For the first time ever, the Autorité de la concurrence blocks a merger

Published on August 28, 2020

Soditroy and the Association des Centres Distributeurs E. Leclerc were planning to acquire joint control of a Géant Casino hypermarket in the conurbation of Troyes.

This merger raised serious competition concerns relating to price increases for consumers.

Due to the absence of remedies capable of addressing the competition concerns identified, the *Autorité* had to block the merger.

Background

The *Autorité de la concurrence* today issues a decision in which it blocks the acquisition of joint control of a Géant Casino hypermarket located in the municipality of Barberey-Saint-Sulpice (Aube) by Soditroy and Association des Centres Distributeurs E. Leclerc (hereinafter "ACDLec").

- This is the first blocking decision issued in the field of merger control by the *Autorité de la concurrence* since it was invested with this power (2009).
- The merger would have created a duopoly between the hypermarket retailers Carrefour and E. Leclerc in the conurbation of Troyes, which would have facilitated tacit coordination in the catchment area concerned.
- The merger would also have led to an increase in prices due to the disappearance of any competition between the hypermarket subject to the takeover and the E. Leclerc hypermarket already present in the Troyes area.

- In the absence of suitable remedies, the *Autorité* decided to block the notified merger.

Parties to the transaction

The owner of Soditroy also owns SIPAN, which operates, under the E. Leclerc brand, a hypermarket located in Saint-Parres-aux-Tertres (Aube), two supermarkets located in Lusigny-sur-Barse (Aube) and in Rosières-près-Troyes (Aube) and four "pick-up points" ("drive-through"-type stores).

ACDLec is the body that defines the strategy of the E. Leclerc movement. Its members are the natural persons managing the companies operating E. Leclerc stores. ACDLec determines, for example, the conditions of approval for the E. Leclerc movement and signs the store agreements (or "sign" agreements), which the E.Leclerc retail store operators are required to obtain.

The hypermarket affected by the merger is located in Barberey-Saint-Sulpice and is operated under the Géant Casino brand. The store also has a petrol station.

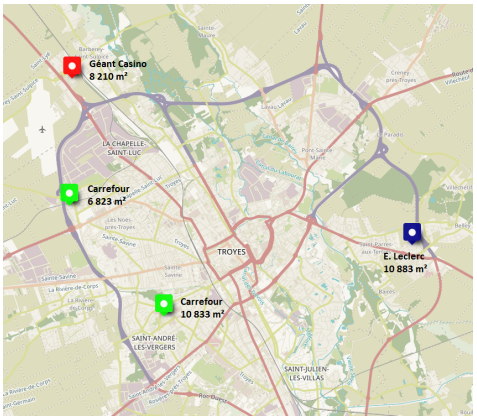
Relevant markets

The operators concerned are active in the upstream consumer product supply markets and the downstream retail distribution markets predominantly for food products.

The merger raised competitive concerns in the retail distribution market predominantly for food products for hypermarkets

Following an in-depth analysis of the proposed takeover (phase 2), which included a consultation of the operators in the area (hypermarkets, supermarkets, discount stores, etc.) and surveys of customers of Géant Casino

and the E. Leclerc hypermarket in Saint-Parres-aux-Tertres, the *Autorité* considered that the merger would create a duopoly between Carrefour and E.Leclerc and lead to significant risks of harm to competition in the retail distribution market predominantly for food products for hypermarkets in the conurbation of Troyes. This analysis was further substantiated by the presence of regulatory barriers to entry, making it highly unlikely that a new competitor of the hypermarket type would arrive on the market.



- *The disappearance of Géant Casino would have caused a significant loss of diversity for consumers*

In an area which, prior to the merger, had two Carrefour hypermarkets, a Leclerc hypermarket and a Géant Casino hypermarket, the disappearance of Géant Casino would automatically have led to a reduction in the diversity of products offered to consumers. Following the merger, the two E. Leclerc hypermarkets in the area (the hypermarket that would have become an E. Leclerc store and the current hypermarket operating under the E. Leclerc brand in Saint-Parres-aux-Tertres) would have had the same owners, the effect of which would have been to harmonise the products for sale and the marketing policies of the two sales outlets.

- *A risk of increased prices due to unilateral effects*

The *Autorité* noted that following changes in the pricing policy at the Géant Casino hypermarket in 2018, the latter's prices were fairly high compared to the prices of its competitors in the Troyes area, which would lead to a loss of customers and poor sales performance for this store. It considered that, regardless of the merger, these prices were probably going to fall, either following the takeover of the store by another buyer or a change to the sales or pricing policy adopted by the store. In respect of this situation, a takeover of the Géant Casino store by the Leclerc store would naturally give rise to a risk of increased prices (or lower price reductions) by eliminating the competition between these two stores.

The *Autorité* also considered that the merger would have created a risk of price increases at the E. Leclerc store in Saint-Parres-aux-Tertres. Once the Géant Casino store had been acquired by the E. Leclerc brand, it would constitute a very attractive alternative for customers of the E. Leclerc store in Saint-Parres-aux-Tertres. Compared to the situation prior to the merger, this store would now be in a position to increase its prices, as a significant share of the customers dissatisfied with the price increase would choose to do their shopping at the new E. Leclerc hypermarket in the area.

- *Risk of coordinated effects: facilitating the coordination of the behaviour of the sales outlets operated by Carrefour and E. Leclerc*

Lastly, the *Autorité* considered that, subsequent to merger, the new entity would easily have been in a position to tacitly coordinate its behaviour in the Troyes area with that of Carrefour.

The *Autorité* first noted that the retail distribution market for predominantly food products is a transparent market in which the stakeholders can easily find out about the behaviour of their competitors (prices, promotions, etc.). Then, based on the fact that the merger would have created a balanced duopoly in the Troyes area both in terms of store surface area and the geographical location of the different sales outlets, the *Autorité* found that each of the stakeholders would have been in a position to retaliate in the event of divergences from the common

line adopted, which would not have been possible prior to the merger. Lastly, the *Autorité* considered that there would be no current or potential competitor remaining capable of challenging coordinated behaviour by Carrefour and E. Leclerc.

The efficiency gains would not have offset the risks linked to the merger

When examining the expected contribution of the merger to economic progress, the *Autorité* considered that the parties to the transaction had not proven that the planned merger would generate sufficient efficiency gains to counterbalance the competition concerns identified.

The proposed remedies were not likely to address the competition concerns identified

In order to address the competition concerns identified, the notifying parties submitted a commitment proposal that would, according to them, remedy the concerns identified on the retail distribution market for predominantly food products by proposing to reduce the surface area of the Géant Casino store from 8 210 m^2 to 6 000 m^2.

The commitments proposed by the parties were not considered to be tailored to eliminating the competition concerns identified. Such a commitment would in fact reduce the product offering available to consumers.

Since no suitable remedy could be envisaged in the form of injunctions or commitments, the *Autorité* decided to block the merger.

- ***The full text of decision 20-DCC-16 of 28 August 2020 will be published shortly on the website of the Autorité***

See press release of 24 October 2019 on the opening of an in-depth examination …

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