Bisphenol A in food containers: the general rapporteur indicates having stated objections to 101 companies and 14 professional organisations

Published on October 12, 2021

The General Rapporteur of the Autorité de la concurrence indicates that objections were stated a few days ago in the manufacture and retail of foodstuffs in contact with materials which may or may have contained bisphenol A or its substitutes sector.

The implicated entities are criticised for having agreed not to communicate on the presence or on the composition of certain materials in contact with food, to the detriment of consumers.

Yesterday, investigation services of the Autorité de la concurrence stated objections to 14 professional organisations and 101 companies.

This investigative act opens the *inter partes* proceedings and allows parties the exercise of the rights of the defence. It cannot prejudge the guilt of the entities which have received the statement of objections. Only the investigation conducted in an *inter partes* manner, with due regard for the concerned parties' rights of the defence, will enable the board to determine, after an oral hearing, whether or not the objections are founded.

The Autorité de la concurrence will not make any other comment on the identity of the companies or associations of companies concerned or on the practices concerned.

The Autorité will now communicate on statements of objections

Article L. 463-6 of the French Commercial Code provides that the Autorité may publish brief information relating to the acts it performs with a view to the investigation, observation or sanction of anticompetitive practices, when the publication of this information is carried out in the public interest and in strict compliance with the presumption of innocence of the companies or associations of companies concerned.

This possibility results from an amendment to the Commercial Code by ordinance 2021-649 of 26 May 2021 relating to the transposition of Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 aimed at providing Member States' competition authorities of the means to more effectively enforce competition rules and to ensure the proper functioning of the internal market.

Other European competition authorities use this option, such as the European Commission, the Austrian, Belgian, Greek, Dutch and Portuguese competition authorities.

What is a statement of objections?

The statement of objections is the "indictment". This document is sent by the Autorité's investigation services to companies or organisations suspected of having implemented anticompetitive practices (mainly cartel and abuse of a dominant position).

This investigative act opens the *inter partes* proceedings before the Autorité during which the parties can make any legal or factual observation, while respecting the rights of the defence.

The written *inter partes* proceedings was reformed by the law of 3 December 2020, known as the "DDADUE law".

Now, depending on the characteristics of the case, there may be one or two written *inter partes* rounds.

In all cases, the case gives rise to an oral hearing before the board, during which the parties, the government commissioner, and, where applicable, witnesses or experts are heard.

A statement of objections does not prejudge in any way the culpability of the companies or organisations concerned. It is only at the end of the investigation, and following a hearing, that the board independently determines whether the grievances are well-founded.



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