# The Autorité de la concurrence opens a public consultation in order to revise its merger guidelines

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Since autumn 2017, the Autorité has been involved in an important modernisation and simplification of merger control by easing the constraints on companies (see press release dated 25 April 2019).

As announced in late 2018, this procedural relief is being accompanied by an overhaul of the merger control guidelines of the Autorité regarding merger control.

Among other things, the new guidelines will take into account the experience of the Autorité and case law since 2013

The overhaul of the guidelines has several objectives:

- extending the scope of the simplified procedure
- incorporating the Autorité's extensive decision-making practice, feedback from its active participation in the European Competition Network (ECN) and its exchanges with the European Commission and other national competition authorities.
- Taking into account the case law of the Administrative Supreme Court (Conseil d'État) since 2013.
- Incorporating the participants' suggestions to public consultations in autumn 2017 and autumn 2018.

By reorganising the architecture of the guidelines and enriching the document with examples, the Autorité wanted to make the new guidelines clearer and more intuitive.

## Inputs of the new draft guidelines

The revised draft guidelines reflect the main themes of the Autorité's merger control activity since 2013.

- Constraints on companies filing a merger draft

First, the section of the guidelines on breaches of procedure (failure to notify, early completion of a transaction) has been supplemented to incorporate recent advances in decision-making practice and case law. These new guidelines remind companies of the constraints imposed on them and must clarify the behaviour to adopt, particularly during the preparatory phase of a transaction.

- Identifying transactions that do not raise competition concerns

Secondly, these new guidelines enable the identification of transactions that in principle will not likely give rise to competition concerns.

## A clearer guide to enable companies to better anticipate the aspects taken into account by the Autorité when examining a transaction

The reorganisation of the structure of the guidelines is intended to make the document more intelligible and manageable for economic operators, who are not always familiar with the merger control procedure and the competition authorities' reasoning.

- The criteria of analysis taken into account by the Autorité during the examination of an operation

In particular, the overhaul of the section regarding competitive analysis highlights the main analytical criteria taken into account by the Autorité when analysing a transaction, without prejudice to its horizontal, vertical and/or conglomerate nature. It is about guiding companies to help them anticipate the aspects that the Autorité is likely to take into account when analysing the effects of a transaction.

- Clarification of the approach taken regarding remedies

The combination of all the principles applicable to remedies (both procedural and structural) in a single section also clarifies the Autorité's approach to the matter and raises awareness among companies of the considerations to be taken into account when proposing commitments.

- The methodology adopted for retail operations

In terms of content, in addition to the thorough updating of the decision-making practice throughout the guidelines, the appendices have been expanded to set out the Autorité's methodology for analysing certain recurring issues in retail trade, on the assessment of the competitive effects of a transaction on local markets and taking into consideration the competitive pressure exercised by online sales.

- Control of commitments made

Finally, in recent years, the Autorité has strengthened the control of commitments made to it, resulting in several significant decisions on non-compliance[1].The input from these various decisions as well as from those of the review courts has been incorporated into this document in order to raise awareness among companies on the importance of complying with the commitments entered into before the Autorité.

Lastly, the Autorité specifies the framework applicable to the procedure for

revising commitments.

## Public consultation open until 16 November 2019

The public consultation, in which all concerned stakeholders can participate, is open until 16 November 2019.
Contributions are to be sent to: email

The new merger control guidelines are scheduled to be adopted before the end of 2019.

[1] For example, decisions 18-D-16 (Fnac/Darty) 17-D-04 (Altice/SFR, contrat Faber), 16-D-07 (Altice/SFR - Outremer Telecom).

The purpose of the merger control guidelines is to provide companies with an educational presentation on the scope of the national merger control rules, the conduct of the procedure before the Autorité and the objectives, criteria and methods for analysis on the merits. In order to ensure maximum legal certainty for companies, the Autorité undertakes to apply the guidelines whenever it examines a merger, provided that there are no circumstances specific to the merger or any considerations in the general interest that would justify derogation from them.

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