 May 2018 regarding practices used in the sector involved in the marketing of bulk wines with the Côtes du Rhône registered designation of origin (AOC)), which resulted, in particular, in the fining of the professional union Syndicat général des vignerons réunis des Côtes du Rhône for having organized an agreement that consisted in establishing and disseminating pricing instructions to its members.

Raising awareness and promoting compliance

In view of the upcoming entry into force of these new, more stringent provisions and in a process aimed at promoting compliance, the Autorité has decided to undertake a study on the application of competition law to trade unions and professional bodies and to infringement that may be retained when appropriate.

This study should be published during the second quarter of 2020, at la Documentation Française, within the collection Les Essentiels (see box below).

Interested stakeholders may, until 15 October 2019, contribute or point out specific topics or concerns that they would like the study to address, at the following address:
Email

The collection Les Essentiels

The Autorité's thematic studies, published so far in its annual report, are now the subject of a separate publication at La Documentation Française, as part of the collection Les Essentiels.

The goal is to summarize the decision-making practice of the Autorité as well as the case-law of the French and European courts, in both French and English publications. They can also be prospective in some areas.

The first published issue is dedicated to loyalty rebates and the second issue of the collection will be focused on behavioral remedies and published during the 1st quarter of 2019, in French and English.