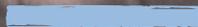


ANNUAL REPORT  
2019 SUMMARY

# FREEFORM

Building a regulation  
in motion

Autorité  
de la concurrence



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## BUILDING A REGULATION IN MOTION

**F**or competition regulation to be fully effective and relevant, it must constantly adapt to changes in the economy. This is why the Autorité is committed to continuously modernising its methods, analyses and tools to address new issues.

In the future, even more so than today, this ability to adapt along with the flexibility of competition law will constitute major assets in facing the economic crisis and meeting the unprecedented challenges of digital technology.

It is with creativity, inventiveness and, sometimes, audacity that the Autorité will have to continue proposing reforms. To do so, it can identify potential areas for growth and support reforms that promote the country's competitiveness. These are as many avenues that public authorities can use to boost competitiveness, purchasing power and employment, thereby helping to breathe life into an economy that is undergoing profound change, owing to the exogenous shock caused by Covid-19.

It will then continue to ensure compliance with rules and to protect economic public order to sustain healthy activity in markets. In particular, this will require firm action against abuses and cartels, as well as effective control of mergers and acquisitions.

A single figure sums up the impact of this action: more than €15 billion in savings were made between 2011 and 2019 to the benefit of the French economy.

Competition, for the benefit of all!

# The Autorité in 1 CLICK

02

## MISSIONS

### **Fighting anticompetitive practices**

(cartels and abuses)

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### **Merger control**

(mergers and acquisitions)

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### **Advisory role**

(opinions issued to public authorities and economic stakeholders)

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### **Regulation of the regulated professions**

(opinions to the Government)

## STATUS

**Independent administrative authority**

**17**

**board members**

---

**188**

**agents**

# BUDGET

€22.5 million

The Autorité's budget for 2019

# FINES

€632 million

The amount of fines imposed by the Autorité in 2019

## European network

The French authority is the most active national authority (in terms of the number of investigations opened and decisions adopted on the basis of European law).

## KEY EVENTS

### 5 March 2019

One-day seminar for the Autorité's 10<sup>th</sup> anniversary at Palais Brongniart (Paris), attended by the Prime Minister.

### 22 May 2019

Appointment of Jean-Pierre Bonthoux as Hearing Adviser.

### October 2019

Launch of the Autorité's new website.

### 9 March 2019

Appointments of Irène Luc and Henri Piffaut as Vice-Presidents and eight new board members.

### 18 July 2019

The G7 competition authorities along with the European Commission published the Common Understanding on the Digital Economy, which was reached under the French Presidency.

### October 2019

An online reporting procedure for anticompetitive practices is made available.

### 7 May 2019

The Autorité joins the Framework on Competition Authority Procedures (CAP) set up by the International Competition Network (ICN).

### September 2019

5-star rating in the Global Competition Review. The Autorité maintains its rank among the world's leading competition authorities for the 8<sup>th</sup> consecutive year.

### 9 January 2020

Creation of the Digital Economy Unit.

**INTERVIEW**

# CATALYST FOR FREEDOM

**04**



**Isabelle de Silva**

President of the Autorité de la concurrence

**The health crisis is going to have a strong and lasting impact on the economy. How does the Autorité intend to support companies in this context?**

has been fully involved in this approach. I would like to take this opportunity to thank all of the Autorité's teams for rallying together during this particular period.

In this time of crisis, companies have had to work hard to ensure that shops continued to be supplied, with food products especially, supply chains were upheld and health protection equipment was provided across the country. In these circumstances, it was important to reiterate both the possibilities offered by competition law, which may permit some coordination between companies, and the lines that must not be crossed. To enlighten companies faced with these significant challenges, coordinated answers were needed from competition authorities. This was done through the dissemination of common guidelines drawn up at the European level, within the framework of the European Competition Network under the aegis of the European Commission, as well as within that of the International Competition Network, the ICN. This meant that companies received a clear message about their possibilities for action and the points that would require careful attention.

The Covid-19 pandemic that we have just gone through has profoundly disrupted the functioning of all sectors of our economy and, beyond that, our society. The State had to demonstrate its ability to react swiftly in order to provide quick and tailored responses to this unprecedented situation. The Autorité

In addition, within a few days, the Autorité answered requests for clarification from companies and professional organisations.

A new era is now beginning, and we will remain vigilant about the longer-term impact of the crisis on the structure of markets. The landscape of company mergers will see lasting change, and efforts to restructure the sectors most affected by the crisis will no doubt take place. Consolidating acquisition policies, particularly by major platforms that have been far less affected by the crisis, require tighter and more careful control than ever.

Merger control is one of the keys to ensuring that competition remains dynamic, particularly in innovative sectors. In this regard, this new context could justify expanding the national and European framework, in order to ensure that acquisitions by dominant or structuring companies do not occur without scrutiny by regulators.

**“Merger control is one of the keys to ensuring that competition remains dynamic, particularly in innovative sectors.”**

**With regard to merger control specifically, a wind of modernisation is blowing, both at European and national levels, can you tell us about it?**

whether reference to abuses of a dominant position suffices), as well as, and as a matter of priority, on reinforcing merger control to make it even more effective. It is clear to see: major platforms derive their power not only from internal growth but also from an active policy of strategic takeovers, with the aim of extending their activity to other sectors or working with innovative Internet start-ups or existing players.

We have put forward proposals to update merger control as part of a contribution to the debate on competition policy in light of the challenges posed by the development of the digital economy, which we published on 21 February 2020. They will be put forward at the European level and, where appropriate, at the national level. Our recommendations aim to equip the Autorité de la concurrence with new tools to enable it to examine mergers that are 'below the thresholds'. Despite the fact that they may have significant structuring effects on the economy, they are not currently subject to any control because of the low turnover of the target companies.

Today, platforms are at the heart of the debate in France and in Europe, as well as in the rest of the world. Adjustments to our regulatory framework may prove necessary (on the tax or social level, for example). As for competition policy, an *aggiornamento* must also be on the agenda, which would entail discussions on anticompetitive practices (for example, the issue of knowing

It has become imperative that all competition authorities, including the European Commission, have a better view of and more control over the acquisition strategies implemented by players with a structuring position in the market.

Firstly, the Autorité proposes introducing a requirement that the Commission and/or the relevant competition authorities be informed of all mergers, within the meaning of Article 3 of Regulation 139/2004, carried out in the European Union by 'structuring' companies, identified according to objective criteria.

Secondly, the Autorité recommends adding a notification mechanism to the current mandatory notification thresholds that can be implemented at the initiative of a competition authority on the basis of competition monitoring. This system is already in place in several European countries (Estonia, Hungary, Ireland, Lithuania, Norway and Sweden), as well as in the United States and Japan. In order to ensure legal certainty for companies, this notification power would only be exercised once certain well-defined conditions had been met. The Autorité also calls for the publication of guidelines designed to clarify the conditions for exercising this power.

In addition, we are very attentive to and involved in the work that the European Commission has begun to modernise European competition law. In particular, the Autorité is playing its full role in the discussions on reviewing communication on the definition of relevant markets, developing new tools to better understand the competition exerted beyond Europe by companies that benefit from State subsidies or operate on protected domestic markets, and adapting the tools of competition law to take into account large digital platforms.

Digital technology

**“Major platforms derive their power not only from internal growth but also from an active policy of strategic takeovers.”**

Audiovisual sector  
**“We have called on public authorities to fundamentally overhaul how the audiovisual sector is regulated to address the situation of inequality faced by incumbent stakeholders.”**



07

**The Autorité carries out a structuring action in the audiovisual sector. What are some of the major aspects?**

on the audiovisual sector and digital technology. In it, we describe a textbook case of a sector disrupted by technological innovation and the development of new uses, as evidenced by the success of OTT media platforms such as Netflix, Amazon Prime Video and, more recently, Disney+. This is why we called on public authorities to fundamentally overhaul how the audiovisual sector is regulated to address the situation of inequality faced by incumbent stakeholders, in order to give them the means to compete on equal terms with the new players that are platform operators.

The audiovisual sector has certainly been at the centre of our priorities over the past year. It is one of the sectors most radically transformed by the digital revolution and we wanted to carry out a comprehensive analysis in our 2019 opinion

The decision to issue clearance to the French streaming platform Salto [in August 2019] was also an opportunity to look into this sector again and to begin directing our work towards this renewed landscape. We cleared the creation of this new kind of platform, subjecting it to commitments that protect the various other players in the audiovisual sector.

The decision issued on 9 April 2020 ordering urgent interim measures to Google concerning related rights also enabled us to begin to explore the issues surrounding the application of this directive, which is expected to play an important role in redefining the value chain of the print media sector. Our decision thus recognises the considerable influence garnered by digital players like Google in the dissemination of news content, particularly through search engines.

**Digital technology features more strongly than ever at the heart of the Autorité's concerns, where it now takes top priority. Can you tell us more?**

Digital technology remains one of the major priorities of our work. We are proud to have drawn up, together with our German counterparts, the first study by competition authorities focusing specifically on the problems raised by algorithms. Our aim is, as always, to provide companies

with decoding tools related to their use of algorithms, and, upstream, for the questions they need to ask when deciding to create, modify, or outsource algorithms. We would also like to outline the prospects of potential breaches of competition arising, which may be enabled and facilitated by algorithms, and on any investigative methods and questions that could be relevant.

We also intend to make use of all existing tools, including those based on data science, big data and artificial intelligence, to develop our investigative capabilities and expose any anticompetitive behaviour. It is in this context that we wanted to create a digital economy unit. It will also contribute to further deepening our understanding of new phenomena and our knowledge of the platform economy. Our objective remains to anticipate the issues and challenges of tomorrow in order to be one step ahead and able to respond appropriately when the time comes.

Certain noteworthy discussions also illustrated our ability to be a vigilant watchdog over the activity of major platforms. Thus, the decision to sanction Google's abuse of its dominant position in the online advertising sector is exemplary, given the amount of the fine imposed (€150 million) but, above all, since it requires Google to fully assume its role as a dominant company with a specific responsibility, in particular with regard to advertisers. In March 2020, the fine handed out to Apple for anticompetitive practices and abuse of a situation of economic dependency concerning its premium resellers also illustrates the Autorité's firmness towards practices that reduce competition in the distribution of Apple products and take advantage of Apple's dominance over its premium retailers. The high value of the fine (€1.1 billion) reflects the considerable economic scale of the markets affected.

The Autorité's action in this sector, which does not hesitate to mobilise all the tools at its disposal, ranging from decryption through studies to sanction, including the adoption of behavioural remedies, demonstrates the relevance of competition law to meet digital challenges and effectively grasp the behaviour of platforms.

**You talked about sanctions in the digital sector. Coming back to this subject, the overall amount of fines was substantial in 2019 and 2020 promises to be just as important in this regard. How do you see this year's review?**

The amount of the sanctions reflects the fact that we were able to uncover far-reaching practices that had an impact on key sectors of the economy. Examples include the food industry, with the decision to sanction the fruit-compote cartel; the financial services industry, where we also imposed a fine on a large cartel; the meal vouchers cartel; and the digital economy, with the decision to sanction

Google for abusing its dominant position in the online advertising market.

The Autorité's effectiveness, however, is not measured by the amount of sanctions alone. In any case, these large amounts, combined with the diversity of sectors, geographical areas and stakeholders involved, demonstrate our determination, with the invaluable help of the Directorate General for Competition Policy, Consumer Affairs and Fraud Control (*Direction générale de la concurrence, de la consommation et de la répression des fraudes, DGCCRF*), to detect and sanction any anticompetitive behaviour that companies may be guilty of, regardless of the sectors of the economy affected and across the entire country, both overseas and in mainland France. Let's remember that anticompetitive agreements, which often concern the everyday products of French citizens, can result in price increases for consumers of up to 25%. In the already mentioned case involving fruit compotes, one of the objectives of the agreement was precisely to increase the sale price.



**European and international cooperation is essential to effectively meet new challenges. What is new in this area and what role does the Autorité play in it?**

enhanced coordination between the various competition authorities. This is why we are committed to being a driving force in developing the tools of international cooperation.

We truly believe that nowadays, in a globalised economy like ours and faced with players present on all continents, regulators must place their action within a framework that too is globalised. We believe that meeting the challenges posed by large digital platforms will inevitably require a supranational response, which will imply substantial and

We are therefore proud of the agreement we reached in 2019, as part of the French Presidency of the G7, led by the Directorate General of the Treasury. This agreement, signed in Paris and presented to the G7 Finance Ministers at the summit in Chantilly in July 2019, for the first time reflects a shared vision among the G7 competition authorities regarding competition policy in the digital era. This is a previously unseen approach that will serve as a roadmap for the next few years. Thus, it is possible to bring our views together on these matters at the international level, if we have the will to do so and we develop a close dialogue with our partners, the European Commission, the DOJ and the FTC in the US, or the JFTC in Japan.

The ICN, a worldwide network of competition authorities, has also worked to enhance integration and its tools for cooperation, proposing a general framework for competition authority procedures. The interests of companies, who aspire to a convergent international framework that respects their rights, have therefore not been forgotten.

Finally, the particularly substantial European agenda includes several major project completion dates approaching in 2020/2021, with the reform of the exemption regulations on vertical restraints and horizontal agreements, as well as the review of communication on relevant markets. We will also have new insights into competition tools and will closely follow the discussions on the regulation of digital platforms, particularly as regards competition, under the Digital Services Act. The Autorité intends to have a very active role in proposing innovative and ambitious solutions in this regard.

**“The amount of the sanctions reflects the fact that we were able to uncover far-reaching practices that had an impact on key sectors of the economy.”**

29 January 2019

## Baking aids

GREEN LIGHT TO THE TAKEOVER OF ALSA BY DR. OETKER (ANCEL).



21 February 2019

## Audiovisual sector

OPINION AND RECOMMENDATIONS FOR AN IN-DEPTH REFORM.



# OVERVIEW

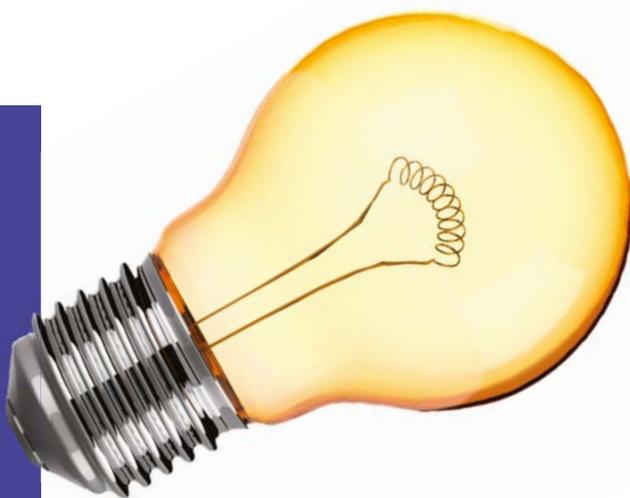
A look at the year's main cases

10

25 March 2019

## Energy

THE AUTORITÉ ADVISED AGAINST INCREASING REGULATED RETAIL ELECTRICITY TARIFFS OF ELECTRICITY WITHOUT FIRST CLARIFYING THE OBJECTIVES THEY MUST WORK TOWARDS.



4 April 2019

## Healthcare

CONCLUSIONS OF THE EXTENSIVE SECTOR-SPECIFIC INQUIRY.



24 June 2019

## Regulated professions

NOTARIES AND COURT BAILIFFS SANCTIONED FOR ANTICOMPETITIVE PRACTICES.



4 July 2019

## Fighting the high cost of living in French overseas territories

GENERAL DIAGNOSIS OF THE COMPETITIVE SITUATION IN THE FRENCH OVERSEAS TERRITORIES AND RECOMMENDATIONS FOR IMPROVING COMPETITIVE DYNAMICS.



12 August 2019

## French streaming platform

CONDITIONAL CLEARANCE GRANTED FOR THE CREATION OF THE PLATFORM SALTO BY TF1, FRANCE TÉLÉVISIONS AND MÉTROPOLE TÉLÉVISION (M6).

30 September 2019

## Architects

ORDRE DES ARCHITECTES SANTIONED FOR ORGANISING AN ARRANGEMENT ON FEES.



18 December 2019

## Meal vouchers cartel

THE FOUR INCUMBENT ISSUERS OF MEAL VOUCHERS FINED ALMOST €415 MILLION FOR ANTICOMPETITIVE PRACTICES.

18 December 2019

## Fruit-compote cartel

MAIN MANUFACTURERS FINED A TOTAL OF €58.3 MILLION FOR PRICE-FIXING AGREEMENT AND MARKET SHARING.



11

31 January 2019

## Online advertising

INTERIM MEASURES IMPOSED ON GOOGLE.



19 December 2019

## Online advertising

GOOGLE FINED €150 MILLION FOR ABUSE OF A DOMINANT POSITION.

# Understanding in order to anticipate and prevent

**EVEN THOUGH COMPETITION CULTURE HAS SIGNIFICANTLY IMPROVED IN FRANCE OVER THE LAST FEW YEARS, THE AUTORITÉ RESOLUTELY PURSUES ITS ACTION IN AWARENESS-RAISING AND PREVENTION WITH ECONOMIC STAKEHOLDERS AND CONSUMERS.**

## **PUBLICATIONS TO EXPLORE ALL SIDES OF THE SUBJECT**

### **A guide for SMEs**

When it comes to competition, all companies, whatever their size, are subject to the same playing rules. This is why the Autorité wanted to make competition law more accessible to small and medium-sized enterprises, which are often lacking a legal department. For these stakeholders, it's a considerable challenge; they have greater difficulty apprehending the applicable rules and implementing compliance policies.

This poor understanding can have serious consequences and sometimes expose them to risks that they are not even aware of!

The aim of the guide is two-fold: to help companies better understand the rules in order to prevent breaches, and to raise awareness of the legal tools available to defend themselves against anticompetitive practices to which they too could fall victim.



An online space offers in plain language practical information sheets as well as concrete examples and videos.

**The SMEs space is available on the Autorité's website**

### **"Les Essentiels" collection**

The Autorité has launched a series of thematic studies to enable everyone to better understand competition issues. This collection is aimed at competition law practitioners, economic stakeholders, professors and students in business law, economic law and competition law.

The series is intended to be primarily educational and serve as a compliance tool for companies, providing access to the Autorité's vision on the most sensitive subjects. The chosen topics may be cross-disciplinary, focusing on a legal or economic concept or a procedure, or sector-specific. The objective is to summarise the Autorité's decision-making practice and the case law of the French and European review courts so that the reader can examine the issues involved from all angles. Published in 2018 and focusing on **loyalty rebates**, the first issue won the Best Soft Law category of the 2019 Antitrust Writing Awards prize organised by Concurrences.



**A second issue, published in January 2020, dedicated to behavioural remedies**

The Autorité is one of the competition authorities that makes the most use of this tool, often in an innovative way, both to put a stop to anticompetitive practices and as part of its task of controlling mergers. The study has the dual aim of reviewing the Autorité's decision-making practice in this field, and providing material for broader discussion on adapting



the means of intervention and on the application of behavioural commitments.

**These works are available free of charge on the Autorité's website and hard copies can be ordered on the website of *La Documentation française*.**

#### Two other written works in progress

One will take a look at **e-commerce**, which has seen very rapid development – further accentuated by the Covid-19 health crisis – that is permanently transforming market operation and business strategies.

The other will focus on **how competition law is applied to trade associations and professional bodies**. The publication of this study is particularly topical since it falls within a new legal context for this category of stakeholders, with the adoption of the ECN+ Directive. This directive, which aims to strengthen the resources of competition authorities to enable them to implement competition rules more effectively, and its upcoming transposition into national law will lead to a considerable tightening of the system of sanctions that can be applied to trade associations and professional bodies in France. Whereas, until then, the maximum fine that an association of companies may be subjected to was €3 million, the maximum fine incurred may, in the future, be up to 10% of the combined turnover of the member companies.

## MEETING WITH ECONOMIC STAKEHOLDERS

Advocacy also entails debate, crossing views and disciplines, as well as being open to new perspectives. The Autorité organises events in different formats.

### Sharing points of view: the “Rendez-vous de l’Autorité”

The “Rendez-vous de l’Autorité” are an opportunity for a dozen specialists or economic stakeholders to express their views on a topical subject, draft guidelines, the functioning of an economic sector or a more general aspect of competitive analysis.

In 2019, the Autorité chose to turn the spotlight onto algorithms. The conference, held at the ENA (*École nationale d’administration*), led to constructive dialogue between various stakeholders (companies, judges, lawyers and academics), who exchanged their views on the issues involved in the use of algorithms.

### Exploring new trends: @Echelle meetings

In 2019, the Autorité also launched a new form of event, in a short format and broadcasted live, entitled “@Echelle”. The aim is to provide an opportunity to understand the new challenges in competition law with regard to technological innovations, new practices and adapting competition policy to these new realities. In an informal setting, with a lot of time devoted to questions and discussion, the meetings are open to all and take place in the offices of the Autorité de la concurrence. In 2019, the editions focused on the following topics: blockchain; competition policy in the digital era; adapting competition policy to the challenges of digital technology in the UK; FinTech; ongoing Government digital projects, including updating regulation, particularly with regard to antitrust and the digital sector through discussions with the State Secretary for Digital Affairs, Cédric O. In June 2020, the Autorité held the event in the form of a webinar addressing the growth of e-commerce.

**Videos of all debates are available on the Autorité de la concurrence website.**

### Discussions on compliance

The Autorité intends to promote compliance widely and has decided in that respect to initiate discussions on compliance policies by putting together a panel of experts (including legal and corporate compliance directors). This approach aims to identify the most effective tools and best practices in this field to effectively shield companies from the “antitrust risk” and to promote awareness among company managers and employees. This approach starts with the needs of companies and the difficulties they encounter in implementing and monitoring antitrust compliance programmes, in order to promote best practices.





# ANTICIPATING

## DIGITAL TECHNOLOGY

# RETHINKING REGULATION

The digital revolution has far-reaching effects on the economy and is profoundly changing competitive dynamics. Competition law, a highly malleable discipline, is constantly evolving to adapt to market changes; as such, it is a particularly effective tool for addressing the challenges of an economy marked by major innovations.

In order to be able to rise to the challenges of regulating the digital sector, the Autorité continues to invest significant time, effort and resources to deepen the understanding of these phenomena and technologies: platforms, network effects, algorithms, data, artificial intelligence, and blockchain, among others. The objective is to anticipate major trends, understand the mechanisms at work and their impact on the strategies of market players, and to identify, if necessary, any new forms of abuse or collusion that may ensue.

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### A strike force dedicated to digital matters

The biggest challenge that competition authorities are facing is finding appropriate answers in increasingly short time frames. Speeding up decision-making is certainly a major challenge and, in that respect, the Autorité decided to bolster the means dedicated to detecting and analysing the behaviour of digital players. This notably involved setting up a new specialised unit, which reports directly to the General Rapporteur. The Digital Economy Unit will take part in the Autorité's discussions and sector-specific inquiries on new issues related to the development of digital technology, in line with those already carried out on big data, online advertising and algorithms. It will thereby contribute to preparing studies on payments, blockchain platforms and technologies, as well

as transformations in physical retail brought about by digital technology (the e-commerce study).

The new team will also be responsible for:

- developing new digital investigation tools, based in particular on algorithmic technology, big data and artificial intelligence;
- providing support to the investigation and inspection units that handle cases with a significant digital dimension;
- working in close cooperation with industry regulators, relevant government departments and other competition authorities at European and international level to develop convergent and uniform methods of analysis and intervention;
- developing discussions with the academic community and research institutions specialising in digital subjects.

## Algorithms Addressing potential new forms of cartels or abuse

There is no denying that algorithms are among the most important technological levers in the process of digitisation taking place today. They are now used in many forms in the economy and are at the very core of how some rapidly expanding companies operate: in the

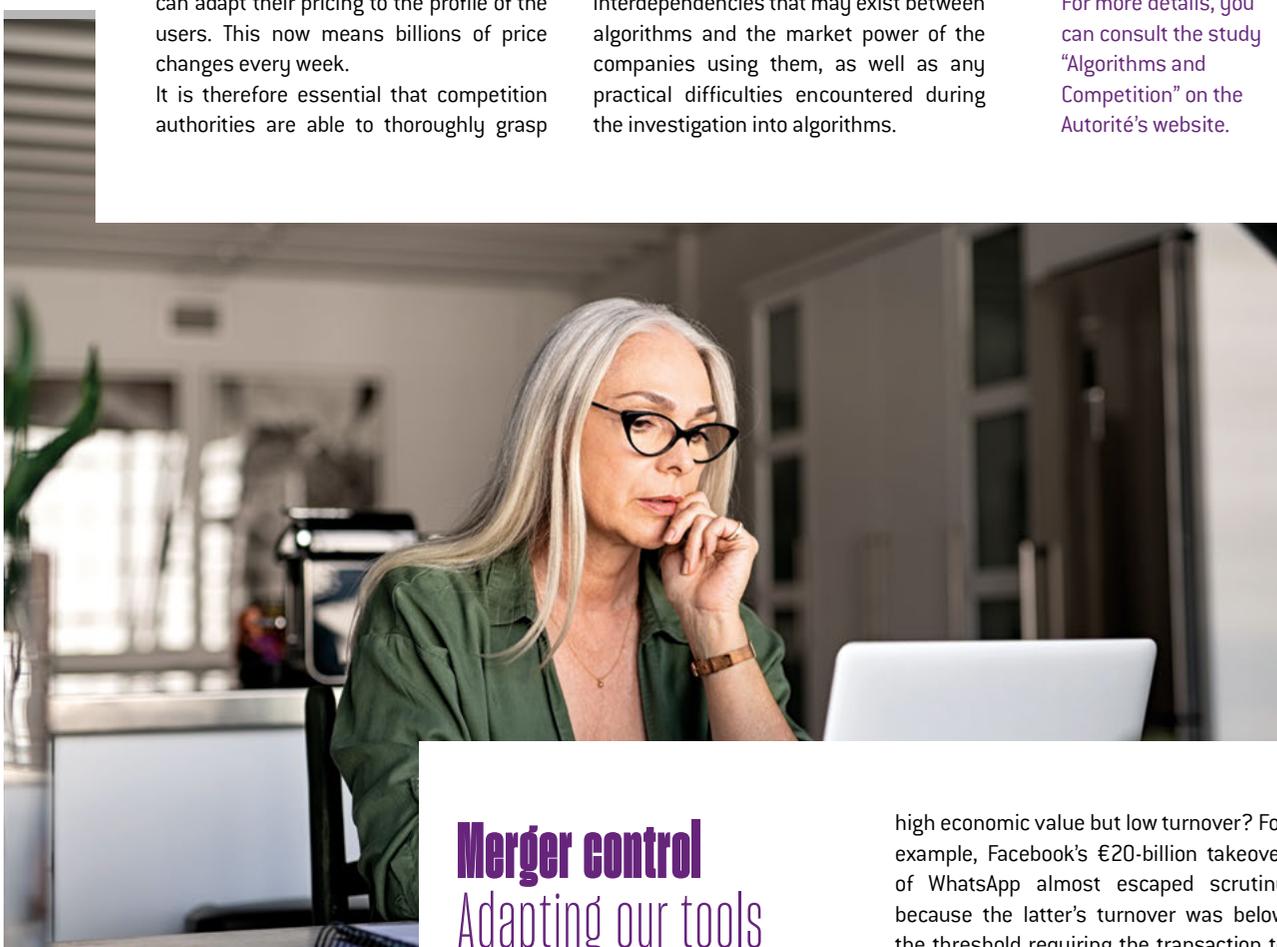
sectors of e-commerce, online advertising, and online travel agencies, to name but a few. Thanks to algorithms, companies can be more innovative, more efficient, and can adapt their pricing to the profile of the users. This now means billions of price changes every week.

It is therefore essential that competition authorities are able to thoroughly grasp

how these algorithms function to determine whether there is a risk of them facilitating or permitting behaviour that constitutes a breach of competition law, and to detect potentially harmful effects on the competitive functioning of markets. To this end, the French and German competition authorities decided to join forces and published a joint study on the challenges stemming from the use of algorithms in the implementation of competition law. In their joint analysis, the two authorities studied the different types of algorithms and the fields of application. They focused in particular on pricing algorithms and the risks of collusion, but also considered the interdependencies that may exist between algorithms and the market power of the companies using them, as well as any practical difficulties encountered during the investigation into algorithms.



For more details, you can consult the study "Algorithms and Competition" on the Autorité's website.



## Merger control Adapting our tools

Through the development of the digital economy, new kinds of mergers and acquisitions have emerged. As a result, regulators have to adapt their analytical frameworks and tools to uncover all practices. Among the questions to be addressed, the issue of whether certain transactions are subject to any control is of particular importance. Does a new merger control category now need to be created in order to review transactions involving companies that have a

high economic value but low turnover? For example, Facebook's €20-billion takeover of WhatsApp almost escaped scrutiny because the latter's turnover was below the threshold requiring the transaction to be controlled. The growing number of these types of acquisition, which are liable to raise significant concerns for competition, is problematic. Like the many countries that have already introduced it, the Autorité is exploring the possibility of implementing targeted ex-post merger control (once the deal has been finalised) to correct the flaw in the current system and be in a position to control operations that could, in some markets, result in dominant or monopolistic positions, or significantly decrease competition.



## Digital platforms With great power comes great responsibility

Competition law is now paramount in ensuring that major platforms do not abuse their dominant position in respect of their partners or their customers.

It is also necessary to ensure that the innovators of tomorrow can compete with those of today: digital giants must not illegally impede the emergence of competitors, partners or customers. These abusive practices can take many forms, such as discriminatory treatment or unfair trading conditions, which could, in some cases, lead to the foreclosure of certain stakeholders. Let's take a look at three concrete cases.

### • RELATED RIGHTS

The Autorité received a complaint from publishers who believed that Google abused its dominant position and circumvented the law on related rights by subjecting them to conditions that ruled out any form of negotiation over or compensation for the reuse of their protected content.

The Autorité ordered urgent interim measures requiring Google to conduct negotiations, in good faith, with publishers and press agencies on the remuneration owed to them for any reuse of their content, according to transparent, objective and non-discriminatory criteria ([Decision 20-MC-01 of 9 April 2020, for more details see p. 68](#)).

### • ONLINE ADVERTISING

While it is perfectly lawful for a platform in a dominant position to enact rules to protect Internet users, those rules must be clear, objective, transparent and non-discriminatory. The Autorité reiterated this in December 2019 by sanctioning Google for imposing rules that were opaque and regularly changing them without informing advertisers ([Decision 19-D-26 of 19 December 2019, for more information, see p. 63](#)).

Similarly, the European Commission has imposed heavy fines on Google for giving its own price comparison service an illegal advantage (Google Shopping decision) and for having impeded competition in the online search advertising intermediation market ([AdSense for Search decision](#)).

### • BOOKING.COM

Similarly, in the case involving Booking.com, the Autorité identified competition concerns related to the conditions imposed by the platform on hotel operators (parity clauses on room availability or commercial terms), including reduced competition between Booking.com and competing platforms, and the risk of excluding new entrants. The application of commitments gave hotel operators more commercial freedom in managing their availability and capacity, enabling them to allocate less room availability to Booking.com than to other platforms and/or to do so on less favourable terms ([Decision 15-D-06 of 21 April 2015](#)).

## Audiovisual sector

### A regulatory framework to be reinvented

Owing to their specificities, new entrants sometimes escape pre-existing regulations and, consequently, are not subject to the same constraints as existing players. Some examples in this regard include the case of chauffeur driven cars in relation to taxis, or the audiovisual sector.

The transformations taking place in this sector, particularly when it comes to digital technology, are extremely profound. Operators working nationally, who have for a long time based their market position in France on the possession of a terrestrial frequency giving them a quasi-monopoly of access to television advertising, now see these national barriers to entry weakened and bypassed by the entry onto the market of powerful international players (such as Netflix, Amazon Prime and Disney+) and OTT streaming.

In its opinion delivered in February 2019 on the draft audiovisual law, the Autorité found that new subscription video-on-demand (SVOD) providers were not subject to the same requirements as those imposed on incumbent channels, whether involving production and broadcasting obligations or obligations related to independent production and advertising. This has meant that, for example, while incumbent channels have been required to fulfil obligations to invest in the production of French films or series for decades, the same requirement has thus far not applied to new streaming platforms, which have developed unhindered. The on-going reform should remedy this asymmetric treatment.



To find out more, see [Opinion 19-A-04 of 21 February 2019](#) and its commentary on p. 71.



## Speaking with one voice internationally

Digital technology has no boundaries and one of the key challenges is being able to act on a global scale. Competition law is seen as a model, thanks to the work within an integrated network of regulators.

Whether at European level, through the European Competition Network (ECN), or at international level, through the International Competition Network (ICN), as well as in other fora such as the OECD or the G7 (see press release of 18 July 2019), collaborative work is furthering thinking and convergence in the field.

## MASS DISTRIBUTION AND E-COMMERCE

# THE NEW FRONTIERS OF TRADE

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The retail sector has been at the heart of the Autorité's work for several years now. With the surge in online sales and changes to consumption patterns, the industry has begun an unprecedented shift. While these developments reflect a fast-moving economy and provide many opportunities for economic stakeholders and consumers alike, the Autorité is nonetheless closely scrutinising them.



To find out more on the subject, watch the @Echelle event video on the transformation of the retail sector.



### A radically changing sector

As a result of digital development, new players are emerging, exerting competitive pressure on the incumbent stakeholders in the sector. With online sales, new services are also materialising, and this trend accelerated significantly owing to the Covid-19 health crisis.

To stay in the race, incumbent retailers must rethink their business models by proposing new services and restructuring their supply chains to be able to offer consumers the lowest possible prices.

Two major shifts are now underway:

- the implementation of joint purchasing agreements between large retailers, in order to carry more weight in negotiations to obtain the best supply costs;
- the development of phygital strategies (physical retailers take over online retailers and, conversely, pure players invest in physical retail), omni-channel and cross-channel strategies, in which retailers target customers via many channels through different services (including using digital to drive in-store traffic with click-and-collect, drive-through pickup and click-and-reserve).





## Joint purchasing agreements Alliances being monitored

The issue of the degree of concentration is key to maintaining a satisfactory level of competition in the mass distribution sector. In this respect, the movement to establish agreements by purchasing offices, which began a few years ago,

could potentially generate new risks to competition.

### • PRIOR NOTIFICATION OF AGREEMENTS BEFORE THE AUTORITÉ

This is why, from 2015, in an opinion addressed to the Government and the Economic Affairs Committee of the Senate ([Opinion 15-A-06 of 31 March 2015](#)), the Autorité highlighted the need to establish a legal requirement to inform the Autorité prior to any new agreement in order to enable it to perform its monitoring role effectively.

The legislator adopted this recommendation, with the Macron Law of 6 August 2015 initially imposing a requirement of prior notification two months before the alliance in question takes effect (the Egalim Law of 30 October 2018 further strengthened this

provision, in particular by extending the advance notice to 4 months]. In accordance with these new provisions, the Autorité was notified of many purchasing alliances in 2018. This was notably the case for the agreement planned between Système U and Carrefour (the latter having also formed an alliance with Tesco) and the one between Auchan, Casino, Métro and Schiever.

### • LITIGATION CASES OPENED

Following on from the review of these agreements, in July 2018 the Autorité announced that it had decided to step up its investigations by opening a litigation procedure for each of these agreements.

In June 2020, the Autorité launched a market test on the commitment proposals submitted by Casino, Auchan, Métro and Schiever. These retailers proposed revising the planned cooperation agreement with regard to the own-brand labels of retailers. They propose excluding several categories of products from the scope of the agreement, in particular agricultural products (milk, eggs, cooked meats, etc.), and limiting the volume of purchases for other categories (potatoes, flour, sugar, etc.). [Market test and press release of 25 June 2020](#).

## Alliances between purchasing offices: what are the risks?

As part of an opinion delivered to the Government and the Senate, in 2015 the Autorité drew up a general analytical framework and mapped the risks that could result from these agreements.

### For the retail market

Downstream, these alliances can encourage the sharing of sensitive information between competing retailers concerning special offers or product ranges, and promote collusion between retailers.

### For the wholesale markets

Upstream, they affect the balance of power between stakeholders, above all strengthening the position of distributors in relation to suppliers, particularly with respect to SMEs in the agrifood industry. They can thereby create significant pressure on suppliers to drive their prices down without valuable consideration, or even lead to practices of delisting. For more information, see [Opinion 15-A-06 of 31 March 2015](#) and the [press release of 1 April 2015](#).



## Understanding to take better action

### A study on e-commerce

Today, 6 out of 10 French people have made at least one online purchase in the last twelve months, 50% more than a decade ago<sup>1</sup>. Online shopping, whether on websites or on smartphone or tablet applications, now accounts for almost €100 billion, representing nearly 10% of all retail trade in France. The Internet has significantly increased the choice and decision-making ability of consumers. This growth in e-commerce can also be explained by the extended offering of goods and services proposed online, the increasing facility with which purchases can be made through various features and services (search engines, price comparison tools, online marketplaces, etc.), reduced delivery times, greater choice of delivery methods and enhanced security of online payments. Moreover, the advantages for companies are also legion, since the Internet enables them to cut costs, improve their service offering and increase sales outside the catchment area of their physical stores. In this context of the rise of e-commerce, which is durably transforming the functioning of the market and business strategies, the Autorité produced a study in which it presents its approach to incorporating this transformation into its analysis of markets and behaviours.

#### • A TAILORED ANALYSIS THAT ADAPTS TO THE SPECIFICITIES OF EACH SECTOR

In order to assess the market power of operators, the Autorité must evaluate the extent to which online sales compete with

in-store or in-branch sales, given that the competitive pressure exerted through the online retail channel on traditional trade can vary from sector to sector.

While in certain markets, from a consumer point of view, online shopping can be substituted to a great extent for shopping in store, in other markets, on the contrary, online sales remain relatively unattractive or too different compared to sales in brick-and-mortar stores for the two channels to be truly in competition with each other. For example, online sales may appear less attractive due to the immediate nature of the need to be satisfied, the importance for the consumer of having contact with the product (so as to see it or touch it, for example), or the significant weight or volume of the articles compared to their value, meaning delivery is not very advantageous.

Where online sales are an important component of competition in any given sector, the Autorité takes this into account when defining the markets and assessing the market power of stakeholders. Where necessary, it also incorporates certain specific parameters into its analysis, such as indirect network effects, in order to assess the effects of competitive behaviour, whether involving a merger, unilateral conduct or concerted practices, such as exclusivity agreements, for example.

#### • A CASE-BY-CASE REVIEW OF BEHAVIOURS

For businesses, online sales represent both an opportunity and a threat. The Internet can help distributors and manufacturers to increase their sales, but it can also contribute to destabilisation, by enabling new competitors (such as players special-

ising in online sales) to enter the market or by creating tougher competition between existing operators: this can, for example, result from the existence of price comparison tools or simply from the extension of catchment areas, the Internet making it easier for consumers to find out about and contact remote vendors.

The authorities responsible for implementing competition law therefore have to weigh up the positive and negative effects of the different conduct adopted by stakeholders.

### Retailers

Lower performing retailers may see their sales fall. As for the most powerful among them, they may be tempted to put pressure on their suppliers to prevent too much competition from the Internet from developing, for example by imposing resale prices on them or restricting the sale of their products over the Internet.

### Manufacturers

Manufacturers themselves may also view the Internet with distrust. In some cases, online sellers may consistently adopt the posture of not offering the same services or sales environment as in stores. However, for a number of products, these requirements may be necessary for the consumer to correctly appreciate the value, the technicality or the conditions of use. This is why, in order to protect their brand image, some manufacturers have opted to set up selective distribution networks to ensure that online sales comply with rules common to traditional shops.

Yet, more worryingly from a competition perspective, manufacturers may also want to limit the development of online sales because the greater competition generated by such sales at the retail stage can have repercussions upstream and intensify competition between manufacturers. In the same way, in certain sectors in which online

sales are already relatively concentrated between a few operators, these operators might seek to limit competition between them, e.g. through price parity clauses. Such restrictions are, in these cases, unlawful given that their aim clearly conflicts with the interests of consumers.

### The need to regulate platforms

The study also highlights the need to regulate the conduct of intermediaries or platforms. By creating a link between online buyers and sellers (i.e. search engines, price comparison tools, marketplaces, etc.), these players now play a key role and their behaviour must, as a result, fall within the scope of competition policies.

As indicated in the Autorité's contribution to the debate on competition policy and digital challenges<sup>2</sup>, the current tools of competition law, by virtue of their adaptability to the specificities of each sector, constitute an effective means of regulation and intervention in digital markets (for digital challenges more generally, see p. 16).



Full study available in the Publications section of the Autorité's website.



1. ARCEP (French Telecommunications and Posts Regulator), *Baromètre du numérique 2018* (2018 Digital Market Barometer), 18<sup>th</sup> Edition.

2. The Autorité de la concurrence's Contribution to the debate: competition and digital, February 2019, and press release of 21 February 2019.

## ISLAND TERRITORIES

# INCREASED VIGILANCE

Island economies have many unique features, both geographical and regulatory, which often lead to higher prices than in mainland France. These structural disadvantages are sometimes compounded by the harmful consequences of illegal trade practices that affect the proper functioning of competition and thereby penalise both consumers and companies. Confronted with these specific situations, particular scrutiny and increased vigilance are essential.

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### Fighting high living cost in French overseas territories

Since every overseas resident should be able to access more competitive prices and since solutions to improve the situation must be offered to them, the Autorité has been playing an active role for many years in fighting the high cost of living in overseas territories. Its work focuses on the main expenditure items for consumers: consumer products, fuel, housing, as well as telephone and Internet expenses.

#### • ASSESSING TO PROPOSE SOLUTIONS

As part of its advisory function, the Autorité also regularly offers its expertise at the service of public authorities by drawing up in-depth diagnoses.

In its opinion issued in 2018, it looked into the abnormally high prices of building materials in La Réunion and Mayotte, a particularly sensitive issue in view of the housing crisis and the demographic dynamics seen in these territories ([Opinion 18-A-09 of 3 October 2018](#)).

In April 2019, it also examined the legitimacy of the fee increases applied to certain services provided by notaries and court bailiffs in Guadeloupe, Martinique, French Guiana, La Réunion and Mayotte ([Opinion 19-A-09 of 11 April 2019](#)).

In an opinion delivered in July 2019, the Autorité undertook an overall diagnosis of the competitive situation in all the overseas territories, focusing in particular on the mechanisms for the import and distribution of consumer products. While positive developments (particularly in the telecoms sector) can be seen from the first diagnosis delivered to the Government in 2009, the Autorité finds that the consumer prices paid by the 2 million French citizens living overseas nevertheless remain significantly higher than those paid by citizens in mainland France, with very considerable price differences of 7% to 12.5%. This price differential is even more marked when it comes to food products (+ 38% for Martinique, + 33% for Guadeloupe and + 28% for La Réunion).

In order to remedy this, the Autorité called inter alia for resolute action to be taken to facilitate online sales, simplify and better target dock dues in the different territories, improve the effectiveness of quality and

price protection, and pursue the structuring of local agricultural sectors ([Opinion 19-A-12 of 4 July 2019](#)).

#### • CONTROLLING COMPANY TAKEOVERS

The Autorité also acts on the structure of markets, reviewing mergers and acquisitions and, where necessary, subjecting them to conditions, in order to prevent monopolies or overly strong positions from forming.

For example, the Autorité conditionally cleared the takeover of the company Super NKT in Cayenne. The commitments made by the buyer SAFO made it possible for an independent hypermarket brand in French Guiana to continue operating and thereby maintained a diversity of offer for consumers ([Decision 19-DCC-180 of 27 September 2019](#)).

The acquisition of the Pain Frotté bakeries group in La Réunion was also cleared subject to remedies. The buyers committed to divesting of a bakery in an area where the transaction created competition difficulties. This prospect of divestiture dispels any risk of harming the competing point of sale's conditions of supply, thereby protecting the purchasing power of consumers in La Réunion ([Decision 20-DCC-28 of 3 March 2020](#)).

## • MONITORING AND SANCTIONING

Lastly, the Autorité seeks to detect and, where necessary, sanction any anticompetitive practices in all these territories, whether they involve cartels, abuses of a dominant position or import exclusivity agreements.

In 2019, it carried out several dawn raids in the air passenger transport sector (La Réunion) as well as in the port services sector (Mayotte).

The Autorité also had to hand out fines on several occasions for exclusive import agreements, such as to bioMérieux and Guyane Service Médical in May 2019 ([Decision 19-D-11 of 29 May 2019](#)), as well as Procter & Gamble, Coty and Chanel in October 2019 ([Decision 19-D-20 of 8 October 2019](#)).

Several fines were also issued in La Réunion for concerted practices in the market for removals for military personnel in March 2020 ([Decision 20-D-05 of 23 March 2020, for details see p. 107](#)), as well as for non-compliance with commitments in the life insurance sector in February 2020 ([Decision 20-D-03 of 20 February 2020, for more details see p. 106](#)).

Finally, in April 2020, in the midst of the Covid-19 health crisis, the Autorité opened an exploratory investigation against Fisher & Paykel Healthcare into the conditions for the distribution of respiratory support devices to hospitals in French Guiana and the French Antilles, which quickly prompted the manufacturer to correct its conduct ([see press release of 6 April 2020](#)).

## As close to the field as possible

In order to address certain sensitive cases and work as closely as possible to the field, the Autorité chooses to meet with local economic stakeholders, decentralised services of the State, social partners and elected representatives, among others. By means of illustration, in the major deal in the overseas mass distribution sector involving the acquisition of Vindémia by Groupe Bernard Hayot, the Autorité decided to implement specific and extensive means of investigation. It formed a team of investigators who, led by the Head of the Mergers Unit, travelled to La Réunion in November 2019, even before the acquisition had been notified, to hold interviews in person with the operators involved and all the different stakeholders (competing retailers, suppliers, consumer associations, etc.), as well as with the institutional partners: the Observatory of Prices, Margins and Revenues (OPMR), the prefecture, the region and members of the French Parliament, etc.

In order to remedy the threats to competition identified by the Autorité, the buyer submitted a series of commitments - including the divestiture of 7 stores to 2 buyers - which will ensure that competition is stimulated and sustained, particularly with regard to pricing, in the interest of consumers ([Decision 20-DCG-72 of 26 May 2020](#)).

## Corsica

### Understanding and preventing the phenomena of economic concentration

Invited by the Government to look into the specific economic situation in Corsica, the Autorité is preparing an opinion on the phenomena of concentration on the island, more specifically in sectors where concerns have been raised: fuel distribution, mass distribution, waste processing and maritime transport.

In this context, in November 2019 the Autorité sent a delegation to meet all the stakeholders in the Corsican economy, both in southern and northern Corsica. Constructive discussions took place on the competitive functioning of markets in Corsica with local elected representatives,

heads of companies, public institutions, associations and social partners, as well as with the prefectural authority and the decentralised services of the State. These interviews will inform the Autorité's inquiry, which will result in the elaboration of a diagnosis of the competitive situation in certain 'key' sectors and the issuing of recommendations appropriate for a balanced growth of the island economy, combining productivity gains for businesses and enhanced purchasing power for Corsican consumers ([see press release of 7 November 2019](#)).



MURDER  
MURDER  
MURDER





# MUSICIANSHIP

# MERGER CONTROL

Merger control is a task that is crucial for the economy: it prevents mergers and takeovers from creating or strengthening market positions that are likely to result in abuses and thus have a negative impact on competition. To fulfil this task, the Autorité continually seeks to establish a balance between an effective response to the problems identified and their suitability to market conditions, placing the negotiation of remedies and dialogue at the heart of the process.

# A strategic and structuring mission

## A well sustained activity

Although, in 2019, the activity with regard to mergers and acquisitions declined worldwide in terms of volume, it remained at a high level in terms of value, representing nearly €3,500 billion. In France, the Autorité reviewed 270 cases in 2019, achieving record activity.

## “Constructing” remedies for transactions that raise concerns

While most of the transactions examined by the Autorité do not present particular problems, the completion of some of them requires that specific conditions (called “remedies”) be included.

In 2019, this was the case for 9 transactions. Devising these remedies is achieved through close cooperation between the merging parties and the Autorité. This dialogue leads to a quicker and more satisfactory outcome for everyone and the creation of innovative commitments.

## CONSEQUENCES OF THE COVID-19 EPIDEMIC

In order to cope with an unprecedented health crisis, the Autorité was obliged to set up extensive prevention measures that required the Mergers Unit to work remotely. Following the introduction of the Law of 23 March 2020 declaring a state of health emergency and the Ordinance of 25 March 2020, the time limits for all procedures handled by the Autorité de la concurrence were adjusted, in accordance with the information provided in its statement of 25 March 2020. As a result, this crisis will have a significant impact on the number of mergers reviewed in 2020.

## Divestiture of business activities

As far as possible, the Autorité seeks together with companies to find solutions that are suited to the specific nature of their business and, most of the time, the required remedies are **structural**. This means that they result in divestiture: this can involve tangible assets (i.e. shops, establishments and production units) and/or intangible assets (trademark licences). The aim is for these assets to be taken over by a competitor in the market concerned, in order to maintain dynamic competition in the area affected by the transaction and thereby ensure that consumers continue to benefit from a diversified offering.

## Divestiture of sales outlets

In 2019, several clearance decisions were made conditional on this type of remedy.

## Acquisition of hearing aid distributor Audilab by the Demant group

The Autorité identified three areas in which the transaction raised competition concerns and conditioned the operation to the divestiture of two points of sale to a competitor in order to maintain sufficient competition ([Decision 19-DCC-244 of 11 December 2019](#)).



## THE MERGER REVIEW PROCESS BEFORE THE AUTORITÉ

Upon receipt of the complete case, the Autorité opens a...



## PHASE 1 OF 25 WORKING DAYS

If the Autorité does not identify any particular difficulties, the transaction is cleared, with or without conditions.

If, however, the Autorité has concerns regarding competition, the case goes to a...



## PHASE 2 OF FURTHER 65 DAYS

At the end of this second phase, the Autorité issues its final decision. Most of the time, the clearance is accompanied by remedies.

• • •

**Acquisition of Point P Travaux Publics by the Frans Bonhomme group**

The buyer committed to selling three sales outlets in order to address the competition problems identified ([Decision 19-DCC-221 of 27 November 2019](#)).

**Transfer of trademark licences or divestiture of business activities**

Remedies may also entail the divestiture of a business activity, the transfer of a trademark or the operation of a service.

**Acquisition of the Marie Brizard group by Cofepp (spirits sector)**

The transaction was cleared upon the condition of the transfer of the Pitters port and Tiscasz tequila brands, the purpose being to maintain competition in the port and tequila markets and to guarantee, both for the mass retail distribution sector and for consumers, a range of choices with regard to products and prices ([Decision 19-DCC-36 of 28 February 2019](#)).

**Takeover of Elsa by Dr. Oetker (Ancel)**

In order to prevent the transaction from resulting in the two main brands in the market – namely Ancel and Elsa – joining together within the new entity, the buyer committed to granting a brand licence to a competitor for Ancel dessert mixes for a period of five years, renewable once. The brand licence will provide a credible alternative for the distributors of dessert mixes and, ultimately, for consumers ([Decision 19-DCC-15 of 29 January 2019](#)).

**Acquisition of Mondadori by Reworld Media**

In the print media sector, the Autorité decided, for the first time, to clear the acquisition of Mondadori France by Reworld Media subject to the requirement that they sell a press publication. This is because the new entity would have owned three of the four main automotive publications distributed in France. The buyer made the commitment to sell a car magazine title to a competitor, in order to maintain sufficient competition

**9 clearance decisions subject to conditions in 2019**

Decision 19-DCC-15 of 29 January 2019	Groupe Dr. Oetker/Alsa France SAS
Decision 19-DCC-36 of 28 February 2019	COFEPP/Marie Brizard Wine & Spirits
Decision 19-DCC-76 of 26 April 2019	RATP Dev - Keolis (joint creation of CDG Express)
Decision 19-DCC-141 of 24 July 2019	Reworld Media/Mondadori France
Decision 19-DCC-147 of 24 July 2019	D'Aucy - Triskalia (merger)
Decision 19-DCC-157 of 12 August 2019	France Télévisions - TF1 - Métropole Télévision (M6) (joint creation of the platform Salto)
Decision 19-DCC-180 of 27 September 2019	SAFO/NDIS
Decision 19-DCC-221 of 27 November 2019	Groupe Frans Bonhomme/DMTP
Decision 19-DCC-244 of 11 December 2019	Groupe William Demant/Audilab

in this market and variety in the editorial offering available to the readership ([Decision 19-DCC-141 of 24 July 2019](#)).

**Behavioural remedies**

The Autorité also accepts ‘behavioural’ commitments, which are based on solutions that modify the future behaviour of the company. The proportion of such commitments accepted by the Autorité is among the highest in Europe ([see the study on behavioural commitments available on the Autorité’s website in “Les Essentiels” collection](#)). A substantial and consistent decision-making practice that went on in 2019.

**Creation of the Salto platform by TF1, France Télévisions and Métropole Télévision (M6)**

In the markets for the acquisition of broadcasting rights for audiovisual content, the operators committed to limiting their possibilities for joint purchases of linear and non-linear broadcasting rights. Additionally, in the markets for producing and marketing television channels, they committed to guaranteeing that Salto does not enter into exclusive distribution agreements for free-to-air DTT channels and associated services and features. In order to prevent the risks of coordination between TF1, France Télévisions, M6 and Salto, the parent companies also undertook to implement a set of structural, individual and collective guarantees designed to limit the exchange of infor-

mation between them and the platform to what is strictly necessary and within a precise framework ([Decision 19-DCC-157 of 12 August 2019](#)).

**CDG Express: creation of a joint venture between RATP Dev and Keolis**

In order to prevent any risk of bundled sales of the future CDG Express ticket with baggage check-in and transfer services, the parties committed to entrusting the operation of the baggage service to an independent partner that is free to determine its own commercial policy for the duration of the public service contract, i.e. 15 years ([Decision 19-DCC-76 of 26 April 2019](#)).

**Acquisition of Vindémia by Groupe Bernard Hayot (GBH) in La Réunion**

In this case, the Autorité accepted previously unseen behavioural commitments which will help protect suppliers, particularly local ones, from potential harm to their competitive situation as a result of the transaction. For instance, GBH committed to maintaining the current level of supply from local producers. GBH will also include a specific provision in its contracts that aims to protect those of its suppliers who may be economically dependent on GBH from any risk of negative effects, by enabling them to sign contracts for a two-year rather than a one-year period ([Decision 20-DCC-072 of 26 May 2020](#)).

# Mergers and acquisitions in figures

A VERY BUSY YEAR



TRANSACTIONS INCLUDING **261** CLEARED WITHOUT CONDITIONS **9** CLEARED WITH COMMITMENTS

**9**  
DECISIONS ISSUED IN PHASE 1  
(SIMPLE REVIEW)

**0**  
DECISIONS ISSUED IN PHASE 2  
(IN-DEPTH EXAMINATION)

**31**

## Major cases

REFERRED BY THE EUROPEAN COMMISSION, WHICH CONSIDERED THAT THE FRENCH AUTHORITY WAS BEST PLACED TO INVESTIGATE THEM.



# 2019 NEWS

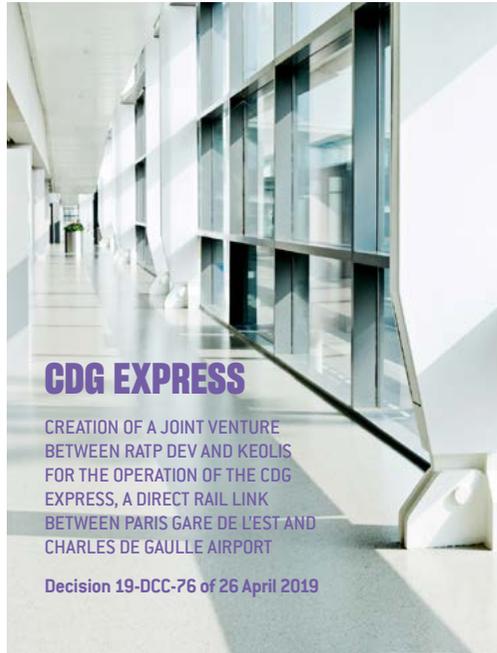
32



## TOYS

ACQUISITION OF JOINT CONTROL OF PICWIC BY TOYS'R'US AND UNDIVIDED OWNERSHIP RESULTING FROM THE SUCCESSION BY MR. STÉPHANE MULLIEZ

Decision 19-DCC-65 of 17 April 2019



## CDG EXPRESS

CREATION OF A JOINT VENTURE BETWEEN RATP DEV AND KEOLIS FOR THE OPERATION OF THE CDG EXPRESS, A DIRECT RAIL LINK BETWEEN PARIS GARE DE L'EST AND CHARLES DE GAULLE AIRPORT

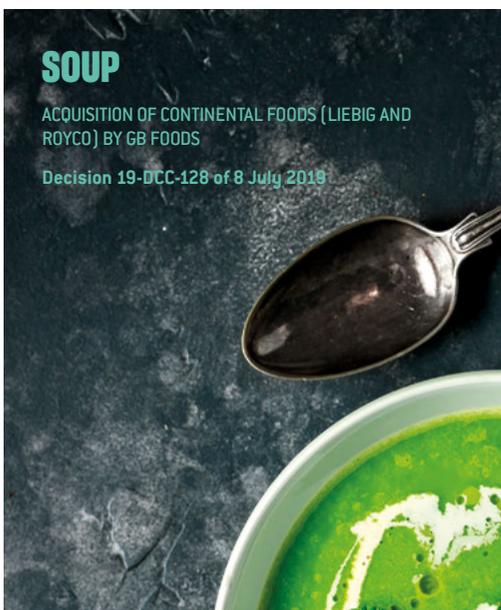
Decision 19-DCC-76 of 26 April 2019



## PERFUMES

TAKEOVER OF AZZARO AND THIERRY MUGLER PERFUMES AND THEIR DERIVED PRODUCTS, OWNED BY CLARINS GROUP, BY L'ORÉAL GROUP

Decision 19-DCC-241 of 13 December 2019



## SOUP

ACQUISITION OF CONTINENTAL FOODS (LIEBIG AND ROYCO) BY GB FOODS

Decision 19-DCC-128 of 8 July 2019



## READY-TO-WEAR CLOTHING

ACQUISITION OF THE KOOPLES GROUP BY THE GROUP MAUS FRÈRES (LACOSTE, AIGLE AND GANT)

Decision 19-DCC-88 of 20 May 2019

ACQUISITION OF THE DE FURSAC GROUP BY THE SMCP (SANDRO, MAJE, CLAUDIE PIERLOT) GROUP

Decision 19-DCC-162 of 23 August 2019

## WELLNESS PRODUCTS

ACQUISITION OF NATURE & DÉCOUVERTES  
BY FNAC DARTY

Decision 19-DCC-132 of 16 July 2019



## COSMETICS

TAKEOVER OF LABORATOIRES FILORGA COSMÉTIQUES  
BY COLGATE PALMOLIVE

Decision 19-DCC-172 of 6 September 2019



## MEDIA

CREATION OF THE SALTO PLATFORM  
BY FRANCE TÉLÉVISIONS, TF1 AND M6  
Decision 19-DCC-157 of 12 August 2019



## RESTAURANT CHAINS

ACQUISITION OF THE LÉON DE BRUXELLES  
GROUP BY GROUPE BERTRAND  
(HIPPOPOTAMUS, BURGER KING, LIPP,  
LA COUPOLE)

Decision 19-DCC-233 of 4 December 2019



## JEWELLERY

ACQUISITION OF JOINT CONTROL OF MAUBOUSSIN  
AND GUÉRIN JOAILLERIE BY GALERIES LAFAYETTE  
AND LA COMPAGNIE FINANCIERE NEMARO & CO.

Decision 19-DCC-136 of 23 July 2019



## SPORT

ACQUISITION OF NICE FOOTBALL  
CLUB BY INEOS GROUP

Decision 19-DCC-160  
of 21 August 2019



TEN YEARS AFTER THE REFORM ENTRUSTING MERGER CONTROL TO THE AUTORITÉ DE LA CONCURRENCE CAME INTO FORCE, AND AT A TIME WHEN THIS POWER IS EXPOSED TO NEW CHALLENGES RESULTING FROM THE GLOBALISATION OF THE ECONOMY AND THE RISE OF DIGITAL TECHNOLOGY, THE AUTORITÉ HAS UNDERTAKEN TO DRAW UP A QUALITATIVE ASSESSMENT. ITS OBJECTIVE IS TO DETERMINE WHETHER THIS TOOL IS STILL WELL SUITED AND TO EXPLORE POTENTIAL AVENUES FOR IMPROVEMENT. IN ORDER TO SPEED UP PROCESSING TIMES TO BE IN STEP WITH THE TIMING OF BUSINESS, THE AUTORITÉ HAS ALSO INITIATED A STREAMLINING PROCESS AIMING TO EASE CONSTRAINTS ON COMPANIES. THESE MEASURES WILL RESULT IN AN OVERHAUL OF ITS GUIDELINES.

# Comprehensive modernisation

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## Revision of merger guidelines: clearer rules, easier to apply

After a decade of controlling mergers, the Autorité wanted to initiate a revision of its merger guidelines. The purpose of this reference document is to provide companies with an educational presentation on the scope of the national merger control rules, the conduct of the procedure before the Autorité and the objectives, criteria and methods of analysis on the merits.

With a view to ensuring maximum legal certainty for companies, the Autorité undertakes to apply the guidelines whenever it reviews a transaction, except when special circumstances mandate otherwise.

The overhaul of the guidelines aims in particular to:

- ➔ extend the scope of the simplified procedure [\[see below for further details\]](#);
- ➔ incorporate the Autorité's decision-making practice, the feedback from its participation in the European Competition Network and its exchanges with the European Commission and other national competition authorities;
- ➔ integrate the case law and doctrine of the French Administrative Supreme Court (*Conseil d'Etat*) since 2013;

➔ include the suggestions made by participants in the public consultations.

By reorganising the structure of the guidelines and supplementing the document with examples, the Autorité intends to make them clearer and easier to understand for all economic stakeholders, who are not always familiar with the merger control procedure and the way in which competition authorities reason.

## Moving towards ex-post merger control?

In order to adapt its action to the challenges posed by the digital economy, the Autorité is studying the possibility of introducing a new control which would take place after the transaction is completed: the transactions affected would be those that, owing to threshold rules, would have escaped control, despite the fact that they could potentially generate competition concerns.

The numerous deals made by digital giants have revealed the existence of a legal vacuum that may shield certain transactions from the control of competition authorities, particularly in cases involving "emerging" innovators or players that have not yet monetised their

innovation. In this respect, Facebook's €20-billion takeover of WhatsApp raises the question of whether it is necessary to create a highly targeted ex-post control framework that is not dependent on the turnovers of the companies concerned. For this reason, France is contemplating a well-defined scope of application for this control with a view to making a "surgical" use thereof.

Many countries have already had such a mechanism in place for several years. In Europe, this is the case in Hungary, Ireland, Lithuania, the United Kingdom and Sweden. Elsewhere in the world, countries such as Brazil, the United States, Canada and Japan also have such a system. Among them, some countries, such as the United States, can intervene with no time limitation, sometimes even several years after the merger was completed.

## Online notification: speeding up the handling of simple cases

The Autorité is continuing to modernise merger control procedures by digitalizing the notification procedure for some transactions.

This forms part of a streamlining approach meant to significantly reduce the amount of information required for the simplest transactions.



As a reminder, the simplified procedure enables the Autorité to issue decisions more quickly (within around 3 weeks instead of 5 weeks).

Every year, approximately half of the cases reviewed by the Autorité come under this procedure. These are mergers that are unlikely, upon initial analysis, to generate competition problems, mainly in the food retail and car retail sectors, which entail the largest number of decisions due to lower notification thresholds.

With the introduction of online notification, the proportion of transactions processed through the simplified procedure is expected to increase significantly, from 50% to 70%.

#### WHERE CAN I FIND THE FORM?

A form is available for companies on the Government's website: [demarches-simplifiees.fr](https://demarches-simplifiees.fr). Users must create an account that can then be used for pre-notifications and notifications.

#### “Fix-it-first”: speeding up and securing the completion of transactions

In the manner of the decision-making practice of the European Commission or the German Bundeskartellamt, the Autorité supports an increased use of “fix-it-first” commitments. These enable the parties to a transaction to suggest a transferee for the business activity to be divested while the case is being reviewed, i.e., before the decision is made. In such a case, the Autorité assesses the impact of the transaction, taking into account the planned divestiture.

The advantage is for the companies to be able to negotiate the sale of assets in a more comfortable timeframe, rather than after they made a commitment to divest – a situation that may encourage wait-and-see or opportunistic behaviour by potential buyers. A “fix-it-first” commitment also reduces uncertainty and shortens the implementation period of the remedy, since it takes away the time required to find and approve the transferee. The merging parties may thus name a buyer – that is, their future competitor – under the supervision of the Autorité, which ensures that this does not promote coordinated behaviours.

In 2019, this mechanism was successfully used in the context of Dr. Oetker's acquisition of Alsa (Ancel). The buyer proposed by Dr. Oetker and approved by the Autorité was Sainte Lucie, and a memorandum of understanding setting out the main terms of the contracts for brand licencing and subcontracting were submitted to the Autorité. The solution chosen in this case was all the more secure as Dr. Oetker had committed to signing the contracts before the date of completion of the cleared transaction [\[see p. 88 for details\]](#).

The Autorité used this mechanism again in May 2020 in the framework of a major transaction in the mass retail distribution sector in French overseas territories. This concerned the acquisition of full control of Vindémia Group by Groupe Bernard Hayot (GBH)... In order to address the competition problems identified, GBH was to remedy the situation prior to completing the transaction, by selling seven stores to two transferees that had been granted prior approval by the Autorité [\[Decision 20-DCC-072 of 26 May 2020\]](#).

The Autorité is tasked with cracking down on anticompetitive agreements and abusive behaviours, which can have a considerable impact on the economy. This requires intensifying detection means, drawing on all procedural tools and handing out deterrent fines.

# FIGHTING ANTICOMPETITIVE PRACTICES

# Priority given to detecting practices

In order to lay hands on evidence that is now often in electronic format and to thwart sophisticated concealment techniques implemented by companies, the Autorité devotes substantial resources to detecting anticompetitive practices and, in 2019, carried out a much greater number of dawn raids. Moreover, the so-called PACTE Law of 22 May 2019 gave it new means, since it can now access the connection data held by telephone operators. It also continues to pursue an ambitious investigation policy by following up more and more on investigation reports by the Economy ministry (*Directorate General for Competition Policy, Consumer Affairs and Fraud Control, DGCCRF*) and by referring cases to the office of the public prosecutor. Let's look back at the origin of the cases.

## Surprise inspections, commonly referred to as “dawn raids”

### Substantial resources

A specific unit within the investigation services is responsible for analysing the DGCCRF investigation reports, refining investigation techniques on computer media and organising dawn raids. Its mission is to collect evidence to be produced during the investigation.

The Autorité has made detection one of its priorities by training all case officers in dawn raid techniques. There are as many as 109 officers available to carry out a surprise inspection. During dawn raids, investigators are authorised to carry out searches and seizures upon judicial authorisation delivered by a criminal judge. They are also authorised to place seals on commercial premises, documents and computer media, and to hold hearings. With certain exceptions, investigators can enter company premises between 6 a.m. and 9 p.m., burst into public places where covert meetings are being held (restaurants and hotels) and access professional vehicles. In concrete

terms, when investigators raid a company, in addition to the handwritten documents that they can photocopy, they make a copy of e-mail accounts and files containing certain keywords. The documents are then opened and analysed in the Autorité's computer lab.

### A special unit of IT experts

The Inspections unit of the Autorité comprises a computer forensics section, made up of case officers experienced in computer search techniques. These investigators have effective forensic capabilities for collecting clues and evidence. They use special software and equipment to access data stored on computers and a device to analyse the content – even if it has been deleted – of phones.

The members of this special unit actively monitor developments in all IT fields related to their missions to continually seek ways of improving techniques and methods. They are also in contact with other French enforcement authorities (the police, DGCCRF, Tax and Customs Directorates, and sector regulators) as well as European institutions and national competition authorities. They now have enhanced means of inspections, since they are able to access phone records ([see below for details](#)).

### Dawn raids carried out in 2019 and early 2020

Luxury watch retail sector	17 January 2019
Engineering, maintenance, decommissioning and processing of waste from nuclear facilities services sector	12 February 2019
Wine and spirits sector	10 April 2019
Crystal component retail sector	2 July 2019
Automatic swimming pool cleaning equipment retail sector	6 September 2019
Port services sector in the Port of Longoni (Mayotte)	7 November 2019
Inter-island air passenger transport sector in the Indian Ocean area (La Réunion)	7 November 2019
VAT refund services sector	28 November 2019
Meal voucher sector	25 February 2020

### Evidence transmitted by DGCCRF

Evidence and clues may also reach the Autorité through another source. The Autorité works in close cooperation with the DGCCRF whose network allows it to have excellent local reach.

The Autorité is thus in contact with the 8 interregional competition investigation brigades, which act at local level and to whom problems are reported by businesses. The evidence they collect is analysed and screened, and then submitted to



**OBSTRUCTING AN INVESTIGATION:  
A BAD STRATEGY**

Obstructing an investigation is a serious infringement, since it can prevent the Autorité from identifying and therefore sanctioning anticompetitive practices; this is why heavy fines are handed out. In 2017, the Autorité fined Brenntag €30 million for hindering its investigation, particularly by refusing to provide certain information **(Decision 17-D-27 of 21 December 2017, confirmed on the merits by the Paris Court of Appeal ruling of 22 May 2020)**. In 2019, for the first time, the Autorité had to fine a company for breaking seals and altering the functioning of an email account during a dawn raid. Akka Technologies was fined €900,000 **(Decision 19-D-09 of 22 May 2019)**. This decision was confirmed by the Paris Court of Appeal, which underlined the seriousness of this type of breach [Paris Court of Appeal, 26 May 2020]. The firmness demonstrated by the Autorité when confronted with practices aiming to hinder the conduct of investigations or inspections is therefore deemed to be appropriate by the review court.



the Autorité's General Rapporteur who, on the basis of a number of criteria – scope of the practices (local, national or European), size of the companies, case interest, the Autorité's workload, best-placed institution to carry out the investigation effectively – decides whether to take up the matter or turn it over to DGCCRF. Once the investigation is complete, the General Rapporteur proposes that the Autorité start *ex officio* proceedings where there are anticompetitive practices of a national extent, or leave it to DGCCRF to continue the procedure if it involves local practices. 2019 marked an important stage, with the Autorité handling a substantial proportion of investigation reports (32% of the cases submitted).

**Access to the data  
of telephone operators**

**A prerogative that has become  
indispensable**

Much like the powers already available to the tax authorities, customs office and French financial regulator, Autorité and DGCCRF officers will now be able to obtain detailed invoices from mobile network operators. Antitrust investigations, particularly of hardcore cartels, have shown how important it is to have access to these key data for cases to move forward. This is

because members of cartels do not hesitate to open dedicated telephone lines to share strategic information and agree on their plan of action.

This new prerogative enhances the effectiveness the detection of cartels, abuse of dominance and other anticompetitive practices **(Decree 2019-1247 of 28 November 2019)**.

**Supervised implementation**

Where there are *prima facie* indications of a competition infringement and access to connection data is necessary for the purposes of the investigation, the Autorité may submit a request for access to this data to a new authority, the "Connection Data Request Supervisor". Access to this data will not undermine privacy or business secrecy, since the Autorité will have no access to the content of any conversation.

The procedure is subject to supervision and safeguards. The Supervisor will be a member of the French Administrative Supreme Court (*Conseil d'État*) or a judge of the French Supreme Court (*Cour de cassation*) and will grant access to data for a specific investigation. If permission is granted, investigators will access such information as the telephone numbers dialled by a specific person, date and time of the calls, and their duration. This infor-

mation will enable investigators to determine, on the basis of the entire file, whether anticompetitive practices (e.g. price-fixing agreements) were implemented.

The decree specifies the procedure for communicating connection data and sets out the information that must be provided to support a request for access, such as the name of the person under investigation, the telephone number, the IP address or the time period for which connection data is requested.

The data shared by the telecom operators will be stored according to provisions that ensure it remains confidential, and its destruction will be recorded in a report. The requests for access to connection data addressed to the Supervisor and ensuing authorisations will be destroyed under the same conditions.

**BUSINESS CONTINUES TO PICK UP THE PACE, HENCE TIME IS EVER MORE OF THE ESSENCE. THE AUTORITÉ MUST BE ABLE TO PROTECT ECONOMIC PUBLIC ORDER 'IN DUE COURSE' AND, WHEN THE CONDITIONS ARE MET, MAKE USE OF ALL OF THE MEANS AT ITS DISPOSAL TO TAKE SWIFT ACTION TO PROTECT OR RESTORE COMPETITION IN MARKETS. SEVERAL PROCEDURES ENABLE IT TO ACT UPSTREAM OR MORE QUICKLY THAN THROUGH THE STANDARD PROCEDURE: INTERIM MEASURES, COMMITMENTS AND SETTLEMENTS. A REVIEW OF THIS WELL-EQUIPPED TOOLBOX.**

# Procedures to act quickly

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## Settlement: time saved and better visibility

Introduced into the Commercial Code (*Code de Commerce*) by the so-called "Macron Law" of 2015, the settlement procedure is of great interest both to companies and the Autorité. Through this procedure, companies that refrain from contesting the objections notified by the Autorité's investigation services may be offered a settlement setting the maximum and minimum amount of the penalty incurred. Companies can thus better anticipate the outcome of the procedure and their financial liability.

### A LOOK AT "HYBRID" CASES

The settlement procedure saves the Autorité time and resources. However, it only agrees to apply this procedure where all the parties concerned decide to compromise. This is because, if some of them do not wish to, then the settlement is not as advantageous for the Autorité since it is required anyhow to fully investigate the case with respect to these companies, in the same way as through the standard procedure.

The procedure also offers a procedural advantage for the Autorité, in that it frees up resources that can be allocated to other cases. If the Board of the Autorité considers that a fine may be issued within the proposed range, the final decision will state the fine without disclosing the negotiations that led to the settlement. Confidentiality regarding the terms and conditions of the settlement is a guarantee for companies.

In addition to the procedural benefits and time saved, a penalty issued to a company that does not dispute the facts or their characterization has educational value. The Autorité welcomes the fact that more and more companies are engaging in this positive practice.

## In 2019, the Autorité issued five decisions implementing settlement

19-D-12	Notaries in Franche-Comté
19-D-13	Court bailiffs in Hauts-de-Seine
19-D-15	Wholesale distribution of bakery products and equipment
19-D-20	Retail distribution of perfumery products and cosmetics in the French Antilles, French Guiana and La Réunion
19-D-21	Road freight transport

● ● ●



### **Commitments: to rapidly restore competition**

#### **Building solutions together undeniably speeds up processing**

In some cases, the Autorité favours the use of commitments where they are the most effective tool for quickly restoring conditions that maintain competition. As an alternative to financial penalties, this procedure is quicker because it achieves results on the market upstream of a standard litigation procedure. It also has the advantage of being less contentious, since its principle is based on building corrective solutions together with the company. Commitments can take various forms: they can entail a change to technical or legal provisions or to a marketing strategy. In concrete terms, the company commits, depending on the case, to modify its behaviour so that competition is restored for the future.

The quality of the proposed commitments is carefully scrutinised by the Autorité to ensure that they are proportionate to the competition concerns expressed in the investigation during the preliminary assessment. The commitment procedure is a solution that ultimately benefits everyone. The market is the primary beneficiary because this procedure means that certain situations can be resolved much sooner. With it, the Autorité avoids the burden of a litigation investigation and frees up resources for other cases. Finally, the company avoids being found in breach of the law and incurring a fine.

#### **Careful monitoring of implementation**

Once accepted by the Autorité, the commitments become binding: these are not empty promises! The Autorité is particularly vigilant that they are implemented by the deadline. If a company fails to deliver on its word, it is liable to receiving penalties of up to 10% of its worldwide turnover.

#### **PMU FINED FOR FAILURE TO COMPLY WITH THE COMMITMENTS IT MADE IN 2014**

In April 2020, after receiving a complaint from BetClic and Zeturf, the Autorité fined the betting shop Pari Mutuel Urbain (PMU) €900,000, for having failed to comply with the commitments it made in 2014. By way of a reminder, the Autorité had expressed competition concerns with respect to its pooling practice, which consisted in combining the pool of its bets generated through its monopoly over horse race betting with the pools of online betting. It had accepted commitments from PMU to ensure fair competition between the incumbent operator and new entrants. After examining the case, the Autorité considered that PMU had not complied with this commitment in relation to foreign races. **[Decision 20-D-07 of 7 April 2020].**

## Interim measures: to deal with urgent situations

### The Autorité, a pioneer in Europe

To be fully effective, competition authorities must be able to take rapid action in the market, while awaiting a decision on the merits. If not, it may be too late! To address urgent situations, the Autorité has an essential tool at its disposal: imposing interim measures. This ability, which helps prevent certain practices from causing serious and immediate harm to competition, is particularly useful in fast-changing industries. A pioneer in Europe in the use of interim measures, the Autorité has extensive experience in this field. The tool has proven largely popular among companies, with almost 100 applications since 2009.

### Applications for urgent interim measures submitted by companies before the Autorité

2009	15
2010	16
2011	7
2012	8
2013	1
2014	13
2015	10
2016	8
2017	3
2018	8
2019	9

### THE AUTORITÉ MAY START *EX OFFICIO* PROCEEDINGS TO ORDER URGENT INTERIM MEASURES

The ECN+ Directive provides that authorities may now order interim measures *ex officio*, without waiting for a complaint to be lodged. Once this is transposed into domestic law, the Autorité will be able to use interim measures whenever it is deemed necessary and appropriate, particularly to meet the challenges of the digital economy.

### The aim: to avoid irreversible damage

An investigation into the merits of a case uses up a lot of time and resources: it requires understanding how the market operates and assessing the economic stakes, hearing the interested parties, and following the steps of the inter partes proceedings. It takes at least 12 months to reach a decision. During this time, however, the suspected practices may continue to have harmful consequences on competition (resulting, for example, in some companies disappearing and thus market competition being reduced in the long term). This is why the law provides that, before the Autorité reaches its decision on the merits, it can take “interim measures”, once the complainant and the company concerned have had the opportunity to express themselves both in writing and orally. Such measures help eliminate the threat to competition and protect it for the future by preventing irreversible damage. The Autorité usually issues an interim decision within three to four months.

### RELATED RIGHTS: INTERIM MEASURES IMPOSED ON GOOGLE

In April 2020, the Autorité issued interim measures against Google ordering it to urgently carry out negotiations with publishers and news agencies on the remuneration owed to them under the directive on related rights [Decision 20-MC-01 of 9 April 2020, for more detail see p. 68].

The Autorité had also ordered measures against Google in January 2019, ordering it to clarify the rules of its advertising platform Google Ads in order to make them more precise and understandable, and to ensure that they are applied on non-discriminatory terms [Decision 19-MC-01 of 31 January 2019].

ANTICOMPETITIVE AGREEMENTS AND ABUSIVE BEHAVIOUR CAN HAVE A SIGNIFICANT IMPACT ON CONSUMERS AND COMPANIES ALIKE; THEREFORE THE AUTORITÉ DOES NOT HESITATE, WHERE NECESSARY, TO ISSUE PENALTIES WHICH SERVE A DUAL OBJECTIVE: SANCTIONING THE CONDUCT OF THE COMPANY CONCERNED AND DETERRING POTENTIAL OFFENDERS FROM ENGAGING IN SUCH PRACTICES. THERE IS, HOWEVER, ANOTHER POSSIBLE ROUTE FOR COMPANIES THAT WANT TO COOPERATE: LENIENCY. A RECAP OF THE AUTORITÉ'S CORE MISSION.

# Penalties, a key lever of regulation

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## Why impose penalties?

### To protect consumers and taxpayers

Cartels can result in significant price increases for consumers (of up to 25%) as well as a reduction in the choice available to them, sometimes over long periods of time. An illustrative and concrete example is the cartel of millers fined in 2012: the Autorité estimated that this may have resulted in consumers paying 11% more for packaged flour for several years, particularly the brand Francine. The harm to consumers created by the cartel was especially great given that demand for this product is not price dependent, due to the lack of substitute products.

Certain practices also affect public accounts, thereby having a knock-on effect on all taxpayers. This is particularly true when public procurement is distorted by cover bids that hinder the competitive bidding process sought by the State. This is what occurred, for instance, in a case involving removal companies in La Réunion, with the State covering the removal costs of military personnel [for more detail, see [Decision 20-D-05 of 23 March 2020, p. 107](#)].

### To protect companies and the economy in general

Cartels may also harm companies downstream, particularly SMEs, which in some cases are subjected to increases in the cost of their inputs (the intermediary products or raw materials that they buy). More broadly, anticompetitive practices undermine market efficiency: depending on their nature, they may reduce the stimulus for companies to excel, prevent the arrival of new entrants, or lead to the foreclosure of certain stakeholders. Ultimately, anticompetitive arrangements and abuses result in reduced competitiveness and innovation, with harmful effects on growth and employment. Even though the Autorité strives to educate, penalties remain vital to ensuring that violating competition rules cannot be a profitable strategy for companies: under no circumstances should the expected profit from illegal practices exceed the fine incurred.

**The penalty must not only serve as a punishment but also have a deterrent effect both upstream, on companies that are planning to cross the line, as well as on all stakeholders, to whom it sends a clear message.**



## Calculating fines: proportionality and personalisation

### Proportionate, dissuasive fines

The French Commercial Code (*Code de commerce*) lays down the principle according to which the fine must be proportionate to four criteria: seriousness of the acts, extent of the damage caused to the economy, the company's individual situation and any potential recurrence. In order to give more predictability to companies, the Autorité generally applies the calculation method that it defined in a

procedural notice (16 May 2011). To a certain extent, companies can thus anticipate the amount of the fines incurred. Within this framework, the Autorité takes care to proportion and tailor the fine on a case-by-case basis: a base sum is calculated depending on the size of the affected market, the seriousness and duration of the practices as well as the significance of the damage to the economy. In 2019, the Autorité had to issue an unprecedented penalty against Apple. At €1.1 billion, it was in fact the heaviest fine imposed on an economic stakeholder, whose extraordinary influence was duly taken into account.

years by continuing to pursue an aggressive commercial policy to increase its market share (acting as a maverick). Conversely, it increased the penalty issued to Materne, judging that it had played a key role in implementing the agreement [Decision 19-D-24 of 17 December 2019, for more detail see p. 82].

Similarly, in the cartel involving meal vouchers, the Autorité increased the penalty by 20% for certain companies for recurrent practices [Decision 19-D-25 of 17 December 2019, for details see p. 79].

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### WHAT IS AT RISK FOR COMPANIES THAT CROSS THE LINE?

Penalties for breaches of competition law can amount to 10% of a company's worldwide turnover. Enough to make economic stakeholders think twice!

### Consideration of specific circumstances

Any mitigating or aggravating circumstances are also taken into account in the calculation. In the fruit compote cartel, sanctioned in 2019, the Autorité reduced the penalty handed out to Andros, considering that the company had 'disrupted' the cartel's operation during the first two

•••

**Professional bodies risk heftier fines**

The ECN+ Directive, published in the Official Journal of the European Union (OJEU) in January 2019, now provides all European national competition authorities with means to enforce competition rules more effectively and thus contributes to the proper functioning of the internal market. Of the new provisions that will have to be transposed into domestic law, one will bring about significant change for trade associations and professional organisations that engage in anticompetitive practices. While, until now in France, the maximum fine that they were exposed to was relatively low (€3 million), the Directive provides for an increase in the upper limit to 10% of the combined turnover of the member companies.

**Penalties other than financial penalties**

Fines are often accompanied by other sanctions, which also serve the purpose of deterrence.

**Fines issued to trade associations, professional associations and orders could, in the future, amount to 10% of the turnover of their members.**

**A STUDY TO BE PUBLISHED IN THE "LES ESSENTIELS" COLLECTION**

The Autorité notes with regret that too many cases exist in which trade associations and professional organisations play a pivotal or 'facilitating' role in the development and organisation of anticompetitive practices. Given the upcoming entry into force of these new, more stringent provisions and with a view to promoting compliance, the Autorité chose to dedicate a study to the application of competition law to trade associations and professional bodies and to the infringements which may be found.

These can include:

- ➔ injunctions requiring the company in question to change its behaviour. Examples of this include the injunctions against Google with respect to the commercial policy implemented by its advertising platform [[Decision 19-MC-01 of 31 January 2019](#)];
- ➔ injunctions to publicize the decision. The aim here is to inform the general public of the harmful nature of the unlawful behaviour, through the publication of a summary of the decision. Thus, in December 2019, the Autorité ordered Google that a summary of the decision given against it be posted for one week on its homepage Google.fr and on the Google.com version accessible in France [[Decision 19-D-26 of 19 December 2019, for more detail see p. 63](#)].

By virtue of the ECN+ Directive (to be transposed into domestic law), the Autorité should also be able to issue structural injunctions where necessary within the context of litigation procedures involving anticompetitive practices, in order to put a halt to the breach.

**Leniency: cooperating to leave the cartel and avoid penalties**

**Win-win cooperation**

Companies that participate in cartels are taking huge risks, facing the prospect of sooner or later having to pay a hefty fine. They should, nonetheless, be aware that this is not the only possible outcome: like in many countries around the world, France has a leniency programme in

place for companies that want to get out of this situation.

The principle behind it? Disclosing the existence of the cartel to the Autorité and cooperating with it throughout the procedure to help substantiate the practices that took place. The company that comes first to report the offence and provide the necessary evidence may be entitled to complete immunity from fines. Companies who make requests at a later time may receive a penalty reduction of up to 50% depending on when they entered the agreement, the nature of the information they provide and their level of cooperation (partial leniency).

Thanks to this system, the Autorité has in recent years broken up a multitude of large-scale cartels (laundry detergents, hygiene and cleaning products, dairy products, floor coverings, parcel delivery, compotes, etc.). Leniency has consequently become a powerful tool for destabilising cartels: at any time, one of the members of an agreement (whether ongoing or even past) can apply to the Autorité to benefit from this procedure.

**Broader application among international groups**

The typology of leniency applicants shows that companies belonging to international groups almost systematically make use of this procedure, particularly when they find out, through an acquisition or following an audit, that the company is (or was) a member of a cartel.

While the attitudes of French companies are only slowly changing, they are nevertheless gradually realising the advantages that this procedure offers. With a view to educating, the Autorité published a guide explaining competition rules to SMEs, with a sheet specifically dedicated to leniency [[for more detail, consult the Guide for SMEs on the Autorité's website](#)].

# The fight against anticompetitive agreements and abuses in figures



€ **632** MILLION IN FINES **45**

## 14 decisions to issue financial penalties in 2019

19-D-05	Antibes Juan-les-Pins taxis	€75,000
19-D-09	Obstruction of raids	€900,000
19-D-11	Chemical pathology in French Guiana	€225,000
19-D-12	Franche-Comté Notaries	€295,000
19-D-13	Court bailiffs in Hauts-de-Seine	€120,000
19-D-14	Online bicycle retail	€250,000
19-D-15	Bakery equipment	€1,700,000
19-D-17	Liquid fertilisers	€24,000
19-D-19	Architectural services	€1,500,011
19-D-20	Perfumes in overseas territories	€176,000
19-D-21	Road freight transport	€3,800,000
19-D-24	Fruit-compotes	€58,283,000
19-D-25	Meal vouchers	€414,734,000
19-D-26	Online advertising	€150,000,000
<b>TOTAL</b>		<b>€632,082,011</b>

## WHERE DOES THE MONEY FROM PENALTIES GO?

The penalties issued by the Autorité de la concurrence go straight into the State coffers and are therefore used to finance such public expenditure as healthcare, education and justice.

# ADVISORY ROLE

A cornerstone in regulating market competition, the Autorité's assessment role continues to expand and often nurtures public debate. Granted the power to provide its opinion on draft bills as well as any general question concerning competition, including at its own initiative, the Autorité analyses a number of issues in detail each year. From recommendations to policymakers to guidance for economic operators, here's a review of a role that regularly contributes to shaking things up.

# Staying ahead of the curve

## Enlightening public authorities, a core mission

The Autorité's assessment is frequently sought by the government and parliamentary committees on all matters pertaining to competition as well as on draft bills and regulations. In this context, it may be required to assess the impact of a reform on the competitive functioning of a sector or identify the risks of distortion that a draft bill could generate. In 2019, the Autorité was asked to examine major issues requiring significant resources in order to deliver the most accurate and comprehensive diagnoses possible.

## Reforming the audiovisual sector: an emergency

The Committee on Cultural Affairs of the National Assembly (*Assemblée nationale*) asked the Autorité to analyse the major competitive changes affecting the audiovisual sector. In its February 2019 opinion, which the press called "a bombshell and free of taboos", the Autorité issued strong recommendations for an immediate reform of an industry in the throes of a major disruption and whose stakeholders were subject to unfair rules. Its opinion has thus contributed to the discussion by public authorities to reform the French audiovisual landscape and usefully contributed to the draft bill [[Opinion 19-A-04 of 21 February 2019](#)]. For more information, see p. 71.

## French overseas territories: providing objectivity and proposing solutions

As part of the fight against the high cost of living in French overseas territories, the Minister of Economy also requested the Autorité to provide an overall analysis of the competitive situation in these regions. In an opinion delivered in July 2019 to the Minister of French Overseas Territories and the Secretary of State to the Minister of Economy, the Autorité analysed price changes in the consumer products sector since its previous opinion in 2009 and the causes likely to explain significant and persistent price differences compared with those in mainland France. In order to



boost competition and reduce the adverse gaps in purchasing power, competitiveness and growth in French overseas territories, it made some 20 recommendations. In the light of this assessment, the French government announced that it would implement an action plan incorporating certain policies proposed by the Autorité: facilitating access by residents of French overseas territories to distance selling, overhauling quality and price protection, pursuing actions against unjustified exclusivity practices or abnormal restrictions on online trade and finally, working in conjunction with local authorities to update the dock dues system [[Opinion 19-A-12 of 4 July 2019](#)]. For more information, see p. 103.

## Extensions of collective labour agreements and their effect on competition

Following a request by the government, the Autorité provided an opinion, in July 2019, that analysed the impact of the mechanism extending collective labour agreements on the competitive functioning of markets. This request was made further to a labour law reform which had introduced in 2017 the possibility for the Minister of Labour to refuse the extension of a collective labour agreement in an industry, in particular on the ground of "excessive infringement of free competition". In order to identify the extensions likely to generate the greatest

risk to competition, the Autorité recommended implementing an evaluation methodology using relevant indicators. It also advocated adapting the statistical system, as well as the use of impact studies in collective bargaining to assess the economic cost of the possible extension of an agreement. The analysis framework was initially used to examine a request to extend an agreement in road transport and auxiliary transport activities [[Opinion 19-A-13 of 11 July 2019](#)].

## Focus on priority topics

Taking the initiative to propose avenues for improvement on important topics is another way of contributing to the definition of public policies. Since 2009, the Autorité has also had the power to issue opinions on its own initiative. It can thus choose the subjects it wishes to explore further and take a proactive approach in uncovering potential growth areas and proposing new reforms.

The Autorité focuses particularly on the areas where increased competition may have a beneficial impact on the budget of French households. As part of its extensive sector-specific inquiries, it conducts thorough analysis and, where appropriate, makes recommendations which are often-times taken up by policymakers.



**Healthcare: a key sector for the economy, a main item in the household budgets**

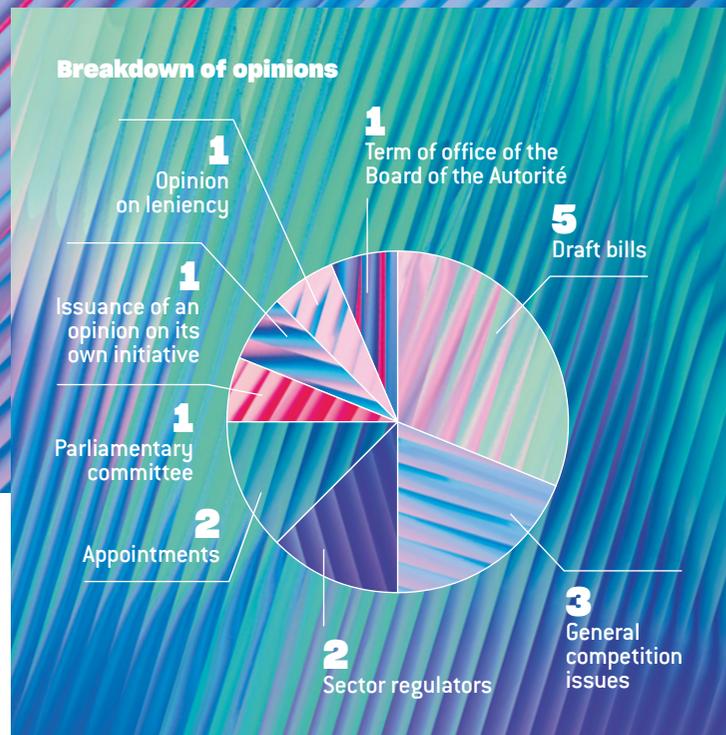
The healthcare sector plays a central role in the national economy and involves major issues for French society. Currently, there are very significant changes under way, including the development of telemedicine, the expansion of the pharmacist's role, the reorganisation of healthcare pathway for city medicine, the growth of online sale of medicinal products, and the restructuring of chemical pathology.

In view of these changes, the Autorité considered it important to review the sector to identify competitive dynamics and exam-

ine whether the current legislative framework was still appropriate to handle these developments.

After several months of investigation and a broad public consultation (with 1,600 pharmacists and 900 medical biologists), the

Autorité released the findings of its inquiry in April 2019. In particular, it made proposals to enable pharmacists, medicinal product intermediaries, such as wholesale redistributors, and chemical pathology laboratories to address emerging issues.



### The Autorité's major sector-specific inquiries

French overseas territories	2019
Audiovisual sector	2019
Distribution of medicinal products and chemical pathology laboratories	2019
Online advertising	2018
Hearing aids	2016
Standardisation and certification	2015
Coach transport	2014
Distribution of medicinal products	2013
E-commerce	2012
Vehicle maintenance and repair	2012
Telecom bundling	2010
Online advertising	2010
Affiliation contracts in mass retail distribution	2010
Role of train stations and intermodality	2009

Modernising the pharmacist's economic model, giving chemical pathology laboratories more flexibility so they can modernise, considering a new remuneration model for wholesale redistributors taking better account of their public service obligations, giving patients greater access to over-the-counter medicinal products in strict compliance with the pharmaceutical monopoly are among the avenues that the Autorité calls for exploring. ([see the press release of 4 April 2019 for more details](#)).

#### Digital topics: addressing new issues

The ability to take the initiative is also an opportunity for the Autorité to explore

new issues, anticipate market developments and understand the challenges in new or changing areas (such as online advertising, artificial intelligence, etc.). Assessing strategic and emerging markets is a means for anticipating the future and gaining the ability to react quickly and appropriately when the time comes. A good example is the 2018 sector-specific inquiry into online advertising ([Opinion 18-A-03 of 6 March 2018](#)). The resulting "foundation" opinion provided the Autorité with an analytical framework for effectively investigating several litigation cases concerning Google ([Decisions 19-D-26 of 19 December 2019](#) on the functioning of Google Ads and [20-MC-01 of 9 April 2020](#) on interim measures to preserve the related rights of publishers and news agencies).

Along the same approach, besides to these sector inquiries, the Autorité has recently published several studies targeting new issues, such as algorithms and online sales, including the development of phygital marketing.

To find out in more detail how the Autorité approaches these new topics, [see page 16](#).

The Autorité  
is a laboratory  
of ideas for  
improving  
the lives of the  
French public.

#### Enabling companies to make a self-assessment

Sometimes sector inquiries are also an occasion to provide an analysis that is useful to companies and send them strong signals about problematic behaviours. It is a real opportunity for them to rely on a comprehensive analytical framework to take action in order to comply with competition law and thus avoid possible litigation procedures. In this way, sector-inquiries thus result in a form of regulation with improved awareness on the part of economic operators, who become aware of the risks of rule violations and can adjust their strategy and improve their compliance programmes.

Although this is not the primary objective, sector inquiries can also contribute to the detection of anticompetitive practices. Following its inquiry on online advertising, for example, the Autorité decided to open several investigations – which were continued in 2019 – into how data are collected, how they are used, and on certain restrictions on access to data.

# REGULATED PROFESSIONS

Initiated in 2015, the reform of the regulated legal professions has now entered its mature phase. With no equivalent elsewhere, this transformation has generated many benefits, such as expanding access to younger people and women in these professions and improving geographical coverage for French consumers. While the Autorité continues to provide the government with its assessment in setting fees and establishing new professionals in accordance with the role entrusted to it by the legislator, it also acted in 2019 to sanction those attempting to prevent the opening up of their profession to competition. Overview of a comprehensive effort to accompany this modernisation.

# Accompanying fee regulation

## A new legislative framework

### Need to revise methodology for fees

In February 2020 the Autorité delivered an opinion to the Government on a draft decree on the method of setting regulated fees for the legal professions ([Opinion 20-A-03](#)).

The legislative amendments introduced by the Programming and Reform Law for Justice had made it necessary to review the method of setting these fees and to modify the framework of rebates that professionals are authorised to apply. The draft bill also incorporates the recommendations made by the Autorité in its [Opinion 19-A-09 of 11 April 2019](#) on fees for regulated legal professions in French overseas territories. The fees of judicial auctioneers, commercial court clerks, court bailiffs, court-appointed administrators and liquidators as well as notaries were thus fixed by the Orders of 28 February 2020 in compliance with this method.

#### MAIN POINTS OF THE LAW OF 23 MARCH 2019

- ➔ A principle of setting fees based on “overall” costs rather than “per act”
- ➔ Reintroduction of the power to freely negotiate rebates above an emolument threshold

Due to the exceptional circumstances brought about by the coronavirus epidemic in France and its impact on economic activity, particularly that of the regulated legal professions, the date of 1 May 2020, from which the new fees were to apply to services performed by these professions, has been postponed until 1 January 2021\*.

\*[Order of 28 April 2020 amending the Orders of 28 February 2020 setting the regulated fees for the regulated legal professions.](#)

## Recommendations accepted by the government

### Specified method for setting fees

The Programming and Reform Law for Justice of 23 March 2019 replaced the “per act” approach with a method based on the overall profitability of the professions concerned to enable professionals to cover all costs incurred and to obtain reasonable remuneration for their “regulated activity”. The draft decree proposed to apply this “overall” approach by indicating the new conditions for assessing “relevant costs” and “reasonable remuneration”. It was intended that the latter should be defined in reference to a target of the income rate, which is determined “using a reference rate set by decree”.

The Autorité issued a conditional opinion, considering that the proposed draft lacked in precision. It proposed adjustments to clarify the conditions for determining and revising the average income rate target and the methodology for evaluating relevant costs and reasonable pay.

➔ The final order follows the recommendations in that it is more precise in its method for setting fees.

### New provisions for rebates

#### Relaxing the limits on rebates under ordinary law

The draft order under review proposed replacing the currently planned ceiling rate of 10% with a 20% rate. The Autorité welcomed this measure, which it had called for on several occasions. The Autorité also recommended that the base threshold for activating this rebate option, currently set for notaries at €150,000, be lowered to €75,000 in order to foster price competition in a sector that has long been deprived of it.

➔ In the final decree, the government set the base threshold at €100,000. While application of the new threshold will not achieve the full effect intended by the Autorité in its proposal, this is an important first step toward establishing the threshold of €75,000 that it had recommended.





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#### Rebates maintained at 40% despite return to free negotiation

Despite the introduction of the free negotiation of rebates between notary and client above a certain emolument threshold, the draft decree submitted to the Autorité proposed maintaining the increased rebate rate (capped at 40% on base brackets above €10 million). It was also envisaged to issue an order setting the threshold at €200,000.

Moreover, an eligibility threshold set at such a high level (€200,000 compared with €80,000 previously) would drastically restrict the scope of the real estate transactions concerned (around 0.2% of transactions concern bases exceeding €25 million), maintaining the rebate mechanism at 40% would have the indirect effect of continuing to exclude all users of services eligible for this exemption scheme from the benefits of the rebate under ordinary law.

➔ In the final decree, re-establishment of the free negotiation of rebates beyond an emolument threshold did not coincide with an abrogation of the exemption scheme of rebates capped at 40%, as the Autorité had suggested. The Autorité regrets this, because, paradoxically, this results in the application of the Macron Law leading to a less competitive situation in the relevant markets than that which has existed since 1978

#### Specific recommendations on fee surcharges in French overseas territories

In its [Opinion 19-A-09 of 11 April 2019](#), the Autorité suggested a thorough review of surcharge rates to date for notaries and court bailiffs in certain French overseas territories (Guadeloupe, Martinique, French Guiana, La Réunion and Mayotte). These surcharges, which result in fees that are 25% to 40% higher than those in mainland France, depending on the profession and region, do indeed appear disproportionate compared to the additional costs actually borne by the offices concerned. This explains why, largely for historical reasons, some ministerial officers in French overseas territories receive pay which is up to three times more on average than their mainland counterparts, to the detriment of consumers in the affected territories.

Taking up the recommendations of the Autorité, the draft decree proposed to streamline setting of fee surcharges in French overseas territories by providing for an “approximation” between the average income rate observed for professionals in these regions and the target of the nationally set income rate. In its opinion on the draft decree ([Opinion 20-A-03](#)), the Autorité recommended clarifying the purpose and conditions for application of fee surcharges in French overseas territories.

€514  
PER NOTARIAL ACT

€40  
PER COURT BAILIFF ACT

THESE ARE THE AVERAGE ADDITIONAL COSTS PAID BY CONSUMERS IN FRENCH OVERSEAS TERRITORIES.

➔ The principles for setting fees finally adopted in the decree are the reasons for the reductions in the surcharge rates on emoluments applicable in French overseas territories, which is welcomed by the Autorité. Indeed, these cuts will trigger an initial shift in rebalancing between the applicable rates and the additional costs actually borne by professionals.

[Opinion 20-A-03 of 14 February 2020](#)

[Decree 2020-179 of 28 February 2020 concerning regulated fees applicable to certain legal professionals](#)

THE LAW FOR GROWTH, ACTIVITY AND EQUAL ECONOMIC OPPORTUNITIES OF 6 AUGUST 2015 PROVIDES FOR A REVISION EVERY TWO YEARS OF MAPS IDENTIFYING AREAS IN WHICH NEW PROFESSIONALS CAN SET UP OFFICES.

# Continuing the process of opening up

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In 2019, the maps of the court bailiffs and judicial auctioneers expired. As the professions have been asked to merge (to become “commissioners of justice”) in 2022, the Autorité conducted the revision work of both simultaneously. As a result, the Autorité sent two proposals for a revised map to the Ministers of Justice and Economy in December 2019 as part of two opinions [19-A-16 and 19-A-17], together with a review of the supply and new recommendations backed up by figures for 2020-2022.

## An accurate overview

In its assessment, the Autorité found that the creation of recent offices had helped stem the decline in the number of independent court bailiffs, but not enough to catch up with the level of 2014. However, in the case of judicial auctioneers, the number of liberal professionals exceeded that of 2014. During 2014-2018, the margin rate for both professions declined slightly from 2012-2014. Moreover, the geographical coverage appears to be strengthened by the creation of offices in areas where there were few offices for court bailiffs or

none at all, in the case of judicial auctioneers. The results are positive with a greater choice for clients and better opportunities for graduates in both professions.

## Quantitative recommendations

In view of the updated data (turnover and professional staff, including new appointees), the Autorité estimates that the potential for 2026 is between 450 and 500 new court bailiffs and 25 to 30 judicial auctioneers. To achieve this, it recommended the creation of additional offices for the installation of 100 new independent court bailiffs over 32 free-installation areas and three new judicial auctioneers in three installation areas, out of a total of 99 zones.

These recommendations take into account the anticipated effects of the arrival of 202 new independent court bailiffs and 41 new judicial auctioneers in accordance with the initial maps, objectives that could not be achieved by the date the opinions were adopted. Consequently, the Autorité stated it would be preferable to add the

remaining recommended positions that could not be met for 2017-2019 to those that were proposed.

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### Qualitative recommendations

In order to improve the system, the Autorité has also made numerous recommendations.

#### Improving the appointment process

➔ **in orange areas:** by ensuring, for example, that decisions of the French Minister of Justice concerning applications to create offices in these areas are published on the Ministry's website;

➔ **in green areas:** by limiting applications to a limited number of areas (three for example) within 24 hours of the opening of the application process, by permitting candidates to list an order of preference among their different applications, or by organising a simultaneous electronic draw in all areas.

#### Lowering barriers for admitting new candidates

The Autorité has also called for clarifying and relaxing the rules on personal solicitation. In the case of judicial commissioners and future commissioners of justice, it also advocated the end of the "residency monopoly".

#### Improving the system for preparing maps

In order to improve future mapping work, the Autorité proposed optimising the procedures for collecting economic data necessary for preparing maps as well as the quality of the data transmitted, for example, by making it mandatory to establish a tool for monitoring the activity of sub-offices. The Autorité also reiterated its desire to contribute to the preparation of the report on the opportunity of expanding free establishment to the *départements* of *Bas-Rhin*, *Haut-Rhin* and *Moselle*.

#### Improving access for women and young people to the profession

Lastly, it recommended extending to the professions concerned the mechanism provided for in Ordinance 2015-949 of 31 July 2015 on equal access for men and women within professional orders and proposed various measures to facilitate the balance between private and professional life.

[Opinions 19-A-16 and 19-A-17 of 2 December 2019](#)

FOR THE FIRST TIME IN 2019, THE AUTORITÉ HANDED DOWN FINES TO NOTARIES FOR FEE-FIXING AGREEMENTS, AS WELL AS TO COURT BAILIFFS FOR SETTING UP DISCRIMINATORY CONDITIONS FOR NEWLY ESTABLISHED PROFESSIONALS. THESE CASES ILLUSTRATE THE AUTORITÉ'S VIGILANCE *VIS-À-VIS* CURRENT STAKEHOLDERS IN ORDER TO PREVENT ANY PRACTICES HINDERING THE REGULAR ENTRY OF NEW PROFESSIONALS.

# Creating obstacles to the implementation of the Macron Law: two decisions handing down fines in 2019

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## Real estate negotiation services: notaries in Franche-Comté organised to hinder deregulation of fees

The Autorité fined Notimo, an economic interest group of some 20 notaries in Franche-Comté, as well as the interdepartmental chamber for fixing fees. In anticipating the end of the regulated fee for real estate negotiation services provided by the Macron Law, Notimo, with the active assistance of the interdepartmental chamber, developed a single “fee table” for notaries in the network. The fixed rates resulted in a large increase in real estate negotiation fees compared to regulated rates. On average, prices were 20% higher than those reported by other offices in the region.

The Autorité stressed that this practice was all the more serious in that it

occurred in a sector where room for competition is strictly limited and that its purpose was to prevent each notary from freely setting their own fees for their services, as prescribed by the legislator [Decision 19-D-12 of 24 June 2019, for further details see p. 95].

## Court bailiffs in the Hauts-de-Seine département: a general effort against the arrival of new colleagues

A fine was also handed down on the Hauts-de-Seine Joint Services Bureau (which unites all of the court bailiffs in the *département*) for introducing discriminatory entry conditions for court bailiffs who sought to join the organisation. Court bailiffs recently installed under the Macron Law were obligated to pay a “lump-sum entry fee” of at least

€300,000. The prohibitive level and discriminatory nature of this right of entry was intended to contravene the legislator's effort to open up the profession, making it more difficult for new entrants starting a business [Decision 19-D-13 of 24 June 2019, for more details, see p. 95].

The Autorité is verifying that there are no other similar breaches in the region.

# EUROPEAN AND INTERNATIONAL COOPERATION

To meet the new challenges facing them and the demands of a global economy, competition authorities are working closely together. The vitality of the relationships and the dialogue in various fora and circles promotes convergence of approaches and tools. The Autorité has long been dedicated to defining European competition policy and takes widely seen and influential actions within the international competition community.

# Permanently connected

## European network

### A leading role for France

Created in 2004, the European Competition Network (ECN) is a true success. The Autorité has played a key role since its inception and is one of its most active member authorities. Since 2004, it has opened 293 inquiries on the basis of European law and has investigated 29 merger operations since 2009 on referral from the European Commission, which found the Autorité best-placed to review the cases.

### Encrypted network

Before launching an investigation, or as soon as the first step is taken, national competition authorities (NCAs) keep each other abreast of new cases of cartels or abuse that may affect trade between Member States. This sharing of information through an encrypted network enables identification of possible cross-border agreements and optimisation of the assignment of cases at European level. Finally, this exchange gives each authority access to the work of its counterparts and, in a very real way, gives case officers an opportunity to exchange on similar cases and share their experience.

### "Early warning system"

The network also innovated by setting up a procedure for rapid reporting of cases involving new issues or with significant implications at European level, particularly in the digital sector. This mechanism should make it possible to strengthen cohesion between NCAs with a view to ensuring uniform application of competition law at the European level.

### Cooperation and assistance in conducting inquiries

Networking also promotes good coordination in the field. The Autorité sometimes finds it necessary to seek the assistance of its counterparts in investigations as well as lend them a hand where appropriate. It also cooperates with the European Commission by pro-

viding it with assistance when it carries out investigations in France. In 2019, the Autorité was called upon to assist the Austrian competition authority in conducting dawn raids in France in the sector for distributing automatic swimming pool cleaning equipment. The Greek, Luxembourg, Romanian and Czech authorities also sent requests to the Autorité for information. Finally, the Autorité assisted the Commission on one occasion.

### Very active working groups

The ECN is also a forum for discussion and careful consideration on specific legal and economic questions. Much work is currently under way, including on consistence

with regard to procedural guarantees, merger law, the fight against cartels and abuses of dominance, illegal horizontal and vertical practices and computer forensics.

The Commission and NCAs are currently highly committed in working groups on high-stakes issues. Examples include the Directorate-General for Competition presenting the findings of the expert report Competition policy for the digital era, and the working group on the application of competition rules in the healthcare and pharmacy sectors, where the issue of the distribution of both over-the-counter and prescription medicines, was debated.

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### A shared desire to strengthen European competition policy

Fifteen years after the ECN was created, the adoption of the ECN+ Directive in January 2019 marked a decisive new step by strengthening the means available to NCAs and by providing for the creation of a common base of powers to improve how competition law is implemented within the European Union.

While many measures already correspond with the French national legislative framework, the Directive contains provisions requiring transposition, which must take place before 4 February 2021. These measures include:

- ➔ discretionary prosecution;
  - ➔ bringing the upper limit for fines for 'bodies' in line with that for companies (10% of worldwide revenue);
  - ➔ the possibility of issuing structural injunctions in the context of litigation procedures involving anticompetitive practices;
  - ➔ the possibility of starting proceedings *ex officio* in order to impose interim measures;
  - ➔ extending and deepening cooperation between NCAs;
  - ➔ extending the power of cooperation between NCAs to cases of non-compliance with a decision (non-compliance with injunctions or commitments) and to procedures opened for obstructing an investigation;
  - ➔ the possibility of requesting mutual assistance for notifying procedural documents and enforcing decisions.
- In addition, the Directive requires that the leniency programmes of the different national competition authorities be fully harmonised in relation to "secret agreements" and gives the authorities the possibility to extend this programme to other types of practices, or even extend it to benefit individuals.

### At international level

#### Multilateral cooperation

##### Within the ICN

The Autorité plays a strong and influential role within the international competition community. It is in fact strongly involved in the International Competition

Network (ICN), which brings together around 140 competition regulators.

Since March 2018, the Autorité has co-chaired the Cartel Working Group, after co-chairing the Merger Working Group for three years and the Advocacy Working Group for four years. As co-chair of the Cartel Working Group, alongside its counterparts from Brazil and Russia, the Autorité took the initiative to turn its attention to the role of big data.

In addition, the President of the Autorité acts as a liaison with competition experts from the Bar, companies, academia or consumer protection associations (non-governmental advisors, NGAs) appointed by the agencies to contribute together with them to the work of the ICN – a role that the President of the Autorité has assumed on a personal basis for more than ten years.

#### The OECD

The Autorité is also active in the Competition Committee of the Organisation for Economic Co-operation and Development (OECD) and the Global Forum on Competition. In 2019, it submitted contributions on the standard of control applied by the courts in competition cases and on merger control in dynamic markets.

#### Bilateral cooperation

The Autorité is also strongly involved in bilateral cooperation.

As such, it responds to the large number of requests it receives from competition authorities and international organisations seeking its assistance to develop their practice, deepen their knowledge or exchange on subjects of common interest.

In 2019, several of these meetings or training sessions were held in Asia, where competition policy is developing in a large number of countries, including outside the already most developed economies.

On the African continent, the Autorité continues to provide technical assistance to the Commission of the West African Economic and Monetary Union (WAEMU), notably the mission of one agent on the subject of public procurement.

The Autorité also maintains close cooperation with long-standing partner agencies. In 2019, it sent a delegation to meet with its Spanish counterpart for an in-depth exchange of views on a wide range of topics related to the recent decision-making and advisory practices of these two regulators and the challenges raised by the changes in the economy, as well as ongoing institutional and legislative developments.



Finally, a dense and lasting relationship is kept with the competition regulators in the United States. In particular, the President of the Autorité took part in an event organised by the Federal Trade Commission (FTC), during which she gave a speech on the role that competition authorities play internationally with respect to technology such as artificial intelligence.

#### COMPETITION, A SUBJECT GAINING GROUND WITHIN THE G7

2019 was marked by the French Presidency of the G7, which provided the Autorité with an opportunity to take unprecedented action alongside its counterparts – the competition authorities of the member countries of this informal organisation that brings together Canada, Germany, Italy, Japan, the United Kingdom and the United States, as well as the European Union as an observer. The French Presidency had, for the first time, included competition policy on the G7 agenda. On 5 June 2019, after several months of intense dialogue, the initiative culminated in the publication of a Common Understanding on the issues raised by the digital economy and the role that competition law plays in this regard.

#### A shared vision for the digital economy

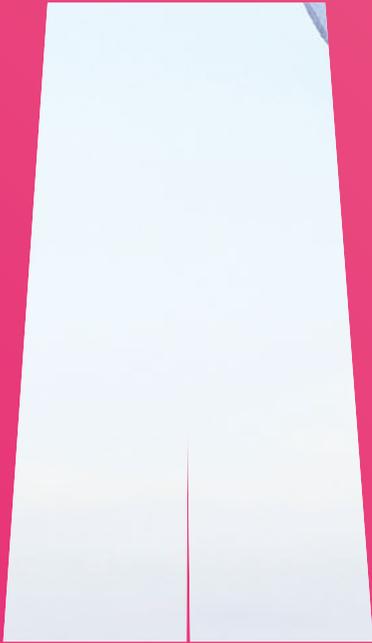
The digital economy provides benefits for innovation and growth.

Competition law provides appropriate means to address digital challenges.

#### The common understanding

Enhanced international cooperation between competition authorities is crucial in light of the global nature of the challenges of the digital economy.

Competition authorities advocate reinforced competition impact assessment of public policies and legislation.



WAVE



# Digital technology

## ONLINE ADVERTISING

# Abuse of a dominant position: Google sanctioned for discriminatory treatment

## The advertiser's complaint

The case began with a complaint from an advertiser, Gibmedia, that publishes weather, company data and telephone information websites, some of which offer paid services. After its Google Ads account was suspended without notice, it filed a complaint to the Autorité and asked it to issue interim measures, considering that the procedure followed by Google and the reasons for its suspension were discriminatory and that they lacked objectivity and transparency. As a reminder, in its decision 15-D-13 ([see press release](#)), the Autorité had rejected the request for interim measures, judging that the condition of urgency had not been met, but announced that its investigation into the merits of the case would be continued, which reached a conclusion.

## What are the operating rules of Google Ads?

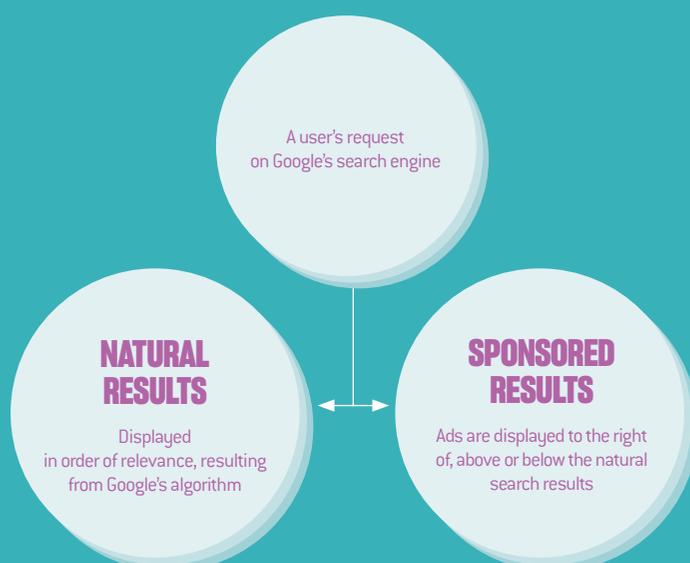
The operation of the Google Ads advertising platform is governed by rules that specify the terms under which an advertiser may display advertising. Before it can open an account, each advertiser must expressly commit to comply with them.

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As an ultra-dominant leader in the online advertising sector, Google has a specific responsibility to ensure that its behaviour does not harm competition. After receiving a complaint from Gibmedia, the Autorité handed out a €150-million fine to the company for adopting opaque and difficult-to-understand operating rules for its advertising platform Google Ads and applying them in a random and unfair manner. In addition, Google must clarify the operating rules of Google Ads, as well as the procedure for suspending accounts, within a short time frame.



## GOOGLE SEARCHES: HOW DOES IT WORK?



The advertisements displayed to Internet users are the result of actions in which publishers that wish to promote websites, products or services bid on keywords (e.g. hotel, restaurant, dishwasher, weather, etc.) on the Google Ads platform. The auction results depend in particular on the price per click that the advertiser is willing to pay.

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Google holds a very dominant position in the online search advertising market (more than 90% of searches in France and probably more than 80% in the online search advertising market). The rules therefore become the 'de facto standard' for advertisers wishing to buy online search advertising services in France, since other players offering this type of advertising have a market share more than 10 times smaller than that of Google.

Some of the rules are designed to protect Internet users from exposure to advertisements directing them to websites that could harm their interests. In particular, Google Ads prohibits advertisers from selling products or services that are normally free of charge or presenting content to Internet users that is different from the content presented to Google. It also requires transparency towards consumers, where relevant, about how they will be billed.



If advertisers do not comply with the rules, Google can reject their advertisements, block their websites or even suspend their accounts so they can no longer run advertisements through Google Ads.

### Legal and economic uncertainty for advertisers

#### Unclear rules

Because of its dominant position, Google must set the operating rules of its advertising platform in an objective, transparent and non-discriminatory manner. Yet, the evidence in the case shows that the wording of the rules was not based on any precise or stable definitions, and that their opacity gave Google latitude to interpret them differently in different situations.

For example, the rule on the sale of free items prohibited "charging users for products or services that are normally free of charge", without further clarification. However, whether a service is "normally free of charge" is not easy to determine.

#### A changing interpretation

The investigation revealed that Google had frequently changed its position on the interpretation of these rules to its advertisers. For example, having considered in September 2014 that the paid website *annuaire-inverse.net* complied with the rules on the sale of services that are "normally free of charge", Google then suspended the website in January 2015 despite the fact that its business model had not changed.

The evidence in the case also shows that Google's support teams for advertisers also had difficulty understanding the rules and, in some cases, had to turn to specialist "Policy" teams responsible for websites' compliance with the rules.







RELATED RIGHTS OF NEWSPAPER PUBLISHERS AND NEWS AGENCIES

# Urgent interim measures imposed on Google

Having received several complaints, the Autorité imposed urgent interim measures on Google requiring it to negotiate in good faith with newspaper publishers and news agencies the remuneration owed to them under the law on related rights for the reuse of their protected content, pending the Autorité's decision on the merits.

## Practices contested by the newspaper publishers and Agence France Presse

The Autorité received complaints in November 2019 from several trade associations representing newspaper publishers (*Syndicat des éditeurs de la presse magazine*, *Alliance de la presse d'information générale*) and from *Agence France-Presse (AFP)* about practices implemented by Google when the French Law on Related Rights of 24 July 2019 came into force. This law, which transposes the European Directive on Copyright and Related Rights of 17 April 2019, aims to establish the conditions for balanced negotiations between publishers, news agencies and digital plat-

forms in order to redefine how value is shared between them, in favour of the publishers and news agencies.

On the grounds of compliance with the law, Google unilaterally decided that it would no longer display excerpts from articles, photographs, computer graphics or videos within its various services (Google Search, Google News and Discover) unless the publishers gave it permission to do so free of charge. The vast majority of news publishers had at the time granted Google free licences to use and display their protected content, without any possibility for negotiation and without receiving any remuneration from Google. Moreover, under Google's new display policy, the licences granted meant that it could reuse even more content than before.

## Google is likely to have abused its dominant position

The Autorité considered that Google likely held a dominant position in the French general search services market (of around 90% at the end of 2019) and that there were also major barriers to entry and expansion in this market, linked to the significant investment necessary to develop search engine technology, and also due to network and experience effects, which

made Google's position even more difficult to challenge for competing search engines wanting to develop.

In the context of its examination of the application for interim measures, the Autorité considered that the reported practices were likely to qualify as an abuse of a dominant position on several counts.

## Imposing unfair trading conditions

Google is likely to have imposed unfair trading conditions on publishers and news agencies, enabling it to avoid any form of negotiation and remuneration for the reuse and display of content protected under related rights.

## Circumventing of the law

Google used the possibility afforded by the law to grant free licences in some cases for certain content by establishing a general principle that there would be no remuneration for the display of any protected content.

This decision is difficult to reconcile with the purpose and scope of the law, which aimed to redefine the sharing of value in favour of newspaper publishers as opposed to digital platforms, by creating a related right that should give rise to remuneration, based on specific criteria. Google also refused to give publishers the information they needed to determine this remuneration and considered



that it could reuse all article headlines in their entirety, without obtaining the publishers' consent.

### Discrimination

By imposing a principle of zero remuneration on all publishers, without examining their respective situations or the corresponding protected content with regard to the specific criteria laid down by the law on related rights, Google is likely to have treated economic stakeholders in different situations identically, without any objective justification, and thus to have engaged in a discriminatory practice.

### Serious and immediate harm to the fragile press sector

Google brings significant traffic to the websites of newspaper publishers and news agencies: according to data supplied by the complainants relating to 32 publications, search engines – and therefore, largely, Google – account for between 26% and 90% of the traffic redirected to their pages, depending on the site. This traffic is essential for many of them, particularly as they cannot afford to lose part of their digital readership because of their economic difficulties.

Under these circumstances, newspaper publishers and news agencies have no choice but to accept Google's display policy without any financial compensation, because the threat of downgraded display terms entails a loss of traffic and, therefore, revenue. That is why most publishers accepted conditions that for them were even more unfavourable after the Law on Related Rights entered into force than those that existed before.



In view of all of this evidence, the Autorité found that there was serious and immediate harm to the press sector as a result of Google's behaviour which, against the backdrop of a major crisis in this sector, deprives publishers and news agencies of resources deemed by the legislator as vital to the continuity of their activity, at the crucial moment when the Law on Related Rights entered into force. Consequently, the Autorité issued several injunctions as a matter of urgency.

### Interim measures

These measures are designed to protect complainants from the consequences of potentially abusive practices, pending a decision on the merits.

Google must negotiate the remuneration due for the reuse of protected content with any newspaper publishers and news agencies that request this, in good faith and in accordance with transparent, objective and non-discriminatory criteria. These negotiations must also, retroactively, cover the period beginning with the entry into force of the Law on Related Rights, i.e. 24 October 2019.

This injunction requires that the negotiations actually result in a remuneration proposal by Google.

- ➔ Google must conduct the negotiations within three months of any request to open negotiations made by a newspaper publisher or a news agency.
- ➔ In particular, the indexing, ranking and presentation of the protected content reused by Google on its services must not be affected by the negotiations.
- ➔ Google must provide the Autorité with monthly reports on its compliance with this decision.

These injunctions will remain in force until the decision on the merits is published.

● **Decision 20-MC-01 and press release of 9 April 2020**



# Telecoms & media

## THE AUDIOVISUAL SECTOR

# Recommendations in favour of an ambitious reform

### The digital revolution: unprecedented transformations in the sector

Patterns of audiovisual media consumption have changed dramatically. Although digital terrestrial television broadcasting (DTT) remains very popular today, the majority of consumers now access television programmes via the triple-play or quadruple-play offers of Internet service providers (ISPs), or even via over-the-top (OTT) streaming without going through ISPs, i.e., directly on the Internet via a smart TV, computer or smartphone.

### The boom in new players

With these new distribution methods, new companies entered the market and quickly met with great success: subscription video-on-demand (SVOD) platforms such as Netflix and Amazon Prime Video.

They make it possible to watch a film, a series, a work of fiction, or a documentary “when you want, where you want and on the device you want” at a lower price. These “non-linear” services address new uses and offer more freedom to consumers, who can now do without the programme schedules of the traditional “linear” television channels.

Netflix, Amazon Prime, Apple TV and Disney+ invest heavily in the production of programmes, particularly “original”

**The audiovisual landscape is, indisputably, changing rapidly and an in-depth overhaul of the sector’s regulation has become essential. In response to a referral by the Committee on Cultural Affairs and Education of the National Assembly (Assemblée nationale) as part of the preparation of a draft law on the reform of the audiovisual sector, the Autorité issued an opinion in which it recommended, in particular, easing the constraints on incumbent stakeholders to enable them to compete on equal terms with online video platforms such as Netflix or Amazon Prime. The reform comprises numerous proposals...**

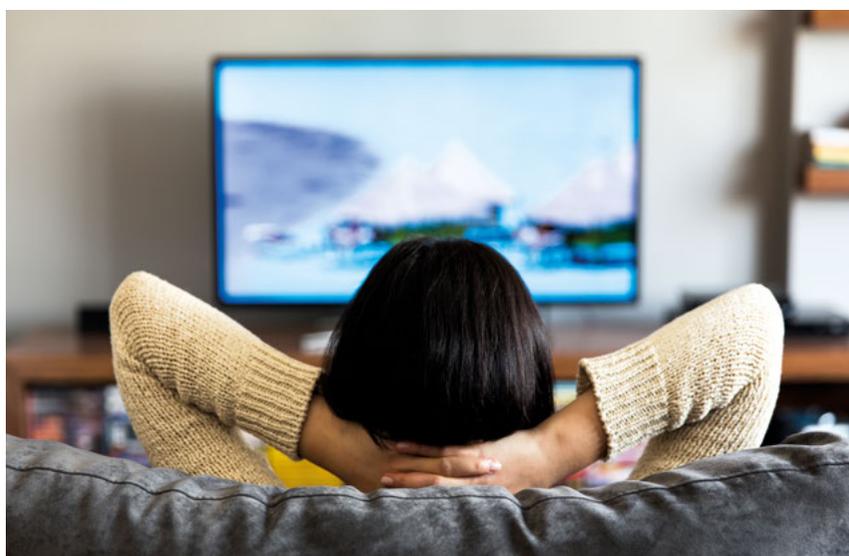
programmes that they produce directly, keeping full exploitation rights in all regions and for a very long time. As a result, their investment capacity is enormous and disproportionate to that of national channel operators, since their subscriber base is global and the rights to the catalogue have no expiry date.

### Incumbent operators destabilised by the emergence of video platforms

Faced with these new uses, the business models of the channels are being disrupted.

**The number of pay-TV subscribers** is falling due to the attractiveness of the platforms’ non-linear programmes, the richness of their Premium content and their low price. These operators are therefore responding by lowering the price of their subscriptions, which reduces their resources to invest in the most attractive programmes (sports, cinema and series).

...





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**Free channels** are faced with a reduction in individual viewing time, which gradually leads to their advertising income stagnating. In addition, advertisers are increasingly turning to the Internet, which enables them to target their advertisements – a service that the channels cannot provide because of the regulatory framework for linear terrestrial television.

**As a result, the Autorité recommends:**

- ➔ enabling channels to offer new forms of targeted advertising, made possible through TV boxes;
- ➔ opening up “prohibited sectors”, i.e. permitting the broadcasting of advertisements for cinema, publishing and promotions in the retail sector.

**The Autorité’s recommendations: easing constraints on television channels**

Economic and technological developments call for a review of existing regulations. The Autorité has therefore proposed an easing of these constraints.

**Advertising**

As far as advertising is concerned, although the distinction between the television advertising market and that of online advertising remains, there is nevertheless a growing convergence between these two markets. Economic and technological developments make it necessary to review the existing regulations on television advertising - which are much more restrictive than those that currently apply to Internet stakeholders.



THE URGENT NEED TO REFORM OUTDATED AND ASYMMETRICAL REGULATIONS THE URGENT NEED TO REFORM OUTDATED AND ASYMMETRICAL REGULATIONS THE URGENT NEED TO REFORM OUTDATED AND ASYMMETRICAL REGULATIONS THE URGENT NEED TO REFORM OUTDATED AND ASYMMETRICAL REGULATIONS THE URGENT NEED TO REFORM OUTDATED AND ASYMMETRICAL REGULATIONS

## THE URGENT NEED TO REFORM OUTDATED AND ASYMMETRICAL REGULATIONS

The new options offered by the platforms, which are attractive to viewers, are virtually unregulated, while sector-specific regulation – still based on the model of linear terrestrial broadcasting – imposes heavy constraints on national incumbent stakeholders.

Once protective for the entire sector, these regulations – which were particularly developed in France compared to other European countries – now impose asymmetrical constraints that weigh only upon national incumbent stakeholders and limit their capacity to adapt to market changes and meet consumer expectations. For instance, it is forbidden for incumbent stakeholders to develop targeted advertising, and they are subject to obligations to invest in content.

All of these adjustments are urgent in order to prevent incumbent stakeholders from being hindered in their efforts to adapt and getting gradually marginalised in national and international markets, which would ultimately harm the entire sector.

THE URGENT NEED TO REFORM OUTDATED AND ASYMMETRICAL REGULATIONS THE URGENT NEED TO REFORM OUTDATED AND ASYMMETRICAL REGULATIONS THE URGENT NEED TO REFORM OUTDATED AND ASYMMETRICAL REGULATIONS THE URGENT NEED TO REFORM OUTDATED AND ASYMMETRICAL REGULATIONS THE URGENT NEED TO REFORM OUTDATED AND ASYMMETRICAL REGULATIONS

### Programmes

Regulations require TV channels to contribute to the funding of film and audiovisual production and organise a complex system of compulsory investments that limit the freedom of operators. In addition to these production obligations, a quota (75%) must be reserved for “independent” works – but with very limited broadcasting and exploitation rights.

The operators are therefore disadvantaged insofar as they can neither vertically integrate, as digital platforms do, nor acquire exclusive long-term rights to exploit a work through various services in France and/or abroad.

#### The Autorité therefore supports:

- ➔ relaxing obligations relating to investments in European and French works;
- ➔ reviewing the conditions for the use of independent production;
- ➔ abolishing the “prohibited days” rule for cinema, which prohibits the broadcasting of films on Wednesday and Friday evenings, as well as on Saturdays and Sundays before 8.30 p.m. This provision no longer makes sense as films are now available all the time on platforms.

- ➔ overhauling the anti-merger measures (1986 law). These provisions, which come in addition to the regular merger control framework, appear to be outdated due to economic developments in the sector. While safeguards guaranteeing pluralism remain necessary, current provisions only apply to television operators and therefore exclude an increasingly significant proportion of content providers.

● [Opinion 19-A-04 of 21 February 2019](#)  
and [press release of 2 February 2019](#)



DISTRIBUTION OF TELEVISION SERVICES

# Salto platform: a transaction subject to conditions

Dubbed the “French Netflix” by the press, the proposed creation of a platform by TF1, France Télévisions and Métropole Télévision (M6) was cleared subject to conditions by the Autorité.

## A major transaction

Following a referral decision by the European Commission, TF1, France Télévisions and Métropole Télévision (hereinafter referred to as “M6”) notified the Autorité de la concurrence of their proposed creation of a joint venture, Salto, on 17 June 2019.

This significant project between three major stakeholders in the audiovisual landscape consists in the creation of a platform that will be active in the distribution of television services, including the digital terrestrial television (DTT) channels of the parent companies and their associated services (e.g. catch-up TV), as well as subscription video-on-demand (SVOD). The platforms’ offering will be streamed over-the-top (OTT) and therefore will be directly accessible to consumers on the Internet without the intermediary of a distributor.

Following a thorough and detailed investigation, informed by the opinion issued by the Broadcasting Regulator (CSA), and thanks to constructive dialogue with all stakeholders, the transaction was cleared in Phase 1 within eight weeks, once the proposed commitments addressed all of the Autorité’s concerns.

## Competition concerns and commitments

### The acquisition of broadcasting rights

In order to supply the catalogue of its SVOD platform, Salto will be active in the markets for the acquisition of broadcasting rights for audiovisual content (film and audiovisual works and flow programmes).

The Autorité analysed to what extent TF1, France Télévisions and M6 would be likely to use their position in the markets for the acquisition of linear broadcasting rights (programmes watched upon airing) in order to restrict the access of Salto’s competitors to non-linear broadcasting rights (programmes watched on demand) and thereby favour Salto in this respect. While it found there was no such risk with regard to American and European content, the Autorité did on the contrary identify a risk with regard to original French-language content and flow programmes. The parent companies may have been tempted to implement a generalised strategy of bundling their purchases of linear and non-linear broadcasting rights in order to promote Salto’s access to non-linear broadcasting rights – a strategy that would have been detrimental both to Salto’s competitors and to copy-right holders.

The Autorité also found that the contracts for the purchase of linear broadcasting rights entered into by TF1, France Télévisions and M6 included clauses (holdback clauses, priority and pre-emption rights) that would likely make it more complex for Salto’s competitors to purchase non-linear broadcasting rights.

### Remedies

- ➔ TF1, France Télévisions and M6 will limit their possibilities for bundled purchases of linear and non-linear broadcasting rights.
- ➔ The supply conditions by which Salto acquires exclusive content from its parent companies will also be limited.
- ➔ The possibility for Salto to benefit from the clauses contained in the contracts for the purchase of linear broadcasting rights signed by TF1, France Télévisions and M6 will be strictly regulated.





### Production and marketing of television channels

The Autorité found that the channels operated by TF1, France Télévisions and M6 – as well as their associated services and features – were essential to enable television distributors to provide an attractive offering to consumers. In this respect, it identified a risk that the parent companies could prevent Salto's competing distributors from accessing, at least in part, their channels and services as well as associated features.

#### Remedies

➔ In order to resolve these competition concerns, Salto will not be able to enter into exclusive distribution agreements for free-to-air DTT channels and their associated services and features. However, in order to maintain its incentives to innovate and enable it to differentiate, Salto will be able to benefit from temporary exclusivity for services and features of its own initiative.

➔ TF1, France Télévisions and M6 must directly offer, without Salto as intermediary, the distribution of their free-to-air DTT channels along with their associated services and features to any third-party distributor on objective and non-discriminatory terms. The remuneration owed by Salto to its parent companies will be set by two independent experts.

### Distribution of pay TV services

Given the proximity of the TF1, France Télévisions and M6's business activity in providing television services and Salto's activity in the field of distribution, the Autorité considered that there was a risk of cross-promotion between the free-to-air DTT channels of TF1, France Télévisions and M6 and the platform Salto.

#### Remedies

➔ As a result, the possibilities of cross-promotion between TF1, France Télévisions and M6 channels and the platform Salto will be limited.

### Advertising

As Salto will not be selling advertising space, the Autorité ruled out any horizontal risks associated with the transaction in these markets. On the other hand, Salto is likely to buy advertising space from its parent companies.

#### Remedies

➔ The parent companies will market advertising space to Salto on the basis of general terms and conditions of sale, and under objective and non-discriminatory terms.

### Risks of coordination between TF1, France Télévisions, M6 and Salto

In view of the links created by the transaction, the Autorité considered that the transparency resulting from the transaction may facilitate coordination between TF1, France Télévisions and M6, as well as

#### Remedies

➔ The parent companies will put in place a set of individual and collective guarantees designed to limit the exchange of information between Salto and its parent companies to what is strictly necessary and within a precise framework.

between them and their joint subsidiary. With the exception of commitments to prevent any risk of coordination, which will apply for Salto's lifetime, the remedies will apply for a period of five years [renewable].

● Decision 19-DCC-157 and press release of 12 August 2019

The number of weeks it took for the transaction to be cleared. An extremely short time period considering the scale and complexity of such a case.

THE PRESS

# Conditional clearance for the acquisition of Mondadori by Reworld Media

## Car magazines: the new entity would have owned three of the four best-selling publications

Upon completing fits analysis, the Autorité identified competition concerns in the car magazine market.

As a result of the transaction, Reworld Media would have held a very large market share in the general interest car magazine market, publishing three of the four titles with the largest distribution in France: *Auto Moto*, *Auto Plus* and *L'Auto-Journal*. The only credible alternative to the new entity's magazines in this market would have been *L'Automobile Magazine*, published by Upside Down Media.

The Autorité considered that strengthening the position of Reworld Media in this market was therefore likely to result in an increase in the unit selling prices or subscription costs of its magazines and a deterioration in content quality. The Autorité also noted that the readers of these magazines would be deprived of an independent offering in an already concentrated market.

In the press sector, wherever necessary, the Autorité controls mergers in order to prevent the content of publications from becoming homogenised and ensure that editorial quality and diversity are maintained for the readership. For the first time since 2009, it made its clearance of the deal conditional on the divestiture of a press publication.

## Divestiture of a publication: a first

In order to guarantee pluralism to readers in the car magazines market, the Autorité cleared the transaction subject to Reworld Media selling one publication, either *L'Auto-Journal* or *Auto Moto*, to a competitor. This commitment is likely to reduce Reworld Media's market power and ensure that sufficient competition is maintained, along with pluralism in the editorial offerings available to readers of general interest car magazines in France.

● Decision 19-DCC-141 and press release of 24 July 2019

## Previous transactions reviewed by the Autorité in the press sector

2010	Joint takeover of <i>Le Monde</i> and <i>Le Nouvel Observateur</i> by Mr. Bergé, Mr. Niel and Mr. Pigasse	10-DCC-129	Without condition
2011	Acquisition of the group <i>L'Est Républicain</i> by <i>Banque Fédérative du Crédit Mutuel</i> ;	11-DCC-114	Behavioural commitments
2014	Acquisition of <i>Le Nouvel Observateur</i> by <i>Le Monde Libre</i> (Mr. Bergé, Mr. Niel and Mr. Pigasse)	14-DCC-76	Without condition
2015	Acquisition of newspapers <i>Le Parisien</i> and <i>Aujourd'hui en France</i> by LVMH	15-DCC-139	Without condition



## DEPLOYMENT OF FIBRE OPTICS

# Injunctions with penalty payments for Altice are upheld



## A review of the measures applied to Altice since the acquisition of SFR

Two decisions governed the behaviour of Altice since the acquisition of SFR.

### Decision of 30 October 2014, giving conditional clearance to the acquisition of SFR (14-DCC-160)

On 30 October 2014, the Autorité cleared the exclusive acquisition of SFR by the group Altice, subject to structural and behavioural commitments. These commitments, undertaken for a period of five years, had expired and therefore needed to be analysed again by the Autorité in order to decide whether they should be renewed.

### Decision of 8 March 2017 fining Altice for failing to honour the commitments made in 2014 (17-D-04)

Given Altice's cumulated delay in connecting fibre-ready buildings in the area

covered by the "Faber" agreement to the network co-financed by Bouygues Telecom – despite having made a commitment laying down the terms of this connection – the Autorité had fined Altice €40 million and required it to comply with a new calendar for completion, combined with periodic penalty payments. Since, in January 2019, Altice requested that these injunctions be lifted, the Autorité also carried out an analysis of the competitive context in the area covered by the agreement.

## Commitments lifted but periodic penalty payments upheld

The changes in the markets since 2014 caused the Autorité not to extend the commitments made by Altice in 2014 when it took over SFR.

As regards the injunctions of 2017 relating to the "Faber" agreement, the Autorité made a distinction between two scenarios.

### For buildings where fibre is to be installed in the future

The Autorité noted that Altice had modified its strategy and now favours the deployment of fibre optics. As a result, its

Given the changes in the markets, the Autorité decided not to renew the commitments made by Altice upon acquiring SFR. However, the injunctions with penalty payments ordered by the Autorité in 2017 concerning the agreement for the co-deployment of the fibre-optic network signed with Bouygues Telecom ("Faber" agreement) have been upheld.

interests are now aligned with those of Bouygues Telecom.

Moreover, it also found that, in December 2018, Altice and Bouygues Telecom had amended the "Faber" contract to introduce mechanisms similar to those implemented as part of the commitments made in 2014 and reiterated by the injunctions of 2017. Consequently, the Autorité considered it unnecessary to uphold these injunctions in the future as these changes guaranteed that the buildings that were to be fibre-ready from 2019 onwards would indeed be connected by Altice to the network co-financed with Bouygues Telecom.

### For buildings not connected at the date of the 2017 decision

For fibre-ready buildings not connected at the date of the 2017 decision, Altice had one more year in which to carry out the connection (injunctions with penalty payments). The Autorité decided to uphold this measure and will decide on whether the penalty payments should be liquidated and lifted as part of a separate investigation, which is currently in progress.

● Decision 19-DCC-199 and press release of 28 October 2019



# Consumer goods

## MEAL VOUCHERS

# Incumbent operators fined for anticompetitive practices

€ **415**  
million in penalties

## A highly concentrated market with four extremely dominant stakeholders

### What is a meal voucher?

Meal vouchers are a form of payment that can be used by employees who receive them to pay for a meal or certain food products to make up a meal, such as fruit and vegetables and frozen foods. They are distributed by 140,000 companies to 4 million employees who can use them in 180,000 outlets (restaurants and local shops).



This fine enters the top 5 biggest fines issued since 2009.

In response to a complaint from Octoplus (Resto Flash), which offers a mobile application for the payment of meals, as well as from several trade associations, the Autorité fined the four incumbent issuers of meals vouchers and the Centrale de Règlement des Titres (CRT) for anticompetitive practices. The four issuers exchanged strategic information and reached an agreement to foreclose the market and thereby prevent the entry of new players.

Let's take a look at practices that not only harmed competition but also slowed down the development of technological innovation in the sector in France.

### Who operates in this market?

Four operators (Edenred France, UP, Natixis Intertitres and SodexoPass France) hold almost 100% of the meal voucher market. The sector also has the particularity of bringing them together under a common structure, the Centrale de Règlement des Titres (CRT), which pools the processing of their vouchers and their reimbursement to merchants. Other stakeholders only issue electronic vouchers, such as Moneo Payment Solutions (Moneo Resto), Caisse Fédérale du Crédit Mutuel (Monetico Resto) and Octoplus (Resto Flash). Their combined market share does not exceed 1.5%.

### How does this work in practice?

The issuers sell meal vouchers to employers at face value. The companies then distribute these vouchers to their employees at a lower price. The merchants then receive the vouchers in payment for meals or food products, and present them to the issuers for reimbursement.

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### The companies and brands affected by the penalty

	PAPER VOUCHER BRANDS	ELECTRONIC VOUCHER BRANDS
Edenred France	Ticket Restaurant	Carte Ticket Restaurant
Up	Chèque Déjeuner	Chèque Déjeuner
Natixis Intertitres	Chèque de table	Apetiz
Sodexo Pass France	Pass Restaurant	Pass Restaurant

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## Confidential information exchanged through the CRT

Between 2010 and 2015, the four companies exchanged confidential commercial information through the CRT on their respective market shares on a monthly basis.

In concrete terms, the CRT sent monthly “dashboards” to the administrative and financial directors that recorded the number of meal vouchers processed by the CRT in the previous month, broken up by issuer, along with the monthly market share of each issuer, calculated based on the number of vouchers processed.

Thanks to this strategic information, each issuer was able to detect any changes in its competitors’ pricing strategy and therefore dissuade it from adopting any aggressive pricing behaviour.

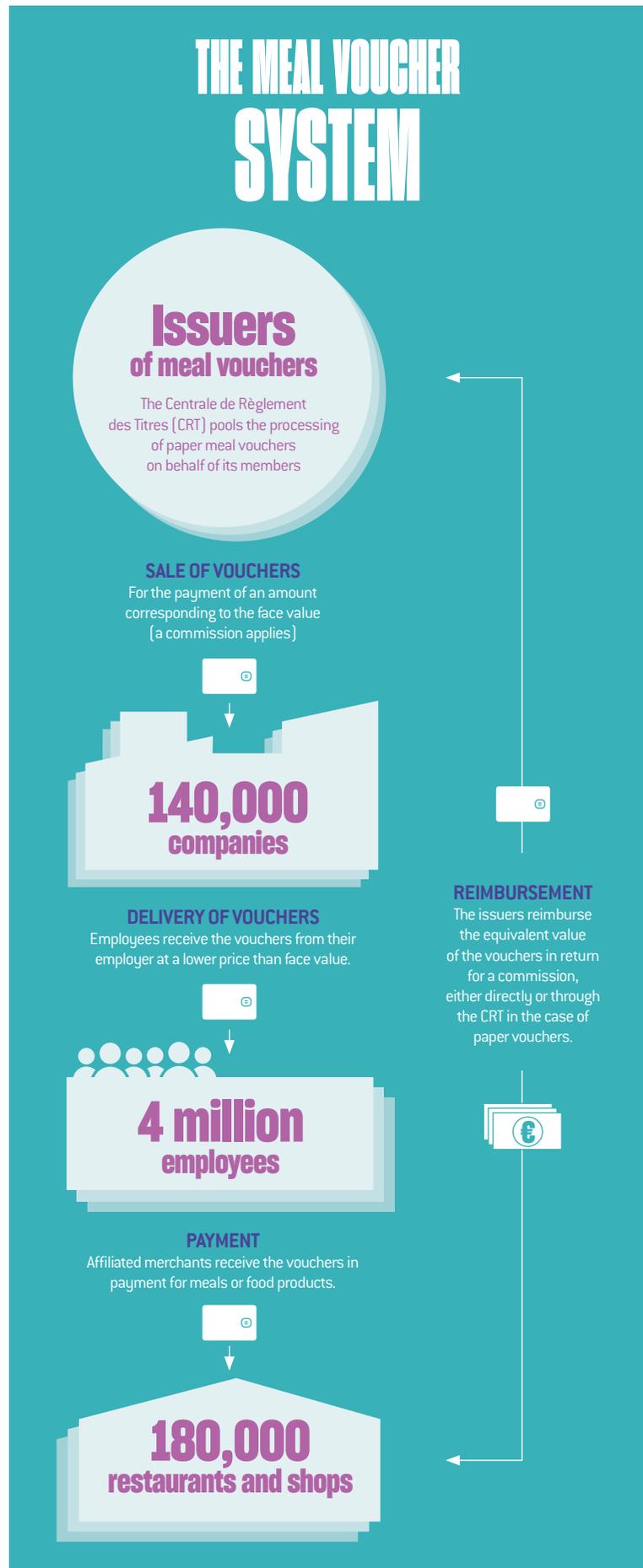
## Anticompetitive practices to foreclose the market

Between 2002 and 2018, the CRT and its member companies implemented anticompetitive practices aiming to seal off the market through statutory, regulatory and formal provisions.

## Preventing the entry of new stakeholders

The first part of these anticompetitive practices involved controlling issuers’ membership to the CRT. Becoming a member of this collective body enables companies to benefit from economies of scale with regard to processing costs, to simplify management for merchants and, above all, given its single point of contact, to have access to all merchants. To become a member, the CRT articles of association stipulated that they must “be presented by a member company of the Association” and “be approved by the Board of Directors”.

The decision for admission was “not open to appeal” and did not have to be reasoned.





FRUIT-COMPOTE SECTOR

# Sanctions for a major cartel

## Fruit-compotes, an everyday product for the French

All in all, a market worth over €40 million was affected. The fined anticompetitive practices involved compotes sold under retailers' own-brand labels as well as those aimed at the institutional catering sector ("out-of-home catering"), therefore affecting a product featuring in the daily lives of French people.

### Compotes sold under retailers' own-brand labels are mainly targeted towards low-income consumers

The main outlet for compote producers is **the supermarket and hypermarket distribution channel**. Some of the products are sold under retailers' own-brand labels. In practice, mass-market retailers organise calls for tender to select suppliers who will manufacture their compote-based products and to which they will then apply their own brands. The other products are sold under "premium" or national brands (for example Materne, Pom'Potes, Andros, St-Mamet, Charles & Alice).

### Out-of-home catering: a major market for the community

The second distribution channel for the production of compotes is that of **sales to distributors specialising in out-of-home catering**, such as Sodexo, Compass, Pomona, Pro A Pro or Transgourmet. These distributors also generally obtain supplies from manufacturers through calls for tender and then supply catering services (company canteens, etc.), hotels and restaurants, hospitals and other residential facilities (schools, retirement homes, etc.).

One of France's favourite desserts was the subject of anticompetitive practices on a national scale between October 2010 and January 2014. Thanks to the leniency procedure, the Autorité discovered a cartel between the main compote manufacturers and fined them a total amount of €58.3 million. A look back at a case concerning an everyday product that, as a result, made a lasting impression!

### Price-fixing and market sharing

In 2010, faced with an increase in the cost of raw materials (including apples and sugar) and packaging, as well as increasing pressure exerted by buyers (distributors of own-brand and out-of-home catering products), seven manufacturers decided to form a cartel in order to protect their margins.

Knowingly breaching competition law, Materne, Andros, Conserves France, Délis, Vergers de Châteaubourg, Charles Faraud, Charles & Alice, Valade and Coroos Conserven began to meet in secret and regularly exchange information, towards the common goal of:

- **increasing the sale prices** of compotes to own-brand customers and the clients of out-of-home catering services, and coordinating the amount of the price increases;
- **agreeing on** a common discourse justifying these price increases;
- **sharing volumes and customers:** a compensation system was put in place to correct potential gains or losses in volumes affecting any of the manufacturers, should any differences emerge compared to what was forecast.

DEDICATED PHONES AND SECRET RESTAURANT MEETINGS DEDICATED PHONES AND SECRET RESTAURANT MEETINGS

### DEDICATED PHONES AND SECRET RESTAURANT MEETINGS

The companies had devised a secret and sophisticated operation so as not to get "caught". Secret meetings, telephones used exclusively for organising the cartel, email exchanges on private messaging services all of the cover-up practices of a cartel that one usually finds in this type of case were there.

Most of the meetings were held in hotels and restaurants in Paris and outside the capital, such as the Parisian hotel Concorde Opéra, the Novotel hotel at Gare de Lyon, the Parisian restaurant Visconti, the Starbucks at Gare St. Lazare, and the Lyon Gerland Novotel or the one in Lille.

RESTAURANT MEETINGS DEDICATED PHONES AND SECRET RESTAURANT MEETINGS



## DISTRIBUTION OF APPLE PRODUCT

# Record fine for anticompetitive practices and abuse of economic dependence

After eBizcuss, a distributor specialising in high-end Apple products, filed a complaint in 2012, the Autorité handed down a €1.1-billion fine to Apple for anticompetitive practices within its distribution network and abusing the economic dependence of its independent Apple Premium Resellers (APRs). Two wholesalers, Tech Data and Ingram Micro, were also fined €76.1 million and €62.9 million respectively for one of the anticompetitive practices. Here's a review of an extraordinary case.

### Apple's dedicated distribution network

The distribution of Apple products in France uses two distinct channels: the 'integrated' stores owned by Apple itself (Apple Stores and website) and some 2,000 independent resellers (who are supplied by wholesalers or directly by Apple).

### A network with several categories of distributors

Upstream, Apple sells its products to two authorised wholesalers who are world leaders in the electronics sector: Ingram Micro and Tech Data. Downstream, a network of some 2,000 distributors, who can be divided into two main categories according to size and business, supplies Apple products.

There are large, generalist retailers (Auchan, Casino, Carrefour, E. Leclerc, etc.) as well as specialist retailers (Fnac, Darty, Boulanger). They are known as "retailers" in Apple's terminology.

Specialised resellers, usually authorised (smaller computer resellers), are called "resellers" in Apple's terminology. They fall into two categories:

- *Apple Authorized Resellers*, (AARs), who have a 'standard' distribution agreement with Apple.

- *Apple Premium Resellers (APRs)*, who can join the Premium network if they specialise in the distribution of Apple products and agree to join an optional program designed to promote a sales environment and provide a very high-quality customer experience. Examples include the complainant eBizcuss (which operated as an APR in Paris and Lyon from 2008 to 2012 before exiting the French market), ActiMac (Le Havre and Rouen), YouCast (Chambéry, Montélimar and Grenoble) and Corsidev (Bastia).

### Its own network

In late 2009, Apple decided in addition to open its own Apple Stores in the largest markets. It also sells its products directly to consumers through its website, Apple Online Store.



€ 1.1 billion in penalties for Apple and two of its wholesalers: Tech Data and Ingram Micro.



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### Controlled profitability

The investigation showed that Apple – which had thorough knowledge of the situation of APRs and controlled their supply and the granting of discounts to which they were entitled – was in a position to control their profitability.

The lack of economic space and the situation of uncertainty also greatly contributed to dissuading APRs from deviating from Apple’s “recommended” prices.

Corsidev’s testimony may be cited in this regard: “There’s really no room for manoeuvre. They wouldn’t stop us from lowering prices, but the margins are so low that it would be suicidal to do so.”

### Abuse of economic dependence: a particularly serious practice

The evidence of the case shows that the APRs were in a situation of economic dependency on Apple and that Apple abused it. The situation, rarely observed in the past decisions of the Conseil de la concurrence and the Autorité de la concurrence, results from a complex web of multiple contractual clauses and practices.

## ALIGNING PRICES OF APPLE PRODUCTS

Under great pressure, the APRs acknowledged that they used the prices “recommended” by Apple, which is corroborated by price records in the case.

As a result, this practice led to a perfect alignment of selling prices to final consumers for almost half of the retail market for Apple products (with the exception of the iPhone).

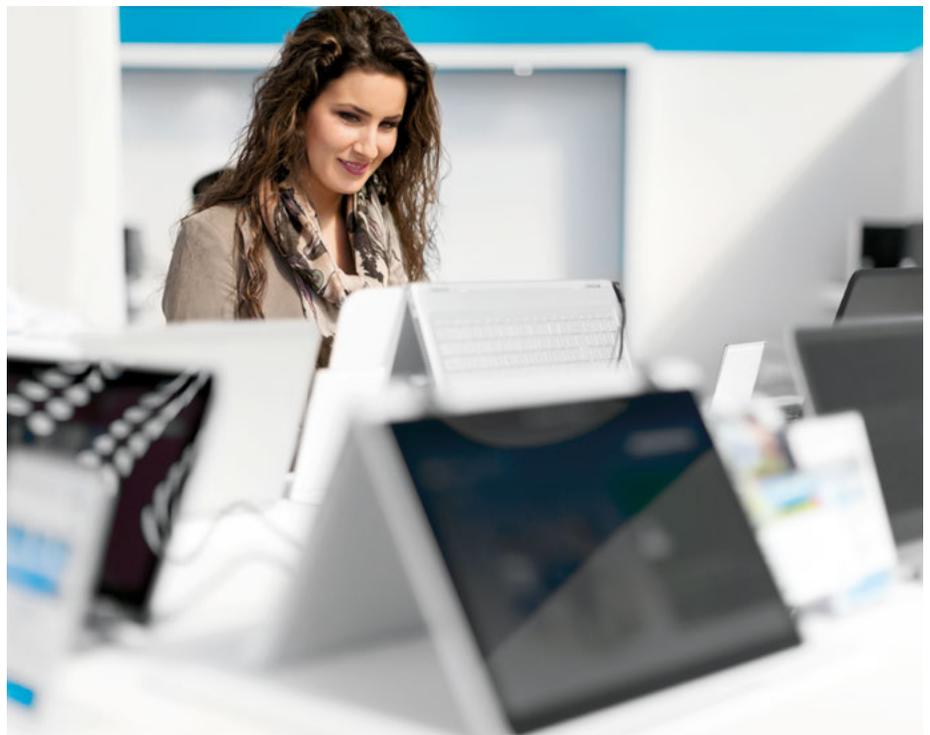
By restricting the pricing freedom of APRs, Apple was able to limit not only competition between the APRs themselves but also competition between the APRs and its own distribution channels, whether in the same geographic area (physical sales points) or online (Apple Online Store). The practice harmed consumers who were deprived of effective price competition in all distribution channels for Apple products.

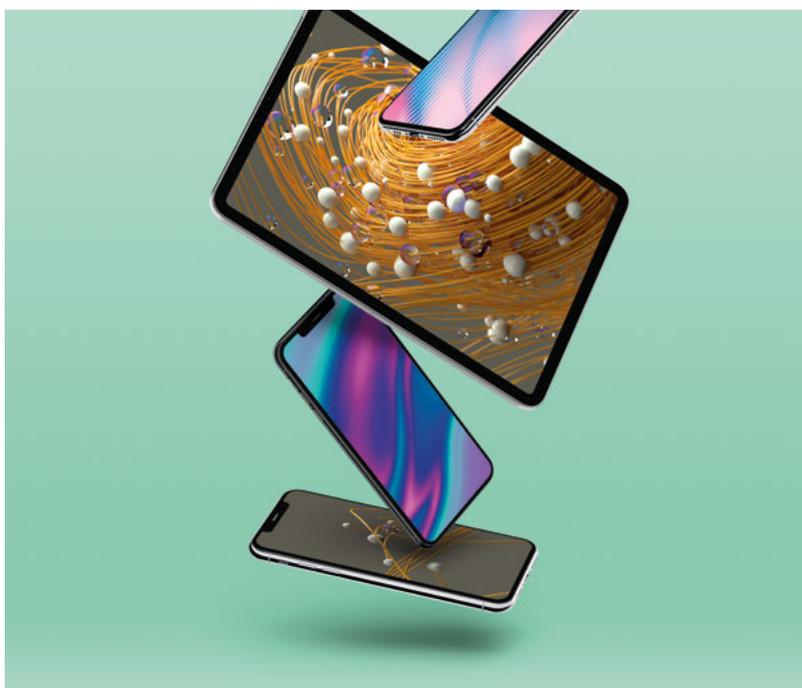
### Extreme economic dependence of APRs

The Autorité noted that APR contracts required them to sell Apple products almost exclusively and prohibited them, during their term and up to six months after their expiry, from opening any shop specialising in the exclusive sale of a competing brand anywhere in Europe.

For them, moreover, leaving the Apple universe would have meant a total loss of value for their business through irrecoverable investments as well as significant costs for store refurbishment and staff training, which would have been impossible over the short term for operators already in fragile situations.

When a manufacturer keeps its distributors dependent on it, the manufacturer must take care not to abuse this dependence, i.e., not to restrict their commercial freedom beyond the tolerable limits and not to put them at a disadvantage in relation to its own internal distribution network.





**Supply difficulties and discriminatory treatment**

In a context where the distributors' margins were extremely low, these practices consisted in keeping the distributors extremely dependent on receiving goods, particularly those most in demand, i.e., new products. For example, the Autorité found that when new products were launched, APRs were deprived of stocks so that they could not meet the orders placed with them, while the network of Apple Stores and retailers was regularly supplied.

APRS AT A DISADVANTAGE COMPARED WITH APPLE STORES

**APRS AT A DISADVANTAGE COMPARED WITH APPLE STORES**

The Autorité demonstrated that delays in or refusals to supply were not the result of stock shortages, since the products were available in the Apple Stores, the Apple Online Store and at major general and specialised retailers.

This discriminatory treatment of APRs was serious given their special situation with regard to the manufacturer. Not only are APRs commercially independent operators who, unlike Apple Stores, must buy their goods for their distribution business, but they are also forced to stock Apple products, which must account for 70% of their sales if they wish to retain APR status.

APRS AT A DISADVANTAGE COMPARED WITH APPLE STORES

In order to meet orders and supply their customers, they were sometimes even forced to obtain supplies themselves from other distribution channels, for example by ordering directly from an Apple Store as an end customer would have done.

**Instability of remuneration conditions (discounts and outstanding balances)**

The APRs were kept uninformed about the volume of their supply, as well as about the terms of the discounts offered by Apple. The system of rebates granted to APRs was discretionary in nature, thus creating uncertainty about the amount of the rebates paid to APRs, as well as to when they would be available.

**Weakening, or even foreclosing, certain APRs**

These practices led to great financial difficulties and resulted in the weakening and, in some cases, the exclusion of some APRs.

During the investigation, the president of the APR association also complained of a real "strategy of exclusion by Apple" with regard to APRs. Alis Informatique evoked a "chronicle of a death foretold".

YouCast blames its financial difficulties and liquidation proceedings on its "cash flow problems related to delivery problems with Apple products".

The situation of eBizcuss demonstrates the concrete and real impact of Apple's abuse of economic dependency. As eBizcuss stores were unable to receive the products to satisfy the demand of its own customers or to compete with Apple Stores in terms of price or level of service, eBizcuss stores in Paris and Lyon were placed at a commercial disadvantage compared to Apple Stores. This led to a decrease in sales of these stores on the order of 15%.

● Decision 20-D-04 and press release of 16 March 2020

**Decisions involving the five largest fines since 2009**

2020	Distribution of Apple electronic products	€1.24 billion
2014	Hygiene and cleaning products	€951.2 million
2015	Parcel delivery	€672.3 million
2019	Meal vouchers	€414.7 million
2011	Laundry detergents	€367.9 million

## BAKING PREPARATIONS AND DESSERT MIXES

# Conditional clearance given to Dr. Oetker to acquire Alsa

The Autorité cleared the acquisition of Alsa by the company Dr. Oetker on condition that the latter grant one of its competitors, Sainte Lucie, a licence for the Ancel brand. The Autorité used the fix-it-first mechanism in this case.

### Parties to the transaction

Dr. Oetker is mainly active in the markets for the manufacturing and marketing of baking aids (flavoured sugars, yeast, toppings, etc.), dessert mixes and gelling agents and gelling sugars for large and medium-sized supermarkets under the Ancel and Dr. Oetker brands. It also supplies baking aids and dessert mixes to the catering and food industry (primarily in the bakery-pastry sectors).

Target of the acquisition, Alsa is present in the same markets, under the Alsa brand for mass retail distribution and as Moench for professional customers.

### Risks of harm to competition in the market for baking aids

As Ancel and Alsa are the two main competing brands in the market for the production and marketing of dessert mixes, the new entity would have become the market leader after the transaction with a market share exceeding 50%.

The Autorité therefore considered that the transaction posed a significant risk and that distributors would in future no longer have credible alternative suppliers.

### Using fix-it-first

In order to get the green light from the Autorité, Dr. Oetker committed to a trademark licensing agreement for Ancel dessert mixes for a duration of five years, renewable once. As in the cases involving the acquisition of Arrivé by LDC in 2009, Totalgaz by UGI in 2015 and Vindémia by Bernart Hayot in 2020, the Autorité used the fix-it-first mechanism in which, during the examination of the transaction, the parties submit to the Autorité a purchaser for the assets to be divested. The beneficiary of the licence was therefore designated before the Autorité's decision was adopted.

It is Sainte Lucie, which will operate the Ancel brand after the transaction. This competitor has experienced strong growth over the last 10 years, significantly developed its product range and recently invested in new production capacity. The trademark license on Ancel's dessert mix business will ensure that there is a credible alternative for distributors of dessert mixes and will guarantee consumers sufficient competition and a diversified choice in this market.

● [Decision 19-DCC-15 and press release of 29 January 2019](#)



## ONLINE SALE OF BICYCLES

# The line not to cross when it comes to restrictions

Regularly called upon to intervene in the area of restrictions of online sales, the Autorité handed down a fine to Bikeurope for prohibiting its authorised distributors from selling its bicycles online for several years.

Such practices were harmful to competition, reducing the possibility for distributors to sell their bicycles outside their physical catchment area and limiting the choice of customers willing to make a distance purchase.

### Authorised distributors prevented from selling online

Bikeurope assembles, distributes and sells high-end bicycles through a network of authorised resellers.

In its general terms and conditions of sale, Bikeurope included provisions setting out that any online sale of its bicycles required delivery to “the authorised place of sale”, i.e., that delivery must be made to the retailer’s store, and later explicitly prohibiting any online sale.

Several emails confirm that, by means of these provisions, Bikeurope intended to prevent its retailers from selling its bicycles online: “We prohibit distance selling of our bicycles (therefore on the Internet).”

### Monitoring enforcement of this prohibition

In the event of non-compliance with these provisions, warning letters were sent to retailers to comply with the instruction and threatening to terminate their business relationship.

For example, between 2008 and 2011, Trek France, the French subsidiary of Bikeurope, sent several ‘final warning’ letters to retailers Riviera Bike, Velo9 and Périgois Cycles: “If, by 30 April, your site does not clearly state that the product must be delivered in your store, I will be obliged to issue a formal notice, under penalty of terminating our contractual relations.”

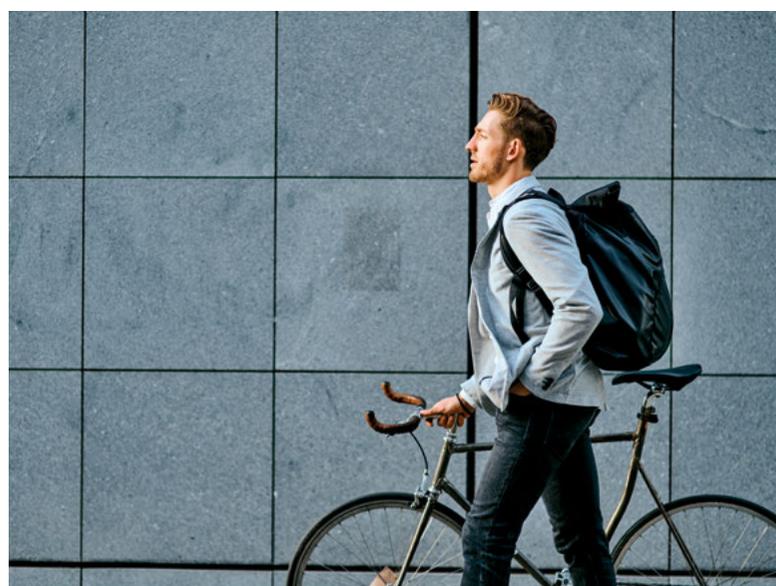
### Harmful consequences on competition

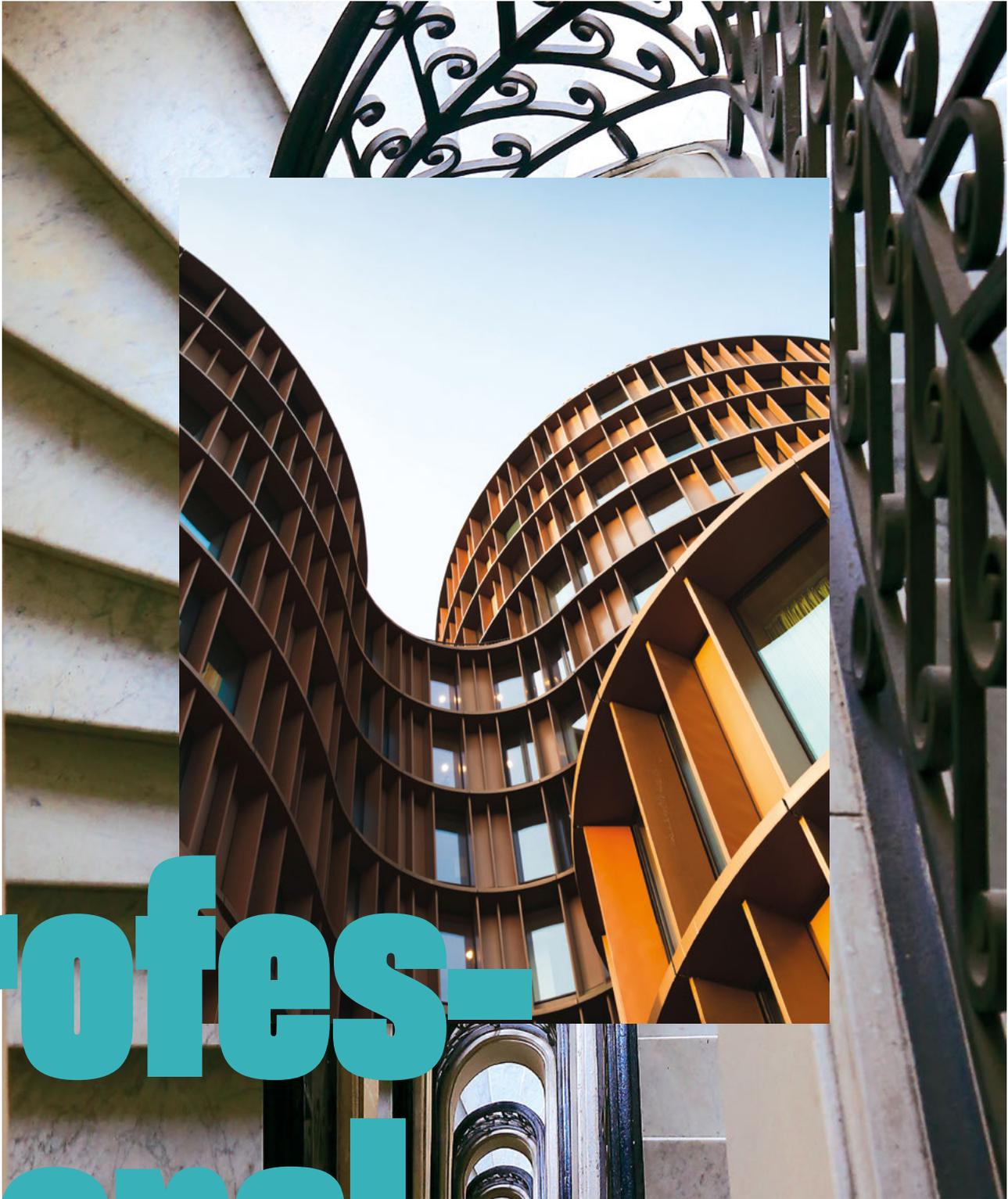
Implemented between 2007 and 2014, the prohibition imposed and monitored by Bikeurope met with full compliance on the part of its retailers, who either did not use the online distribution channel, stopped doing so, or ended their business relationship with Trek for this reason.

The prohibition restricted the commercial freedom of retailers and prevented consumers from having the benefit of competition among retailers in terms of price and products.

The Autorité de la concurrence thus handed down a fine of €250,000 to Bikeurope.

● [Decision 19-D-14 and press release of 1 July 2019](#)





# Profes- sional orders

## PUBLIC WORKS

# The Ordre des Architectes fined for enforcing a fee schedule

## What is public project management for architects?

It consists in carrying out, on behalf of a public contracting authority (municipality, community of municipalities, *département*, etc.), a works project in accordance with time, quality and/or cost constraints defined in advance by a set of specifications.

As managers of public works, architects are entrusted by the public contracting authority with designing the project, preparing the tender documentation, supervising the proper execution of the works and interfacing with the companies responsible for their execution. They are free to set their own fees, thus ensuring competition on the market.

## Fighting “fee dumping” by certain “anti-collegial” architects

Beginning in 2013, four regional councils (*Hauts-de-France, Centre-Val de Loire, Occitanie* and *Provence-Alpes-Côte d’Azur*) distributed a method of calculating fees to their members in order to combat alleged “fee dumping”, i.e., abnormally low responses by certain “anti-collegial” architects. The president of the regional council of the Centre-Val de Loire Order declared: “It is disloyal to other colleagues who responded to this tender because the fee was too low. To set a price too low to be sure to obtain a market is anticompetitive and a practice which is unfair to colleagues.”

In order to combat these “acts of unfair competition”, the Ordre, through its regional councils, diverted the real purpose of the

guide for the Interministerial Mission for the Quality of Public Buildings (intended to help public authorities evaluate the projected budget for project management fees) by using it as a reference to calculate architects’ fees, and by encouraging architects to set their fees according to the ranges recommended by the guide without taking into account their actual costs.

The *Autorité de la concurrence* handed out fines to the *Ordre des Architectes* (the architects’ professional association) for distributing and enforcing a fee schedule that architects were required to apply when responding to calls for tender for public works contracts. The practices concerned are all the more serious since they were undertaken by a professional association, the initiator and principal abettor of the agreement, while it benefitted from undeniable moral authority both among its members and public contracting authorities.

**“MANDATORY” FEE SCHEDULES FOR RESPONDING TO GOVERNMENT CONTRACTS**

Following investigation reports from the DGCCRF, the *Autorité* fined the *Ordre des Architectes* 1.5 million for having implemented, through its regional councils of *Hauts-de-France, Centre-Val de Loire, Occitanie* and *Provence-Alpes-Côte d’Azur*, anticompetitive practices.

The practices consisted in creating, disseminating and enforcing a fee scale applicable to architects working on public project management contracts. The distribution of this schedule was accompanied by a “fee policy” of retaliatory measures against architects who did not comply with the instructions as well as contacts with public contracting authorities to dissuade them from contracting with architects offering fees considered “too low”.

The Order thus sought to control fees charged by its members with the purpose, according to the Order, of avoiding an alleged undermining and impoverishment of the architectural profession, even though architects have full control in the setting of fees.







NOTARIES IN *FRANCHE-COMTÉ* REGION

# Fine for fee-fixing agreement

**For the first time since the application of the Macron law, the Autorité handed down fines to notaries for implementing an agreement aimed at obstructing the free setting of real estate negotiation fees. The Franche-Comté interdepartmental chamber of notaries not only participated in the breach but also refrained from denouncing it to the authorities.**

The law of 6 August 2015, which enacted an overall reform of the regulated legal professions, terminated the regulated fee for real estate negotiation services as of 1 March 2016. Since that date, it is no longer public authorities but notaries who freely set their fees for real estate negotiations.

Seeking to prevent the application of the new framework, Notimo, an economic interest group of some twenty notaries in the *Franche-Comté* region, had set up a fee agreement between its members, so that they would apply a 'scale' for real estate negotiation services. Evidence in the case revealed that the Franche-Comté interdepartmental chamber of notaries had facilitated the breach by actively making its secretariat available to Notimo and by not denouncing the unlawful practice to the competent

authorities. The Autorité considered that this dereliction is all the more reprehensible as it is the work of a regulatory body, which is required to provide advice and monitor the compliance of its members with professional ethics. The agreement resulted in users of the notarial services of these offices being subjected to prices that were on average 20% higher than those of other offices in the region. Notimo and the interdepartmental chamber did not contest the facts and their qualification. As such, they benefitted from the settlement procedure. Their fines were accordingly reduced to €250,000 and €45,000, respectively.

● [Decision 19- D-12 and press release of 24 June 2019](#)

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COURT BAILIFFS IN *HAUTS-DE-SEINE* DEPARTEMENT

# Imposing a discriminatory and illegal entry fee

**The Autorité fined one of the eight joint services bureaus of court bailiffs in France, namely that of *Hauts-de-Seine département*, for fee-fixing. It had introduced discriminatory entry conditions in order to prevent new bailiffs from joining, making it more difficult for them to exercise the profession.**

The Hauts-de-Seine organisation includes all of the court bailiffs of the département (25 court bailiff offices representing 63 permanent or associate bailiffs). Membership in this body is essential for new entrants as it reduces costs for members, improves the quality of service delivery and provides immediate access to the market.

The penalised practices consisted in introducing discriminatory entry conditions for court bailiffs who sought to join the body. Court bailiffs recently established under the Macron Law were obliged to pay a "lump-sum entry fee" of at least €300,000. This discriminatory entry fee, the level of which was prohibitively high, was intended to thwart the legislator's

desire to open up the profession, by making it more difficult for newly established court bailiffs to exercise their profession. The Hauts-de-Seine office did not contest the facts nor their qualification and benefitted from the settlement procedure. It was fined €120,000 and has also undertaken to amend its articles of association.

● [Decision 19- D-13 and press release of 24 June 2019](#)

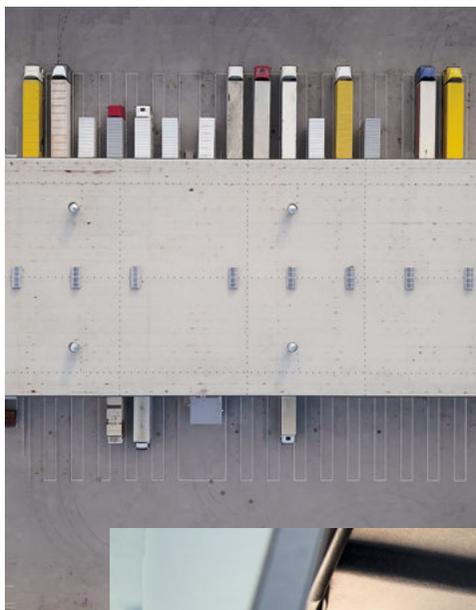


# Trans- port

ROAD FREIGHT TRANSPORT

# Sharing of customers within Astre, largest road freight group in Europe

Following an investigation report from the DGCCRF, the Autorité handed down a fine of €3.8 million to the road freight group Astre for organising the allocation of customers among its members for more than 20 years. The decision is another illustration of the application of competition law to professional groups.



## Review of the sector

In France, the road freight sector is highly fragmented with more than 33,500 companies, of which more than 83% are very small businesses employing fewer than ten people. In recent years, however, there has been a trend towards concentration, with 18% of transport companies now accounting for 75% of the sector's overall turnover.

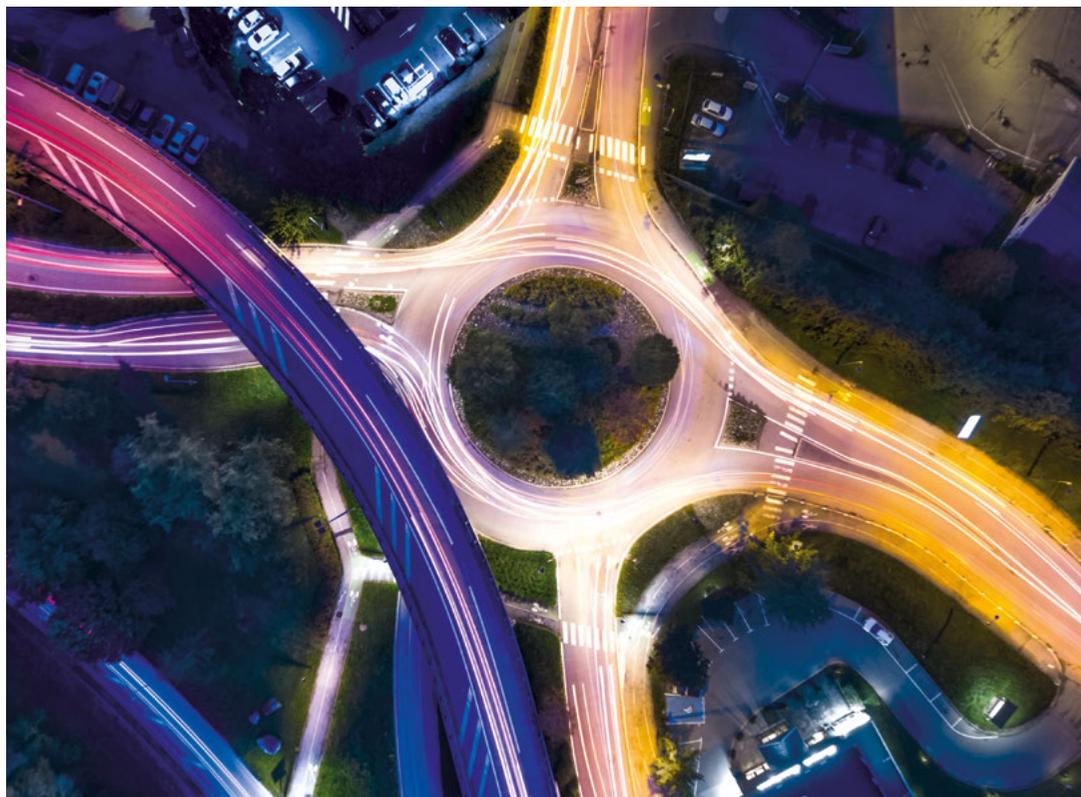
While the sector includes large generalist transport groups, it also includes many groups of SMEs, who seek to pool traffic in order to optimise the filling of lorries and limit empty returns.

The model was developed in the 1960's so that smaller companies – usually active in a local market – could come together to meet larger orders and cover a larger territory. These groups generally adopt the cooperative model in which the companies can make joint purchases and transfer freight between them. However, within these groups, each carrier remains an independent company and must behave as such.

...



€3.8 million in penalty



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...

### **Well-organised allocation of customers**

Astre Group unites SMEs and has nearly 400 locations in 12 countries of the European Union. The group introduced clauses in its rules of procedure, its articles of association and its membership agreement establishing a non-competition obligation which prohibited its members, known as Astrians, from soliciting the customers of another member. After leaving the group, former members were required to comply with the non-compete clause for one year.

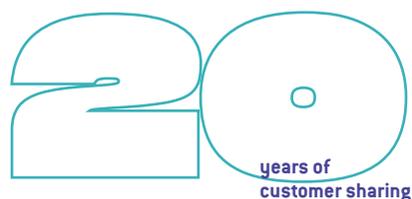
Although these clauses, introduced in 1997, were removed in March 2016 after an inquiry by the DGCCRF, the non-compete obligation was nevertheless maintained for calls for tender. Astre Group effectively intervened on numerous occasions to request that its members refrain from responding to requests from clients of other members, and implemented a priority rule. According to the rule, for calls for tender issued by a client already working with members of the group, Astre sent the call for tender only to said members, who were considered the best positioned to submit a bid. In fact, this rule of priority benefited the oldest and most established members.

### **Point-based monitoring system**

A point-based system was introduced. Each member had a "label" with 12 points that could be taken away in the event of failure to comply with the obligations set out in the internal rules, especially the non-compete clause.

Losing all points resulted in withdrawal of the label and exclusion from the Astre Group. In six cases, Astre's board imposed penalties ranging from a loss of points accompanied by fines to exclusion. For example, on 4 February 2015, the board expelled a member, and imposed a financial penalty of €5,100, for working with the client of another member.

This internal monitoring increased the seriousness of the practices.





CDG EXPRESS  
(CONNECTION BETWEEN PARIS GARE DE L'EST AND ROISSY AIRPORT)

## Conditional clearance for RATP Dev/Keolis joint venture

The Autorité has cleared, subject to conditions, the creation of a joint venture by RATP Dev and Keolis.

It will operate the future CDG Express link between the Gare de l'Est train station in Paris and Charles de Gaulle airport, scheduled to start in 2025.

### No risk identified of rate increases or service degradation

After the transaction, the parties will have no competitors operating rail links between inner Paris and Paris-Charles de Gaulle airport. They will operate the CDG Express link, RER train line B, Bus Direct and the RoissyBus line.

The Autorité however found that the parties will not be able to increase the fees or degrade the quality of the CDG Express service due to the regulatory context that governs the fares and quality of the CDG Express service (public service contract concluded with the State).

It made the same finding for the other transport services operated by the parties which are governed by agreements concluded also with a local public authority, *Île-de-France Mobilités*.

Finally, the risk of the parent companies coordinating was also ruled out in view of the limited activity of the joint venture. The Autorité considered that the data collected by the joint venture, which concern only CDG Express passengers, would not enable the parent companies to coordinate for future tenders.

### Commitment to avoid bundled sale of tickets and baggage services

The Autorité did however identify the risk that the new entity could use its strong position in the market for public passenger transport between inner Paris and Paris-Charles de Gaulle airport to sell a check-in and baggage transport service to and from the airport together with a ticket for CDG Express on preferential terms.

In order to maintain effective competition, the parties have undertaken to turn over operation of the luggage service to an independent partner who will be free to determine its business policy. The Autorité must approve the contract to be concluded with this partner. This commitment was made for the duration of the public service contract, i.e. 15 years from the effective date of entry into service of the CDG Express link.

● Decision 19-DCC-76 and press release of 26 April 2019

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## AIRPORTS

# Cleared takeover of Toulouse-Blagnac Airport by Eiffage Group

The Autorité examined the transaction to acquire Toulouse-Blagnac Airport, a major strategic asset for the local economy of the South-East Occitanie region. The Autorité cleared without conditions the takeover by Eiffage Group of Aéroport de Toulouse-Blagnac (ATB), previously owned by the Chinese company Casil Europe.

## Review of the transaction

As Eiffage already holds the concession for Lille-Lesquin Airport since 1 January 2020, the Autorité analysed the effects of the transaction on the European market for the award of airport management concessions, in which competition takes place at the time of the competitive bidding procedure.

The Autorité also examined whether the transaction was likely to produce vertical effects insofar as it concerned the acquisition of control of an airport concession company by a group active in the public works sector.

## Unconditional green light

The Autorité noted that the parties to the transaction, Eiffage and ATB, are simultaneously active in the market for the award of airport concessions. However, in view of their combined market share, which remains low, it considered that any risk of harm to competition could be ruled out.

The Autorité also analysed the effects of the merger in the markets for works and maintenance of airport infrastructure with regard to vertical effects (the possibility that Eiffage would use its position to reserve certain works at the airport for itself).

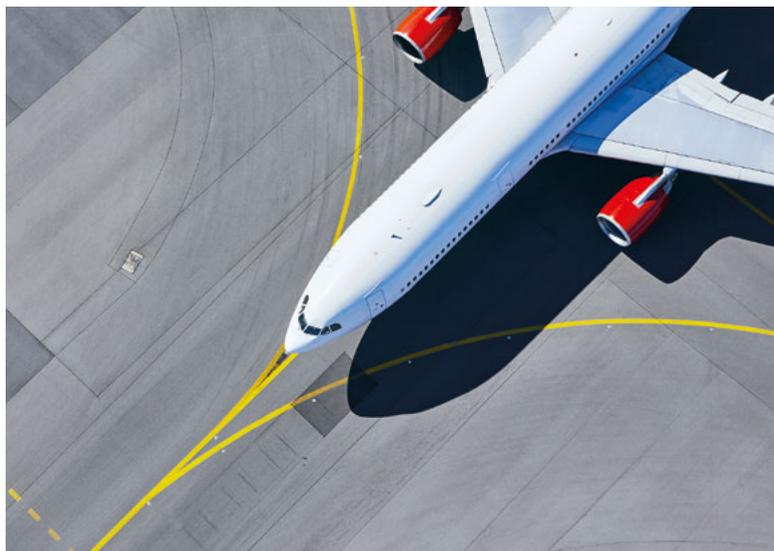
At the end of its analysis, the Autorité ruled out any risk of harm to competition in these markets, given that:

- almost all the contracts awarded by ATB are subject to a procedure of announcement or competitive bidding, governed by the provisions of the public procurement code;
- Eiffage Group is not a major supplier of ATB;

- Eiffage Group accounts for only a negligible proportion of ATB purchases each year.

In light of the above, the Autorité cleared the transaction without conditions.

● [Decision 19-DCC-229 and press release of 11 December 2019](#)





# French Overseas territories

## FIGHTING THE HIGH COST OF LIVING IN THE FRENCH OVERSEAS TERRITORIES

# Recommendations to effect significant change

On a referral from the Minister for the Economy, the Autorité provided an overall assessment of competition in French overseas territories. As part of this opinion, it analysed price changes in the markets for consumer goods since its previous opinion in 2009 and reassessed the competitive situation in these sectors, taking into account in particular the impact of the measures put in place over the last ten years. In total, some twenty recommendations were made to boost competition.

## Significant price differences compared to mainland France

While positive developments were observed, particularly in the telecoms sector, consumer prices paid by the two million people living in French overseas territories remain significantly higher than those in mainland France.

The general level of consumer prices is 7% to 12.5% higher in French overseas territories than in mainland France to the detriment of household purchasing power, business competitiveness and growth in the overseas territories.

The price gap is particularly large in the case of food products, and can be as large as 38% in some cases.

## Food remains the sector with the widest price differences

French overseas territories	Price difference/Mainland France (food products)
Guadeloupe	+33%
Martinique	+38%
French Guiana	+34%
La Réunion	+28%
Mayotte	+19%

## Margin rates alone do not explain price differences

The Autorité has analysed the margin rates of the various stakeholders in retail distribution: distributors, shipping companies, ports, handlers, freight forwarders and wholesalers. Although the margin rates achieved by some stakeholders are higher than those in mainland France, the Autorité has not identified any over-margins which alone would be responsible for a significant share of the differences of the prices when they are compared with those in mainland France. On the other hand, it is the accumulation of margins of the stakeholders along the entire consumer chain that contributes to the differences in prices found in mainland France.

In addition, the Autorité found that the forwarding costs (ocean freight, dock dues and various taxes, import-related services) and the use of wholesaler-importers weigh heavily on the price of the imported products. These costs are passed on by distributors in the final price to the consumer and thus partly explain the price differences with mainland France.

## RECOMMENDATION

### → Simplify and harmonise the dock dues system

Dock dues are the most expensive item among forwarding costs; French and European authorities will be deciding on the renewal of the system before the end of 2020.

While it is not within the Autorité's competence to decide whether to maintain or abolish the tax, it believes it would be useful for public authorities to consider simplifying the rate grid for dock dues and making it consistent for areas that are geographically close. The Autorité also proposes to exempt products for which there is no equivalent in local production and calls for considering the interests of local businesses which buy products affected by dock dues for their business without being able to benefit from the exemption.



•••

## A highly concentrated retail sector

The retail sector in the French overseas departments and regions appears to be more concentrated overall than in mainland France. Although merger control enables the Autorité to regulate takeovers of supermarkets and hypermarkets and to ensure that the intensity of competition is upheld, it does not make it possible to take action in areas that are already highly concentrated.

While the Autorité has the power to use structural injunctions, which can force a dominant retailer to divest stores, this tool is nevertheless coupled with very restrictive conditions that make it difficult to implement.

### RECOMMENDATION

#### → Facilitate the implementation of structural injunctions

The Autorité recommends relaxing the conditions for using this tool, in order to facilitate its implementation and better address the situation of high concentration experienced in overseas territories.

## “Quality and price protection” helps fight the high cost of living

The mechanism known as “quality and price protection” is based on a list of everyday consumer products (i.e. ham, beans, rice, laundry detergent, washing-up liquid, toothpaste, etc.), which vary from one overseas region to another, that must be sold at

a reasonable price. It is the result of annual negotiations between the various economic stakeholders, under the supervision of a government representative.

Quality and price protection led to significant price reductions in 2019 across all regions and all stakeholders welcome the principle behind this system, which supports the fight against high living costs. While this price moderation tool has found its place, it nevertheless faces several difficulties in its implementation: insufficient visibility among consumers, too many objectives and the unequal participation of stakeholders.

### RECOMMENDATION

#### → Make quality and price protection more effective

The Autorité proposes, in particular, extending the system upstream to stakeholders other than retail chains alone and to set up a price comparison tool in order to give consumers better visibility of the system. It also proposes that its objectives be better targeted, according to the intentions and needs of each region (e.g. seeking low prices or promoting local production).

## Import agreements

The Autorité has noted that the ban on import exclusivity clauses (introduced by the Lurel Law of 2012) has proven to be particularly useful. Its application has, on several occasions, begun to produce results, in particular by promoting local stakeholders' adoption of the rules and by encouraging suppliers to use competitive bidding procedures when selecting their wholesale-importers.

The Autorité has also noted that a significant share of overseas retail groups are also active as wholesale-importers in the wholesale market. This vertical integration (presence of a stakeholder at different levels of the supply chain) is likely to raise competition risks, since an integrated stakeholder could be encouraged to favour its own retailers to the detriment of its competitors.

### RECOMMENDATION

#### → Reinforce the rules to prevent discrimination against stakeholders in cases of vertical integration

The Autorité recommends introducing a new provision into the Commercial Code (*Code de commerce*) that would make it possible to sanction the conduct of an integrated stakeholder with de facto exclusivity when found to discriminate against third-party customers in order to promote sales within its group.









# DEBRA



# WORLD

# THE BOARD

# OF



# THE AUTORITÉ

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## Permanent members

FROM LEFT TO RIGHT

**Fabienne Siredey-Garnier**

Vice-President, Judge

**Henri Piffaut**

Vice-President, Advisor  
to the European Commissioner

**Isabelle de Silva**

President, Senior Judge at the French  
Administrative Supreme Court  
(*Conseil d'État*)

**Emmanuel Combe**

Vice-President, Professor of Economics  
at *Université Paris I*

**Irène Luc**

Vice-President, Judge

### INDEPENDENCE AND COLLECTIVE RESPONSIBILITY

The Autorité's board is made up of 5 permanent members (the President and four Vice-Presidents) and 12 non-permanent members. Half of the Board is renewed every two and a half years (with the exception of its President, who is appointed for a renewable five-year period). The legislator wanted to ensure that they come from very different backgrounds: lawyers, university law and economics professors, economic leaders, and heads of professional and consumer organisations share their points of view during deliberations. This diversity enhances debate and the neutrality of deliberations and, as such, is a guarantee of their richness and legitimacy. The college also keeps its promises in terms of parity with 9 women and 8 men.

## Members from the private sector

FROM LEFT TO RIGHT

**Jean-Yves Mano**

President of the consumer, housing,  
and quality of life organization CLCV

**Valérie Bros**

General Secretary of  
Plastic Omnium company

**Sandra Lagumina**

Managing Director for asset management  
at Meridiam

**Alexandre Menais**

Executive Vice-President and  
General Secretary of ATOS Group

**Marie-Laure Sauty de Chalon**

CEO of the company Factor K

**Laurence Borrel-Prat**

Lawyer registered with the Paris Bar



© IMAI Toshimitsu, Vagues d'hiver, 1992 - Acrylic on canvas

## Members from the public sector



FROM LEFT TO RIGHT

**Jérôme Pouyet**

Associate Professor at the ESSEC Business  
School (*École supérieure des sciences  
économiques et commerciales*)

**Séverine Larère** (until 2 March 2020)

*Maître des requêtes* at the French  
Administrative Supreme Court  
(*Conseil d'État*)

**Savinien Grignon-Dumoulin**

General counsel at the French Supreme  
Court (*Cour de Cassation*)

**Fabien Raynaud**

President of the 6<sup>th</sup> chamber of the  
litigation division of the French  
Administrative Supreme Court  
(*Conseil d'État*)

**Gatherine Prieto**

Professor of Law at Université Paris I

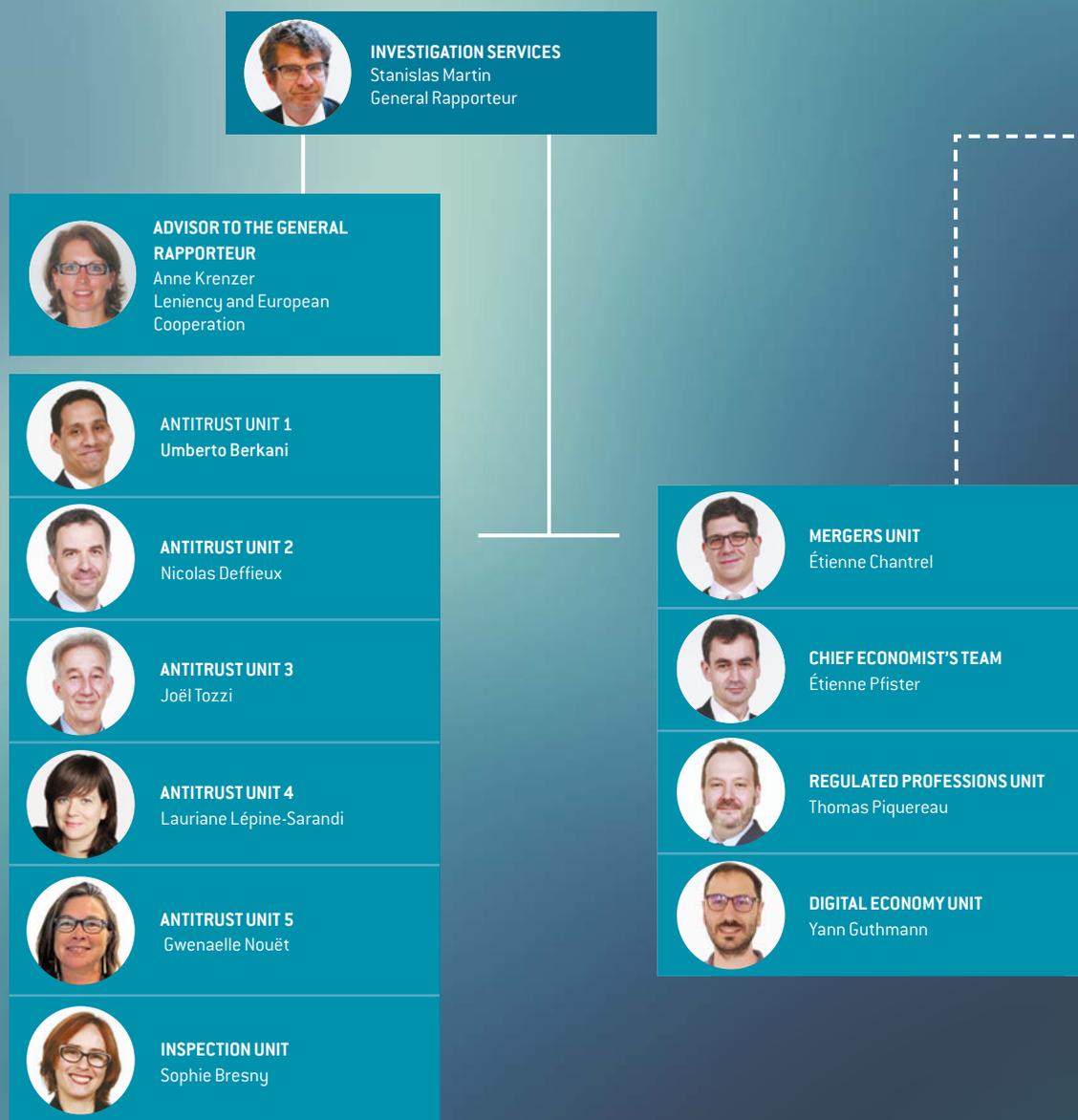
**Christophe Strassel**

Senior Judge at the French Court  
of Auditors (*Cour des comptes*)

# ORGANISATION CHART

ON 31 MAY 2020

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\*Board members who participate when the Autorité de la concurrence deliberates on opinions addressing the freedom of establishment of certain regulated legal professions (Article L. 462-4-1 of the French Commercial Code).

# OUR VALUES

## EXTERNAL

We are committed to ensuring the protection of economic public order, consumer protection and free competition, regardless of political or private interests.

Our decisions are based on *inter partes* debate, the consideration of legal and economic arguments and the sole merit of the case.

## INDE- PEN- DENCE

We conduct our engagements with integrity and probity, and each case receives a rigorous and unbiased review.

We call into question our certainties and know to be bold in formulating our assessments and proposals.

## INTERNAL

We attach great importance to dialogue, and do our utmost to ensure that it is open and constructive with Parliament, the government and public stakeholders (including the DGCCRF), companies, associations and other stakeholders as well as our European and international partners.

We are particularly attentive to respecting the principle of fairness and the *inter partes* nature of the procedure.

## DIA- LOGUE

We seek to provide a work environment that fosters team spirit, well-being at work and the constructive exchange of ideas. On a daily basis, we work in a spirit of trust which values mutual assistance, benevolence and mutual respect among agents.

We do not hesitate to examine complex and sensitive subjects, in all sectors of business, within the framework of our various prerogatives. We are responsive and agile in the face of new changes in the French economy.

## COMMIT- MENT

We are committed to ensuring that market competition functions properly and we make use of all the legal tools at our disposal.

We perform our duties with loyalty, rigour and creativity, with the objective of being a driving force for the future.

We are firmly committed to acting within a European and international framework.

We consider that the plurality of points of view, taken into account during the investigation of our cases, and of the exchanges conducted within the framework of the Board's meetings or in consultations with stakeholders, makes our action more effective and legitimate.

## OPEN- NESS

We bring together profiles, disciplines and nationalities to create a modern vision of competition.

We foster an inclusive work environment that ensures equal access for women and men at all levels of responsibility. We value the diversity of profiles, which encourages debate and enriches our thinking.

Our ambition is to be among the most active and innovative competition authorities.

We are constantly seeking to improve the efficiency of our procedures, the quality and richness of our decisions and to issue them as quickly as possible. We strive to provide an expert view of competition issues based on in-depth investigation and specialist knowledge, particularly of strategic and emerging markets.

## EXCEL- LENCE

We want to attract the best talent. We train our teams in the most advanced methodologies. We ensure that they regularly update their skills in order to be able to understand the legal, economic and technological challenges of tomorrow's world and anticipate market developments.

# COMMITMENT TO SUSTAINABLE DEVELOPMENT

**Meeting the Paris Agreement objectives calls for far-reaching changes from all economic stakeholders, with profound implications for society. The changes required to combat global warming are highly relevant to regulators. In order to be able to accompany these changes and light the way for society, regulators have thus begun discussions within the network with a view to pooling their resources and skills in these areas. The Autorité, which has placed sustainable development at the core of its action, now attaches particular importance to this issue, both in detecting anticompetitive practices that undermine environmental protection and in discussions at national, European and international level to better accompany the economic stakeholders that are embarking on this path.**

## The climate emergency: regulators have a role to play

Following the close of the 25th United Nations Climate Change Conference held in December 2019, the nine French regulators (AMF, CSA, ARCEP, CNIL, Hadopi, ART, CRE, Arjel and Autorité de la concurrence) initiated discussions on incorporating the climate targets defined in the Paris Agreement into their strategic priorities and operational activities. This unprecedented cooperation resulted in the publication of a document formalising their initial conclusions in May 2020.

Of the regulated sectors, some are at the heart of the climate transition, such as the energy industry, for which the reduction of greenhouse gas emissions requires changes in the technology used as well as, above all, a reduction in the use of carbon-based fuels and a di-

versification of the energy mix. This is also the case in the transport sector. Other sectors have a growing impact on the climate, such as digital, or a specific role to play, such as the financial sector in securing the investments required for the transition to a low-carbon economy. Regardless of the sector they operate in, companies must demonstrate greater transparency, not only in relation to public authorities but also to their customers, suppliers, investors and civil society, about their contribution to the fight against global warming and their ability to meet the challenges associated with it.

This discussion paper also describes the framework of the tasks that have been entrusted by the legislator to the regulators.

These missions take climate targets into account to varying degrees, and are exercised alongside other public

prerogatives. Whatever the legal framework, regulators believe that they have a role to play.

### 4 LEVERS OF ACTION

- 1 Defining incentives, recommendations or good practices
- 2 Monitoring and control of climate risk management
- 3 Decisions and opinions that may contribute to fighting global warming
- 4 Providing data on climate risk and the impact of activities on the climate

Keeping citizens well-informed is also a key priority. The public is demonstrating ever-stronger convictions about climate change. Yet a lack of information is a barrier to citizens' awareness of their possible courses of action as consumers (energy, transport services, etc.) or savers. This is why education and the fight against greenwashing are priorities for regulators.

### Action is stepping up in the fight against anticompetitive practices

The Autorité has raised sustainable development to the top of its priorities for 2020. In particular, it will seek to detect practices that restrict competition between companies and compromise environmental protection. Practices such as these have already been sanctioned, for example in the case of the floor coverings cartel. The member companies of the cartel had agreed to deliberately refrain from promoting environmental performance that surpassed a certain industry "standard". The Autorité noted that, by reducing competition in this area, the companies had harmed the interests of consumers, who are increasingly mindful of the environmental performance of products and seek to favour the best-performing products in this respect.

At the same time, the Autorité is to open up the discussion internationally within the framework of the International Competition Network (ICN), as well as on a European level, as part of discussions on the revision of the European exemption regulations on vertical restraints and on certain categories of research and development agreements, as well as on certain categories of specialisation agreements.

● Press release of 5 May 2020

## TWO INSTANCES OF ANTITRUST DECISIONS THAT HAVE HAD A POSITIVE IMPACT ON THE ENVIRONMENT

### FLOOR COVERINGS CARTEL

The Autorité notably sanctioned the implementation of a non-competition agreement on communication relating to the environmental performance of products.

[17-D-20]



### ENGIE

The Autorité accepted Engie's commitment to remove the requirement to use gas as the sole source of energy in the framework of common utilities, thereby enabling co-owners to benefit from efficient mixed-energy solutions (solar, for example).

[17-D-16]

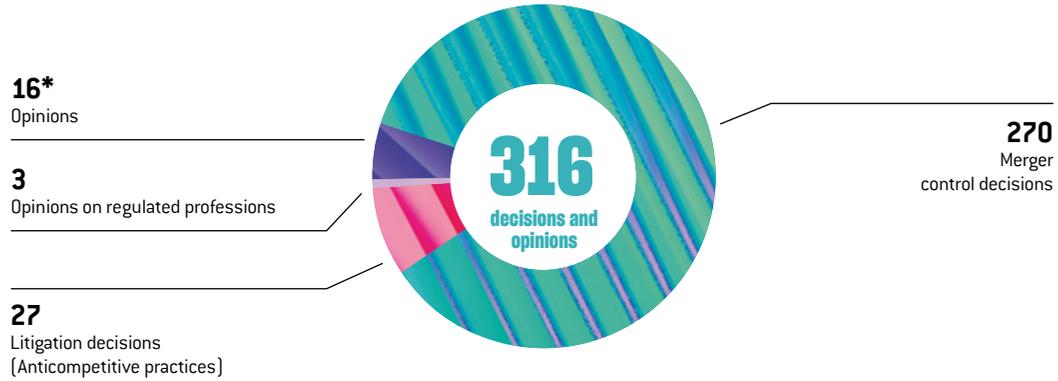


### Greenwashing

is the misleading use of environmental arguments to improve the image of a company or its products.

# 2019 Key figures

## Activity report

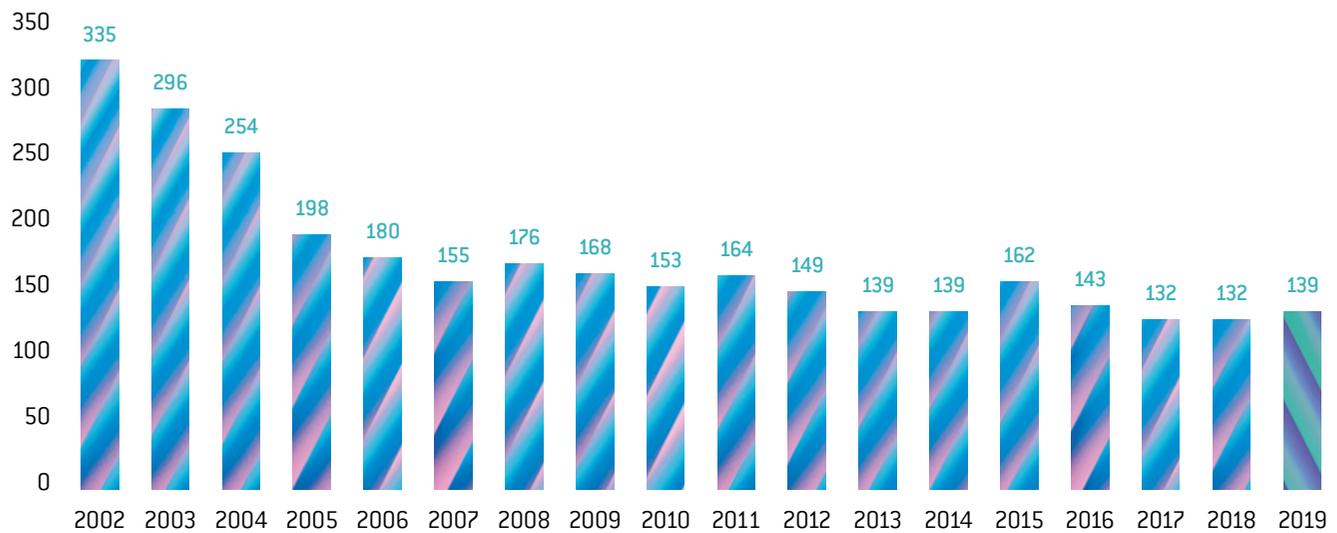


\*including 1 leniency notice.

## Ongoing cases

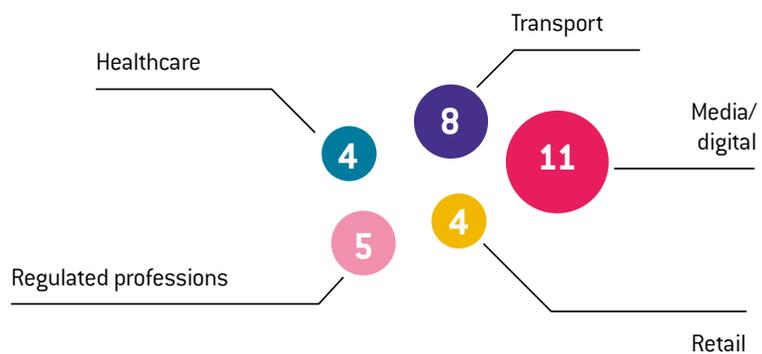
Case load (excluding mergers)

118



## Economic sectors

Economic sectors in which the Autorité was most active in 2019 in terms of litigation activity and its advisory function (excluding merger review decisions)



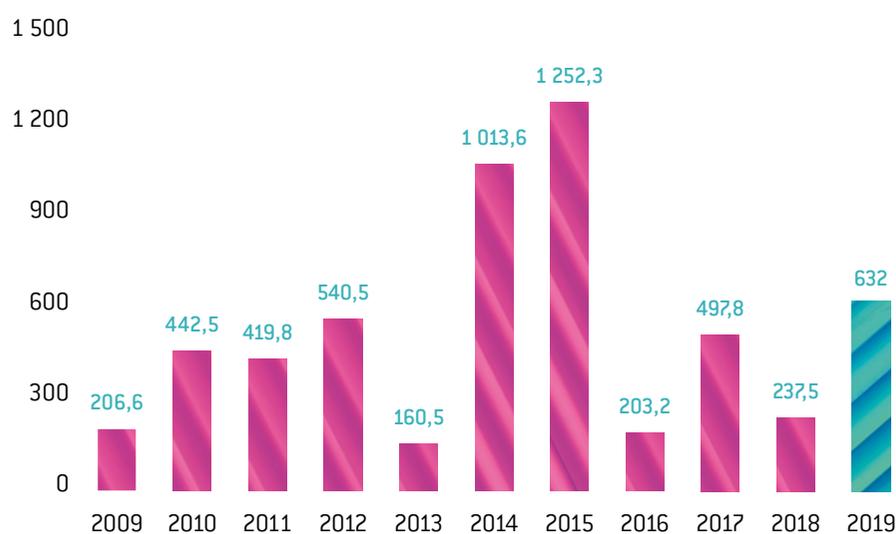
## Mergers

Clearances without commitments	261
Clearances subject to commitments	9*
Clearance subject to injunctions	0
Inapplicability decision	0
<b>Total</b>	<b>270</b>

\*All 9 decisions were issued in Phase 1.

## Fines

Total amount of financial penalties (in millions of euros)



### Type of practices sanctioned

Abuse of a dominant position	1
Anticompetitive agreements	10
Obstruction of dawn raids	1
Exclusive imports in French overseas territories	2
<b>Total number of decisions to issue fines</b>	<b>14</b>

Anticompetitive practices account for 71% of the number of decisions to issue fines and 76% of the amount of the fines.

# 119

## Appeal court proceedings

Status as at 17 April 2020

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
<b>Number of appeals filed</b>	12	8	6	10	10	14	8	9	5	9	12
Number of decisions upheld:	11	5	6	7	8	13	7	9	5	7	5
• appeal dismissed, inadmissible or withdrawn	9	5	5	5	7	9	5	4	4	5	3
• partial revision/decision upheld on the merits of the case	2 <sup>1</sup>	–	1 <sup>2</sup>	2 <sup>3</sup>	1 <sup>4</sup>	4 <sup>5</sup>	2 <sup>6</sup>	5 <sup>7</sup>	1 <sup>8</sup>	2 <sup>9</sup>	2 <sup>10</sup>
<b>Total appeals examined</b>	12	8	6	10	10	14	8	9	5	9	5
Pending cases	0	0	0	0	0	0	0	0	0	0	7
<b>% decisions upheld/total appeals examined*</b>	91	62	100	70	80	93	87	100	100	77	NS

1. Decisions 09-D-19 and 09-D-36

2. Decision 11-D-02

3. Decisions 12-D-23 and 12-D-24

4. Decision 13-D-03

5. Decisions 14-MC-01, 14-MC-02, 14-D-08 and 14-D-19

6. Decisions 15-D-01 and 15-D-199

7. Decisions 16-D-09, 16-D-11, 16-D-14, 16-D-20 and 16-D-28

8. Decision 17-D-25

9. Decisions 18-D-21 and 18-D-23

10. Decisions 19-MC-01 and 19-D-09

\*These statistics may evolve depending on the rulings handed down by the French Supreme Court and the relevant Court of Appeal, as applicable.

This summary is intended to inform the public about the activities of the Autorité de la concurrence and shall not be binding upon the institution on any grounds whatsoever.

It accompanies the annual report, which can be consulted at [autoritedelaconcurrence.fr](http://autoritedelaconcurrence.fr).



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