Application for review of injunctions: The Autorité de la concurrence declares Interflora's complaint inadmissible

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Background

On 1 December 2020, Interflora France referred to the *Autorité de la concurrence* for a review of the injunctions issued against it by Decision of the Minister for the Economy 86-4/DC of 6 February 1986 and Decision of the *Conseil de la concurrence* 00-D-75 of 6 February 2001.

The *Autorité* notes that, while it can issue injunctions and ensure compliance on the basis of Articles L. 464-2 and L. 464-3 of the French Commercial Code (*Code de commerce*), it does not have the jurisdiction to review a previous sanction decision (which includes injunctions).

Moreover, the *Autorité* recalls that it is not its role to issue a negative exemption decision which would conclude that there is no violation of competition law.

For these reasons, Interflora's referral has been declared inadmissible.

Injunctions imposed

The review request submitted to the *Autorité* by Interflora concerns the injunctions issued against it by Decision of the Minister for the Economy 86-4/DC of 6 February 1986 and Decision of the *Conseil de la concurrence* 00-D-75 of 6 February 2001, which considered that the de jure or de facto exclusivities

imposed by Interflora on the florists who are members of its network hindered the normal functioning of the competitive market.

For the record, in Decision No. 86-4/DC of 6 February 2001, the Minister for the Economy ordered Interflora to end its practice of imposing exclusive membership in its network on its members. Similarly, in Decision 00-D-75 of 6 February 2001, the *Conseil de la concurrence* issued several injunctions, including the obligation for Interflora to cease applying in its rating system for independent florists criteria such as "*acts only under the Interflora brand*" and to cease prohibiting member florists from mentioning in the same advertisement that they are members of both the Interflora network and other long-distance flower delivery networks. A penalty of 10 million francs was also imposed.

On 1 December 2020, Interflora referred the matter to the *Autorité de la concurrence* to request a review of these injunctions. It justified its request by supporting the idea that the upsurge in e-commerce has changed the relevant market in which it operates and, consequently, its position in this market, making the injunctions in question obsolete and even unfavourable to the development of effective competition.

The *Autorité* has no jurisdiction to review injunctions issued in a decision that has become final

The *Autorité* notes that, while it has the jurisdiction to issue injunctions and ensure compliance, there is no statutory or regulatory provision that allows it to revise a sanction decision that it has previously adopted.

The decisions granting injunctions in this case are final and therefore have the force of res judicata [1]. It is therefore up to the companies against which injunctions have been issued to ensure that they are implemented within a reasonable time. It is also their responsibility to assess the validity of the agreements they enter into in light of competition rules and the injunctions imposed on them.

The Autorité cannot issue a negative exemption decision

This decision is an opportunity for the *Autorité* to recall that only a litigation complaint is likely to lead to an assessment of the lawfulness of the practice in question with regard to the provisions prohibiting anticompetitive agreements or abuses of a dominant position or of economic dependence.

The *Autorité* is therefore, in principle, not competent to issue a negative exemption decision to a company that requests it, concluding that there is no violation of competition law.

[1] These decisions were subsequently made final, as the decision of the Minister for the Economy was not appealed and the decision of the French competition authority became final following the Decree of the *Cour de cassation* (French Supreme Court) of 14 June 2005, in which the Court rejected the appeal lodged by Interflora against the Confirmatory Decree of the *Cour d'appel de Paris* (Paris Court of Appeal) of 16 March 2004.

DECISION 23-D-01 OF 15 FEBRUARY 2023

on the application for review of the injunctions issued against the Interflora company by Decision of the Minister for the Economy 86-4/DC of 6 February 1986 and Decision of the Conseil de la concurrence 00-D-75 of 6 February 2001

Full text of the Decision (in French)

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