4 April 2017: Waste collection, sorting and treatment

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The *Autorité de la concurrence* clears, under conditions, the merger-absorption of Ecofolio by Eco-emballages

On 6 February 2017, the Ecofolio and Eco-emballages companies notified the *Autorité de la concurrence* the merger-absorption of Ecofolio by Eco-emballages.

The operation

In France, waste collection, sorting and treatment are organized according to the "extended produced responsibility" principle, which imposes on its producer the treatment of the waste generated by the products it sells in the market. The producer is allowed to transfer this responsibility to a producer responsibility organization in exchange for remuneration, as the organizations in this instance. The responsibility is then transferred to local authorities to enable them to meet their legal obligation of collecting, sorting and treating household waste. Eco-emballages and its subsidiary Adelphe are, to this day, the only two producer responsibility organizations approved by public authorities in the household waste sector. Ecofolio is the only producer responsibility organization approved by public authorities in the paper sector. The notifying parties are in a *de facto* monopoly position in their respective fields.

The takeover occurs in the framework of the re-approval process - which has come to an end - of these producer responsibility organizations carried out by the public authorities. Indeed, the new terms of reference for the re-approval process regarding the extended responsibility of paper producers for 2017 – 2022 were published on 2 November 2016. The terms of reference applicable to the household waste field for 2018-2022 were published on 29 November 2016. These new set of specifications were substantially modified by public authorities in order to facilitate the entry of new operators and to reinforce competition

within the two sectors.

The context of the "opening up" of the household waste and paper collecting and sorting markets

In its opinion **16-A-27** of 27 December 2016, the *Autorité* noted that "considering the regulatory framework for the extended responsibility of household waste producers and the environmental goals pursued by the mechanism", the new terms of reference for the household waste sector left little room for price competition between authorized producer responsibility organizations. However, it considered that producer responsibility organizations could compete on the basis of the quality of service offered to producers and collectivities.
It is specifically in light of this opinion that the competitive analysis of the operational effects has been carried out.
In order to rule on this operation, the *Autorité* also relied on a market test with the main stakeholders of the sector, i.e. the producer responsibility organizations, producers and local authorities among others.

Risk to competition arising from the disappearance of a potential competitor

The merger does not lead to overlapping activities insofar as Ecolio and Eco-emballages were active in distinct markets beforehand. The *Autorité* has, however, noted that by gathering incumbent operators from the household packaging and paper sectors into a unique entity, the merger would lead to the disappearance of a potential competitor in each of these two sectors. Ecofolio does indeed have the means necessary to diversify its activity into household packaging markets. The same is true to Eco-Emballages and the paper market.

Upon completion of its analysis, the *Autorité* considered that the disappearance of a potential competitor is not likely to be offset in the medium term by the entry of other operators. This is due to the difficulty of accessing information required to obtain an approval or to undertake activities as a producer responsibility organization – notably activities relating to the organization of collecting and sorting modes for the local authorities, and their performances.

In order to rule out any risk linked to the operation, Ecofolio and Eco-emballages offered to provide potential competitors with necessary information to issue a request for approval, and, once the approval is given, to offer efficient services to the local authorities.

Information will be given to each new authorized producer responsibility organization, as well as to potential candidates preparing to request for the approval. Data transfer will be covered by a contract, annexed to the commitments made to the *Autorité* to guarantee its implementation shortly after the adoption of the decision. Lastly, the request for accessing the data will be renewable each year, which will allow new entrants to restore historical data and refine their analysis.

The commitment is valid throughout the current period of approval for the extended produced responsibility of the two sectors (i.e. until 2022) and until the subsequent mutli-year approval enters into force. This period length will facilitate the access to the aforementioned markets by potential competitors to the new entity arising from the merger, during both the approval period and the following multi-year approval period.

> To consult the full text of the decision 17-DCC-42

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