Dental care networks: the National Council and five departmental councils of the College of Dental Surgeons and two trade union federations fined for boycott

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The *Autorité de la concurrence* hands out fines worth €4 million to the National Council and five *departmental* councils of the College of Dental Surgeons and two trade union federations representing dental surgeons (the FSDL and the CDF) for boycotting dental care networks (including Santéclair, Kalivia, Itélis) recommended by complementary health insurance schemes.



Background

After receiving a referral from Santéclair, and after conducting unannounced inspections in 2015 and following an in-depth examination, the *Autorité de la concurrence* has fined the National Council of the College of Dental Surgeons (CNOCD), the *departmental* councils of the College of Dental Surgeons (CDOCD) in Isère, Bouches du Rhône, Dordogne, Haut-Rhin and Bas-Rhin and the Federation of Private Dental Surgeons' Trades Unions (FSDL) for their involvement, each in its own way, in a single, complex and continuous breach intended to hamper the activity of dental care networks between 7 February 2013 and 18 December 2018. It has also fined the National Confederation of Dental Trade Unions (CNSD), which is now called *Chirurgiens-dentistes de France* (CDF), for hampering the activity of these networks through separate practices between November 2014 and 18 December 2018.

The *Autorité* hands out fines for boycott actions against care networks designed to hamper their operation. By their very nature, they constitute breaches of competition law. These practices are particularly serious in that the purpose of the affected networks is to facilitate access to care for patients by reducing the excess costs to be borne by those patients. The "excess to be paid" is one of the main reasons people forego dental care.

The *Autorité* took account of the specific and decisive role played by the FSDL, the CNOCD and the Isère CDOCD in the breach, the repeated nature of the practices as regards the CNOCD and the Bas-Rhin CDOCD and, lastly, the more limited involvement of the other CDOCDs. In total, the amount of the fines is a little over €4M, distributed as follows:

Bodies	Fines in euros

National Council of the College of Dental Surgeons (Conseil national de l'ordre des chirurgiens-dentistes)	3,000,000
Isère Departmental Council of the College of Dental Surgeons (Conseil départemental de l'ordre des chirurgiens-dentistes de l'Isère)	57,000
Bouches-du-Rhône Departmental Council of the College of Dental Surgeons (Conseil départemental de l'ordre des chirurgiens-dentistes des Bouches du Rhône)	23,000
Dordogne Departmental Council of the College of Dental Surgeons (Conseil départemental de l'ordre des chirurgiens-dentistes de Dordogne)	4,000
Bas-Rhin Departmental Council of the College of Dental Surgeons (Conseil départemental de l'ordre des chirurgiens-dentistes du Bas-Rhin)	22,000
Haut-Rhin Departmental Council of the College of Dental Surgeons (Conseil départemental de l'ordre des chirurgiens-dentistes du Haut-Rhin)	11,000

Federation of Private Dental Surgeons' Trades Unions (Fédération des syndicats dentaires libéraux (FSDL))	216,000
National Confederation of Dental Trade Unions (Confédération nationale des syndicats dentaires) (CNSD, now the CDF)	680,000
TOTAL	4,013,000

COMPLIANCE

Advice to undertakings

Seeking to act as a concerted obstacle to the entry or the development of another actor in the market exposes you to boycott sanctions.

Funding of dental care in France and care networks

The dental care expenditure budget in France is considerable (€11.3 billion in 2017) and the statutory health insurance scheme only bears the cost of a relatively small proportion of this expenditure (33.2% in 2017). Complementary health insurance schemes (OCAM) therefore play a significant role in their funding (40.9% of dental health expenditure in 2017), with a very substantial excess to be funded by households (22.2%), which is one of the main reasons for foregoing care.

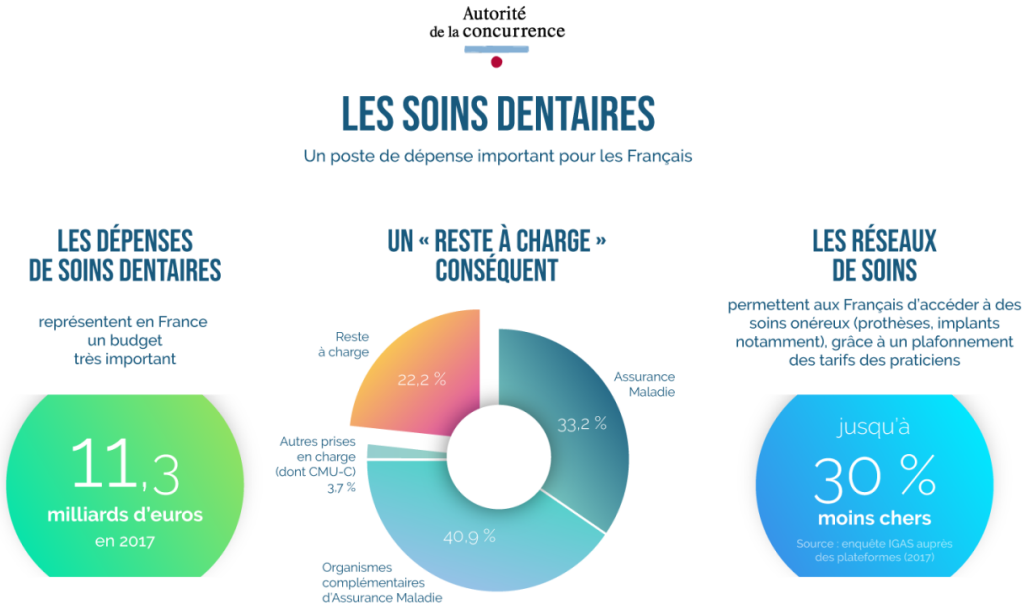
Care networks are established on the basis of agreements concluded between complementary health insurance schemes and health professionals and reflect the desire of complementary health insurance schemes to manage the constantly rising costs of health expenditure in the sectors in which they are the main funders (ophthalmic, dentures or hearing aids). The existence and characteristics of the care networks available to policyholders are a fundamental aspect of the competitive positioning of complementary health insurance schemes, particularly in respect of businesses, which pay particular attention to the existence of networks when they choose a complementary health insurance scheme for their employees. The legal framework for care networks was established by law 2014-57 of 27 January 2014, known as the Le Roux Act, to enable mutual insurance companies to adopt differentiated rates of reimbursement depending on whether the policyholder uses a care network or not[1].

A care network always covers a specific sector of activity (ophthalmic, dental or hearing aids mainly). It can be created and managed directly by the complementary health insurance schemes or by a third party, in this case a management platform, on behalf of one or more complementary schemes. Management platforms, which were created in the 2000s, have become increasingly important in the complementary health insurance sector. The General Inspectorate for Social Affairs has registered six networks (Carte

Blanche, Itelis, Istya, Kalivia, Santéclair and Sévéane) and has indicated that, in 2016, they provided cover for 45 million people (policyholders and beneficiaries), i.e., three quarters of those people that have a complementary health insurance policy.

Dental care networks, however, only work with a limited number of professionals and are far less well developed than the optician networks.

[1] A number of mutual insurance companies had been fined for such practices, even though they were authorised for insurance companies and provident schemes.



Dental networks (general practitioners) managed by the platforms (2)

Network	Carte Blanche	Itelis	Kalivia	Santéclair	Sévéane

Date of creation	2001	1998	2015	2003	1999
Number of dental surgeons	5750	2430	2346	2700	4613

Survey conducted in 2017. At that time, over 40,000 dental surgeons were practising in France (42,197 across all types of practices)
Santéclair and Itelis have also added a network dedicated to implantology to their network of general practitioners.

[2] Source : IGAS, "Les réseaux de soins" [Care Networks], Report compiled by N. Durand and Dr J. Emmanuelli, June 2017, 2016-107R.

Practices adopted by the National Council of the College of Dental Surgeons, the Isère, Bouches-du-Rhône, Dordogne, Haut-Rhin and Bas-Rhin *departmental* councils and the FSDL

The anticompetitive practices adopted by the CNOCD, the FSDL and the various ***departmental*** councils, either jointly or separately, stem from on overarching plan with a single anticompetitive objective, i.e., to hamper the activity of Santéclair and care networks in general.

These practices took the form of a campaign of complaints and multiple complementary practices that served the same end.

Campaign of complaints and call for a boycott

The *Autorité*'s investigation revealed that, after an initial fine handed out to the College of Dental Surgeons by the *Conseil de la concurrence* in 2009[1], the CNOCD, the FSDL and the Isère CDOCD sought once again to develop a strategy designed to hamper the activity of Santéclair, for example by instigating disciplinary proceedings against dental surgeons affiliated to Santéclair. Those involved in the practices hoped that the *Autorité* would not be competent to penalise such conduct. It was with this in mind that, to quote one of the vice-presidents of the FSDL, a "*unified and concerted action" was adopted "by the FSDL and the National College along with precautions to avoid legal action*"

The CNOCD, the Isère CDOCD and the FSDL jointly organised a campaign to encourage dental surgeons to file complaints with the *departmental* councils against their colleagues who were affiliated to Santéclair. More specifically, each complaint was then to be used to put pressure on the relevant practitioner during the pre litigation procedure with the aim of getting the practitioner to terminate his contract with a network.

Dental surgeons were invited to boycott Santéclair nationwide. For example, a letter entitled "*CALL FOR RESISTANCE AGAINST SANTECLAIR"* was sent out by the president of the FSDL on 8 October 2013 to the other members of the board of directors of this trades union, and then disseminated widely to practitioners. Dental surgeons whose patients received a letter from Santéclair mentioning three names of dental surgeons belonging to the network were encouraged to file a complaint against them with the competent *departmental* council of the college for collusion, poaching or attempted poaching of patients and prohibited advertising, even though these practitioners had not infringed these ethics rules.

As exemplified by this message, the FSDL and the college had divided up the roles "*the FSDL would encourage colleagues to take action against the networks*" while the college *"would fight the fight"*… This same message reads: "[…]*, after speaking* [to the president of the CNOCD] *(who has had it in for SantéClair since it lost the court case and 80,000 euros along with it), it would be a good idea for practitioners whose patients receive this letter mentioning the 3 names to first file a complaint against each of the signatories or just one of them with the departmental* [council of the college]*.*

After that, a mediation hearing will be held in relation to potential infringement of the following Articles of the Code of Ethics […] *».*

An exchange via Facebook on 11 June 2014 between the president of the FSDL and a member also highlights this overarching plan: "*I have received assurances from* [the president of the CNOCD] *that he will do everything in his power to destroy Santéclair..."*.

The existence of a plan coordinated by the CNOCD and the FSDL is also highlighted in a newsletter by the La Réunion branch of the FSDL, which reads as follows: *"The FSDL, in conjunction with the National Council of the College, will support you in this action in order to put a stop these unacceptable practices".*

Lastly, various evidence collected during the investigation attests to the fact that one of the two vice-presidents of the FSDL gave regular updates to the president of the CNOCD and to the Isère CDOCD regarding the campaign of complaints.

Additional actions

Each of these three bodies proceeded to take individual action designed to ensure the success of this campaign and, more generally speaking, to hamper the activity of all care networks, while the Bouches-du-Rhône, Dordogne, Haut-Rhin and Bas-Rhin CDOCDs also adopted practices targeting these networks.

- Drawing on its moral authority and ability to influence the *departmental* councils, **the CNOCD** sent a circular to the latter in which it was suggested

that these networks were breaching the code of ethics. The *Autorité* noted that the significance of the "Agreements" circular was decisive since it was designed to guide the thinking of the CDOCDs in charge of examining the contracts concluded by the practitioners working within its jurisdiction and the care networks.

In this respect, despite the adoption of the Le Roux Act and the decisions issued by the disciplinary authorities, which, since 2015, have systematically concluded that dental surgeons that join Santéclair are committing no disciplinary breach in doing so, the National Council has not amended this circular, which constituted, at least until December 2017, the reference document "*for any queries raised by departmental councils of the college regarding agreements with care networks*". Thus, by suggesting to the *departmental* councils that the care networks were infringing the code of ethics, the CNOCD was encouraging the CDOCDs to ask practitioners under their jurisdiction to terminate their affiliation.

- As regards the **Isère CDOCD**, it drafted and circulated two letters to all practitioners in the Isère *département* in early 2014 and early 2015, recalling their obligation to register their contracts with the council. These letters tended to call into question the compatibility of the contracts concluded with the care networks with the code of ethics, for example by mentioning the complaints filed "*for unethical advertising, poaching of patients and collusion*" and by alluding to "*conflictual situations*" arising from the conclusion of these contracts.

The Isère CDOCD then forwarded these two letters to all the other *departmental* councils so that they could copy its practice. The letter sent with the communication reads as follows: "*We thought you should be aware of our initiative, since all of the departmental Councils need to have the same approach to a situation that could become controversial*". Subsequently, several *departmental* councils did indeed send their members letters similar to those sent by the Isère CDOCD.

- The **FSDL**, for its part, mainly communicated with its members or supporters to try to get them to file complaints against practitioners that were affiliated to Santéclair, to terminate or refuse to sign any affiliation

agreement with Santéclair, to call into question the compatibility of the agreements concluded with Santéclair with the code of ethics and to notify them of the number of complaints already filed and the number of contracts terminated.

The actions of the FSDL also targeted the Kalivia and Itélis networks, as well as the network of Assurances du Crédit Mutuel, which was in the process of being set up, and its future partners, such as GACD.

By way of an example, the evidence collected during the investigation included an article on a website of the FSDL entitled "*Testimony of a practitioner following a case of patient poaching",* which reads as follows*:*

"*By stepping up our actions with your support, **we will eventually completely eradicate** these commercial networks, which attempt to crudely poach our patients …[…].*

We can also mention the publication in June 2014 of an article in "Libéral Dentaire" containing the testimony of a "repented" practitioner who used to be affiliated to Santéclair, which reads as follows:

"I understand why some colleagues file complaints with the departmental branch of the College of Dental Surgeons on grounds of patient poaching, collusion and practising dentistry as if it were a business. (…) *Personally speaking, I am happy that I saw how things work from the inside and just as happy to have got out!*

Now it is up to YOU, as a member of the network, to do the same as I did and to think about whether it is justified to continue your affiliation !!!

And YOU, colleagues, Santéclair will one day ask you to register with them, in which case I hope that these few lines above will help you to take a considered decision. "

We can also mention an anonymous letter entitled "**message to fellow colleagues**" sent out in February 2015 to several hundreds of practitioners and to several regulatory bodies, containing a black list of practitioners affiliated to Santéclair. In an email, the president of the FSDL justifies the decision to disseminate the list in the following terms: *"Its aim is not to show them that they are biting the hand that feeds them, as we all know that the main incentive for being part of a network is to poach your neighbour's patients, but to SHAME them by*

disclosing their names to all practitioners in the Var. At each training course, seminar, etc…., these people will now feel the disgusted gaze of their colleagues from whom they knowingly steal their patients. ”

A short time before sending out the “message to colleagues”, exchanges on Facebook between the president of the FSDL and the member behind the anonymous message were captured:

[1] In Decision 09-D-07, the Conseil de la concurrence had considered that, by exerting pressure on dental surgeons to leave or not join the Santéclair network, the regulatory bodies of the profession had adopted a practice that was tantamount to a call for a boycott, thereby infringing the provisions of Article L. 420-1 of the French Commercial Code (Code de commerce). In this case, the Conseil had handed out a fine worth 76,000 euros to the CNOCD and 600 euros to the Bas-Rhin CDOCD.

02/03/2015 10:25	President of the FSDL	“when are you going to get it done ???? The famous Schindler’s List Nico”
02/03/2015 10:26	Member	“I know, it is starting today”

02/03/2015 10:40	President of the FSDL	"at SC [Santéclair – added] they are going to say "f**k, we sent the summons last week and, to take revenge, they sent out the list of our partners anonymously… bastards"" (sic)
02/05/2015 20:19	Member	"Enola gay has been dropped, I repeat, enola gay has been dropped (partially for 300, 300 more to come)" (sic)

Lastly, the evidence in the case shows that the FSDL was very active on Facebook via groups such as "Les chirurgiens-dentistes ne sont pas des pigeons et encore moins des moutons [Dental surgeons are not fools and even less so sheep]" or within the "Eugenol" discussion forum. For example, on 1 November 2014, "***Patatrasse***" (alias of the president of the FSDL) posted the following message on a thread entitled "***Toujours santeclair [Always Santéclair]***", which had been opened on the Eugenol forum : "***Currently 93 colleagues from Paris have been summoned to appear before the College to explain the advertising by AXA within the framework the Itelis network and yesterday I met with four colleagues at a mediation meeting, they have understood the issue and want to avoid being brought before the disciplinary committee".***

Lastly, in order to hamper the creation of a new network by Assurances du Crédit Mutuel, which wanted to develop its activities in the field of implantology, the FSDL exerted huge pressure on the planned supplier for the future network, GACD, and launched a fully-fledged campaign on social networks calling for a

boycott. In an article published on its website on 22 November 2014, the FSDL stated the following:

"The FSDL was shocked to note that, among the exclusive suppliers likely to be chosen by the funders of this network, we have GACD, Euroteknica (implants) and Lyra (3D imaging[…]"

"*At the same time, a message intended for the whole profession was sent over social networks in order to ensure that as many colleagues as possible contact the marketing department of GACD to express their discontent"*

On the Eugenol forum, a thread relating to the "*Creation of implanto network Crédit Mutuel/GACD/Euroteknika"* was opened by the president of the FSDL (under the alias "Patatrasse"). It reads as follows:

"*I would ask you to read the appended document carefully. An invitation to create a network similar to SantéSombre which states its intent "patients will be sent to..."*

Take steps in respect of the following companies :

-CrEdit Mutuel

-EurotekniKa

-GACD".

- Lastly, **the Bouches du Rhône, Dordogne, Bas-Rhin and Haut-Rhin CDOCDs** advised their members not to enter into or continue their contractual relations with networks as they ran the risk of breaching the code of ethics. Some communications even stated that such breaches could be subject to penalties.

Practices adopted by the CNSD

The CNSD (which is now the CDF) is a confederation of 100 *departmental* trades unions with over 12,000 practitioner affiliates, which equates to around one third of private dental surgeons. In November 2014, this body took a stance against care networks on several occasions. The practices adopted have mainly consisted of communication campaigns broadly disseminated over the website of the trade union and published in the journal " *Le Chirurgien-Dentiste de France [The Dentist in France"*" or press releases

Dental surgeons take a stance against care networks

The CNSD launched such a campaign in 2014 via a "*dental surgeons' manifesto"*, which each practitioner was called on to sign.

This manifesto rejected, for example, "*any affiliation and* [invited] *members to leave networks that indulged in disinformation and systematically poached patients and disregarded the charter signed by complementary health insurance schemes*" and denounced, among other things, "*the slander, lies and poaching of patients by well-known financial platforms with the backing and blessing of the public authorities (Leroux Act regarding "networks")"*.

Patient communication campaign

The CNSD also waged a communication campaign designed to discourage patients from using the practitioners recommended by these networks. The practitioners were invited to give "*a flyer to your patients (…) at the same time as your estimate in order to provide them with additional information"* The arguments put forward in this flyer called into question the quality of the "*cheaper treatment"* and denounced the commodification of dental care.

Pressure exerted on Assurances du Crédit Mutuel (ACM) group and its future partners

Lastly, the CNSD also exerted pressure on ACM group and its potential partners in order to prevent the emergence of a new implantology care network.

None of these practices fall within the remit of the CNSD. They do show, however, its desire to force care networks out of the market. In respect of competition law, each of the practices constitutes a collective practice insofar as it is the expression of the joint desire of all of the members of the trades union.

Serious practices in their own right, which have disrupted the market

The disputed practices have had a significant impact on the market:

- Some 50 dental surgeons have left the Santéclair and Itélis networks as a result of the practices subject to the fines. In particular, Santéclair declared that it had lost almost one third of its partner practitioners from its implantology network.
- These practices have discouraged non-affiliated practitioners from concluding a partnership with a care network.
- They have caused ACM to postpone the date of creation of their future network and to abandon their initial project to provide implantology services at affordable rates to as many patients as possible (700 euros with an excess to be paid of 0 euros) in favour of a network specialising in dentures.
- In addition to the care networks, a number of suppliers of dental surgeons have also been targeted by the disputed practices, including the association Génération implant or the companies Dentaurum, GACD, Euroteknika and Lyra.
- Lastly, the disputed practices have obviously had repercussions for dental care prices. Insofar as the complementary schemes bear the costs of a

significant share of the dental costs, the stimulation of competition introduced by the care networks acts as a lever for bringing down the price of dental care services. According to Santéclair, this price reduction is around 15% for general dental care and 40% for implantology. IGAS was also of the opinion that the prices charged by the care networks could constitute significant price reductions for patients of up to 30%.

The *Autorité* considered that the boycotts that have been penalised were particularly serious

Care networks are set up in order to facilitate access to care, particularly by reducing the excess to be paid by patients. This objective is particularly crucial for dental care, which is a sector where patients are most likely to forego care for financial reasons. The various boycotts of the care networks adopted by the FSDL and the regulatory bodies were combined with the practices of the CNSD, which had the same goal, and which exacerbated their effects.

These practices are particularly serious since they have been adopted by regulatory bodies, which have taken advantage of their moral authority to encourage their members to force service providers out of the market, and by the two main dental trades unions, which, due to their advisory and informational roles, play a specific role in terms of compliance with the legal provisions and dissemination of applicable laws.

These practices are particularly deplorable in that the national council of the college had already been fined twice before on similar grounds and is therefore a repeat offender. All of those involved in the practices were therefore aware of the risks they were running if they boycotted the care networks. The *Conseil* had already handed out fines for this type of practices, which had been adopted by

several regulatory bodies, including the CNOCD and the Bas-Rhin CDOCD, in Decision 09-D-07 of 12 February 2009 on a referral made by Santéclair. In an email, the president of the FSDL in La Réunion, alludes ironically to the 2009 fines: "*I am reading the decision of the conseil de la concurrence and have noted the following points :*

(…) the Conseil de la concurrence has no oversight over ethical issues, which is the exclusive competence of the college and the administrative justice system. Therefore, Santéclair can take no action against action taken by regulatory bodies against colleagues that have signed agreements (...)". "A rather interesting detail: the fines handed out by the conseil de la concurrence are proportionate to the resources of the parties.

Resources CNO 2007 : 7,620,888. fine : 76,000 euros, i.e., 1% of their annual resources.

The fines handed out to the CDO are insignificant (between 300 and 600 euros! ".

The organisation of the complaints campaign specifically targeted Santéclair, not directly, but via the practitioners affiliated to this network, in order to avoid the risk of being fined by competition authorities.

To determine the amount of the fines, the *Autorité* took into account all of this evidence and the financial capacity of the bodies subject to investigation and determined that the CNOCD, the FSDL and the Isère CDOCD had played a decisive role, as well as the repeat nature of the situation in which the CNOCD [4] and the Bas-Rhin CDOCD had placed themselves as regards similar practices [5]. All of this evidence led to the imposition of a fine at the top end of the threshold set by the French Commercial Code (*code de commerce*).

[4] Decision 05-D-43 of 20 July 2005 on practices implemented by the Departmental Council of the National Order of dental surgeons of the Puy-de-Dôme and the National Council of the National Order of dental surgeons.

Decision 09-D-07 of 12 February 2009 on a referral by Santéclair in relation to practices adopted on the top-health insurance scheme market.

[5]Decision 09-D-07 of 12 February 2009 on a referral by Santéclair in relation to practices adopted on the top-health insurance scheme market.

DECISION 20-D-17 OF 12 NOVEMBER 2020

regarding practices implemented in the sector of dental care surgery

See full text of the decision

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