The Autorité submits for public consultation a draft notice aimed at providing undertakings with informal guidance on the compatibility of their sustainability projects with competition rules

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Background

Sustainability is a key priority for the *Autorité de la concurrence* and part of its 2023-2024 roadmap. The *Autorité* wants to support undertakings that wish to pursue projects in the area of sustainable development. To that end, the *Autorité* is submitting a draft notice for public consultation until 23 February 2024 in order to provide undertakings with informal guidance on the compatibility of their projects with competition rules.

Sustainability is a key priority for the *Autorité* and part of its 2023-2024 roadmap.

The way in which competition law can address sustainability issues is a major point of interest for the *Autorité*, which takes resolute action against anticompetitive practices that are the most harmful in terms of sustainability.

However, the *Autorité* intends to adopt a balanced position by combining its firm stance with support for undertakings that wish to take steps to better achieve a sustainable development objective.

Thus, the ***Autorité* is committed to an** "open door" policy in order to encourage undertakings that wish to develop projects with a sustainability objective, but for which the analysis in terms of competition law presents a particular difficulty.

In order to better support undertakings in their efforts, the *Autorité* wants to offer a flexible framework in which they can submit a request for guidance in assessing the compatibility of their projects with competition rules.

To that end, the *Autorité* is launching a public consultation to gather feedback from stakeholders on a draft notice on informal guidance from the *Autorité* in the area of sustainability.

What approach does the draft notice propose?

Firstly, the *Autorité* recalls the legal instruments that undertakings can use to self-assess the competitive risk of their projects, such as the various guidelines issued by the European Commission or the provisions of the regulation establishing a common organisation of the markets in agricultural products (CMO).

Secondly, the *Autorité* describes the framework within which undertakings whose projects present a new or particularly complex competition issue will be able to consult the General Rapporteur of the *Autorité*, and within which the General Rapporteur will be able to provide an informal guidance letter assessing the compatibility of their projects – as they stand at that date – with the rules prohibiting anticompetitive practices.

The draft notice outlines the conditions in which undertakings will be able to submit a request for informal guidance to the General Rapporteur, in terms of the nature of the project and the supporting information they should provide.

Thirdly, the draft notice explains how and according to which steps the request will be processed by the General Rapporteur and the factors on which the assessment is likely to be based.

Lastly, the draft notice specifies the scope of the informal guidance letter provided by the General Rapporteur with regard to the status of the project and

its possible implementation and, where applicable, in the event of any subsequent proceedings before the Board of the *Autorité*.

The information gathered during the public consultation will be used to enrich the draft notice and to clarify the framework within which the *Autorité* intends to provide informal guidance to undertakings engaged in a sustainability initiative.

The public consultation, in which all stakeholders can participate, is open until 23 February 2024.

Comments should be sent to: developpement-durable@autoritedelaconcurrence.fr

The notice on informal guidance from the *Autorité* in the area of sustainability will be published as soon as possible following the public consultation.

Draft notice on informal guidance from the Autorité in the area of sustainability

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