Respiratory assistance equipment in French Guiana and the French West Indies: investigation closed for exclusive imports

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The Autorité closes an initial investigation into exclusive import practices in the medical equipment sector intended for hospitals in French Guiana and the French West Indies.

It takes note of the decision of the Fisher & Paykel Healthcare group to clarify the conditions for the distribution of its products in these overseas territories in order to strengthen competition.

Following a report made by a Guianese company to the Autorité de la concurrence on 30 March 2020, the investigation Services of the Autorité de la concurrence opened an initial investigation into exclusive import practices likely to be implemented by the Fisher & Paykel Healthcare group, active in the supply for hospitals of respiratory systems and products intended for patients suffering from respiratory disorders, in particular for patients suffering from covid -19.

Cadmed: Single entry point to supply Fisher & Paykel Healthcare products in French Guiana and in the French West Indies

It was not excluded that this group had recently entrusted the import of its medical products in French Guiana, Guadeloupe and Martinique (notably artificial ventilation masks useful for intensive care patients) to the only company Cadmed Inc. located in the United States, effectively preventing any other alternative from supplying local distributors, in particular via mainland France.

However, the law of 20 November 2012 on Economic Regulation in French overseas territories, known as the “Lurel law”, intended to address the specific problems of overseas territories (insularity, remoteness, narrow markets, existence of barriers to entry etc.) by prohibiting, from 22 March 2013, exclusive import agreements in French overseas territories (Article L. 420-2-1 of the French Commercial Code).

Fisher & Paykel Healthcare clarifies the distribution conditions for its products

During the investigation, for which the Autorité's investigation Services approached the French subsidiary of the Fisher & Paykel Healthcare group, the latter quickly took the initiative, given the current pandemic background and to avoid any risk of supply disruption in the overseas territories concerned with sensitive medical products, to clarify the group's distribution rules.

Thus, the group reaffirms that "*in the current health emergency context and even when this state of health emergency is lifted, importers who would like to buy Fisher & Paykel Healthcare products for respiratory assistance for distribution in French Guiana, Guadeloupe and Martinique can and will, according to their choice, obtain their supplies directly from Fisher & Paykel Healthcare SAS or from any other authorised distributor, on the basis of their respective general terms and conditions of sale, as soon as the products are available*".

Taking note of this initiative in favour of competition on the French Guianese and West Indian markets, the investigation Services of the Autorité decided to close the investigation opened against the group Fisher & Paykel Healthcare.

While acknowledging the spirit of responsibility and cooperation of Fisher & Paykel Healthcare, the investigation Services will remain vigilant with regard to market behaviour and will check that French overseas distributors can effectively obtain supplies in compliance with the rules of competition.

The Autorité's action during the Covid-19 Coronavirus epidemic

The Autorité's action during the epidemic is part of a common message sent by the European competition network to businesses.

In the current situation, the Autorité is careful that no company can abuse its market power or agree with other companies to the detriment of consumers and the community. It is notably of the utmost importance to ensure that products considered essential remain available at competitive prices.

In this context, the Autorité's investigation Services are mobilizing. An internal network was thus organised, notably to pool market surveillance work during the crisis, analyse the various behaviours observed and, if necessary, take action to remedy as effectively as possible the behaviours detected.

In this regard, the investigation Services invite any person (company or consumer) who considers that an action taken by one or more companies is likely to be anti-competitive to use the following dedicated address to report it to the Autorité: signalement.externe@autoritedelaconcurrence.fr

The current situation is also leading to temporary cooperation movements between companies, notably to guarantee the production and fair distribution of essential products to all consumers. The Autorité de la concurrence supports this type of initiative and is ready to assist them.

The internal network set up also aims to enable the Autorité to quickly respond and as pragmatically as possible to requests securing virtuous initiatives. In this context, it will provide informal advice on the compatibility with competition law of a cooperation project that would be presented to it or of its implementation methods.

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