13 May 2015: Distribution of consumer goods in the French overseas territories

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The *Autorité de la concurrence* has obtained from several mainland manufacturers
their commitment to stop awarding exclusive contracts
for the distribution of their products in the overseas territories

This commitment should in particular allow price competition to be boosted, to the benefit of consumers



> Version française

Following two ex officio proceedings by the Autorité de la concurrence regarding the import of consumer goods to the overseas territories, four manufacturers expressed their wish to make commitments before the Autorité. Bolton Solitaire, Danone, Johnson & Johnson Santé et Beauté France and Pernod-Ricard proposed establishing a competitive bidding approach between wholesale importers who are likely to import and distribute their products, on a non-exclusive basis, within the overseas departments, regions or communities[1] .

These proposed commitments are subject to public consultation (market test). Interested parties (distributors, manufacturers, consumer organisations, etc.) are invited to submit their observations prior to 15 June 2015.

The Autorité's action in the overseas territories

The *Autorité de la concurrence* has always paid particular attention to the competition situation in the overseas markets. Since 2009, which saw demonstrations against the high cost of living, it has taken further action by investigating sectors that have a direct impact on purchasing power in the overseas territories. In the wake of the opinions it issued in 2009 on fuel prices and mass retail distribution[2], the Autorité opened several cases, including the file that is the subject of the present market test, and issued several decisions[3].

Distribution of consumer goods in the overseas territories

Consumer goods distributed by retailers in the overseas territories are not generally produced or packaged by local companies but by manufacturers from mainland France and then shipped from continental Europe to overseas.

The transport of these goods to the overseas territories generally takes place via intermediaries known as "wholesale importers" or "brand agents" who perform various logistical operations (storage, delivery, etc.), sell on the goods purchased from the manufacturers to the retailers and take responsibility for certain commercial actions. The production and distribution chain in the overseas territories can be diagrammatically represented as follows:



These imported products are, more often than not, sold at a price that is significantly higher in the overseas territories than in mainland France (up to more than 50%).

Wholesale importers protected from any competition

The Autorité's investigation shows that, in most cases, a single wholesale importer per territory ensures the distribution of a given brand, or even all of a manufacturer's goods and brands.

Some manufacturers grant their overseas commercial middlemen de facto or de

jure exclusive relationships for the supply of certain overseas territories. Such a situation protects the wholesale importers from any competition, to the detriment of competing operators and consumers.

Among the manufacturers who were the subject of investigation, the companies Bolton Solitaire, Danone, Johnson & Johnson Santé et Beauté France and Pernod-Ricard have approached the Autorité's investigation services to explore how this matter could be regulated by means of a commitments procedure.

At this stage of the investigation, these exclusive relationships are therefore liable to constitute practices aimed at or resulting in granting exclusive importing rights to a company or group of companies, a practice which is prohibited under the law of 20 November 2012, known as the "Lurel" law.

Investigation into practices other than those implemented by the companies Bolton Solitaire SA, Danone SA, Johnson & Johnson Santé et Beauté France and Pernod-Ricard is also currently underway.

The manufacturers in question propose to bring these exclusive distribution relationships to an end

In response to these competition concerns, Bolton Solitaire SAS, Danone SA, Johnson & Johnson Santé et Beauté France and Pernod-Ricard have proposed:

- establishing written agreements (in the form of contracts or general terms and conditions of sale) noting that the commercial relationship is not an exclusive one;

- organising regular competitive public tenders (every 2, 3 or 4 years as relevant) for the shipping and distribution of their goods in each of the territories in question. Under the terms of these tenders, operators will be chosen on the basis of objective, non-discriminatory criteria.

For the record, the companies, or their subsidiaries, that have made these commitments sell the following brands in particular:

Companies	Brands
Bolton Solitaire SAS	Carolin, WC net, Sanogyl, etc.
Danone (water and baby food sections)	Volvic, Evian, Badoit, Gallia, Blédina, etc.
Johnson & Johnson Santé et Beauté France	Le Petit Marseillais, Vania, Nett, Neutrogena, Labor Vendôme, etc.
Pernod-Ricard	Ricard, Pastis 51, Clan Campbell, Absolut Vodka, et

Next steps

Once the market test is completed, there will be a meeting of the board of the Autorité. If the proposed commitments, in their expanded and amended forms, are such that they address its competition concerns, the Autorité de la concurrence will close the file and make the commitments binding.

[1] The areas covered by these proposed commitments are: La Réunion, Mayotte, Guadeloupe, Martinique, French Guyana, Saint-Barthélemy, Saint-Martin, Saint-Pierre-et-Miquelon, Wallis and Futuna.

[2] See press releases of 29 June 2009 and of 8 September 2009.

[3] Some of the most recent include: yoghurts in the Antilles (see press release of 24 July 2014) and telephony in La Réunion (see press release of 13 June 2014). To find out more, refer to Déclic's issue dedicated to overseas.

> Any interested third parties have until 15 June 2015 to submit their observations on the proposed commitments. All practical information is given in the market test available here.

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