The Autorité de la concurrence fines three companies for having maintained agreements containing exclusive import rights for termite traps after the entry into force of the « Lurel » law

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Located in the intertropical zone, the French overseas collectivities are lands that are especially conducive for the development of termites. In order to combat this plague, the legal and regulatory framework imposes strict protection measures for buildings. In order to do so, buyers and owners can use various preventive and curative extermination methods, such as bait traps soaked with an active substance or biocide.

The Dow Agrosciences group currently produces, under the « Sentri Tech^{TM} » brand, the only biocide-based bait trap whose efficiency is certified overseas. Its traps are almost entirely imported in the concerned territories by a unique importer/wholesaler, which distributes them to dispensers and companies specialized in the anti-termite services.

Bans of unjustified exclusive import rights agreements in the French overseas départments

The law of 20 November 2012 relating to economic regulation overseas, known as the “Lurel” law, forbade, as of 22 March 2013, agreements containing exclusive import rights in the overseas collectivities.

At the end of its investigation carried following an investigation from the DGCCRF, the *Autorité* noted that the elements of the case show that in this case ,

Dow Agrosciences maintained exclusive import clauses in the contracts relating to the marketing of its bait traps for several years and after the entry into force of the "Lurel" law. According to these agreements, Emeraude was the only importer/wholesaler of « Sentri TechTM » products in Réunion, while CTC was the only importer/wholesaler in the French Antilles and French Guiana.

Additionally, the *Autorité* assessed that Emeraude, which was the only importer/wholesaler of bait traps refused, in a discriminatory manner, to provide these products to the Stop Insectes undertaking which had the required certification in the anti-termite control. This behavior constituted an abuse of dominant position.

The sanctions imposed

In light of the circumstances of the case, the *Autorité* pronounced the following sanctions:

Dow Agrosciences	Emeraude	CTC
60 000 €	10 000 €	5 000 €

The *Autorité* considered that these moderate sanctions, which took into account the size of concerned overseas undertakings, were proportionate as soon as a dissuasive and remedial effect was reached via injunctions. Thus, the *Autorité* enjoined the Dow Agrosciences group to delete from its contracts for the next two years, any disposition establishing an import exclusivity and to inform in the next two months, by letter, all of the companies using the « Sentri Tech^{TM} » products of the deletion of the exclusive import clause.

See the text of Decision 18-D-03 of 20 February 2018