

27 January 2017: Poultry sector

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The *Autorité de la concurrence* approves the acquisition of the Duc group by the Dutch Plukon group

On 14 December 2016, Plukon notified its intention to take control of the Duc group, in the context of arbitration proceedings at the commercial court of Évreux. On 20 December 2016, the *Autorité de la concurrence* granted a waiver authorising the conclusion of the transaction without waiting for the final decision, which was issued today.

Poultry sector

Plukon owns eight poultry abattoirs and five processing and packing companies at various locations in the Netherlands, Germany and Belgium. In France, the group collects poultry and sells it both as fresh meat and as finished products processed at its own plants. Duc is one of the principal stakeholders in the poultry sector. The group's activities are mainly based in France, covering all stages in the certified chicken value chain, from poultry feedstuff manufacturing to processing the chicken into finished products under the "Duc" brand.

The *Autorité* did not identify any significant overlapping activities, and took the countervailing buying power of supermarket chains into consideration.

In the light of its assessment, the *Autorité* considered that the transaction would not be likely to hinder competition. The overlap between the respective activities of the parties is limited, as their poultry collection businesses are not located in the same regions and their market shares in terms of poultry meat sales are generally smaller than those of their domestic and European competitors, such as the LDC and Galliance groups in France¹. Furthermore, the *Autorité* made

particular allowance for the ability of supermarket chain purchasing offices to exert countervailing buying power when dealing with the new entity.

Duc's financial difficulties prompted the *Autorité* to grant a derogation from the suspensive effect and move rapidly to issue a decision.

The transaction was notified in unusual circumstances, marked by an outbreak of avian influenza and chronically weak poultry prices in France. The Duc group's financial difficulties prompted the *Autorité* to assess the operation and issue its decision within a particularly short time frame. Specifically, to enable Duc to continue trading, Plukon was granted a derogation from the suspensive effect of the merger review procedure, pursuant to Article L. 430-4 of the French Commercial Code (*Code de commerce*).

¹*Galliance is the poultry division of the Terrena group, coordinating the activities of Gastronome and Doux , after the Autorité cleared the acquisition of sole control of Doux by Terrena on 15 February 2016 (see the press release of 18 February 2016).*

What is a derogation from the suspensive effect?

If the effective conclusion of merger is subject to approval from the *Autorité de la concurrence*, in certain exceptional circumstances, duly argued by the parties, the *Autorité* may issue a derogation enabling them to finalise part or all of the transaction without waiting for the approval decision. Although derogations from the suspensive effect are by definition exceptional, offers to take over companies subject to receivership or liquidation proceedings regularly benefit from such measures. A derogation may also be justified in other exceptional circumstances, such as a risk of imminent dissolution of the acquisition target, the initiation of collective proceedings or the need for an acquiring party to provide guarantees or obtain financing to keep the target afloat. However, the issue of a derogation by the *Autorité* is without prejudice to the final decision made in the light of its full assessment. The *Autorité* has the power to impose corrective measures, or even veto the transaction if it is found to be anti-competitive.

> To consult the Full text of decision 17-DCC-10 of 27 January 2017 relating to the sole acquisition of Duc group by Plukon.

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