Extension of industry sector collective agreements: towards better anticipation of potential effects on competition

Published on July 11, 2019

At the government's request, the Autorité proposes a method to assess the impact on competition of extending industry sector collective agreements and conventions

Since the 2017 labour law reform, the Code du travail (French Labour Code) has expressly provided for the possibility of the Labour Ministry to refuse the extension of an industry sector collective agreement for “general interest reasons, particularly for excessive anticompetitive effects” (L. 2261 25). Where appropriate, it can refer the matter to a group of experts tasked with assessing the “economic and social” effects of these agreements (L. 2261 27 1 of the Labour Code).

In this context, the government requested an opinion from the Autorité, inviting it to analyse the issues for market competition related to this extension mechanism, but also to list indicators that could be used to identify the risks extension might pose for competition.

As the basis for its analysis, the Autorité obtained submissions from the different stakeholders involved in collective bargaining at industry sector level (public authorities, experts and social partners). The insight it offers is based in particular on its technical expertise in anticompetitive practices and by the case law and doctrine to date of its review courts.

The Autorité's main findings

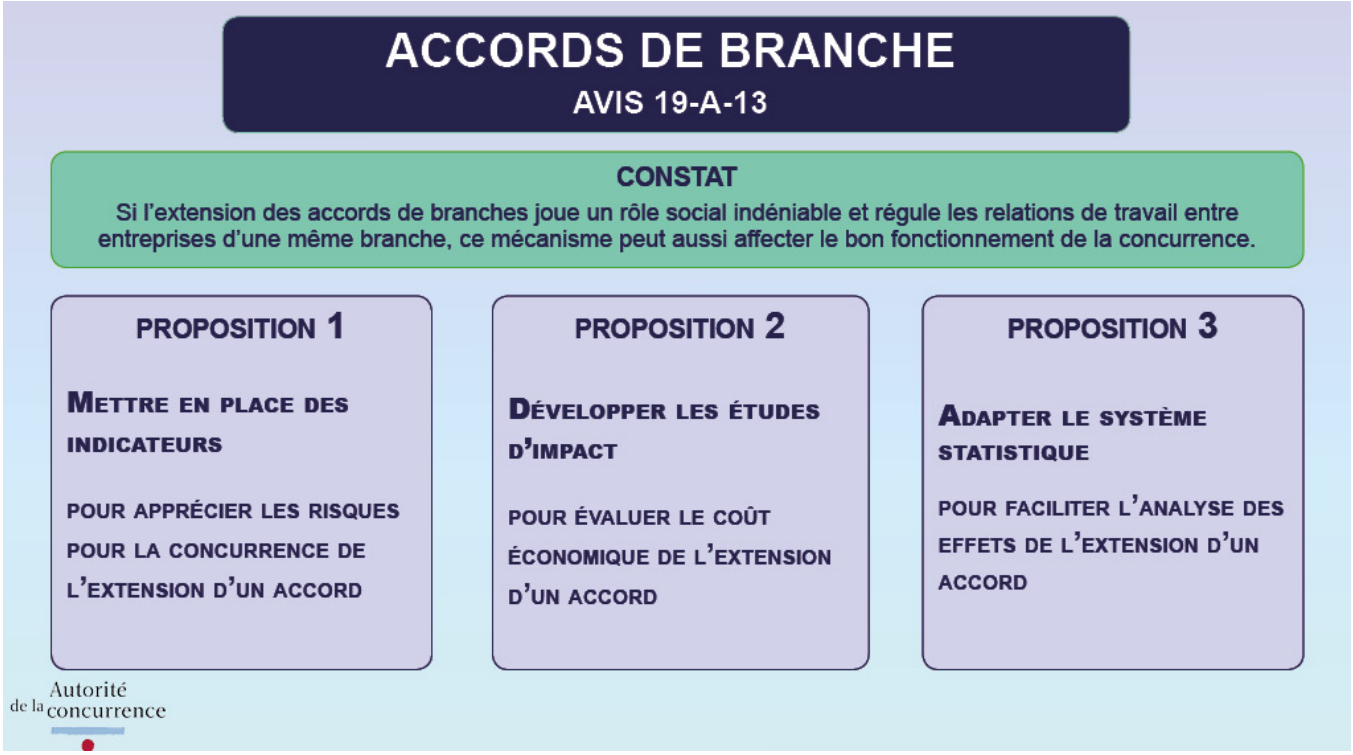
Although the extension of agreements undoubtedly plays an important social role and regulates labour relations between companies in the same industry sector, the mechanism can also have a negative impact on competition.

As a result of its analysis, the Autorité has made a number of findings:

- From a social point of view, extending industry sector agreements plays a key role by ensuring social protection for workers is the same across a whole industry sector and by regulating the functioning of the labour market, particularly by limiting "social dumping". The social partners consider that, if a company seeks a competitive advantage by applying less favourable social rules to its employees than those of its competitors, this constitutes "unfair social competition". The extension mechanism can also compensate for low unionisation rates among employees and low employer organisation coverage rates in France (i.e. the proportion of companies that are members of employer organisations and the proportion of employees in those companies), particularly in very small, small and medium-sized enterprises (VSEs/SMEs). In France, approximately 95% of collective agreements made at industry sector level are extended, which means that employment rules and social protections negotiated collectively apply to all employees and companies in the industry sector, regardless of whether they belong to an employee trade union or an employer organisation.
  For more details, see the Opinion from paragraph 61.
- From an economic point of view, the experts agree that the mechanism can reduce inequality between employees. However, the studies also found that there was a need for regulation, given the potentially damaging consequences of agreement extensions, macroeconomically, for

employment levels in the sector and for competitive intensity in the goods and services markets concerned according to a microeconomic analysis. For more details, see the Opinion from paragraph 70.

- The impact on competition due to the extension of an agreement, where this appears necessary, needs to be assessed on a “case-by-case” basis, taking account of the state of competition between the companies potentially affected by the extended agreement, and weighing the social objectives of the extension and the imperatives of free competition against each other.
- In practice, there are few examples where free competition has been harmed by the extension of collective agreements. Case law and doctrine to date and the Autorité's past decisions, however, are a valuable guide for defining indicators to identify agreements that could be intended to or could have the effect of restricting market access or hindering the free exercise of competition if they are extended.
- At present, few if any analyses are carried out prior to the extension of an agreement, to quantify the economic cost of generalised application of the agreement to non-signatory companies. The legislative and economic impact of such an agreement, extended by order of the Minister of Labour, could justify prospective studies like this being done as part of the collective bargaining process.
- Finally, a lack of coherence in statistics for a relevant business sector, industry sector and market makes it difficult to use statistical data to assess the effects of extension on employment and competition.



Proposal 1

Useful indicators for assessing risks to competition

The Autorité suggests using three categories of indicators to identify agreements that would harm competition should they be extended.

1. Indicators related to the subject areas addressed by the agreement and its content

Detailed examination should be made of agreements that:

- cover subjects not limited to simple application of legal requirements to improve working conditions but that affect relationships between economic stakeholders;
- cover minimum pay for different grades or classification tables;
- change the way working time is organised;
- specify the rules for passing on employment contracts when businesses are transferred;
- recommend pension providers and medical insurance providers;
- introduce new requirements for training or obtaining vocational qualifications;
- regulate employee mobility.

For more details about the use of these indicators, see the Opinion from paragraph 111.

2. Indicators related to the functioning of the sector to which the agreement will apply

The following are likely to harm competition:

- monopolies, oligopolies or companies that hold a dominant market position;
- sectors in which companies hold exclusive rights and operate in the competitive market;
- markets where there is asymmetry in the capital intensity of companies;
- markets characterised by low levels of trade between EU member states or limited international openness;
- markets in which technological innovation is important;
- sectors where there is a shortage of labour.

For more details about the use of these indicators, see the Opinion from paragraph 115.

3. Indicators related to the conditions of negotiating the agreement

- The following situations should attract the assessor's attention:
- low employer organisation coverage in an industry sector;
- low rates of signature of agreements by SMEs;
- the industry sector consists mainly of VSEs/SMEs;
- the industry sector consists mainly of subcontractors;
- the industry sector consists of companies likely to have diverging interests.

For more details about the use of these indicators, see the Opinion from paragraph 138.

Proposal 2

Consider the development of impact studies during collective bargaining to assess the economic cost of the possible extension of the agreement

Because of difficulties with quantifying the economic cost of some labour rules negotiated by social partners, the Autorité recommends that impact studies be carried out as part of the negotiating process for companies that are not signatories to an agreement (or more specifically for VSEs/SMEs or startups).

Proposal 3

Consider adapting the statistical system to facilitate the analysis of the effects of extending industry sector collective agreements on competition

La difficulté d'utilisation de l'outil statistique tel que le Système Unifié de Statistiques d'Entreprises (« SUSE »), dans le cadre de l'analyse des effets de l'extension des accords collectifs sur la concurrence, devrait conduire à ce que les données de statistique publique permettent de mieux appréhender les secteurs d'activité, branches professionnelles et marchés pertinents.

Pour consulter le détail des recommandations formulées par l'Autorité, voir à partir du § 109 de l'avis.

Because of the difficulty of using statistical tools such as the unified system for business statistics (SUSE) when analysing the effects on competition of extending collective agreements, public statistical data should be adapted to give a clearer picture of the situation in the relevant business sectors, industry sectors and markets.

To read the Autorité's recommendations in more detail, see the Opinion from paragraph 109.

OPINION 19-A-13 OF 11 JULY 2019

regarding the competitive effects of industry-wide agreements' extension

See full text of the opinion

Contact(s)

Bertille Gauthier
Communications Officer
+33155040039
Contact us by e-mail