

27 July 2018: Fnac's acquisition of Darty

Published on July 27, 2018

The *Autorité de la concurrence* fines Fnac Darty Group €20 million for failing to divest itself of three stores, which was the pre-condition for clearance of the transaction.

The *Autorité* also orders Fnac Darty to divest itself of two stores in lieu of those that it failed to sell.

The *Autorité* had cleared, in 2016, the transaction on condition that Fnac Darty divest six stores in Paris and the Parisian region

In 2016, when it examined Fnac's acquisition of Darty, the *Autorité de la concurrence* noted that the transaction was likely to harm competition in the retail markets for brown (televisions, hi-fi and audio equipment) and grey products (personal computers, screens, peripheral devices, telephones) due to the absence of competitive pressure in several catchment areas, especially in Paris¹. In order to remedy the anti-competitive effects of the transaction, Fnac had committed to divesting itself, by 1 August 2017, of six stores located in Paris and the Parisian region: Darty Wagram, Darty Italie 2, Fnac Beaugrenelle, Darty Belleville, Darty Saint-Ouen and Darty Vélizy.

Three of the six stores were not sold to an approved buyer before the deadline: Fnac Beaugrenelle, Darty Belleville and Darty Saint-Ouen

The *Autorité de la concurrence* noted that Fnac Darty had failed to meet its divestiture commitments. It failed to submit a divestiture contract or put forward a buyer for the Fnac Beaugrenelle store and the buyer presented for the Darty Belleville and Darty Saint-Ouen stores was not approved by the *Autorité*, as it did not meet all the requisite characteristics to compete effectively with the new

entity in the brown and grey goods markets.

The failure by Fnac Darty to meet half of its commitments has distorted competition and limited consumer choice

Isabelle de Silva, President of the *Autorité de la concurrence*, stated: “*When a company makes commitments to the Autorité de la concurrence in order to receive clearance to acquire another company, it must understand that it has to deliver on its commitment. All commitments must be observed, save for exceptional circumstances. By failing to divest itself of three of the six stores it had committed to sell within the prescribed deadline, Fnac Darty has committed a serious breach of its obligations which prevented consumers from quickly benefiting from a new source of electronic products in Paris.*”

It is important that the company comply with all of its commitments. The commitments are a package, which covers all of the competition problems identified. By failing to comply with half of the commitments, Fnac Darty has undermined the overall balance sought by the decision and hindered the restoration of competition in several catchment areas, thereby depriving consumers of alternatives.

In order to determine the amount of the fine imposed, the *Autorité* took into account all of the circumstances of the case and noted the efforts made by Fnac Darty at the beginning of the commitment period to divest the three first stores. However, it considered that, confronted with difficulties in finding a buyer for the three other stores, it was Fnac Darty's responsibility to take the appropriate measures to fulfill its commitments, for instance by asking the *Autorité* to substitute other stores for those it wasn't able to sell.

In view of these elements, the *Autorité* hands out a fine of €20 million to Fnac Darty and orders it to divest itself of the Darty Montmartre and Darty Passy stores in lieu of those that were not sold.

The *Autorité* also orders Fnac Darty to sell the Darty Montmartre and Darty Passy stores to a competitor, which will have to be approved by the *Autorité de la concurrence*, in lieu of the divestiture commitments that were not carried out.

These injunctions will serve to restore the competitive structure of the brown and grey product retail markets in the relevant catchment areas of Paris.

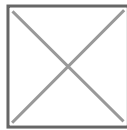
This is the first time that the *Autorité de la concurrence* has fined a company for non-compliance with structural commitments which conditioned a clearance of a transaction (consisting of divesting assets by a given deadline). As a reminder, the *Autorité* had nonetheless imposed fines on behaviour that removed the substance from commitments that had been made².

1 See the press release of 18 July 2016

2 Bigard/Socopa (decision 12-D-15) and Numericable/SFR (16-D-07/conditions of divestiture of Outremer télécom and 17-D-04/equipping buildings with fibre optic)

> See the full text of the decision 18-D-16

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> This decision was submitted before the Conseil d'Etat (pending case)