8 September 2009: Maritime freight and mass retail distribution in the DOM

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The *Autorité de la concurrence* recommends improving the operation of the competitive mechanisms in the markets in order to revitalize mass retail distribution, which is the only way to lower prices for the benefit of consumers

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After a referral on 18 February 2009 from the Secretary of State for overseas (*Secrétaire d'État à l'outre-mer*) relative to the competitive situation in the overseas *départements*, the *Autorité* has hereby rendered an opinion on the **import and marketing mechanisms for consumer goods in the DOM**. This is the second part of the initial referral that, on 24 June 2009, had resulted in opinion 09-A-21 regarding **fuels**.

In the DOM, the small size of the markets and their distance from the main procurement sources are natural obstacles to securing prices that are comparable with the ones seen in mainland France. In addition to these extra costs, there is a special tax, i.e. the dock dues, collected by the local and regional administrations on imports, which necessarily increases sale prices for consumers.

However, these specificities are insufficient to explain the scale of the **price discrepancies for consumer goods between mainland France and the DOM**. As such, based on the findings with a sample (1) of approximately 75 products imported from mainland France to the four DOM, the in-store price differences with mainland France exceed 55% for more than 50% of the sampled products, a percentage that is too high to be explained solely by transport costs and the

dock dues. In particular, in its opinion, the *Autorité* identifies several particularities of the procurement circuits of the DOM markets that allow operators to partially avoid the effects of competition, which alone is able to lower prices in favour of consumers in the DOM.

Insufficient competition in the retail and wholesale markets

According to the *Autorité*, the mass retail distribution sector, primarily for food, is insufficiently competitive in the DOM. Protected by specific **entry barriers** (length of the logistics circuits towards the overseas territories, scarcity and high price of commercial real estate), **the concentration level is high**, with some groups having market shares for commercial spaces in excess of 40%, either throughout the entire *département* in question, or on one or more trading areas.

The behaviour displayed by operators confirms this lack of competition, whether this applies to the limited presence of distributor brands on the store shelves or the virtual absence of any ripple effect of the back margins on consumer sale prices.

The poor competition on the retail market is all the more harmful to consumers in the DOM since, upstream, the importers-wholesalers often solicited by manufacturers or distributors are themselves also relatively protected from competitive pressure. In particular, the **territorial exclusivity practices** that frequently bind manufacturers and importers in each DOM weaken the ability of distributors to arbitrate between various importers-wholesalers or between the latter and manufacturers established in mainland France, thereby reducing the competition between products of a single brand, let alone between products of different brands. For illustration, a single wholesaler on La Reunion markets the products of two major metropolitan French cheese groups (Lactalis and Bel), which are the brands best-known to consumers. More generally, as a result of these exclusivity arrangements, distributors in the DOM can in the end only choose between a more limited number of suppliers than exists in mainland France. As distributors are unable or not encouraged to play on competition between importers-wholesalers, the latter are free to apply significant commercial margins that oscillate between 20 and 60% for a high number of

references, even approaching or exceeding 100%.

The proposals of the *Autorité* to revitalize competition on the markets

Curbing possible anticompetitive practices

During the examination of the request for opinion, practices implemented at various steps in the import-distribution chain and that are likely to be viewed as anticompetitive practices (such as imposed sale prices, horizontal anticompetitive practices, clientele exclusivity agreements and restrictions on parallel trade) were brought to the attention of the *Autorité*, that will initiate the inspections that it considers necessary.

Facilitating competition by doing away with the regulatory entry barriers and by improving consumer information

The *Autorité* recommends the removal of the regulatory obstacles that hinder the arrival of new actors, a necessary condition for taking full advantage of the competitive process. Over and above the reforms already implemented as part of the LME law, the abolition of the control wielded by the CDAC (2) on establishment projects at more than 1000 m^2 and the lowering of the notification thresholds for mergers (3) involving supermarkets established in the DOM will serve to promote a more competitive market structure for retail distribution.

Moreover, it considers that the efforts made to improve the information for consumers relative to the prices and price policies of major distributors must be continued, while taking into account several suggestions issued as part of the opinion released to the public.

Pooling the logistics circuits

In parallel with these recommendations of a competitive nature, the *Autorité* considers that it is necessary to work on improving the logistics circuits between mainland France and the DOM. The procurement segmentation between various operators and intermediaries prevents economies of scale from being generated while compounding the margins at each stage of the procurement chain.

In each DOM, the local and regional authorities and the State must set up study missions with the objective of defining the provisions for the creation and operation of regional procurement and storage centres that, through the pooling of resources, would reduce costs and allow distributors to make better use of competition between manufacturers and intermediaries.

Reviewing the assistance measures for local companies

Finally, the *Autorité* recommends a review of the assistance measures for companies established in the DOM, whether this involves dock dues or the exemptions on charges and the subsidies paid to local manufacturers. Such measures can only be justified if their short-term costs, in terms of levies or price increases, can be compensated through the medium-term development of competitive local industry.

However, the collected data tend to indicate that these assistance measures, in the current context, do little to encourage the competitiveness of the local companies, and even encourage high prices. In the case of locally produced yogurts, coffee or spring water, margins and prices higher than the ones seen with imported products or products sold in mainland France have been identified, despite the aids and protection afforded to local producers.

Such examples promote the possibility of gradually phasing out dock dues, while setting up a system to assess the various available assistance mechanisms, notably in terms of the competitiveness of local companies.

In any event, the *Autorité de la concurrence* reiterates that price regulation is not a solution to the identified competition problems: as a result of its inherent risks and implementation difficulties, it must remain an exceptional measure applied to clearly identified sectors or steps in the procurement chain in which the effects of competition have been circumvented. In the present case, however, price regulation could aggravate the competitive deficit that has already been identified, but without managing to lower prices in a lasting manner.

(1) As these findings, carried out by the DGCCRF at the request of the Autorité,

were intended only to provide an idea of the in-store price differences between the DOM and metropolitan France for imported products, the products in the sample group are not representative of the consumption of households in the DOM and cannot thus be extrapolated for the purposes of a general comparison between the price levels of consumer goods in the DOM and in metropolitan France.

(2) Commission départementale d'aménagement commercial.

(3) that the Autorité proposes setting at 7.5 million euros (versus the current 15 million) for operations relating to overseas retail trade.