4 September 2014: Single-portion Espresso Coffee Machines

Published on September 05, 2014

The Autorité de la concurrence has obtained a commitment from Nespresso to lift barriers to entry for other coffee capsule makers – compatible with Nespresso coffee machines – as well as barriers to their growth

The final commitments made by Nespresso – the first in the world – have been substantially improved in relation to the original proposals tested in April
They re-establish conditions of fair competition on the capsule market while preserving Nespresso's capacity for innovation.

> Version française

Background

Following referrals from DEMB (the *L'Or Espresso* brand) – formerly known as Sara Lee – and the Ethical Coffee Company (the *Espresso* brand and private label brands), Nespresso has made a series of commitments lifting the barriers to entry for other coffee capsule makers – compatible with Nespresso coffee machines – as well as barriers to their growth.

Last April, Nespresso proposed a series of commitments designed to resolve the competition problems identified by the Autorité (see press release of 17 April 2014).

After launching a market test and in order to meet the Autorité's requirements, Nespresso supplemented and substantially improved its initial proposal, in particular in relation to the important question of communicating information to competitors regarding technical modifications made to Nespresso machines.

In deciding to make all these commitments obligatory, the Autorité de la concurrence is the first antitrust authority to provide responses to the difficulties encountered in this market. Nespresso's capacity for innovation is preserved and competitors are in a position to exercise more effective competition.

Reminder of the complaints of DEMB and the Ethical Coffee Company

The two informant companies complained of exclusionary practices by Nespresso, consisting in particular of linking the purchase of Nespresso brand capsules to that of Nespresso-brand coffee machines.

Nespresso, the leader in the coffee-machine and capsule market, was given to linking the purchase of its own-brand capsules to the purchase of its coffee machines, as a result excluding manufacturers of competing capsules.

In France, 73% of single-portion espresso coffee machines sold are Nespresso machines and 85% of sales of capsules compatible with Nespresso machines are Nespresso-brand capsules (2012 figures).

During the investigation, the Autorité's investigation services found that there were several practices of a technical, legal and commercial nature that incentivised consumers to only use Nespresso-brand capsules with Nespresso machines:

- on a technical level: 4 subsequent modifications (between 2007 and 2013) made to Nespresso machines had the effect of rendering capsules produced by competing manufacturers incompatible with the new models;
- on a legal level: Nespresso had put wording encouraging consumers only to use Nespresso brand capsules in Nespresso coffee machines, on the packaging and in the instructions and, in particular, in the warranty;
- on a commercial level: Nespresso had disseminated information to the press and in its shops encouraging consumers only to use Nespresso brand capsules.

The Autorité considers that these practices, which would exclude manufacturers of competing capsules, are liable to constitute abuse of its dominant position.

Nespresso's commitments

The initial commitments

In response to these competition concerns, Nespresso initially proposed a series of commitments, on three different fronts, in response to each of the practices liable to constitute an abuse of its dominant position:

- on the **technical front** consisting, in particular, of notifying competing capsule manufacturers of all technical modifications carried out that are liable to affect interaction between the capsule and the Nespresso machine. This transfer of information should be made at the point when Nespresso adopts the decision to put the modified machine into production and a minimum of 3 months before the commercial launch of the machines;

- on the **legal front** consisting, in particular, of the implementation of new warranty conditions applicable even when Nespresso brand capsules have not been used;

- on the **commercial front** consisting, in particular, of refraining from making any comments about competitors' capsules, either in the press or in the Nespresso Club. This commitment will be implemented as part of a compliance programme.

Commitments improved following the market test and at the Board hearing

These commitments were strengthened significantly following the market test and requests from the Autorité.

In particular, on the important question of notifying competitors of information regarding any technical modifications made to the machines, Nespresso has substantially improved its position on four points:

- Nespresso undertakes to notify competitors of information about any technical modifications at the moment when the order is given to put the new machines into production, without waiting until they go on sale. It undertakes, furthermore, to provide a non-reducible safeguard period, guaranteeing competitors that they will have this information a minimum of 4 months (compared to 3 months in the initial version) before the machines are released onto the market;

- It likewise commits to appoint a "trusted third party" who will play the role of intermediary in order to avoid any transfer of confidential information between the competitors and itself when notification of the technical information is given;

- Nespresso undertakes to provide competitors, via the trusted third party, with prototypes of the new machines – a minimum of 15 so that they can carry out compatibility tests with their capsules, while only three prototypes were initially proposed;

- Finally, it has made the commitment to be more transparent with regard to the origin of technical modifications made to the machines and new technical specifications, in particular by submitting a file to the Autorité setting out the reasons behind each technical change.

The Autorité's decision

These commitments, taken as a whole, form a coherent package in which the commitments are supplemented and strengthened. The device thus implemented lifts barriers of a technical, legal and commercial nature to entry for other coffee capsule makers – compatible with Nespresso coffee machines – as well as barriers to their growth.

They are nevertheless proportioned such that they do not put a brake on Nespresso's innovation, while at the same time preventing a weakening of competition on the market.

The Autorité accepts these commitments, makes them obligatory and decides to close the proceedings brought before it. It will make sure they are strictly respected by Nespresso.

> For more details, consult the full text of decision 14-D-09 of 4 September 2014

Press contact:
Virginie Guin Tel 01 55 04 02 62 / Email

Yannick Le Dorze Tel 01 55 04 02 14 / Email