The Autorité clears, subject to conditions, the acquisition of Société de Financement Local by Caisse des Dépôts et Consignations

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On 24 July 2020, the *Caisse des Dépôts et Consignations* (CDC) notified the *Autorité de la Concurrence* of its plans to acquire *Société de Financement Local* (SFIL).

The parties

The *Caisse des Dépôts et Consignations* is a public institution that carries out missions of public interest in support of the public policies implemented by the State and local government bodies. CDC's activities are open to competition and focus around four areas:

- the environment,
- real estate,
- investment and private equity
- services. Established by the French Act of 28 April 1816, CDC was placed " *under the supervision and guarantee of the legislative authority".* The intent of this method of governance was to ensure the independence of this institution, which manages private funds requiring special protection.

CDC controls *La Banque Postale* (LBP), which conducts banking and insurance activities for individuals, businesses and local public organisations. Together with the State, CDC jointly owns the Bpifrance Group, whose subsidiary, *Bpifrance Financement*, is active in foreign trade investment.

Société de Financement Local (SFIL) is a public development bank established on 1 February 2013 following the liquidation of Dexia. SFIL is currently entirely publicly owned. The European Commission's decision of 28 December 2012

authorised SFIL to refinance local public sector loans granted by LBP for fifteen years. In its decision of 5 May 2015, the Commission authorised SFIL to refinance export credits for 5 years. The European Commission renewed this authorisation for another 7 years in its decision of 7 May 2020.

Given the activities of CDC and SFIL, the *Autorité* examined the effects of the transaction on the local government financing and export financing markets.

The transaction has no impact on the local government financing market

The *Autorité* has determined that the conditions under which SFIL and LBP conduct their activities in this market are strictly regulated by the Commission's 2012 decision. The *Autorité* further noted that prior to the transaction, LBP was SFIL's only contractor in the market. As the transaction will have no effect on the structure of the local government financing market, competition problems were ruled out.

The Autorité has identified risks that could restrict competition in the export credit sector with respect to refinancing offers and confidentiality

SFIL is a leading player in the export refinancing market, whereas CDC is active in the export financing market via *Bpifrance Financement* and potentially through LBP in France. Given the vertical relationship between these two markets, the *Autorité* examined the risk of SFIL showing favouritism to LBP and *Bpifrance Financement* to the detriment of other operators when granting refinancing offers.

In the case of *Bpifrance Financement*, the *Autorité* was able to rule out any risk of a vertical effect[1] between its financing activities and the refinancing activities of SFIL, noting that *Bpifrance Financement* only intervenes to offset a lack of private

supply by applying the principle of “active subsidiarity”.

For LBP, the *Autorité* ruled out the risk of SFIL showing favouritism to LBP by granting it better rates than those offered to other banks requesting refinancing, as the 2015 and 2020 decisions of the Commission strictly dictate how SFIL establishes the rate offered to commercial banks.

However, the *Autorité* considered that if LBP requests refinancing, SFIL could refuse to make a refinancing offer to the banks consulted by the borrower or exporter so that they do not participate in financing the transaction. This kind of strategy would automatically incite the borrower or the exporter to choose the LBP offer.

The *Autorité* also believes that after the transaction, SFIL could be encouraged to remove clauses relating to the confidentiality of information gathered in the course of refinancing transactions from the memoranda of understanding concluded with commercial banks, which would give LBP access to confidential information about its competitors.

The commitments made by CDC eliminate any risks of anticompetition identified by the Autorité

CDC has agreed not to show favouritism to LBP in the refinancing process for the duration of the authorisation granted by the Commission’s 2020 decision. The commitments provide for a mechanism involving *ex ante* control of a trustee to be invoked in situations where LBP competitors could be excluded. This control mechanism is important in guaranteeing the proper implementation of the non-discrimination commitment made by CDC.

CDC has also undertaken to maintain its confidentiality commitments under the memoranda of understanding entered or to be entered with commercial banks.

[1] *Vertical effects are examined when the transaction involves players from different levels of the value chain.*

> Full text of decision 20-DCC-126 of 18 September 2020 regarding exclusive control of Société de financement local by Caisse des dépôts et consignations will soon be published on the Autorité's website