2 February 2017: Food wholesale sector

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The *Autorité de la concurrence* clears Metro's acquisition of Colruyt France (Pro-à-Pro)

On 28 November 2016, the European Commission referred the review of the acquisition of Colruyt France SAS ("Colruyt France") by Metro AG ("Metro) back to the *Autorité de la concurrence* (see note on referrals in the box below). The parties, which operate in France mainly in the food wholesale sector, submitted their proposal to the *Autorité* on 7 December 2016.

Ruling: the operation will not entail any lessening of competition in the food wholesale market

Following a wide-ranging consultation of operators in the sector, the *Autorité* broke with its previous practice by deciding, for the first time, that the competition analysis should be conducted in the general wholesale market for food products intended for non-domestic catering (local authorities, cafés, hotels, restaurants, etc), while including cash-and-carry operators[1] because the investigation revealed that most catering customers make no distinction between a "traditional" wholesaler and a cash-and-carry when seeking the same goods[2]. As the operation involves two non-specialist operators, the *Autorité* also decided that solely the impact of the operation on the general distribution segment should be analysed without making any distinction in terms of products.

The *Autorité*'s finding at the end of its analysis was that the new entity's market share would not be excessive either nationally or locally and that the Metro group would still be competing with many specialists and non-specialists on the French market and locally (Pomona, Promocash, Transgourmet, Brake, France Frais, etc).

The *Autorité* also carefully examined the parties' purchasing power in the procurement of food products from suppliers and widely consulted the suppliers serving the parties in order to determine whether the operation might create or increase purchasing power, thereby making the suppliers economically dependent, but the investigation did not reveal any such structural effect.

For the first time in the distribution sector, the *Autorité*'s analysis of the parties' purchasing power considered the purchasing alliances formed between Metro and Auchan in 2010 and 2015 and then between Auchan and Système U in 2014, taking account of each trader's market share and position after the formation of these purchasing alliances[3] and coming to the conclusion that there was no competitive risk for suppliers.

[1] A cash-and-carry is a wholesale shop where products can be collected "off the shelf" by buyers.
[2] The authority did not rule on the issue of whether an autonomous cash-and-carry segment exists because Colruyt is not a cash-and-carry trader.
*[3] See **competition authority Opinion N° 15-A-06** of 31 March 2015 on alliances between central buying and stocking agencies in the hypermarket sector and the **press release of 1 April 2015**.*

European Commission referrals to the *Autorité de la concurrence*

Operations are regularly referred to the *Autorité* by the European Commission, demonstrating the flexibility of the European concentration supervision system and the acknowledged quality of the authority's work. The referral procedure, provided for by European Regulation N° 139/2004, enables the Commission, if the concentration may " threaten significantly to affect competition in a market within that Member State presenting all the characteristics of a distinct market ", to refer the case to the national authority best placed to assess the effects of the operation on competition.

> To consult the full text of the Decision 17-DCC-11 of 30 January 2017

> Press contact:
Chloé Duretete : +33 (0)1 55 04 01 20 / Mail