17 November 2015: Standardisation/certification

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Having carried out an analysis of the market and consulted with players active in the sector, the Autorité de la Concurrence publishes its opinion.

The Autorité considers that the competitive operation of standardisation and certification processes may be improved by the application of simplification measures, as well as greater transparency in the processes currently in use.

The construction and public works [BTP] sector, which has a number of distinctive features, has been the subject of particular review resulting in specific recommendations for that sector.



> version française

In brief

On 16 January 2014, the Autorité de la concurrence decided, on its own initiative, to review the process currently used in France for standardisation and certification in the light of competition law.

Within the framework of the public consultation which began before the summer, the Autorité received more than a hundred responses from interested stakeholders, which enabled it to enhance initial recommendations (see press release published on April 13th 2015).

The Autorité now publishes its opinion on the matter, by which it recommends three points of improvement:

- First, regarding standardisation, the Autorité makes suggestions aiming to reinforce steering and transparency during the standardisation process;

- Regarding the certification activity, the Autorité recommends that COFRAC should publish a list of areas in which accreditation is necessary, along with the costs associated. Moreover, the Autorité invites the AFNOR group to better dissociate its activities of public interest and the commercial operations of its subsidiaries. AFNOR and public authorities have also been invited to prevent any risk of confusion over the commercial use of the NF symbol (*Norme Française*, or 'French standard'), and draw the implications for NF certification process.

- Finally, concerning the construction and public works ["BTP", *Bâtiment et Travaux Publics*] sector in particular, the Autorité recommends that the common legal standardisation process be applied to the sector, and that the role of the CSTB be redefined. The Autorité invites public authorities to remove all references to certification trademarks from existing legislation.

ENSURING STANDARDISATION QUALITY IN ORDER TO BENEFIT COMPETITION

By facilitating compatibility and interoperability between different products and services, the adoption of standards has a positive effect on competition, as it promotes diversity of offer and allows purchasers to compare various aspects of a product or service more easily, thus improving competition on the merits. Conversely, a misused standard may restrict market competition.

The Autorité recommends streamlining standardisation bodies and their working methods

In France, the standardisation process is overseen by AFNOR. More specifically, the actual creation of standards is carried out by AFNOR's Standardisation Committees and the Sectoral Standardisation Officeswhose role is to gather input from companies interested in the development of standards for their respective areas of business activity.

Inquiries and information gleaned from the public consultation have revealed a relative deficit in oversight of standardisation bodies by AFNOR, which does not have detailed knowledge of relevant standardisation committees, current member lists, the origin of their funding or the schedules of their planned operations.

> Therefore, **the Autorité recommends improving the upstream standardisation process by**:
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> - Reducing and streamlining the number of standardisation bodies in operation, especially those which are inactive or whose activity overlaps with that of another committee. The *Autorité* stresses that these simplification measures will require proactive action on the part of the government, as AFNOR does not have the legal authority to control the proliferation of standardisation organisations;
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> - Strengthening the steering role played by AFNOR in the standardisation process (centralising information, formalising the decisions to initiate works, online publication of work schedules, verifying effective consultation with relevant stakeholders, oversight of resource allocation, etc.).

The Autorité recommends upstream reflection on the need for new standards

An inadequate standardisation process may affect economic efficiency and restrict competition if it produces useless standards whose economic cost/benefit ratio has not been proven, or if it allows the approval of a standard that is biased towards certain market operators, who may then be able to use said standard as an barrier to prevent competitors or innovators from entering the market.

These dangers are all the more serious given that useless standards are highly difficult to detect and correct once the standardisation process has been completed.

It is for this reason that the Autorité considers that a company which suggests the introduction of a new standard should be capable of explaining why it is necessary; the reasons being put forth in support of the standard should be available for review and, where relevant, refuted by their competitors.

> **The Autorité recommends the implementation of a mandatory step in order to validate the added value expected to be brought about by the introduction of a new standard or revision of an existing one**. The launching of operations by standardisation committees would be decided by AFNOR, working from a file which includes a diagnostic summary of advantages and disadvantages for the market, as well as an estimation of the process schedule and the names of any companies which may be affected.

> The *Autorité* recommends that this mandatory validation phase should be formalised via the composition of a handbook or set of guidelines.

CLARIFYING CERTIFICATION AND ACCREDITATION ACTIVITIES

Certification is a procedure by which a third party confirms that a product or service meets a certain number of characteristics which have been defined in a reference document known as a “Certification Rules”, to which professional clients and consumers are expected to attach particular importance in their purchasing decisions.

Regarding the scope and cost of accreditations
While certification operations are open to competition, in certain sectors they may only be carried out by accredited organisations, known as “Conformity Assessment Bodies”, or CABs (French: Organismes d’Evaluation de la Conformité, or OECs), whose ability to carry out said operations is validated in France by the COFRAC (French Accreditation Committee).
In France, seeking accreditation is often seen as a pre-requisite for businesses to be able to develop, even in those sectors in which it is not compulsory. In addition, several responses to the public consultation mentioned excessive costs, or even prohibitive for moderately-sized certification bodies.

Regarding the various activities of the AFNOR group

AFNOR plays a central role in the French standardisation system, but the group is also involved in certification and training by way of its subsidiaries AFNOR-Certification and AFNOR Compétences, which are developing significant commercial operations.
The conditions in which these subsidiaries operate can raise competition concerns , if they derive an unfair advantage from the prevalent confusion between their own operations and those of their parent company.

Regarding the status of the 'NF' mark

The ‘NF’ acronym, accompanied by an identification number indicating an AFNOR-approved standard, stands for 'Norme française', or 'French standard'. However, this symbol is also used to signify that a product conforms to a frame of reference developed by a subsidiary body named AFNOR Certification, which may not be connected to any approved standard but is nonetheless presented to consumers as a selling point.

To this initial confusion is added the fact the AFNOR allows certain certification partner organisations the option of placing the NF logo on the products they audit. This practice has been questioned by other non-partner CABs, to whom the NF certification market remains inaccessible.

> As regards the certification activity, the Autorité issues several recommendations aimed at preventing various competition risks:

- the Autorité recommends that COFRAC publish on its website a list of fields and sectors for which accreditation is compulsory, as well as estimated costs which should be regularly compared with their European counterparts;

- the Autorité also encourages AFNOR to implement, where necessary, simple measures aimed at preventing the creation of circumstances which may unfairly benefit its subsidiaries or be harmful to competing operators;

- regarding the current confusion surrounding the use of the NF mark, the Autorité proposes a critical framework for this issue and invites public authorities and AFNOR to quickly determine a positioning for the NF mark and draw the appropriate consequences for the network of NF certification partner bodies.

SPECIFIC ISSUES IN THE CONSTRUCTION AND CIVIL ENGINEERING ("BTP") SECTOR

Overriding and proliferating standardisation

The construction and civil engineering ("BTP", *Bâtiment et Travaux Publics*, in French) sector is characterised by a proliferation of "quasi-standards", which have not been validated by AFNOR and are not approved, but that have nevertheless, in practice, assumed a compulsory nature for construction techniques that belong to the so-called "traditional" field. Among these are DTUs (*documents techniques unifiés* - building code), which are now referred to as NF-DTU; public authorities have begun the work of progressively integrating these concepts into the common legal standardisation process.

The competitive ramifications of this update process are significant, as this group of documents in its entirety is viewed by industry professionals and insurance bodies as the "state of the art" when it comes to construction.

Overriding quasi-certification for innovative products and processes

In a similar way, ATs and DTAs (*avis techniques* and *documents techniques d'application*, both types of technical advice documents) which apply to innovative products are not legally compulsory but are required in practice by project managers and insurers.

They are formulated by a specialist commission, the CCFAT, whose administrative bodies and information centres are entrusted to the *Centre Scientifique et Technique du Bâtiment* (Scientific and Technical Construction Centre, or CSTB). The procedure, which often involves laboratory testing, can be expensive; currently the cost is met by the company whose product is being tested, which needs de facto to pass the evaluation in order to ensure successful entry into the market.

Public consultation has revealed that the procedure has drifted from its intended purpose, as the majority of technical evaluations pertain to renewals of quasi-certifications and are aimed at products which are already on the market, in some cases for a very long time, and not at new products or innovative processes.

> The Autorité recommends that the certification process should be completed for DTUs (unified technical documents), and that processes which override the production of these documents should be progressively phased out so that the procedures may be brought into line with common legal standardisation.

> Regarding technical evaluations for innovative products, **the Autorité suggests that evaluation inquiries should be made open to competition, in particular via the intervention of accredited certification bodies**.

> **The Autorité recommends that the renewal of technical evaluations over 7 years old should be highly limited, or banned outright.**

> The Autorité also recommends ensuring that technical evaluations are not required (and therefore delivered against payment) for innovative products whose use has already been legally authorised by the European Union.

> See full opinion 15-A-16 of 16 November 2015 reviewing standardisation and certification processes in the light of competition law

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