The project to deploy Darty spaces within Carrefour hypermarkets does not constitute a merger and therefore does not have to be submitted to mandatory clearance by the Autorité de la concurrence

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On 22 May 2020, Fnac-Darty notified the Autorité de la concurrence of its plan to deploy sales spaces dedicated to retail distribution of household appliance products, operated under the Darty brand (“shop-in-shop” model)), in 30 Carrefour stores.

Following its analysis, the Autorité today sent a decision on non-controllability to Fnac-Darty, indicating that this transaction did not constitute a merger as defined by article L. 430-1 of the French Commercial Code. As a result, the planned transaction is not subject to the notification obligation provided for by the French Commercial Code.

As a result, Fnac-Darty and Carrefour are free to carry out this project without the clearance of the Autorité being necessary.

What’s merger control?

Competition law distinguishes between merger law and the control of anti-competitive practices. Merger law is preventive: it is a check prior to the completion of an acquisition, merger, or takeover transaction, intended to assess the competitive effects of the latter on the market structure concerned.

As soon as the transaction is qualified as a merger transaction and the thresholds set by Article L. 430-2 of the French Commercial Code or Article 1 of Regulation n° 139/2004 are exceeded, a transaction must be subjected to prior checking by the Autorité or, where appropriate, by the European Commission.

Merger control is an administrative police power which limits the freedom of companies, in particular their contractual freedom. It places two main obligations on the latter: the obligation to file a case with the Autorité and the prohibition to carry out the transaction until the Autorité has given its agreement.

When the Autorité considers that a transaction is not controllable, companies are not subject to any obligation vis-à-vis the Autorité or, where applicable, the European Commission, with regard to merger law and have full contractual freedom, subject to any obligations that may be imposed by common law.

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