# Opinion 19-A-13 of July 11, 2019

regarding the competitive effects of industry-wide agreements' extension

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SERVICES

## Presentation of the notice

### Summary

Since the 2017 labour law reform, a group of experts has been tasked with assessing the economic and social effects that may result from extending collective labour agreements (CLAs) concluded between employers' and employees' organisations to regulate labour relations (L. 2261-27-1 of the French Labour Code). The group requested the Minister of Labour to ask the Government to submit to the Autorité de la concurrence a request for an opinion on the effects on competition that could result from these extensions.

On 3 August 2018 the Autorité was therefore asked to examine the competition issues and identify useful criteria for assessing the risks to competition associated with the extension of these agreements. As the basis for its analysis, the Autorité obtained submissions from the different stakeholders involved in collective bargaining at the industry level (public authorities, experts and social partners).

The insight it offers in this opinion derives in particular from its technical expertise in anticompetitive practices and on case law.

The Autorité notes the following main findings:

- From a social point of view, industry-wide agreements play a key role by ensuring social protection and by regulating the functioning of the labour market, particularly by limiting "social dumping". 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 microbusinesses and small and medium-sized enterprises (SMEs).

- The economic analysis examined the impacts of extending CLAs. The experts agree that this mechanism can reduce inequalities among employees, but also note the need for regulation given the potentially damaging consequences of extensions of agreements on the level of employment in the industry or on the intensity of competition in the relevant markets for goods and services.

- In this context, a group of experts may be required to provide technical support to the Minister of Labour in assessing the foreseeable economic and social effects of the extension of the agreement, in particular the potentially negative induced effects on employment and competition.

- The opinion of the group of experts, prior to decisions on approving extensions, as well as the arbitration carried out by the Minister of Labour between social objectives and the imperatives of free competition, requires a "case-by-case" prospective analysis of the effects induced by extending the agreement taking into account the actual state of competition in the business sector concerned.

- In practice, there are few examples where free competition has been harmed by the extension of collective labour agreements. However, they do provide useful guidance in the search for clauses that would, for example, have the purpose or effect of limiting market access or the free exercise of competition.

On the basis of these findings, the Autorité makes the following recommendations:

- Where the situation presents particular risks for competition, perform competitive analyses on a "case-by-case" basis of multi-employer agreements whose extension is requested in order to (i) take into account the real economic conditions specific to each industry, and (ii) achieve a fair balance between social and competition policy objectives.

- To assess these risks, the Autorité proposes useful indicators to anticipate the effects of the agreement on competition, which are of three types and bear respectively on:

**.1** matters covered by the agreement:

In particular, the evaluator's attention may be drawn to the 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;
- involve a change or a new way of organising working time;
- specify the conditions for maintaining employment contracts when businesses are transferred;
- recommend provident institutions and medical insurance providers;
- introduce new requirements for training or obtaining vocational qualifications;
- contain clauses relating to employee transfers.

**.1** functioning of the industry to which the agreement will apply.

Some criteria alone may be sufficient to justify a more in-depth analysis of the agreement, while others will be part of a "multiple indicator cluster". This may be the case in particular for:

- monopolies, oligopolies or companies that hold a dominant market position;
- companies holding exclusive rights and operating in the competitive market;
- asymmetry in the capital intensity of companies in the market;
- low trade flows between EU Member States or low international exposure;
- technological innovation;
- industries where there is a shortage of labour.

**.1** conditions in which the agreement is negotiated.

In addition to other indicators, the employer coverage rate and the structure of the industry may also be useful in targeting certain agreements that warrant in-depth analysis. This may be the case when:

- employer organisation coverage is low in an industry;
- rate of signature of agreements by small and medium-sized enterprises (SMEs) is low;
- the industry consists mainly of microbusinesses and SMEs;
- the industry consists mainly of subcontractors;
- the industry consists of companies likely to have diverging interests.

- Because of difficulties with quantifying the economic cost of some labour rules for companies that are not signatories to an agreement or more specifically for microbusinesses and SMEs, the Autorité recommends the development of impact studies within the industry as part of the negotiating process.

Finally, each of the concepts of business sector, industry and relevant market has its own logic. Thus, the analysis of the effects of the extension on employment (in the industry) and on competition (in the relevant market) cannot be based, in the current state of the concepts used, on the use of harmonised statistics or correspondence tables. A comprehensive examination by public statisticians would be necessary to overcome this difficulty.

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### Information about the notice

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| **Origin of the referral** | Government |
| **Device(s)** | Refer to the opinion |

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689.7 KB

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