The Autorité clarifies the options of a professional association for dealing with its members' rent during the COVID-19 pandemic

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In brief

A professional association representing opticians (Rassemblement des Opticiens de France, hereinafter "ROF") contacted the *Autorité* because it seeks to aid its members - opticians whose business has been brought to a standstill by the health emergency - in their dealings with lessors concerning commercial rents. The *Autorité* confirms that the terms of the proposed initiative do not appear to infringe competition law.

Informal consultations with competition authorities during the health emergency

In light of the crisis resulting from the COVID-19 outbreak, the competition authorities of the European Union have indicated that they can provide informal guidance to companies on the compatibility of cooperative behaviour with competition law in response to the emergency[1].

The *Autorité de la concurrence* has set up a COVID-19 emergency monitoring network, which is particularly concerned with providing informal and pragmatic responses to requests made by companies seeking to ensure their initiatives are

legally secure[2].

For its part, the European Commission[3] has published a Temporary Framework that provides guidance on what constitutes possible agreements between competitors that comply with competition rules during the outbreak.

A professional organisation has contacted the Autorité about an initiative concerning the adjustment of commercial rents

In this context, the ROF asked the *Autorité* about an initiative to send a letter to a number of lessors with a view to requesting an adjustment of its members' commercial rents.

Such an approach is outside the scope of the framework published by the Commission, as it is not cooperation "in order to ensure the supply and adequate distribution of essential scarce products and services during the COVID-19 outbreak and thus address the shortages of such essential products and services resulting first and foremost from the rapid and exponential growth of demand"[4].

However, the *Autorité* is prepared to respond to requests for clarification during the emergency.

The planned initiative falls within the scope of actions implemented by professional associations to defend the interests of their members. By way of a reminder, the *Autorité* will publish in 2020 a cross-sector study on the application of competition law to the actions of trade associations and professional bodies[5]. In line with the established practice of the *Conseil de la Concurrence*and subsequently the *Autorité*, a professional association is at liberty to disseminate information intended to help its members in the exercise of their business[6]. However, it is important to distinguish between:

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behaviour which is in the defence of the professional interests of the members of the organisation, without constituting an intervention in a market, and

- that which, because it invites economic operators to adopt a particular attitude on the market, in particular in the form of warnings or instructions, constitutes intervention in a market. Such intervention may, in certain cases, constitute an infringement of competition law, which may result in fines where appropriate[7].

The proposed initiative remains within the scope of the professional organisation's missions and does not seem to pose any problems with regard to competition

In this respect, the behaviour consisting, for a professional organisation, in providing advice, in general fashion, to its members, in the context of the COVID-19 outbreak, on the application of provisions taken by the public authorities or on the interpretation of existing contracts and in expressing its position in writing enters, at first sight, within the framework of its mission to provide information and advice and defend its professional interests.

The *Autorité* notes that the ROF has indicated that it offers only general recommendations and legal and factual arguments in support of its members' requests. The ROF also specified that it would not determine the behaviour that its members should adopt. Lastly, its action is aimed at preventing the risk of business failures due to the prolonged closure of various sales outlets; it does not, in the present case, enable any appreciable coordination of the costs of the stakeholders concerned. In light of these details, the envisaged initiative, as described to the *Autorité*, is not such as to be considered as an anticompetitive market intervention.

Such an analysis is based on the factual details communicated at this stage to the *Autorité* and is limited to the sole behaviour that the association concerned has stated that it plans. The initiative cannot in any event be centred on either discussion of prices or direct/ indirect exchanges of sensitive information between members, such as the conditions directly applicable to their respective contracts.

The Autorité remains available to provide informal advice to businesses and professional bodies

More generally, as the conditions for intervention by a professional organisation, as well as its concrete consequences for the functioning of competition, may differ greatly from one market to another, the *Autorité de la concurrence* reiterates that it is ready to legally secure virtuous initiatives and to provide as quickly as possible informal advice on the compatibility with competition law of a cooperative project presented to it.

Under no circumstances will the *Autorité* tolerate behaviour that seeks to exploit the current emergency to engage in anticompetitive behaviour.

1 Antitrust: Joint statement by the European Competition Network (ECN) on application of competition law during the coronavirus emergency. The Autorité de la concurrence publicised the announcement the same day.

2 https://www.autoritedelaconcurrence.fr/en/basic-page/covid-19.

3 Temporary Framework for assessing antitrust issues related to business cooperation in response to situations of urgency stemming from the current COVID-19 outbreak

4 Ibid, paragraph 4.

5 https://www.autoritedelaconcurrence.fr/fr/node/5708

6 Decision 05-D-33 of 27 June 2005 on the practices employed by Ilec, paragraph 30.

7 Decision 10-D-11 of 24 March 2010 on practices implemented by the Syndicat national des ophtalmologistes de France (SNOF) concerning the renewal of eyeglasses, paragraph 53.

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