Fighting the high cost of living in French overseas territories

Published on July 04, 2019

The Autorité delivers a general diagnosis of competition in the French overseas territories.
There have been positive developments since the 2009 opinion, particularly in the telecoms sector.
However, consumer prices paid by the two million people living in the French overseas territories remain significantly higher than those in mainland France.
The Autorité makes some twenty recommendations aimed at boosting competition in the French overseas territories.

Background

In June 2018 the government requested an opinion from the Autorité de la concurrence on the functioning of competition for the importation and distribution of consumer products in French overseas departments. The Autorité is today issuing its conclusions.
Given the range of issues and the diversity of the regions concerned, the Autorité has put in place significant investigative resources to handle this request for an opinion. It set up a team of some ten staff members under the guidance of three deputy general rapporteurs, including the Autorité's officer for the overseas territories. The Autorité was able to rely on government services and in particular on the overseas units of the French Directorate General for Competition Policy, Consumer Affairs and Fraud Control (DGCCRF). It conducted a large number of hearings and analysed the many replies to the questionnaires sent to local actors.
In its assessment, the first global analysis of competition since 2009, the Autorité focused on measuring the effects of the Law of 20 November 2012 on Economic

Regulation in French Overseas Territories (known as the “Lurel Law”) and the Law of 28 February 2017 on Substantive Equality in French Overseas Territories. In this respect, the Autorité noted that the prohibition on import exclusivity has proved to be particularly useful, has been applied on several occasions and is beginning to produce structural effects. The Autorité also noted that there are substantial price differentials with mainland France, to varying degrees depending on the products and areas, but which may reach as much as 38% for food products in Martinique, for example.
Competition law has proven a useful tool whose use must continue and which can be improved overseas for greater efficiency. In addition, it appears necessary to act on other mechanisms. The conclusions of the study thus notably reveal that dock dues contribute to increasing the cost of consumer goods but also add complexity. Also, among its recommendations, the Autorité invites the public authorities to simplify and unify the system for all regions, and to resolve certain specific pernicious effects.
The Autorité also notes that there are numerous barriers to the development of online sales even while overseas consumers, like those in mainland France, seek to benefit from the advantages of e-commerce (attractive prices and access to products not available locally). It considers that these barriers must be removed in order to encourage the development of online sales in French overseas territories for the benefit of the consumer.

French overseas territories are one of the priorities adopted by the Autorité in 2019, and is one of the themes of the strengthened partnership with the DGCCRF under the new cooperation protocol that binds them.

In total, the Autorité issued in its opinion some twenty recommendations aimed at strengthening competition in the retail sector in French overseas territories.

COMPARED TO MAINLAND FRANCE, SIGNIFICANT PRICE DIFFERENCES RANGING FROM 19% TO 38% FOR FOOD PRODUCTS

The general level of consumer prices is 7% to 12.5% higher in French overseas departments than in mainland France[1].

General price level / Differences with mainland France	
Guadeloupe	+ 12,5 %
Martinique	+12,3 %
French Guiana	+11,6 %
La Réunion	+7,1 %
Mayotte	+ 6,9 %

These price differences are largely attributable to food products, which represent one of the main items of household consumption, and for which price differences are much larger and average between 19% and 38% depending on

territories.

Food prices Differences with mainland France	
Guadeloupe	+ 33 %
Martinique	+ 38 %
French Guiana	+ 34 %
La Réunion	+ 28 %
Mayotte	+ 19 %

MARGIN RATES SOMETIMES HIGH BUT WHICH DO NOT BY THEMSELVES EXPLAIN THE COST DIFFERENCES

The Autorité has analysed the margin rates of the various stakeholders in retail distribution: distributors, shipping companies, ports, handlers, freight forwarders and wholesalers. It found that the margins of some stakeholders are higher than those in mainland France, indicating limited, but real room for manoeuvre.

However, the Autorité has not identified any margin variances that alone would explain a significant share of the price differences with mainland France. On the other hand, it is the accumulation of margins of the stakeholders in the entire consumer chain that can explain some of the price differences with mainland France.

HAVING RECOURSE TO WHOLESALE IMPORTERS AND DOCK DUES REPRESENT A SIGNIFICANT SHARE OF THE PRICE OF THE PRODUCTS

If the margins made by distributors alone do not account for most of the price differences between French overseas departments and regions and mainland France, two main factors, however, largely explain these differences for imported products:

- forwarding costs for imported products, related to geographical distance (16% of the cost of a product for a distributor). They include maritime transport, dock dues, various taxes and costs related to the use of different service providers for imports. On average dock dues are the most expensive cost item in forwarding costs;
- recourse to wholesale importers (16% of the cost of a product for a distributor).

Commodity prices (of which 16% for wholesalers/importers)	63 %

Distance (including 7% dock dues)	16 %
Real Estate	2 %
Staff	7 %
Other operating costs	12 %
Total	100 %

These forwarding costs and the use of wholesale importers, passed on by distributors in the final price to the consumer, therefore partly explain the price differences with mainland France.

While the use of wholesale importers is often necessary for distributors given the services provided on their behalf (storage, stocking and advertising), the forwarding costs, mainly consisting of dock dues, are unavoidable. This tax, set by the French overseas territories, is levied on goods imported and produced in French overseas departments. Goods produced in each collectivity may be exempt from this tax, the objective being to encourage the consumption of local products over that of imported products. Initially designed to protect local production through rate differentials, dock dues are now a significant resource

for local authorities and have sometimes deviated from the initial objective, for example when they apply to products that are not locally produced.

The complexity of the rates applied and the mechanisms implemented were identified for their adverse effects on consumers, distributors and local businesses.

In addition, the average sea-faring rates can be very disparate depending on the territories. According to available data, the average rate in French Guiana, for example, is three times higher than the average rate in La Reunion (average rate of 15% in French Guiana, 7% in Guadeloupe and Martinique, and 4% in La Réunion).

Recommendation: simplify and harmonise the dock dues system

French and European authorities must decide on the renewal of the dock dues system before the end of 2020. While it is not within the Autorité's competence to decide whether to maintain or abolish this tax, it believes it would be useful for public authorities to consider simplifying the rate grid for dock dues and making it consistent for areas that are geographically close.

It also proposes to exempt products for which there is no equivalent in local production.

Finally, it suggests taking into account the interests of local companies that buy products subject to dock dues for their business without benefiting from an exemption.

A HIGHLY CONCENTRATED RETAIL SECTOR

The retail sector in the French overseas departments and regions appears to be more concentrated overall than in mainland France, although there are differences by area. Some representatives of local authorities and associations have indicated that the small size of the overseas territories would encourage the convergence of offers and that the distributors in the French overseas departments and regions would not be engaged in a "price war" similar to what can be seen in mainland France.

Merger control allows the Autorité to examine takeovers of supermarkets or hypermarkets and to ensure that competitive intensity is maintained. This has been done, particularly in Martinique recently, with the adoption of innovative measures to maintain competition between different retailers.

However, merger control cannot be used to intervene in highly concentrated areas. If the structural injunction , to force a retailer to sell stores – this mechanism is however accompanied by very restrictive conditions, which has led the Autorité to propose a relaxation of this mechanism in order to facilitate its implementation and to better respond to the situation of high concentration in French overseas territories.

Recommendation: facilitate implementation of the structural injunction

The Autorité recommends amending the current wording of the provision of the French Code of Commercial Law (Code de commerce) governing the structural injunction in order to clarify and facilitate the conditions for its implementation.

QUALITY AND PRICE PROTECTION HELPS TO FIGHT THE HIGH COST OF LIVING

Quality and price protection is based on a location-sensitive list of everyday consumer products (examples: ham, beans, rice, rice, laundry, dish washing liquid, toothpaste, etc.) which must be sold at a reasonable price. It is the result of an annual negotiation between the various economic stakeholders, under the supervision of a government representative.
All stakeholders welcome the principle of the system, which is aligned with the fight against the high cost of living. Quality and price protection thus made it possible to observe significant price reductions in 2019 in all regions.

French overseas departments and regions	2018	2019	Change 2018/2019
French Guiana	280 €	265 €	-5,4 %
Martinique	341 €	307 €	- 10 %

French overseas departments and regions	2018	2019	Change 2018/2019
Guadeloupe	356 €	320 €	-10 %
La Réunion	288 €	253 €	-12 %
Mayotte	210 €	193 €	-8 %

While quality and price protection is a tool that has found its place, it nevertheless faces several difficulties in its implementation: insufficient visibility among consumers, too many objectives and unequal participation by stakeholders.

Recommendation: Strengthen the effectiveness of quality and price protection

In particular, the Autorité proposes to extend the system upstream to stakeholders other than retail chains and to set up a price comparison system in order to give consumers better visibility of the system.

It also proposes that its objectives be better targeted, according to the intentions and needs of each location (e.g. seeking low prices or enhancing local production).

IMPORT AGREEMENTS

The 2012 Lurel Law prohibited exclusive import agreements in order to intensify price competition between retailers. The Autorité has already had to fine suppliers and distributors who had not put an end to these exclusive distribution agreements on five previous occasions and has seen local stakeholders become more familiar with the new rules. The law has also forced suppliers to implement competitive tendering procedures much more frequently in choosing their wholesale importers.

The Autorité also notes that a significant share of overseas distribution companies is also present as wholesale importers on the wholesale market. This vertical integration (presence of a stakeholder at different levels of the chain) is likely to raise competition risks, in particular as regards the allocation of commercial cooperation budgets (price advantages granted by the supplier to the distributor for the promotion of his products on shelves or in catalogues). An integrated stakeholder could indeed be encouraged to favour its retailers to the detriment of competitors.

Recommendation: strengthen the rules in French overseas territories to prevent discrimination against stakeholders in cases of vertical integration

The Autorité recommends introducing a new provision in the French Code of Commercial Law (Code de commerce) that would make it possible to fine an integrated stakeholder for de facto exclusivity that discriminates against its third-party customers in order to promote internal sales within the group.

TRANSPORT COSTS THAT CAN WEIGH ON PRODUCTS WITH LOW ADDED VALUE

In general, maritime transport costs represent a limited share of the purchase cost of imported products (less than 5% on average excluding fuel and handling). In recent years, these costs have tended to increase, in part due to higher handling and fuel costs.

As freight services do not depend on the value of the goods, products with low added value, such as a bottle of water, are more affected than products with high added value (a bottle of champagne for example). Thus, the cost price of mineral water more than doubles when the cost of freight is considered. An explanation for this is that containers are billed at fixed cost independent of the value of the product. It therefore applies in the same way to a bottle of water and a bottle of champagne. In the end, including all forwarding costs (freight + dock dues + local transport), the price of the bottle of mineral water is multiplied by 4, compared to 1.3 for the bottle of champagne.

	Mineral water 1.5L	Champagne Brut 75cl
Purchase price (euros)	0,15	14,5
Cost price (euros)	0,6	19,8
Difference between cost price and purchase price	x 4	x1,3

MINIMALLY COMPETITIVE LOCAL PRODUCTION

Local production accounts for a quarter of consumer goods but remains generally uncompetitive compared to imported products. Despite the forwarding costs and taxation specific to French overseas departments and regions (government assistance and dock dues), these schemes do not generate any obvious downward effect on prices. While some sectors, such as bananas, sugar and rum, do export, they are not enough to offset the trade imbalance. This lack of competitiveness is largely due to the narrow markets in French overseas territories and the high number of farms, which prevent local producers from achieving economies of scale.

Recommendation: structure the sector and develop quality labels

The Autorité recommends pursuing sector structuring and encouraging differentiation of local products through quality labels.

E-COMMERCE: A FACTOR IN OPENING UP AND FIGHTING AGAINST THE HIGH COST OF LIVING BUT WHICH IS DEVELOPING SLOWLY

The e-commerce is potentially a factor in opening up the populations of French overseas departments and regions and combating the high cost of living. It is also an indirect vehicle for developing local employment with the creation of logistics activities. The market of the French overseas departments and regions also has considerable business interest, with individual markets having several hundred thousand inhabitants.

However, despite the opportunities it presents, the e-commerce sector in French overseas territories is lagging behind in its development, with a significant number of retailers operating in mainland France absent from the overseas territories. Of the dozens of major online retailers consulted by the Autorité during the investigation, only one third offer delivery in the French overseas departments and regions. This situation is mainly due to the existence of strong barriers and constraints, both logistical (delivery costs and times, return of products, after-sales service) and customs (dock dues in particular).

Thus, shipping costs increase the price paid by the consumer and discourage

overseas consumers from ordering online. For example, the following costs were observed on some online sales sites:

	Product price	Shipping costs
Computer	330 €	84 €
Book	Any price	11 € (en moyenne)
Automotive spare part	Any price	165 €

Delivery times are also longer than in mainland France: from 3 to 27 days compared to an average of 5.3 days in mainland France.

The exercise of the right of withdrawal, which allows a consumer to return a product without giving any justification within 14 days of delivery, is also more difficult to implement, as some sellers leave the costs of reshipment to the buyers, which may discourage buyers from ordering online. Some retailers prefer not to sell overseas rather than having consumers pay for the return and delivery costs.

The implementation of the guarantee of conformity, which in the event notably

of a defect gives the consumer a right to the repair, replacement or reimbursement of the product can be complicated. While this right, unlike the right of withdrawal, must not entail any costs for the consumer, it appears that some retailers do not respect the law to the letter, making the buyer contribute to the costs of return or reshipment.

In addition, consumers are not or poorly informed about the payment of dock dues when ordering online. They complain about the lack of transparency and advance knowledge of the amount of dock dues to be paid. In addition, it is questionable whether it is appropriate to apply this tax to products that do not compete with a local option (for example, for certain electronic devices), even though one of the reasons for the existence of this tax is to protect local production.

Finally, European regulation 2018/302 prohibits geoblocking based in particular on the customer's place of residence. Thus, consumers in French overseas territories must be able to freely access e-commerce sites and benefit from non-discriminatory conditions compared to mainland consumers.

Recommendation: encourage online sales

The Autorité proposes, in particular:

-encouraging group shipment of parcels by allowing a single customs formality to be completed in order to reduce delivery costs.
-verifying that retailers do not charge consumers for the cost of returning a product under the guarantee of conformity.
-adapting consumer law in order to oblige online retailers to clearly display applicable taxes and dock dues.
-studying adoption of a reduced and single rate for dock dues for products sold online.
-ensuring that there is no geoblocking by transposing the provisions of the

European regulation into French law.
- adopt a national regulation transposing the provisions of the European regulation on the geoblocking, taking into account the uncertainty as to the applicability of this text to the situations involving an overseas consumer.

The Autorité's actions in French overseas territories

Since 2009, the Autorité de la concurrence has intensified its actions overseas in fighting the high cost of living. In numerical terms, these include:

- 28 litigation decisions, representing 10% of the decisions taken over the past 10 years;

- 41 merger control decisions and major commitments required to protect competition in French overseas territories (Canal+/Mediaserv, Altice/SFR-SRR) and which are closely monitored (€15 million fine imposed on Altice for noncompliance with commitments made at the time of the sale of Only);

- 12 opinions regarding various subjects and proposing reforms for the benefit of the consumer, in particular to lower construction prices, tariffs for regulated professions, fuels, telephone calls, heavy vehicle technical control;

- €420 million impact on the economy of the French overseas territories, including €210 million as a result of fines imposed by the Autorité.

It notably issued a recent opinion on building materials in Réunion and Mayotte in which it made recommendations to reduce the cost of building social housing and public engineering works.
In addition, in the last few months, it has carried out dawn raids in several companies in the inter-island air transport and retail sectors. The evidence collected is currently being examined by the Autorité's investigation services.

[1]*INSEE 2015 figure.*

[2]*Since the lowering of the notification thresholds, introduced by the Lurel Law, the Autorité's supervision of the sector has tightened. In this respect, it has also issued several decisions making these acquisitions conditional in order to guarantee price competition in the catchment areas concerned.*

[3]*See Decision 18-DCC-142 of 23 August 2018 regarding the acquisition of sole control of SDRO and Robert II by Groupe Bernard Hayot.*

[4]*The structural injunction makes it possible to order transfers of assets (stores) in the retail trade if three cumulative conditions are met: the retailer is in a dominant position, it has committed an abuse and it practices high prices or margins.*

[5]*See decisions 19-D-11, 18-D-21, 18-D-03, 17-D-14, 16-D-15*

OPINION 19-A-12 OF 04 JULY 2019

regarding the functioning of competition in the French overseas territories

See full text of the opinion

Contact(s)

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