

The Autorité de la concurrence declines its competence for ruling on practices implemented in French Polynesia

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In its decision of 22 August 2019, the *Autorité polynésienne de la concurrence* ruled that the Wane Group had breached the Polynesian Code of Competition Law (*code de la concurrence polynésien*) by engaging in abuse of its dominant position in the beverage distribution sector. Using the avenues for appeal provided for by Polynesian Law, the Wane Group lodged an appeal on the merits against that decision before the Paris Court of Appeal.

The case was passed on to the Autorité

Prior to that decision being adopted, the Wane Group submitted to the First Presiding Judge of the Paris Court of Appeal a request for the case to be transferred for reasons of legitimate suspicion of bias regarding the President of the *Autorité polynésienne de la concurrence*. Following a judgment of the French Supreme Court (*Cour de cassation*) annulling the ordinance declaring that appeal inadmissible, the First Presiding Judge of the Paris Court of Appeal ruled again the request for legitimate suspicion admissible, and, properly grounded, appointed the *Autorité de la concurrence* to rule on the infringement proceedings that resulted in the disputed decision. Following this ordinance, the *Autorité polynésienne de la concurrence* passed on the case files regarding Wane group to the *Autorité de la concurrence*.

Under the applicable provisions, the Autorité does not have the competence for ruling on practices in French Polynesia

For its part, the *Autorité de la concurrence* considers that the facts submitted to it for examination do not come within its subject matter competence. The *Autorité de la concurrence* is competent, under the powers entrusted to it by the legislator, to rule on:

- the application of French national and European competition law in the territory of Metropolitan France (i.e. the Home Country of France), in French overseas *départements*, and in the French "overseas collectivities" (overseas local authorities) of Saint Barthélemy and Saint-Martin; and
- the application of French national competition law only, in the "overseas collectivities" of Saint Pierre et Miquelon and Wallis et Futuna.

Therefore, the competence of the *Autorité* does not cover French Polynesia. In this overseas territory, control of anticompetitive practices lies by virtue of the provisions of a "law of the country" ("*loi du pays*") adopted through the procedures provided for by Article 74 of the Constitution and the organic law establishing the status of French Polynesia under the exclusive jurisdiction of the *Autorité polynésienne de la concurrence* (which was created in 2015 by the country's law n° 2015-2 of February 23, 2015).

The *Autorité de la concurrence* has consequently, declined its competence to rule on the file transmitted by the *Autorité polynésienne de la concurrence*.

DECISION 20-D-18 OF 18 NOVEMBER 2020

regarding practices implemented in the territory of French Polynesia

See full text of the decision

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