The Autorité fines Cofepp for acquiring control of MBWS without prior notification of the transaction and without waiting for its decision

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Background

The *Autorité de la concurrence* has fined Cofepp (Poliakov, Label 5, Cruz, Saint James, Old Nick, etc.) for acquiring control of Marie Brizard Wine & Spirits (Marie Brizard, San José, William Peel, etc.) before notifying the *Autorité* of the transaction and without waiting for its clearance decision.

In the present case, before requesting and obtaining the required clearance, Cofepp exercised a decisive influence on MBWS, in particular by appointing its new CEO, negotiating with its suppliers in place of MBWS's managers, directly participating in the establishment of MBWS's commercial and budgetary policy and intervening in several operational management decisions.

Cofepp, which did not contest the practices, benefitted from a settlement procedure. The Autorité handed down a 7 million euros fine.

Cofepp acquired control of MBWS before notifying the Autorité

Cofepp undertook a gradual merger with MBWS starting in June 2015, gradually increasing its equity stake and by becoming, from 2017, its main shareholder.

Cofepp had access to sensitive information relating to MBWS's commercial and budgetary policies through its representatives on the Board of Directors. It interfered in MBWS' strategic and operational decisions, even playing a key role in the selection of its new CEO.

This de facto takeover of MBWS occurred even though the merger had not been notified to the *Autorité*, since it was not until 3 January 2019 that Cofepp filed its plan to acquire sole control of MBWS with the *Autorité* de la concurrence.

Cofepp pursued its merger with MBWS before the Autorité had made its decision

While Cofepp had gained decisive influence in the management of MBWS prior to the notification, it continued this premature merger between the notification and the *Autorité's* decision on 28 February 2019[1]. The companies exchanged sensitive information in the context of the search for synergies between the two companies. Cofepp also gave certain instructions to the CEO and the Chairman of the Supervisory Board of MBWS on various projects under consideration.

Facts not contested by Cofepp

The build-up of Cofepp's interference in the life of MBWS reflects a deliberate desire to carry out the transaction in defiance of the competition rules. The evidence in the file shows that Cofepp was fully aware of the obligations relating to the acquisition of sole control of MBWS, and disregarded them.

Cofepp, which did not contest the facts, requested and obtained the benefit of a settlement procedure. In light of all these details, the *Autorité* imposed a €7 million fine on Cofepp.

[1] The Autorité cleared the transaction subject to brand transfers (see Decision 19-DCC-36/press release).

What is the settlement?

The settlement procedure allows a company that does not contest the charges brought against it to receive a financial penalty within a range proposed by the General Rapporteur and giving rise to the agreement of the parties.



Previous decisions issued by the Autorité

- Failing to notify deals

13-D-22 of 20 December 2013 concerning the situation of the Castel group with regard to I of Article L. 430-8 of the French Commercial Code (Code de commerce) (see press release of 26 December 2013)

13-D-01 of 31 January 2013 concerning the situation of the Réunica and Arpège groups with regard to I of Article L. 430-8 of the French Commercial Code (Code de commerce) (see press release of 1 February 2013)

12-D-12 of 11 May 2012 concerning the situation of the Colruyt group with regard to I of Article L. 430-8 of the French Commercial Code (Code de commerce)

- Gun jumping

16-D-24 of 8 November 2016 concerning the situation of the Altice group with regard to II of Article L. 430-8 of the French Commercial Code (Code de commerce) (see press release of 8 November 2016)

DECISION 22-D-10 OF 12 APRIL 2022

regarding the situation of Compagnie Financière Européenne de Prizes de Participation with regard to Article L. 430 8 of the Commercial Code

See full text of the decision

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