The Autorité de la concurrence fines the Nel Group from Mayotte for obstructing the investigation

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The *Autorité* today issued a decision in which it fined Mayotte Channel Gateway (MCG), which manages and operates the port of Longoni in Mayotte, and its parent company (Société Nel Import Export)[1] €100,000 for failing to respond to requests for information from the investigation services during an ongoing case.

An investigation opened following practices noted in the port of Longoni

The *Autorité* opened an investigation into practices in the port of Longoni following evidence submitted by the Directorate General for Competition Policy, Consumer Affairs and Fraud Control (DGCCRF). Having carried out dawn raids, in particular at the premises of MCG (see press release of 8 November 2019), the *Autorité* started proceedings ex officio.

Despite several reminders, MCG did not respond to the questionnaire sent by the Autorité de la concurrence.

The investigation services sent a request for information (questionnaire) to MCG as part of the investigation of the case. Despite several reminders, two extensions of the deadline for replies, giving the company a total of ten weeks to reply to the questionnaire, and a double reminder of the penalties for failure to reply, MCG has not provided the *Autorité* with a single reply ten months after the questionnaire was sent.

Refusal to cooperate with the Autorité is serious and undermines the effectiveness of its action

By knowingly refusing to respond to a repeated request for information from the *Autorité*, MCG undermined the effectiveness of the investigation services by preventing them from obtaining the answers they need to pursue the investigations against it.

This deliberate and repeated refusal to respond is serious. A company which knows that it is the subject of an investigation by the *Autorité* has an obligation to cooperate actively and honestly and respond promptly, fully and accurately to any request for information.

In light of these details, the *Autorité* imposed a €100,000 fine on MCG and its parent company, Nel Import Export. It also ordered the companies to provide, within one month, all the information and supporting documents in their possession in response to the requests made by the investigation services.

Compliance

Business Advice

The company under investigation is subject to an obligation of active and loyal cooperation, which implies that it must provide the investigating services with any information and evidence they request. Thus, a company's representatives, through their duly mandated counsel, where applicable, are required to provide complete, accurate and unaltered documents when requested to do so, and to respond promptly to requests for information.

The failure of a company to respond to the investigation services is likely to constitute obstruction under the terms of the second paragraph of V of Article L. 464-2 of the French Commercial Code (Code de commerce). Such practices obstruct the investigative powers of the *Autorité's* agents and may be fined.

[1] The two companies form the Nel Group.



Previous cases of obstruction fined by the Autorité

The *Autorité* has fined cases of obstruction on several occasions:

Decision 21-D-16 of 9 July 2021 regarding obstruction practices by Nixon

Decision 21-D-10 of 3 May 2021 regarding obstruction practices by the Fleury Michon Group

Decision 17-D-27 of 21 December 2017 regarding obstruction practices by Brenntag*

Decision 19-D-09 of 22 May 2019 regarding obstruction practices by the Akka Group

** These decisions have been appealed.*

DECISION 21-D-28 OF 9 DECEMBER 2021

regarding the implementation of V of Article L. 464-2 of the French Commercial Code (Code de commerce) concerning the obstruction by Mayotte Channel Gateway SAS of the Autorité's investigation

See full text

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