The Autorité de la concurrence announces its priorities for 2020

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Background

Several topics that were among the *Autorité*'s priorities for 2019 will remain at the forefront of its action in 2020. They remain strategic in ensuring that competition is strong, benefiting both businesses and consumers, and include: **digital** challenges, the **retail** sector, competition in **overseas territories**.

New subjects are emerging in 2020, illustrating the *Autorité*'s desire to take into account economic developments by providing them an appropriate response. It will be particularly interested in:

- **the impact of the digital revolution on the financial sector**, through **electronic financial services**, **fintech, blockchain technology and the emergence of digital giants in payment services**. **These topics will be addressed in a specific study to be completed in 2020.**

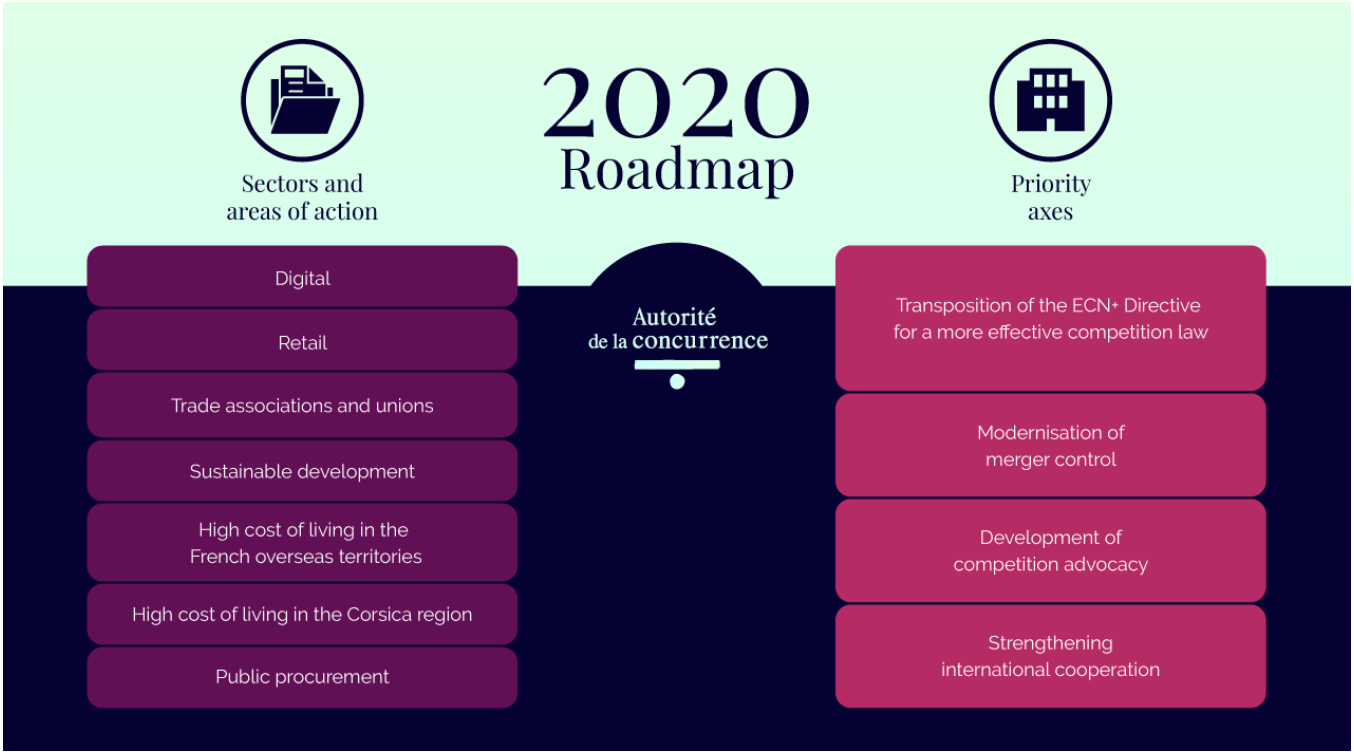
- taking into account the requirements of sustainable development and in particular the environment. The Autorité will take part in particular in the common reflection initiated by the group of regulators on taking into account the ecological imperative in the action of regulators. It will also develop its reflection on the links between competition law and the environment, for example by targeting competition law infringements which also jeopardize the protection of the environment.

- the compliance of trade associations and unions with competition rules. The *Autorité* will publish in 2020 a study on how competition law is enforced on these parties. It chose this theme in anticipation **of the ECN+ Directive's** entry into force**, which will have to be transposed in 2020, and which will lead trade associations**

and unions to be subject to much heavier and dissuasive sanctions. This study will be instructive and will caution the actors about risky behaviour.

Finally, the Autorité will pursue an active litigation policy in 2020, with a certain number of important cases which will be concluded during the year, notably in the sectors of food retail, press, healthcare, optical, consumer electronics,...

More generally, the *Autorité* intends to promote **compliance** more broadly. In this respect, it will facilitate a specific working group whose objective is to identify, with companies, the most effective policies and best practices regarding **compliance**.



Sectors and lines of action

The digital sector

The *Autorité* will continue to make digital technology one of its top priorities in 2020. The digital revolution is profoundly affecting the economy and competitive dynamics. This is why substantial resources will be dedicated to deciphering these issues: it is a question of fully evaluating the economic changes brought about by the digital revolution (in the retail sector in particular), as well as being able to prevent or sanction new forms of cartels or abuses of a dominant position.

We therefore intend to further strengthen the human resources dedicated to detecting and analysing the behaviour adopted by players in the digital sector. This will notably involve creating a new specialised department, reporting directly to the *Autorité*'s General Rapporteur: the **Digital Economy Unit**.

It will be responsible for developing in-depth expertise in these areas and for providing support in cases with a significant digital dimension, whether they involve company mergers or investigations relating to compliance with competition law. The department will first focus on developing new tools (conceptual framework, investigation methods) that will enable the *Autorité* to effectively understand the economics of these platforms. It will work in liaison with the academic world and research institutions specialised in digital technology. It will also work in close cooperation with other competition authorities, in Europe and internationally, other regulators and relevant government departments.

The *Autorité* will also support the establishment of the digital expertise center which will soon be set up by the government and with which it intends to interact.

With respect to fighting anticompetitive practices, the *Autorité* is determined to use all of its tools to prosecute and impose fines for anticompetitive behaviour by players in the digital sector as quickly as possible. All of the procedural means provided for by competition law – urgent interim measures, financial penalties and injunctions – may be used when practices restrict free competition or the ability of new entrants to enter a market. More specifically, the *Autorité* will focus on the online advertising sector, the competition issues related to the

collection and processing of personal data and the use of algorithms. In March 2020, it will examine the request for urgent interim measures presented by several parties in the print media sector on the conditions for exercising neighbouring rights.

Finally, the Autorité will actively participate in the work carried out to redefine the tools and objectives of competition policy to meet the challenges of the digital economy, both at national, European and international level: among the subjects on the agenda will be an adaptation of the legal framework to deal with competitive issues related to platforms. The Autorité will put forward proposals in order to strengthen and deepen mergers control, in particular with regard to predatory acquisitions or which consolidate the power of large platforms.

Retail

The retail sector has been one of the foci of the *Autorité*'s activities for several years.

This year will see the completion of various investigations opened in connection with the new joint purchasing agreements in the predominately food mass retail distribution sector of which the *Autorité de la concurrence* has been notified. These investigations should, in particular, make it possible to establish whether the risks to competition identified by the *Autorité* in Opinion 15-A-06 of 31 March 2015 on purchasing offices could materialise.

In 2020, the Autorité will publish a study focusing on **new commercial retail strategies**, such as "phygital" (a model integrating physical and digital retail) or "omni-channel" strategies on how competition law takes note of these developments.

Trade associations and unions

The *Autorité* has noted that, over the years, certain trade unions and associations, as well as professional bodies, have regularly been associated with – or even instigated – breaches of competition law (examples include the cases involving courier services in December 2015, the cartel in the floor coverings sector in

October 2017, and the fines handed out in 2019 for anticompetitive practices against certain regulatory bodies for notaries and architects). The *Autorité* will therefore continue to make the detection of such practices a priority in its investigations.

Furthermore, the year 2020 will mark a very significant change, with the transposition of the ECN+ Directive 2019/1, aiming to provide competition authorities of the Member States with the means to implement more effectively the competition rules and to guarantee the proper functioning of the internal market. Indeed its results from this directive that the system applicable to business associations will be substantially hardened.

Whereas infringements sanctioned by the Autorité de la concurrence against professional associations or trade unions could not, until now, exceed €3 million, with this directive ECN+, penalties may reach an amount corresponding to the cumulative total of 10% of the global turnover of each company that is a member of the union or association. Fines issued to trade unions, professional associations or orders may therefore be much more dissuasive in the future.

In order to anticipate this new rule of law, the *Autorité* launched a call for contributions in 2019 and in 2020 will publish a **thematic study on the enforcement of competition law on trade unions and professional bodies**, which will be published in the collection *Les Essentiels.* This study will be aimed in particular at promoting compliance, by identifying practices that may fall under competition law.

Sustainable development

The *Autorité* wishes to place sustainable development at the core of its action and will notably take part in a collective discussion on how climate issues can be incorporated by the group of regulators (in which the *Autorité* cooperates with the AMF, CSA, ARCEP, CNIL, Hadopi, ART, CRE and Arjel), launched on 19 December 2019 (See press release).

For its part, the *Autorité* will focus in particular on identifying the practices that restrict competition between companies and which harm the environmental

protection. In this respect, the *Autorité* has already handed out fines for practices of this kind in Decision 17-D-20 regarding practices implemented in the hard-wearing floor coverings sector which sanctioned cartel behaviour whereby cartel members deliberately refrained from promoting environmental performance that went beyond a certain industry 'average standard'. The *Autorité* has noted that by reducing competition in this area, companies have harmed the interests of the consumer, when the latter is being increasingly attentive to the environmental performance of products and seeks to favour the best-performing products in this respect.

In parallel, the *Autorité* will open up the discussion internationally in the framework of the International Competition Network (ICN), as well as on a European level as part of discussions which should take place in 2020 on the revision of the European exemption regulations on vertical restraints and on certain categories of research and development agreements, as well as on certain categories of specialisation agreements.

French overseas territories

The *Autorité* carried out in 2019 unannounced inspections in French overseas territories Réunion, Mayotte), and visited for a week La Réunion *département* in order to investigate merger case in the food retail sector relating to the divestiture of stores from the Vindemia company (Jumbo, Score, Vival ...) to Groupe Bernard Hayot. Several cases should be concluded in the course of 2020.

The *Autorité* will remain particularly attentive to competition infringements in the French overseas territories. Furthermore, it will remain mobilised on the subject of the high cost of living in French overseas territories and to the reforms that can stimulate competition and enable overseas consumers to benefit from better-quality products at better prices, in line with the opinion on French overseas territories it delivered to the government in July 2019.

Corsica

In 2020, the *Autorité* will issue the opinion requested by the Government on the competition issues of the Corsican economy. At the end of 2019, the *Autorité* conducted a one-week field trip. This was an opportunity for the team led by Vice-President Fabienne Siredey-Garnier and the General Rapporteur Stanislas Martin to meet all the stakeholders in the Corsican economy, in both southern and northern Corsica. The interviews conducted have enriched the investigation considerably, which should lead to an analysis and proposals.

Public procurement

The *Autorité* wishes to pay particular attention to the fight against anticompetitive practices in public procurement. This is because public procurement is particularly exposed to the risk of cartel, which causes significant harm to public purchasers and affects the proper use of public funds.

In the manner of its European and international counterparts, in addition to this heightened vigilance, in collaboration with the Ministry of the Economy and Finance, the *Autorité* is working to implement tools to allow the automatic collection and analysis of datas of government contracts and thereby detect collusive behaviour more accurately and exhaustively. The Autorité will also remain particularly vigilant on construction sites relating to major infrastructures requiring major public contracts.

Modernising the *Autorité*

Merger control

Following an extensive public consultation phase in autumn 2019, the *Autorité* will adopt new merger control 'guidelines' in early 2020. The *Autorité* will include in this document developments in its practice linked to the digitisation of the economy, for example when assessing the competitive pressure exerted by

online retailers.

In addition, the *Autorité* will continue to be a driving force behind proposals to adapt merger control at national and European level, in order to deepen this essential tool to preserve competition in the markets. The Autorité will focus on better taking into account the acquisition practices of certain players and operations that currently fall 'below the thresholds' despite affecting competitive market dynamics are subject to tighter control.

Strengthening the *Autorité*'s powers through the transposition of ECN+ directive

A number of substantial changes are expected to take place in 2020 that will contribute to enhancing the effectiveness of the *Autorité*.

The draft law on audiovisual communication and cultural sovereignty in the digital age, presented to the Council of Ministers on 5 December 2019, which is to be reviewed in 2020, contains provisions aiming to transposing the ECN+ Directive and modernise the *Autorité*'s procedural frame, in which it carries out its missions.

Competition advocacy

In 2020, the *Autorité* will pursue its work on competition advocacy.

In January, it will make a 'Guide to Competition' available to SMEs and to anyone who wishes to understand the basic principles of competition law. It will use this document as a basis for further dialogue and clarification with companies and their professional associations.

In addition, it will publish a study in early February on behavioural commitments applied to competition in the collection *Les Essentiels* (La Documentation Française). This work explores the Autorité's use of behavioural commitments (goals, methods, and effectiveness). It aims to provide companies preparing for a merger or for litigation procedures with tools to understand its methodology and the desired objectives.

The *Autorité* will also launch a **review of compliance policies by conducting a panel of experts** (including legal and corporate compliance directors) to identify the most effective tools and best practices with regard to compliance, in order to effectively shield companies from the 'antitrust risk' and promote awareness among executives and employees of companies.

Strengthening international cooperation

The summer of 2019 was marked by the adoption, at the initiative of the *Autorité de la concurrence*, of a joint 'Digital and Competition' agreement between competition authorities within the G7 (US Department of Justice and Federal Trade Commission; competition authorities of Canada, Italy, the United Kingdom, Japan, Germany, and the European Commission) present at the Chantilly summit under the French presidency of the G7 (see press release of 15 July 2019 and the common agreement).

The *Autorité* considers that the continued efforts of the G7 competition authorities to find common approaches to the competitive assessment of digital subjects is crucial. It has consequently proposed that **this specific cooperation between authorities in the G7 countries should be a long-term project**. The G7 partner authorities have approved, by the end of 2019, this proposal and have decided to pursue high-level discussions this year. This will involve in particular, besides the substantive exchanges, a conference being held in Paris in the second half of 2020 and a deeper exploration of some of the issues addressed in the July 2019 agreement.

In parallel, the Autorité will continue to be particularly involved in other international cooperation forums (OECD, ICN), foremost among which is the European Competition Network. The European Competition Network will have to discuss important projects, with the revision of the regulation on vertical and horizontal restrictions and the update, announced by the European Commission, of its notice on the definition of the relevant markets.

The ICN will also experience a new advance with the implementation of the new tool of the global competition network ICN on procedural fairness in competition proceedings, entitled 'Framework on Competition Agency

Procedures', adopted in 2019.

Finally, in 2020, the Autorité will continue to develop an in-depth bilateral cooperation with its German counterpart, and will organise the 9th Franco-German competition day in France.

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