The Autorité de la concurrence fines Audiens Santé-Prévoyance, in a dominant position on the markets for collective supplementary social protection for entertainment workers, for abuse of a dominant position in the market for payroll management services for entertainment workers, in which its subsidiary Movinmotion is active

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Background

Audiens Santé-Prévoyance (Audiens SP) is a provident institution active in the sector of collective supplementary social protection for entertainment workers. After starting proceedings ex officio following a report prepared by the local network of the Minister of the Economy drawn up by the Auvergne-Rhône-Alpes Inter-regional Competition Investigation Brigade (***Brigade interrégionale d'enquête de concurrence d'Auvergne-Rhône-Alpes***) and transmitted by the Directorate General for Competition Policy, Consumer Affairs and Fraud Control (***DGCCRF***), the ***Autorité de la concurrence*** sanctioned Audiens SP for using its brand image and the resources and data available to it in connection with its activities of supplementary social, to develop the activity of its subsidiary Movinmotion, which is active on the market for payroll management services for entertainment workers.

Audiens SP abused its dominant position by implementing two types of abuse:

- first, by enabling its subsidiary Movinmotion to use its brand image and reputation, thus creating confusion in the minds of employers of casual

workers between the quasi-monopoly activities of Audiens SP and its other competitive activities;
- second, by using the data available to it in its capacity as manager of collective provident and complementary health insurance contracts for entertainment workers to facilitate the marketing of its subsidiary Movinmotion's offer of payroll management services for entertainment workers, giving it a competitive advantage that could not be replicated by its competitors.

Audiens SP did not contest the facts alleged by the *Autorité de la concurrence* and benefited from the settlement procedure. The *Autorité* has fined Audiens SP 800,000 euros.

Audiens SP's market position

The Audiens Group is a professional social protection group dedicated to the cultural sector which is made up of a group of organisations managed by social partners (supplementary pension institutions, insurance companies, mutual provident institutions, etc.).

One of these organisations is Audiens SP, a provident institution active in the sector of collective supplementary social protection for entertainment workers [1]. In terms of collective supplementary health insurance for casual workers, Audiens SP is responsible for managing the collective entertainment industry health fund, which finances benefits and to which all employers of casual workers are required to contribute. As regards the collective provident scheme managed by Audiens SP, which also offers its own services, the system is financed by a contribution paid by all employers of casual workers, on each salary. In fact, almost all of the companies that participate in the collective entertainment industry health fund also subscribe to the Audiens SP provident scheme.

Due to its quasi-monopoly and the essential nature of the Audiens Group to which it belongs, the *Autorité de la concurrence* notes that Audiens SP is in a

dominant position in the markets for collective supplementary social protection for entertainment workers.

In addition, after acquiring part of its capital in April 2016, Audiens SP has been the parent company of Movinmotion, a company active in the sector of payroll management services for entertainment workers, since 2018.

The *Autorité* noted that there was a nexus between the French markets for collective supplementary social protection for entertainment workers, in which Audiens SP holds a dominant position, and the French market for payroll management services for entertainment workers, in which the practices were implemented.

The reported practices

The *Autorité* accuses Audiens SP of using its quasi-monopoly position to create confusion between its activities in the markets for collective supplementary social protection for entertainment workers and its other competitive activities in order to give its subsidiary Movinmotion a competitive advantage that could not be replicated by the latter's competitors. The *Autorité* notes that Audiens SP provided Monvinmotion with material and immaterial resources and allowed it to access its database to develop and promote its activity as a provider of payroll management for entertainment workers.

- **The provision of material and immaterial resources**

To enable Movinmotion to develop rapidly, Audiens SP allowed it to use the Audiens Group's brand image to promote its payroll management activity. In addition to using the logo, graphic identity and colours used by Audiens, the Movinmotion service was presented under the name "Movinmotion by Audiens".

Furthermore, Movinmotion's service was also the subject of numerous joint communications between April 2016 and August 2020 that were intended to create confusion in the minds of customers as to the role of each structure. The companies were therefore confused during professional events (trade shows, conferences, breakfasts), as well as in the context of professional newsletters

sent by Audiens SP. The Audiens SP customer area and the brochure dedicated to the Izilio professional counter were also used to highlight or communicate information about Movinmotion to its customers.

- **Cross-usage of clientele databases**

At the same time, from 2016 until January 2022, Movinmotion was able to capitalise on the Audiens SP database, generated thanks to its status as manager of the collective provident and supplementary health insurance contracts for entertainment workers. This database is exhaustive, up-to-date and contains strategic and privileged information. Movinmotion and Audiens SP used this data for the purposes of direct mail, telephone canvassing and email newsletters.

Furthermore, the *Autorité* emphasises that all the resources made available to Movinmotion were, at the very least, the subject of a de facto cash advance as well as advantageous financial conditions.

The practices implemented by Audiens SP allowed Movinmotion to significantly grow its business between 2016 and 2019.

Practices not contested

Audiens SP did not contest the alleged practices and requested the benefit of the settlement procedure. This allows a company that does not contest the charges brought against it to obtain a financial penalty within a range proposed by the General Rapporteur, setting a maximum and minimum amount and giving rise to the agreement of the parties. Under this negotiated procedure, the *Autorité* imposed a penalty of 800,000 euros.

[1] Due to the specific nature of their activity and their particular employment conditions, casual workers in the entertainment industry have a specific supplementary social protection system designed to offer them a series of basic guarantees.

DECISION 22-D-20 OF 15 NOVEMBER 2022

regarding practices implemented in the payroll management services for entertainment workers sector

See full text of the decision

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