21 December 2017: Collection and recovery of non-hazardous office waste sector

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**In an unprecedented move, the Autorité de la concurrence closes a litigation procedure,
and on the same day, clears a merger involving the same activity.**

**The Autorité obtained commitments from La Poste regarding the promotion, commercialization
and valuation of their waste collection offers. It also cleared, subject to conditions, the creation of a full-function joint venture
between La Poste and Suez**.

Background

The *Autorité de la concurrence* today released a decision in which it accepts the commitments made by La Poste and makes them binding. Further, it makes its clearance of the creation of a full-function joint venture[1] between La Poste and Suez subject to similar commitments.

In both cases, the identified concerns involved, on the one hand, a risk of using competitive advantages that could not be reproduced by competitors, linked to the universal postal service, and on the other hand, price setting by La Poste of offers or services for the collection of non-hazardous office waste at prices below cost.

La Poste committed, firstly, to preventing the confusion of means between its office waste collection and recycling offers and its universal postal service offers, secondly, to establishing and using a methodology for cost assignment for price setting in compliance with competition law, and finally to beginning monitoring profitability.

Suez and La Poste made similar commitments in the framework of a merger control procedure. In view of the concomitance of these two cases, the Autorité took a special interest in guaranteeing the efficiency of the two series of commitments.

RECOVERY OF NON-HAZARDOUS OFFICE WASTE FOR RECYCLING

The environmental code defines waste as a substance or an object whose owner disposes of or which they wish to or have to dispose. Non-hazardous waste is that which can be processed in the same installations as domestic waste as they are not hazardous (e.g. paper, glass or packaging). It can be produced by households or companies: in the latter case, it is referred to as non-hazardous office waste (*déchets banals d'entreprises* (DBE)). Waste management

includes two specific steps: collection and management, which can either involve the disposal or the recovery of the waste.

Non-hazardous office waste management should develop in the years to come. In particular, the French Energy Transition for Green Growth Act of 17 August 2015 and its implementing decree create,for companies and public administrations, an obligation to collect and recover such waste at source as well as paper waste from offices separately from the other types.

THE LINK BETWEEN THE LITIGATION PROCEDURE AND THE MERGER CONTROL PROCEDURE

Since 2011, La Poste has offered collection and recovery of papers from offices, under the Recy'go name. On 19 April 2013, the FEDEREC (Professional federation of recycling companies) lodged a complaint with the *Autorité de la concurrence* regarding practices implemented by La Poste in this second. To remedy the competition concerns raised by the investigation services, the La Poste group made commitments which were subject to a **market test in September 2017**.

On the same date (4 September 2017) La Poste and Suez announced their intention to create a full-function joint venture active in the non-hazardous office waste management sector.

Facing an unprecented situation, the *Autorité de la concurrence* analyzed the issues posed by each case in view of the objectives of each procedure.

The results of the two analyses led the companies to offer similar commitments in both procedures. The *Autorité* has endeavored to guarantee the efficiency of the two sets of proposed commitments. It ensured, in particular, that La Poste's commitments under the framework of the litigation decision would not be rendered ineffective by the completion of the merger.

THE COMPETITION ISSUES EXPRESSED

In their preliminary assessment, the investigation services identified competition issues regarding the risk of using a competitive advantage that could not be

reproduced by competitors linked to the universal postal service. The use of the oath of the mailmen as a confidentiality guarantee and the use of the group's postal clients' existing contacts for the promotion and sale of collection services are especially concerned.

Competition issues concerning pricing practices regarding waste collection services were also identified.

THE ANALYSIS FROM THE AUTORITE IN THE MERGER CONTROL PROCEDURE

The project to create a joint venture is not liable to generate competition problems in the different markets of collecting, managing, recovering and trading in waste, because of the small extent of the overlapping activities between La Poste and Suez and the presence of important operators, some of which are present in several of these markets.

However, the market test (consultation of the sector's stakeholders) carried out under the framework of the merger showed that similar competition issues to those identified by the *Autorité de la concurrence* in the litigation procedure were liable to occur after the creation of the full-function joint venture. In particular, in view of the position held by La Poste in the different postal services markets: the parties are liable to benefit from competitive advantages linked to the universal postal services that cannot be reproduced; and to use them during the marketing and promotion of the joint venture's services. Additionally, La Poste could provide the joint venture with services necessary to its service offers at prices below the costs that it actually generates.

COMMITMENTS ADOPTED BY THE AUTORITE

To address the competition concerns, the parties proposed the following commitments:

1. Regarding the litigation procedure

Regarding non-tariff aspects, the Groupe La Poste committed to :

- Measures to prevent the confusion of means between their waste collection services (non-hazardous office waste) and their universal postal service by:

o designing national communications in regard to waste collection services to avoid any confusion with the offers under the universal postal service;
o presenting commercial proposals (scoring, invoices) concerning waste collection services on materials avoiding all confusion with the offers under the universal postal service;
o setting up awareness-raising programs for staff in contact with clients of the waste collection services;

- And more specifically, by :

o Deleting all reference to the notion of the swearing-in of mailmen in the devices and materials used for sales promotion of waste collection services;
o Not setting up a policy to promote or sell services to clients when they are inquiring services linked to the universal postal service;

Regarding tariff aspects, the Groupe La Poste committed to:

- Developping a methodology for cost assignment guaranteeing compliance with competition law and valuing the use of the universal postal service for the promotion, marketing and delivery of non-hazardous office waste collection services;
- Using this methodology for price determination;
- Implementing profitability monitoring.

Finally, the Groupe La Poste also committed to establishing, for its staff, specific training on compliance with competition law if confronted by diversification (including tariff aspects for relevant staff).

2. Regarding the merger control procedure

To remedy the competition concerns identified during the market test, Suez and La Poste made the same commitments as those presented before, regarding the promotion and marketing of the new company's services.

La Poste committed, as far as it is concerned, to regulating its behaviour regarding the promotion and marketing of the joint venture's services and to pricing any services it provides to the full-joint venture at market price, via a cost handling methodology that complies with competition law.

For more details on the two cases, see the full text:
- of **Decision 17-D-26 of 21 December 2017 regarding practices implemented in the collection and recovery of non-hazardous office waste sector available on the Autorité's website**
- of **Decision 17-DCC-209 of 21 December 2017 regarding the creation of a joint venture between the La Poste and Suez RV France companies**

[1] *The merger had been refered to the Autorité by the European commission*

[2] *The FEDEREC is made up of more than 1,300 establishments, from very small firms to big corporation, throughout France and which activity covers the collection, sorting, recycling of industrial and household waste or the trading of raw material for recycling*

> Press Contact: Chloé Duretête +33 1 55 04 01 20 / Email



> See decision of the cour d'appel de Paris (5th July 2018)