

# 10 YEARS

SUPPORTING  
THE MODERNISATION  
OF THE ECONOMY

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# EDITORIAL

## COMPETITION FOR THE BENEFIT OF ALL

All players in the economy have a stake in open and fair competition. The Autorité, as referee, intervenes to ensure proper conduct in the game by sanctioning prohibited actions, without hindering the competitors' vigour and maintaining fair play in the field.

In practice, in just under 10 years, the Autorité's actions have resulted in **a total gain of nearly €14 billion for the economy**: €9.5 billion in avoided costs and €4.5 billion in fines collected for the government treasury, used to finance public expenditure, such as education and justice. In addition, there have been significant gains in terms of purchasing power, quality, diversity of choice and employment as a result of reforms based on proposals from the Autorité and adopted by public authorities.

In order for them to be well understood and accepted, the referee must also explain the rules. When we look in the rear-view mirror, we see how much **the competition culture has progressed in France** in recent years. Companies are now making it a priority of their compliance policy and society has become fully aware of the harmful nature of secret agreements on the economy (according to a recent IFOP survey, 73% of French people disapprove of cartels).

While the work accomplished is undeniably positive, there is still some way to go. By advising public authorities on reforms, controlling mergers and punishing anticompetitive practices, **the Autorité works on a daily basis to ensure that competition benefits everyone** with the firm conviction that the future is built with the present.

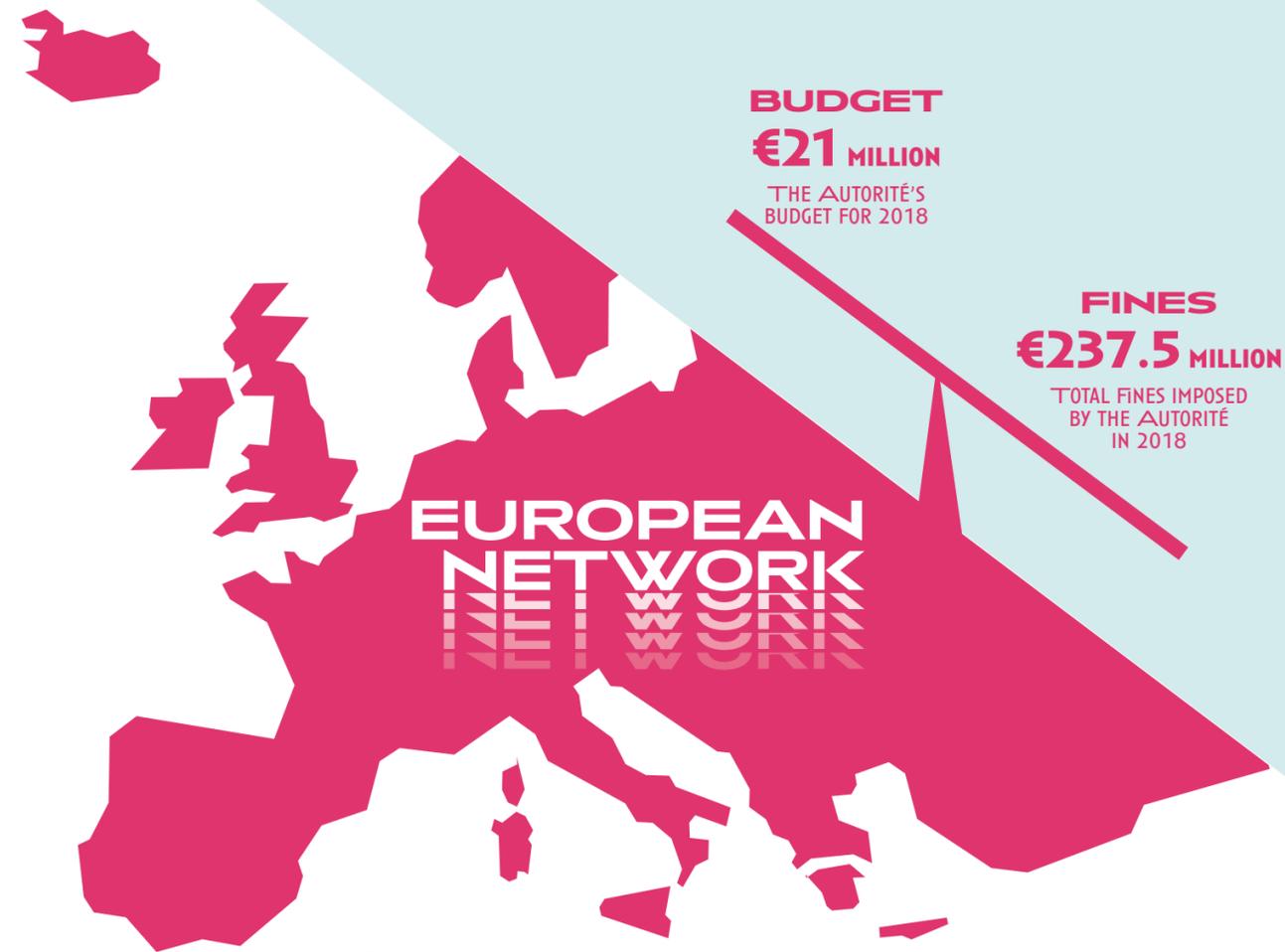
# THE AUTORITÉ IN 1 CLICK

## STATUS

INDEPENDENT ADMINISTRATIVE AUTHORITY

17 board members

199 agents



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

# MISSIONS

**ADVISING**  
(OPINIONS FOR PUBLIC AUTHORITIES AND ECONOMIC STAKEHOLDERS)

REGULATION OF **REGULATED PROFESSIONS**  
(OPINIONS FOR THE GOVERNMENT)

**MERGER CONTROL**  
(MERGERS AND ACQUISITIONS)

FIGHTING **ANTICOMPETITIVE PRACTICES**  
(CARTELS AND ABUSES)

## KEY EVENTS

**26 MARCH 2019**  
Winner of the Best Soft Law Award at the Antitrust Writing Awards for its study on loyalty rebates

**21 MARCH 2019**  
Appointment of Juliette Théry-Schultz as Chief of the Legal office

**19 MARCH 2019**  
Appointments of Irène Luc and Henri Piffaut as Vice-Presidents and eight new Board members

**5 MARCH 2019**  
Study day for the Autorité's 10th anniversary at Palais Brongniart (Paris)

**2 JANUARY 2019**  
Appointment of Maël Guilbaud-Nanhou as Secretary General

**JUNE 2018**  
Five-star rating in the Global Competition Review. The Autorité maintains its place among the world's leading competition authorities for the 7th consecutive year

**12 MARCH 2018**  
Appointment of Fabienne Siredey-Garnier as Vice-President

# CHANGING IN SYNERGY WITH THE ECONOMY



Interview with  
Isabelle de Silva  
President of the Autorité de la concurrence

**“The Autorité has succeeded in ensuring that competition law is now a major factor in defining corporate strategy.”**

**This year, the Autorité celebrates its 10<sup>th</sup> anniversary. How do you see the Autorité’s changing role?**

This anniversary is an opportunity to consider how far we have come since the Law on the Modernisation of the Economy, which created the Autorité in 2009. In hindsight, we can say that the challenge of modernising competitive regulation in France by entrusting a single independent entity with all the means of intervention and broadening its scope of action has been largely met. The Autorité has been able to take on its new powers to instil a true overall dynamic.

First of all, it has made full use of the new power it now has to issue an opinion on its own initiative by expanding its advisory activity. In complete autonomy, the Autorité can now target the subjects at stake that it believes deserve a panoramic examination, and use this tool to anticipate economic developments. On this occasion, it may make proposals to adapt the legislation. It is satisfying, from this point of view, to note that several opinions have met with strong support from public authorities and led to structural reforms that are beneficial in terms of growth and purchasing power. While occasionally it takes time before some proposals make their way, I am

deeply convinced that when an idea is good, it will become reality sooner or later, as with the case for spare automotive parts. During our study day to mark the Autorité’s 10<sup>th</sup> anniversary on 5 March, the Prime Minister stated that he would follow the Autorité’s opinion of 2012 and implement the reform to open up the manufacturers’ monopoly on visible parts. He also announced that he was launching a reform of the online sale of medicinal products, as we had called for.

Secondly, the Autorité has succeeded in ensuring that competition law is now a major factor in defining corporate strategy. Businesses are now fully aware that they must implement an approach to prevent infringing on competition in order to avoid fines and damage to their reputation. They also know how to use the tools of competition law when they are victims of abusive practices, and do not hesitate to contact us in this case. More generally, compliance policy has developed considerably in recent years, with compliance managers and legal directors highly trained and aware of competition issues. The Autorité has also started work to educate SMEs and will soon publish a guide and videos aimed at explaining the rules in a simple and concrete way. In addition, we are fortunate to have courts in France that are very familiar with this litigation. This contributes to the construction of an effective “competition culture”.

**“While occasionally it takes time before some proposals make their way, I am deeply convinced that when an idea is good, it will become reality sooner or later [...]”**

We want to promote compliance policies and this is one of our objectives when we formulate opinions, sector-specific inquiries and thematic studies. Through our opinions, we can sometimes point out practices that are potentially contrary to competition law: we are then in the areas of prevention and pedagogy. In this respect, the opinion on purchasing offices in 2014 is typical, as it clearly highlighted a number of practices that could restrict competition.

The Autorité has also changed its approach to the repression of anticompetitive practices. In 2019, for the first time, it carried out an assessment of its impact on the French economy. According to this assessment, its actions have saved nearly €14 billion between 2011 (date of adoption of its notice on the calculation of fines) and 2018. Thanks to the thorough investigations that have been performed over the years, the Autorité has been able to fine cartels and abuses of a significant dominant position. Our ambition for the coming years is to continue to relentlessly and speedily pursue those who do not respect the

rules of competition in all sectors of the economy so that deterrence is effective. In this respect, the very significant development of policies to compensate for damage caused by infringements on competition contributes to increasing the risk for companies, and thus deterring them. In addition to the fine imposed by the Autorité, compensatory damages imposed by the courts can be considerable.

Finally, this anniversary is an opportunity to review 10 years of merger control, since it was in 2009 that this new competence was entrusted to us. Here again, the challenge seems to us to have been met. Today, the Autorité's competence in this field is recognised. Its decisions are sound and considered to be particularly innovative in Europe, particularly with regard to the design of remedies. Its activity is extremely fast-paced, with around 230 decisions per year, and serves as an essential tool for influencing the structure of upstream markets to pre-empt the creation of excessively strong positions and maintain competitive dynamics.



**“In 2019, for the first time, the Autorité carried out an assessment of its impact on the French economy, which amounts to €14 billion.”**

### **On this very subject, the Autorité has launched a comprehensive review to modernise the framework within which it exercises control over mergers. What are some of the major aspects?**

After a decade of implementation, we decided to verify the adequacy of the French legislative framework for the control of mergers by launching a strategic review.

After a major public consultation, we first proposed to the government to simplify the procedure by reducing the administrative burden on companies for the simplest transactions. This simplification came into force on 25 April 2019.

In order to take into account the efficiency constraints expressed by companies and their advisers, we decided to set up the possibility of notifying mergers online, a procedure that is new to national competition authorities and currently in the implementation phase.

At the same time, we discussed with companies, lawyers and economists the fundamentals of the system: criteria, general thresholds and specific thresholds (retail trade, French overseas territories). At the end of the evaluation, it seems to us that, overall, the current system is based on solid criteria and is well designed with regard to the competitive challenges of the French economy. However, on one point, it has a shortcoming that would justify it being supplemented with an additional “ex-post” control. In practical terms, this would mean introducing the possibility of examining certain transactions to acquire companies that are potentially problematic but which are currently beyond our control. This is typically the case with companies that have a high economic value measured by transaction value but not by turnover: Facebook's takeover of WhatsApp for €20 billion has launched the debate at the European level on the need to control this category of transactions. In addition, this new tool would provide a better understanding of killer acquisitions, through which very powerful players can consolidate their position or rid themselves of a potential competitor. This proposal has been forwarded to the government, which should decide on the adoption of such a system at the French or European level.

Finally, it seems essential to me that we must constantly renew our view of transactions in order to take into account changes in the economy, particularly the digital economy. This is why we regularly exchange views on these subjects with our counterparts within the framework of the European and international competition networks in order to improve our techniques and analytical tools.

### **With the European Commission's blocking the merger of Siemens with Alstom, a debate has begun on the issue of creating “European champions”. What is your position?**

The Siemens/Alstom case created a magnifying glass effect and has been the opportunity for stakeholders, public authorities and other competition authorities to look again at the European competition policy in the light of the express desire to have “European champions” and an ambitious industrial policy.

First of all, it should be recalled that the main objective of merger control in Europe is to maintain effective competition in the Single market. Objectives relating to industrial policy or the development of balanced trade relations with other regions of the world are not among the objectives assigned to European competition policy. While they are entirely legitimate, they concern other instruments, such as the control of state aid, which has recently been revised to promote European projects of common interest. Investment in new technologies is a key to the development of a strong European industry, as noted in the *Inspection générale des finances* (French Inspectorate General of Finances) report of April 2019. The debate also highlighted the need for rebalancing, in the sense of reciprocal access to public procurement at the international level.

If we analyse the figures, we can also see that the blocking of transactions is extremely rare, since it represents only 17 cases out of more than 6,000 transactions examined at the European level since 2000. Merger control does not therefore prevent the creation of European champions, and recent examples, such as the PSA/Opel and Essilor/Luxottica mergers, bear witness to this.

What we want to prohibit are mergers that do not bring any benefit to consumers or companies, and will only enable the company to strengthen itself, charge more for its products, or reduce product quality or its efforts to innovate. When the transaction leads to the creation of a monopoly in Europe, public authorities and consumers are likely to pay more, without any benefit.

That being said, it is always useful to consider how authorities can make their analytical framework evolve. In this case, a debate is possible, for example, on how to assess potential competition (reference period, etc.). An update of the European Commission's guidelines could thus incorporate, when appropriate, the outcome of these discussions.

**2018 was a pivotal year for the regulated legal professions as the first cycle of the reform is now completed and a new one begins. What is your assessment today?**

The reform of the regulated professions is now entering a mature phase. The first full two-year implementation cycle (2016-2018) for notaries has been completed and the continuation, at a reasonable pace, of the opening of the profession for the second cycle (2018-2020) has been approved by the government, following our recommendations. All stakeholders have now accepted and integrated the reform. Everyone can be pleased with its positive effects: the establishment of new notaries makes it possible to improve territorial coverage, a factor of social cohesion. The profession has opened up to younger generations (the average age of newly appointed notaries is 37) and to women, who make up more than half of the new notaries. By the end of 2020, some 2,300 new notaries will have joined the ranks of the profession.

Before the reform, it was difficult to access notarial services in some regions: there was, in fact, less competition and therefore less incentive to offer high quality services. The consumer can now access a notary under better conditions, the first achievement of the reform. In addition, some competition in terms of fees can now take place, through larger discounts.

In an opinion for the government, the Autorité also examined the higher fees applicable in French overseas territories for the services of notaries and court bailiffs. For some of them, such as a real estate sale or a summons to pay, these increases may be 25%-40% higher compared to fees in mainland France, without any justification in relation to the real costs incurred.

More generally, the modernisation process is under way in other professions such as court bailiffs, judicial auctioneers and lawyers at the French Administrative Supreme Court (*Conseil d'État*) and French Supreme Court (*Cour de Cassation*), which are also opening up in a gradual, well-conceived process.

**In a context where the issue of purchasing power is a hot topic, what is the Autorité's action in the mass retail sector?**

The sector remains a priority for the Autorité, given its strong impact on the economy - with farmers and food companies upstream and consumers downstream.

In July 2018, the Autorité announced that it had opened investigations into joint purchasing agreements of which it has been notified in order to perform more detailed investigations into the effects of these agreements on competition. The investigation is ongoing.

The Agriculture and Food Law of 30 November 2018, or Egalim Law, is a significant step forward: it has given us new powers to strengthen the control exercised over agreements between purchasing offices. This was a strong sign from Parliament, which considered that we had a useful role to play. The law now allows us to block a merger as a precautionary measure and, if necessary, to obtain a modification of the agreement or a return to the previous state.

In addition, this year we issued an opinion on the modification of the threshold for resale at a loss and the framework for sales promotions, on which we had strong reservations. These measures seemed, to us, likely to generate an increase in the prices charged by distributors, without being assured the desired positive effects on farmers' incomes. These issues will have to be revisited in a review of the Egalim Law to assess whether or not the law has achieved its objective of improving conditions for farmers' remuneration.

In line with its strong commitment to French overseas territories, the Autorité will soon publish a general opinion on mass retail distribution and purchasing power in these areas. This opinion assesses the results of 10 years of action and evaluates the effectiveness of measures such as quality and price protection and the prohibition of exclusive imports, a provision of the Lurel Law. We are also committed to understanding how prices are formed and what causes price increases so that public authorities may have information for understanding and discussing these complex issues.

**“With the adoption of the ECN+ Directive, European cooperation has changed dimension since all competition authorities will now have a harmonised and enhanced range of powers.”**

**In a globalised economy, competition is also global. Can you tell us what are the keys to the success of cooperation at the European and international level?**

In an economy that knows no borders, international cooperation has become essential in the work of competition authorities.

We are now acting in an increasingly integrated way, exchanging with the European Commission and our counterparts in the European Competition Network (ECN). The network, created in 2003, is a wonderful example of a success story for which the rest of the world envies us and tries to replicate: this is what we see in South America, Africa and Asia with the creation of regional networks based on the ECN's operating methods.

In addition, to meet the challenges of the development of digital technology, we have a lot to gain from sharing our experiences in order to update our analytical framework. We need to exchange more and more on the concepts we apply and the new practices we observe since companies like Google, Amazon or Facebook are present in all regions of the world. It is very useful to know which cases are open in which countries, sometimes at the European level, to deal with each subject at the right level. Some authorities are at the forefront of certain technologies and by putting the network to best use, we share innovation and techniques horizontally in order to optimise our resources. I very much believe in this platform work, which is very responsive and is also a reaction to the acceleration of the business world.



The year 2019 was marked, it should be stressed, by the transition to a new dimension for European cooperation, with the adoption of the ECN+ Directive. It will considerably strengthen the authorities that are members of our network. All European authorities will now have at their disposal a harmonised and enhanced set of powers. At the international level, a new step has also been taken with the recent adoption within the ICN of a new tool to promote procedural safeguards: the "Framework on Competition Agency Procedures".

These developments demonstrate that cooperation circles play an active role in the upward harmonisation of procedures, guarantees of independence and means of action. Just as the economy is global, competition is now taking place in an increasingly integrated and responsive international environment, and I'm delighted about it.



# MIRROR OF THE ECONOMY

## UNDERSTANDING THE NEW MODELS ARISING FROM DIGITAL TECHNOLOGY

**THE DIGITAL REVOLUTION AND PROFOUND CHANGES IN CONSUMPTION PATTERNS ARE MODIFYING MARKET DYNAMICS AND ENCOURAGING SECTORS TO RESTRUCTURE AS A RESULT. UNDERLYING TRENDS ARE EMERGING, SUCH AS THE DEVELOPMENT OF "PHYGITAL"\* MARKETING, DATA MINING, BLOCKCHAIN, THE USE OF ARTIFICIAL INTELLIGENCE AND ALGORITHMS. THESE DEVELOPMENTS CAN HAVE A STRONG IMPACT ON COMPETITION LAW AND SOMETIMES RAISE NEW ISSUES THAT THE AUTORITÉ MUST ANSWER.**

\*Phygital is the integration of data and methods from the digital world into the physical point of sale distribution model.

If companies are to meet the challenge of the digitalisation of the economy, public authorities and regulators must do likewise. At a time when prices are set in a fraction of a second on digital platforms and algorithms have the ability to organise cartels, the Autorité has made these issues a priority: it seeks to constantly adapt its efforts to market developments by reinventing its conceptual tools and its method of intervention so that its decisions remain effective and strictly proportionate to competition requirements.

### Speed, flexibility and inventiveness

**Interim measures: a tool for greater efficiency**  
Providing appropriate responses to distortions on competition while remaining in step with business is essential. By using interim measures (a tool the Autorité will soon be able to use ex officio, due to the implementation of the reform based on adoption of the ECN+ Directive), the Autorité can intervene before the situation creates irretrievable damage (for example to prevent the failure of a company or to prevent a stakeholder from permanently acquiring a decisive position on the market). Measures of this type were taken against Apple in 2008 (ending exclusive iPhone distribution) and Google in 2010 and 2018 (NaVx and Amadeus cases).

### The search for coordinated solutions at the European level

The activity of the new platforms is now transverse, as it extends far beyond national geographical borders. As the concerns observed are often similar in different countries, they require a coherent and coordinated approach. For this reason, the Autorité works in close cooperation with the Commission and other national authorities to enrich discussion, exchange views and, in some cases, find common solutions in order to seek the best outcomes for the market and consumers. In the Booking case, for example, the Autorité, together with the Italian and Swedish authorities, achieved significant progress in favour of hoteliers so that they could regain greater commercial and pricing freedom. This produced significant commitments, which were then extended to all of Europe.

### Knowing how to change your perspective

The Autorité is also committed to constantly developing its analytical capabilities in order to remain in step with the reality of the market. During the examination of the merger between Fnac and Darty in 2016, it considered that online sales and sales made by physical stores could now be considered as part of the same market. It transposed the approach to the toy distribution sector during the 2019 review of the acquisition of Picwic by Toys'R'Us. As part of the initial examination of the merger between two online platforms, SeLoger and Logic-Immo, the Autorité also adapted its approach by adopting a dynamic perspective in order to take into account competition from current and potential players, such as Facebook and Amazon. To the Autorité, this appears essential to anticipate the possible effects of a major stakeholder's entry into the market in the short term.

**In a changing world, it is necessary to rethink the rules at regular intervals.**

### To be ready, the Autorité invests in knowledge

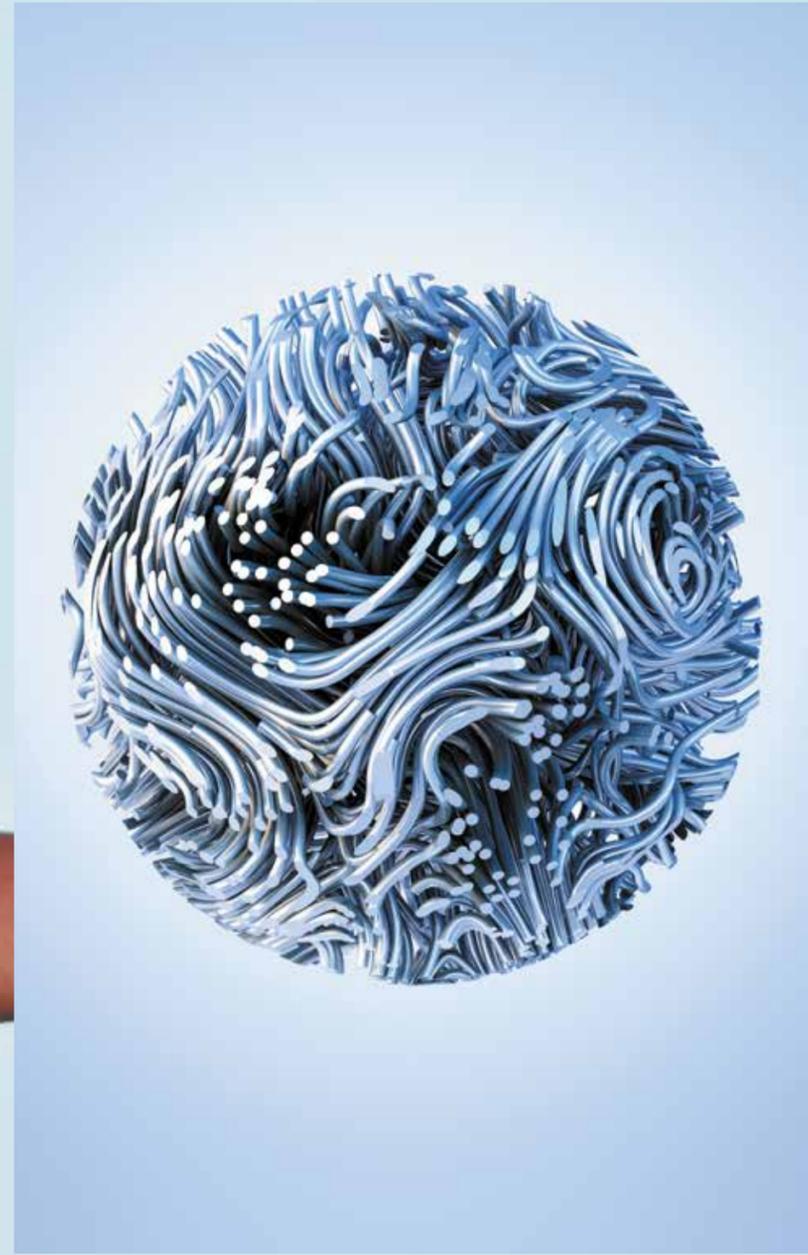
Like companies, the Autorité is constantly monitoring developments in order to anticipate changes and base its choices on solid and in-depth discussions when it issues a decision. It does this not only through its sector-specific inquiries, such as online search advertising in 2010 and display advertising in 2018, but also through studies, including one conducted in partnership with the UK's Competition and Markets Authority (CMA) on open and closed ecosystems in 2014, and those conducted with Germany's Bundeskartellamt on big data in 2016 and algorithms in 2019.

### Rethinking the rules in a changing world

The Autorité has always encouraged companies that innovate because they generate growth and consequently purchasing power and employment. However, regulation has an important role to play to make sure the digital giants, such as GAFA, comply with the rules of competition and do not exempt themselves on the grounds that they are global. At the same time, the Autorité is in favour of ensuring that incumbent stakeholders, which are sometimes destabilised, have access to resources to adapt and integrate new uses. Through its advisory activity, the Autorité regularly formulates recommendations to public authorities along these lines: for example, it has advocated relaxing the rules on the online sale of medicinal products and adapting the regulations governing taxis to enable them to face competition from chauffeur-driven cars.

In a changing world, it is therefore necessary to rethink the rules at regular intervals in order to prevent asymmetries and to ensure that traditional stakeholders are not being subject to regulations that new market players would be able to eschew. The situation in the audiovisual sector is critical in this respect: in a 2019 opinion, the Autorité recommended that the current legislative and regulatory framework be made more flexible in order to take into account the digital revolution at work in the sector and thus enable stakeholders in the audiovisual sector to compete on equal terms with new video distribution platforms, such as Netflix and Amazon Prime, and with online advertisers (Google, Facebook).

# FLUVO TIONS



# 10 YEARS OF FIGHTING ANTICOMPETITIVE PRACTICES

## DNA

### What are anticompetitive practices?

There are two main families: agreements ("horizontal" between competitors or "vertical" between suppliers and distributors) and abuses of dominant position (e.g. discriminatory practices, smear campaigns, exclusivity clauses, tied selling, predatory pricing, increased barriers to market entry, etc.).

### Why fight them?

Cartels lead to higher input costs for businesses and higher prices for consumers. They also hinder competition between companies and undermine the economy's competitiveness. Abusive behaviour by a dominant player can lead to the exclusion of competitors or prevent the arrival of new entrants. Ultimately, this results in consumers paying more for products and services and enjoying less diversity and quality.

### What happens in the event of infringement?

The Autorité may impose financial penalties, interim measures in the event of an emergency situation, or injunctions to cease the practice or to change behaviour in the future; or it may publish a statement in the press in order to alert companies in the sector and the general public to the harmful nature of the illegal behaviour.

### What is a negotiated procedure?

In some cases, companies may, prior to litigation proceedings, undertake to change their behaviour (commitment procedure) and thus avoid a fine. They may also request the benefit of leniency or settlement procedures to reduce the amount of the fine incurred.

## PROGRESS

ECN+: TOWARDS  
A STRENGTHENING  
OF THE AUTORITÉ'S  
POWERS

With the European ECN+ Directive adopted in December 2018, the Autorité will have:

- discretionary jurisdiction, so it can dismiss complaints on the grounds that it does not consider them a priority. The Autorité can thus optimise its resources, giving priority to those cases that are most harmful to competition;
- more deterrent fines, with elimination of the specific ceiling for organisations, and the introduction of a single harmonised cap (10% of worldwide turnover);
- the possibility of issuing structural injunctions in the context of litigation procedures, where necessary to effectively end anticompetitive practices;
- the possibility of starting proceedings *ex officio* in order to impose interim measures, which will enable the Autorité to intervene much more quickly.

NEARLY  
**73%**  
of French people  
DISAPPROVE OF CARTELS\*

NEARLY  
**€5**  
billion  
IN FINES HANDED OUT IN 10 YEARS

NEARLY  
**450**  
companies  
AND PROFESSIONAL BODIES  
HAVE BEEN FINED IN 10 YEARS

NEARLY  
**98**  
decisions  
FINING ANTICOMPETITIVE PRACTICES  
IN 10 YEARS

\*IFOP survey, L'Opinion des Français sur les cartels, June 2017.



# FIGHTING ANTICOMPETITIVE PRACTICES

**PROTECTING CONSUMERS AND BUSINESSES FROM ANTICOMPETITIVE PRACTICES IS THE CORE MISSION OF THE AUTORITÉ DE LA CONCURRENCE. BEYOND THE PUNITIVE DIMENSION OF THE FINES IMPOSED, THEIR MEDIA COVERAGE OVER THE PAST TEN YEARS HAS SIGNIFICANTLY INCREASED DETERRENCE AND CONTRIBUTES TO A NECESSARY EFFORT TO PREVENT AND DEVELOP A CULTURE OF COMPETITION IN FRANCE. AN EFFECTIVE MODEL, FURTHER STRENGTHENED BY THE RECENT INCREASE IN THE NUMBER OF ACTIONS FOR DAMAGES AND THE FORTHCOMING ENTRY INTO FORCE OF THE ECN+ DIRECTIVE IN FRANCE.**

## Cartels: extremely harmful practices

25%...this is the percentage price increase that consumers can experience in a sector dominated by a cartel. In addition to its inflationary effect on prices, a cartel leads to a limitation of product choice and quality as well as a reduced incentive to innovate. Companies, too, experience an increase in the cost of inputs (intermediate products or raw materials). Finally, some practices affect public procurement: they then impact public accounts and consequently all taxpayers. For the economy, this means a loss of competitiveness, innovation and a negative impact on employment. Citizens, consumers, entrepreneurs, taxpayers... agreements ultimately touch everyone.

## Preserving competition based on merit

When a company has a historical monopoly or acquires a dominant position, it may be tempted to abuse its position in the market, in particular by increasing prices, by hindering the arrival of new entrants or slowing the emergence of new economic

models. The Autorité ensures that such abuses are punished and that companies that cross the line are put back on track. It has thus had to deal with major cases in telephony (end of exclusive marketing of the iPhone in 2010; fine of Orange in 2015), transport sector (fining SNCF in 2012), energy (fining Engie in 2017), mass distribution (commitments of Nespresso in 2014) and online advertising (protective measures against Google in 2010). In this way, the Autorité ensures that competition is based on merit alone and that dominant stakeholders do not impose discriminatory conditions on their customers.

## "Competition watchdog"

Fighting anticompetitive practices is therefore fundamental and French law, like that of the European Union, has provided for a mechanism to impose severe penalties: the maximum fine is 10% of the worldwide turnover of the group to which the company belongs! This will make those who might consider venturing down this path think twice. Often referred to as the "competition watchdog", the Autorité does not hesitate to impose heavy fines on compa-

nies that cheat and do not play by the rules. In 10 years, it has imposed almost €5 billion in fines, which have been paid into the state's budget and have thus contributed to funding public services such as education and justice. Its scope of action is very broad, covering all sectors of the economy, from mass distribution to energy and from telecoms to healthcare and transport (*see major fines on the following page*).

In addition, anticompetitive practices have become even riskier for companies, which confront considerable additional financial risk with the growth in actions for damages. Indeed, since the adoption of the directive on actions for damages for breach of competition law, all potential victims can bring an action for damages on the basis of the Autorité's decision without having to demonstrate the breach again. A recent example illustrates that the risk is now far from being purely theoretical: in the case of Orange Caraïbes, for example, the operator that had originally been fined €63 million by the Autorité, was sentenced an additional €346 million following an action for damages (judge-

ment of the *Tribunal de commerce de Paris* [Paris Commercial Court] of 18 December 2017). The same trend can be observed at the European level with the increase in cases.

## Priority given to detecting practices

In order to further improve the system for combating cartels and abuses of dominant position, the 2009 reform transferred investigation power to the Autorité. Faced with increasingly sophisticated methods of concealment, the Autorité has focused on developing extremely advanced means for investigating and detecting evidence. It is constantly adapting its methods and resources, especially within its IT forensics section. Investigators have top-notch forensic police resources to collect pieces of evidence and access data stored on computers, tablets, mail servers and smartphones.

The Autorité has also increased the number of dawn raids in recent years and regularly assists inspections by the European Commission in France.

During these 10 years, the detection of agreements has also increased significantly due to the leniency programme. Its principle? A company that reports its past participation in an agreement to the Autorité may be granted full or partial immunity from fines depending on the rank of its application and the degree of cooperation it provides. Using this tool, the Autorité was able to dismantle 13 major agreements that were extremely harmful to consumers (cartels in the sectors of laundry detergents, dairy products, linoleum, household appliances, etc.).

As the latest step in detection, the Autorité will set up a system to report anticompetitive practices on its website.

## What is the economic impact of the Autorité's action?

In order to assess the impact of its action on the economy, the Autorité decided to include a global evaluation in its annual report this year.

Based on the method recommended by the OECD, this evaluation takes into account not only the amount of fines imposed on companies but also the gains to the economy resulting from the end of anti-competitive behaviour or the implementation of remedies in the context of a merger.

Indeed, in the absence of intervention or threat of intervention by the Autorité, anticompetitive behaviour is likely to continue for several years, thus generating additional costs for the economy.

Similarly, by requiring remedies prior to a merger, the Autorité avoids a reduction

in competition, which would have resulted in higher prices or lower quality, which would be detrimental to the well-being of customers.

Using a conservative methodology, the Autorité measured the impact over the period from 2011 (year of adoption of the procedural notice on the calculation of fines) to 2018 and estimated it at around €13.8 billion, including €9.5 billion resulting from the extra cost avoided and €4.3 billion in fines (*For more information on the methodology, see the Autorité's annual report on its website.*)

**€13.8 billion,**  
the overall benefit  
for the economy from the  
Autorité's actions from 2011 to  
2018 (fines and additional costs  
avoided for the economy).

## Top 10 fines at a glance since 2009

Hygiene and cleaning products	€951.2 million
Parcel delivery	€672.3 million
Interbank cheque fees	€384.9 million
Detergents	€367.9 million
Business telecoms market	€350 million
Floor coverings	€302 million
Flour	€242.4 million
Dairy products	€192.7 million
Household appliances	€189 million
Mobile telephony	€183.1 million

# 360

**OVERVIEW OF THE MAIN CASES IN THE FIGHT AGAINST ANTICOMPETITIVE PRACTICES OVER THE PAST 10 YEARS.**



**2010 ROAD AND TRAFFIC SIGNS**

EIGHT LEADING MANUFACTURERS PARTICIPATED IN AN AGREEMENT AT THE EXPENSE OF STATE AND LOCAL AUTHORITIES FOR NEARLY 10 YEARS. THE COMPANIES WERE FINED €52.7 MILLION.

Decision 10-D-39 of 22 December 2010

**2010 CHEQUE FEES**

THE 11 LARGEST FRENCH BANKS WERE FINED €384.9 MILLION FOR INTRODUCING SEVERAL UNJUSTIFIED INTERBANK FEES WITH THE SWITCH TO ELECTRONIC CHEQUE PROCESSING.

Decision 10-D-28 of 20 September 2010

**2011 DETERGENTS**

THE FOUR MAIN MANUFACTURERS IN FRANCE WERE FINED €367.9 MILLION FOR AGREEING ON PRICES AND PROMOTIONAL RULES PRACTISED FOR NEARLY SIX YEARS WITH MASS RETAIL DISTRIBUTION.

Decision 11-D-17 of 8 December 2011





**2012 RAILWAY FREIGHT**

THE AUTORITÉ FINED SNCF €60.9 MILLION FOR HINDERING OR DELAYING THE ENTRY OF NEW OPERATORS INTO THE MARKET.

Decision 12-D-25 of 18 December 2012

**2013 CHEMICAL PRODUCTS**

FOUR OF THE MAIN DISTRIBUTORS OF CHEMICAL PRODUCTS (SOLVENTS, ALCOHOL, ACIDS, BLEACH) IN FRANCE WERE FINED €79 MILLION FOR AGREEING ON PRICES AND HOW CUSTOMERS WERE TO BE ASSIGNED.

Decision 13-D-12 of 28 May 2013



**2014 HYGIENE AND CLEANING PRODUCTS**

TWO MAJOR AGREEMENTS BETWEEN THE MAIN MANUFACTURERS WERE FINED NEARLY €1 BILLION.

Decision 14-D-19 of 18 December 2014




**2015 DAIRY PRODUCTS**

ELEVEN MANUFACTURERS WERE FINED FOR CARTELS IN THE PRIVATE LABEL MARKET. THE TOTAL AMOUNT OF FINES HANDED OUT WAS €192.7 MILLION.

Decision 15-D-03 of 11 March 2015



**2016 ZINC ROOFS AND GUTTERS**

UMICORE, ONE OF THE WORLD'S LEADING ZINC PRODUCERS AND THE MAIN SUPPLIER IN FRANCE, WAS FINED €69 MILLION FOR ABUSE OF ITS DOMINANT POSITION.

Decision 16-D-14 of 23 June 2016

**2014 MOBILE TELEPHONY IN FRENCH OVERSEAS TERRITORIES**

SFR, AND ITS RÉUNION SUBSIDIARY SRR, WERE FINED NEARLY €46 MILLION FOR RATES THAT FAVOURED CALLS MADE WITHIN THE SRR NETWORK IN RÉUNION AND MAYOTTE OVER THOSE MADE TO ITS COMPETITORS' NETWORKS.

Decision 14-D-05 of 13 June 2014




**2015 PARCEL DELIVERY**

TWO MAJOR AGREEMENTS BETWEEN COMPANIES IN THE COURIER SECTOR RESULTED IN FINES OF €672.3 MILLION.

Decision 15-D-19 of 15 December 2015

**2017 SUPPLYING GAS**

THE AUTORITÉ IMPOSED A FINE OF €100 MILLION ON ENGIE FOR ABUSING ITS DOMINANT POSITION BY USING ITS OLD CUSTOMER DATABASE TO CONVERT CUSTOMERS FROM REGULATED RATES FOR GAS TO MARKET-BASED CONTRACTS FOR GAS AND ELECTRICITY.

Decision 17-D-06 of 21 March 2017



**2017 PVC FLOOR COVERING**

THE THREE MAIN MANUFACTURERS WERE FINED €302 MILLION FOR AGREEING ON PRICES AND FREEZING COMPETITION WHEN COMMUNICATING THE ENVIRONMENTAL PERFORMANCE OF THEIR PRODUCTS.

Decision 17-D-20 of 18 October 2017




**2018 HOUSEHOLD APPLIANCES**

SIX MAJOR MANUFACTURERS WERE FINED €189 MILLION FOR AGREEING, IN PARTICULAR, ON INCREASES IN "RECOMMENDED RETAIL PRICES".

Decision 18-D-24 of 5 December 2018

**4 August 2008**

The Autorité de la concurrence (and no longer the Minister of the Economy) has jurisdiction for clearing mergers of companies. As the economy emerges from a downturn, the number of transactions accelerates.

**10 July 2013**

Publication of revised guidelines on merger control, an educational guide for companies.

**8 November 2016**

For the first time, the Autorité imposes fines for implementing two mergers prior to clearance ("gun jumping"). The decision constitutes a first in Europe and worldwide, both in the extent of the practices for which fines were imposed and the level of fine imposed (acquisition of SFR and Virgin Mobile by Numericable).

**20 October 2017**

The Autorité launches a public consultation to modernise and simplify merger law.

**7 June 2018**

The Autorité announces several measures to reduce and simplify business procedures and decides to study the possibility of *ex post* merger control.

**PROGRESS**

CREATION OF A NEW  
ULTRA-SIMPLIFIED  
ONLINE NOTIFICATION  
PROCEDURE

The Autorité has set up an online notification form for mergers under the simplified procedure (concerns about half of decisions rendered).

Through this electronic procedure, the Autorité is contributing to the government's modernisation process and taking into account the efficiency constraints expressed by companies and their advisers.

**2,000**  
transactions  
REVIEWED IN 10 YEARS

**27**  
transactions  
REFERRED BY THE  
EUROPEAN COMMISSION  
IN 10 YEARS

**50%**  
of transactions  
EXAMINED UNDER THE SIMPLIFIED  
PROCEDURE

**96%**  
of transactions  
CLEARED WITHOUT CONDITIONS  
IN 10 YEARS

# 10 YEARS OF MERGER CONTROL

## DNA

### What is a merger?

Different forms are possible: merger of two companies, creation of a joint venture, or takeover of one company by another.

### How does it work?

Above a certain turnover threshold, companies are required to notify their proposed transaction to the Autorité, which gives its clearance after verifying that it would not harm competition. If the transaction exceeds a certain size or impacts several Member States, the European Commission has jurisdiction, but it may decide to refer the case to a national authority if it is in a better position to examine it.

### Tempo

Upon receipt of the complete file, the initial phase of the examination begins (this initial phase takes 25 working days). If the transaction is complex or competition concerns are identified, the Autorité may begin a second phase to perform a thorough investigation (an additional 65 working days), at the end of which it will issue its decision.

### What if there is a problem?

If it appears that the transaction may give rise to competition issues, remedies are then discussed with the companies. Most of the time, corrective measures are structural in nature: they take the form of sales of assets. The Autorité may also accept, in certain cases, so-called "behavioural" measures.

### And then what?

If the commitments are not met, the Autorité may withdraw the clearance decision, order the parties to comply with their commitments or impose a financial penalty.

# MERGER CONTROL



BY CONTROLLING MERGERS, THE AUTORITÉ HAS BEEN ACTING FOR 10 YEARS TO PREVENT THE CREATION OF EXCESSIVELY STRONG POSITIONS THAT COULD HAVE A NEGATIVE IMPACT ON THE MARKET AND LEAD TO HIGHER PRICES FOR CONSUMERS. HERE'S A REVIEW OF THE IMPACT AND SIGNIFICANT DEVELOPMENTS OF THIS CRUCIAL AND STRUCTURING MISSION FOR THE FRENCH ECONOMY.

## A strong impact on the daily lives of French people

Over the past decade, the Autorité's actions have had a profound impact on the daily life of French people. Its merger control decisions have ensured that effective competition on the markets and thus a diversified range of products and competitive prices, for example in consumer goods (takeover of Monoprix by Casino), electronics (takeover of Darty by Fnac) and DIY (takeover of Bricorama by Bricomarché).

## Simplification and acceleration

Since 2009, the Autorité must process a large number of transactions for analysis (more than 200 cases per year). The challenge is relentless since it must deliver a diagnosis in line with the pace of business, which is continually accelerating. In response to this trend, it has focused on streamlining the procedure to process and analyse cases rapidly, particularly those concerning the retail sector or acquisitions by investment funds. These cases are processed through a "simplified

procedure" and within a very short time frame. Today, nearly half of all clearance decisions are issued within 15 working days. In the framework of a wide-ranging discussion held in 2018 for the purpose of modernising and further simplifying merger control, the Autorité has gone even further by extending the scope of the current simplified procedure, simplifying the content of the notification package and preparing for the launch in 2019 of an online notification system for the simplest transactions. Another development in recent years has been a more frequent use of pre-notification phases, encouraged by the guidelines, for early identification of difficulties related to market definition or the effects of a transaction. Companies are invited to enter into informal contacts with the Merger Unit as soon as they have a sufficiently complete project in order to facilitate an efficient and speedy investigation of their case.

## Ongoing dialogue for effective remedies

A constructive dialogue with companies is at the heart of the merger control process.

**200**  
More than 200 cases reviewed each year.

The Autorité has always adopted a pragmatic approach to this issue, as stated in its guidelines: mergers improve the competitiveness of companies by generating economic efficiency gains, which can have a positive impact on the overall competitiveness of the economy, innovation capacity and the welfare and purchasing power of consumers. However, the Autorité ensures that such mergers do not affect competition so that companies and consumers continue to benefit from quality products, low prices and innovations that are the result of competition between companies. If necessary, the Autorité clears mergers subject to remedies in order to maintain competitive market dynamics. It is known for its innovative and proportionate approach in these issues.

## Firmness: a necessary counterpart

The Autorité carries out its mission in a spirit of openness and dialogue, but in order to ensure the credibility and effectiveness of the current system of *ex ante* control of mergers, it is firm in dealing with companies that fail to submit to the control of their merger, that carry out their transaction without waiting for the Autorité's clearance, or that do not honour their commitments. For the first time in France and Europe, the Autorité thus imposed a sanction for the premature completion of two mergers ahead of its final green light (known as "gun jumping") in the takeovers of SFR and Virgin Mobile by Numericable, [decision 16-D-24 of 8 November 2016]. In the event of non-compliance with the commitments entered into, the Autorité may order the company to comply with them, impose fines, as in the Fnac/Darty case in 2018, or even withdraw the clearance, as in the Canal Plus/TPS case in 2011.

## An evolutionary approach

Faced with new issues related to the development of digital technology and in order to

better understand the reality of the market, the Autorité is constantly updating its approach. In 2016, while examining Fnac's acquisition of Darty, it changed its analysis by integrating, for the first time in Europe, online sales into the retail distribution market for electronic products. This approach was again applied in 2019 in the context of a merger in the toy sales sector and could be extended in the future to other consumer goods if the conditions of competition between distribution channels justify it. In 2018, for the first time in its history, the Autorité examined a merger between two online platforms (SeLoger.com and Logic-Immo.com), and did not hesitate to rely on a broad online questionnaire (sent to 30,000 real estate agencies) to assess the impact of the transaction on the online real estate classified ad market and to examine numerous internal documents in order to assess the threat of Facebook's entry into the French market.

## Modernisation of the system

After 10 years of merger control, the Autorité estimated that it was time to

carry out a qualitative review of the legislative framework and launched a wide-ranging discussion aimed at adapting merger law in the light of decision-making practice and new needs. In takeovers of digital or high-tech companies, which may sometimes escape the control of the competition authorities because of relatively low turnover even though their valuation is considerable, the Autorité considered, at this stage, that the introduction of merger control based solely on the transaction value (as recently decided in Germany and Austria) was not the most appropriate for the French economy.

It has however decided to explore the possibility of a new targeted, *ex post* control, based on models used in several countries (including Sweden, the United Kingdom and the United States). This solution would have the advantage of allowing the Autorité to control, at its own initiative, a very limited number of transactions which could prove to be problematic in terms of competition and which it cannot control because of the assessment of the current turnover thresholds. Such a system would require a new law.

# 360

**OVERVIEW OF THE MAIN MERGER CONTROL TRANSACTIONS EXAMINED OVER THE LAST 10 YEARS.**

## 2010 ACQUISITION OF TMC AND NT1 CHANNELS BY TF1

A TRANSACTION WITH CONDITIONAL CLEARANCE SO OTHER COMPETING DIGITAL TERRESTRIAL TELEVISION CHANNELS CAN CONTINUE TO COMPETE IN FREE-TO-AIR TELEVISION.

Decision 10-DCC-11 of 26 January 2010



## 2012 CANAL PLUS/TPS CANAL PLUS/D8 AND D17

THE AUTORITÉ HAS BEEN PARTICULARLY VIGILANT REGARDING THE ACQUISITIONS IN PAY AND FREE-TO-AIR TELEVISION BY THE DOMINANT PAY-TV COMPANY. CONDITIONS WERE REQUIRED IN ORDER FOR THESE TRANSACTIONS TO BE CLEARED.

Decisions 12-DCC-100 and 12-DCC-101 of 23 July 2012

## 2013 ACQUISITION OF MONOPRIX BY CASINO

A TRANSACTION CLEARED ON CONDITIONS THAT CASINO SELLS 55 STORES IN PARIS AND THREE IN VAR AND CORSICA DÉPARTEMENTS IN ORDER TO PRESERVE THE DIVERSITY OF RETAILERS FOR CONSUMERS.

Decision 13-DCC-90 of 11 July 2013



## 2014 ACQUISITION OF SFR BY NUMERICABLE

THE TRANSACTION WAS CLEARED, SUBJECT TO CONDITIONS, INVOLVING COMMITMENTS TO PRESERVE COMPETITION BETWEEN TELECOM OPERATORS, FOR THE BENEFIT OF COMPANIES AND INDIVIDUALS.

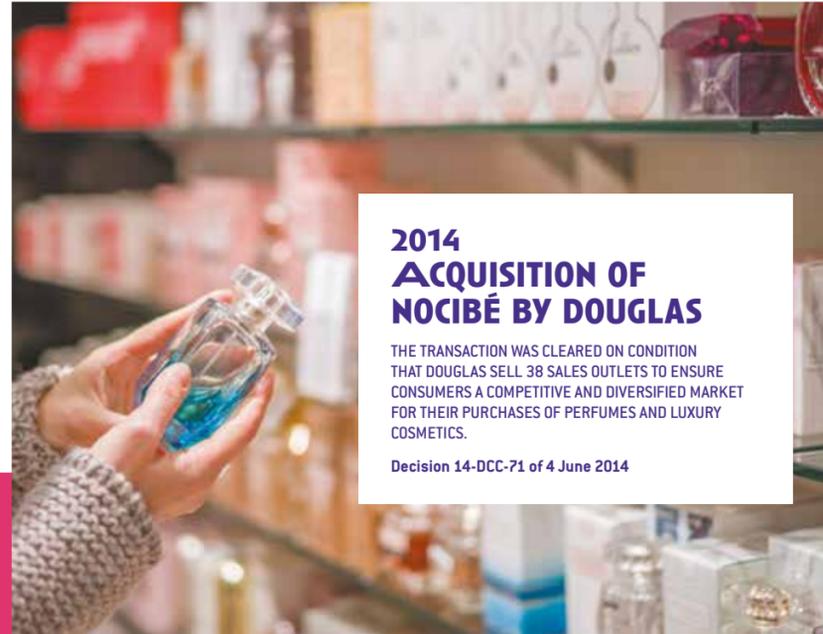
Decision 14-DCC-160 of 30 October 2014



## 2014 ACQUISITION OF NOCIBÉ BY DOUGLAS

THE TRANSACTION WAS CLEARED ON CONDITION THAT DOUGLAS SELL 38 SALES OUTLETS TO ENSURE CONSUMERS A COMPETITIVE AND DIVERSIFIED MARKET FOR THEIR PURCHASES OF PERFUMES AND LUXURY COSMETICS.

Decision 14-DCC-71 of 4 June 2014



## 2015 ACQUISITION OF QUICK BY BURGER KING

THE GREEN LIGHT WAS GIVEN WITH CONDITIONS REGARDING THE CITY OF AJACCIO IN ORDER TO MAINTAIN DIVERSIFIED COMPETITION IN THE FAST FOOD SECTOR.

Decision 15-DCC-170 of 10 December 2015



## 2016 GUN JUMPING

ACQUISITION OF SFR AND VIRGIN MOBILE BY NUMERICABLE. FOR THE FIRST TIME IN FRANCE AND EUROPE, THE PREMATURE COMPLETION OF TWO TRANSACTIONS (PRIOR TO APPROVAL OF THE AUTORITÉ DE LA CONCURRENCE) WAS FINED €80 MILLION.

Decision 16-D-24 of 8 November 2016



## 2018 ACQUISITION OF LOGIC-IMMO.COM BY SELOGER.COM

FOLLOWING A THOROUGH EXAMINATION, THE AUTORITÉ CLEARED THE TRANSACTION WITHOUT CONDITIONS. IT WAS THE FIRST TIME IT ADDRESSED THE MERGER OF TWO MAJOR ONLINE PLATFORMS.

Decision 18-DCC-18 of 1 February 2018



## 2017 ACQUISITION OF BRICORAMA BY BRICOMARCHÉ

THE TRANSACTION WAS CLEARED ON CONDITION THAT SIX POINTS OF SALE BE TRANSFERRED TO A COMPETING RETAILER IN ORDER TO ENSURE CONSUMERS A DIVERSIFIED RANGE OF DIY AND GARDENING PRODUCTS AND TO AVOID PRICE INCREASES.

Decision 17-DCC-215 of 18 December 2017



## 2016 ACQUISITION OF DARTY BY FNAC

THE TAKEOVER WAS CLEARED ON CONDITION THAT FNAC SELLS SIX STORES IN ORDER FOR CONSUMERS TO HAVE ACCESS TO A DIVERSIFIED MARKET IN THE PARIS REGION AND TO COMPETITIVE PRICES AND SERVICES IN THE FIELD OF ELECTRONIC PRODUCTS.

Decision 16-DCC-111 of 27 July 2016



# DNA

## What is the European Competition Network (ECN)?

Created in 2004, the ECN makes it possible for the 28 national competition authorities (NCAs) and the European Commission to share information and communicate on the cases they are investigating. The objective is to work together to achieve greater consistency in national approaches and greater efficiency in the application of competition rules. The authorities are in permanent contact, cooperate in the field by assisting each other in investigations, exchange information, meet frequently throughout the year and develop a common approach within specialised and sector-specific groups, such as digital technology, food, or vertical restrictions.

## What is the International Competition Network (ICN)?

The ICN is a global forum that brings together 139 competition authorities and their designated non-governmental advisers (NGAs) from all continents. Its slogan is "all competition, all the time". The ICN has been able to develop very quickly thanks to its flexible and informal mode of cooperation, the aim of which is to achieve greater convergence of competition policies and better coordination of national practices. The result is recommendations, tools and recommended practices that set international standards. Another very important objective is to support the development of young agencies. Finally, the ICN is enriched by the participation of NGAs, including lawyers, economists, corporate lawyers, academics and judges.

## PROGRESS

### 2019: A REMARKABLE YEAR FOR EUROPEAN COOPERATION

The ECN+ Directive results in expanding cooperation mechanisms and strengthening the network:

- of cooperation to cases of non-compliance with a decision and to procedures opened for obstructing an investigation;
- possibility for national competition authorities to request mutual assistance for notifying procedural documents and enforcing decisions.

In addition, the Directive imposes tougher, more widespread administrative sanctions and complete harmonisation of leniency programmes for "secret agreements". National competition authorities are free to extend this programme to other types of practices or even to extend it to benefit individuals.



# 10 YEARS OF INTERNATIONAL COOPERATION

**280**  
investigations  
OPENED BY FRANCE SINCE 2004  
ON THE BASIS OF EUROPEAN LAW

**139**  
competition authorities  
ARE PART OF THE ICN

**18**  
annual  
conferences  
HELD BY THE ICN  
SINCE ITS INCEPTION

# INTERNATIONAL COOPERATION

**IN A FAST-PACED, GLOBAL AND DIGITALLY TRANSFORMED ECONOMY, THE CONVERGENCE OF NATIONAL COMPETITION AGENCY LAWS IS IMPERATIVE TO MEET TODAY'S CHALLENGES AND PREPARE FOR THOSE OF TOMORROW. REVIEW OF THE LAST SEVERAL YEARS OF ACTIONS IN THE FIELD OF INTERNATIONAL COOPERATION, WITH A FOCUS ON THE ADOPTION OF THE ECN+ DIRECTIVE, WHICH STRENGTHENS THE EUROPEAN COMPETITION NETWORK AND OFFERS SIGNIFICANT ADVANCES FOR THE AUTORITÉ.**



## Competition networks: finding strength in unity

Since the inception of the European Competition Network (ECN) in 2004, the Autorité has played a structuring role and has contributed on a daily basis to strengthening the institution.

With 280 investigations opened on the basis of European law, it is one of the most active authorities in the network. The European Commission has referred 27 cases to it for merger review, a strong sign of its confidence in the Autorité.

On a daily basis, this cooperation takes many forms: assistance in carrying out investigations on behalf of another authority on the French territory, participation in meetings of working groups, contribution to the advisory committees examining the Commission's cases, etc. The Autorité plays a leading role in the development of coordinated solutions in cases involving several countries, as illustrated by the Booking case (in 2015, the French, Italian and Swedish authorities simultaneously accepted commitments from the online booking platform).

France is also a founding member of the International Competition Network (ICN), and plays an important role in its governance. It participates in the convergence dynamics that lead to the emergence of standards and "recommended practices" to improve the effectiveness of competition policies at the international level. In this context, the Autorité shares its decision-making practice at network meetings (annual conferences and working group workshops). Within the Merger and Cartel working groups, which it co-chairs, the Autorité contributes to creating or updating reference standards for the international community. It also worked on the development of Advocacy within a dedicated working group of which it was co-chair. Finally, the Autorité plays a strong role in the work of the OECD's Competition Committee, as well as in the work of other international and regional organisations such as the United Nations Conference on Trade and Development (UNCTAD), West African Economic and Monetary Union (WAEMU) and the Association of Southeast Asian Nations (ASEAN).

## An ever more effective ECN

An ambitious project from its creation, the ECN has proven to be a great European success story. It is entering a new phase of consolidation and advancement. Following the success of the first stage, which enabled the establishment of a flexible and responsive network based on the principle of subsidiarity - in which national authorities are fully competent to apply European competition law in a decentralised manner - a new stage has just been reached with the publication on 14 January 2019 of the ECN+ Directive, which now obliges each Member State to ensure that the national competition authority has the guarantees of independence and resources, as well as the powers of enforcement and the setting of fines necessary for the effective application of Articles 101 and 102 of the TFEU, which punish agreements and abuses of a dominant position.

In this context, competition authorities will be assured of being able to carry out their activities independently and with the necessary resources, using the same

set of enhanced investigative and decision-making powers and with wider scope for mutual assistance. This framework also ensures a balance between procedural efficiency and the protection of the rights of companies.

For the Autorité de la concurrence, the directive will result in a strengthening of its means of action:

- it can now exercise discretion in the cases it opens and thus to better optimise its resources by devoting them to the cases with the highest stakes for competition;
- it may start proceedings ex officio to impose urgent interim measures;
- it may impose "structural" measures on companies in the event of anticompetitive practices;
- finally, all economic stakeholders will now be subject to the same rules regarding fines, which will lead to remove the €3 million ceiling previously applied to business organisations and associations. Trade associations and professional orders may now be fined according to the resources of their members.

## Helping young agencies develop

Very involved since the beginning with newly-established competition authorities, the Autorité devotes significant resources to helping them build their skills, develop their institutional structure, adopt internal rules and guidelines and set priorities. Depending on their needs, it provides experts for on-site training (Algeria, Egypt, Morocco, Tunisia, West African Economic and Monetary Union, Albania, Serbia, etc.) and organises training seminars in Paris. Some relationships are formalised through the signing of cooperation agreements, as it was recently the case with Peru.

### ASSISTANCE TO RECENTLY FORMED COMPETITION AUTHORITIES IN FRENCH OVERSEAS TERRITORIES

The Autorité also maintains close links with recently formed "sister" competition authorities.

It accompanied the creation of competition authorities in French Polynesia and New Caledonia by sending case handlers from its investigation services, participating in ongoing and comprehensive dialogue with both agencies and providing assistance and onsite training (IT, procedures, etc.).

**560**  
opinions

**92**  
referrals  
ON GENERAL COMPETITION  
ISSUES

**12**  
sector-specific  
inquiries

**105**  
referrals  
ON DRAFT LEGISLATIVE  
AND REGULATORY BILLS

**44**  
referrals  
BY SECTOR REGULATORS

# 10 YEARS OF ADVISING OPINIONS

## DNA

### To whom does the Autorité address its opinions?

The Autorité's expertise is frequently sought by the government and parliamentary committees on all matters concerning competition as well as on draft legislative bills and regulations. In this context, it assesses the impact of a potential reform on the competitive functioning of a market and identifies the risks of distortion of competition that a draft bill could generate.

The Autorité also issues opinions at the request of sector-specific regulators including CSA (audiovisual), CRE (energy), ARCEP (post and telecommunications) and ARAFER (rail and roads).

### What is a sector-specific inquiry?

Since 2009, the Autorité has also been able to start proceedings *ex officio* to assess the competitive functioning of a market in a global way, identify opportunities for growth or innovation and detect any malfunctions. The in-depth investigation carried out allows the Autorité to consider a maximum of insights and points of view before issuing an opinion. Once the obstacles have been identified, the Autorité considers the best solutions to implement and makes recommendations to public authorities and/or economic stakeholders.



# ADVISORY ROLE

IN 10 YEARS, THE ADVISORY MISSION OF THE AUTORITÉ HAS GROWN AND ACQUIRED A PROACTIVE DIMENSION. ITS RECOMMENDATIONS HAVE MADE A DIFFERENCE IN MANY SECTORS BY INSPIRING AND ACCOMPANYING REFORMS OR BY PROVIDING GUIDANCE TO ECONOMIC STAKEHOLDERS.



## A proactive vision to inspire reforms

Ten years ago, the Law on the Modernisation of the Economy of 4 August 2008 gave the Autorité de la concurrence the power to start proceedings *ex officio* to issue opinions. Since then, its action in this area has grown in strength and taken on a new dimension. It can now choose its own subjects and devote itself to issues of significant economic importance or of particular interest to consumers.

In a number of cases, the quality of its expertise and the relevance of its recommendations were directly responsible for the implementation of major reforms. By being a driving force for proposals, the Autorité thus participates in the definition of public policies by making diagnoses and proposing solutions or by detecting unexplored or under-exploited growth opportunities. The opening of the coach market in 2015, the installation of more than 2,000 additional notaries in France, the strengthening of competition in the hearing aid sector and, soon, an end to the

monopoly on visible spare parts for cars are all advances inspired and supported by the Autorité.

## Informing public authorities

The government and Parliament moreover frequently seek the opinion of the Autorité in preparing draft bills and reforms. In this context, it then assesses the potential impact of these texts on competition in the sector or provides overall expertise. In 10 years, the Autorité has carried out numerous analyses (on the new organisation of the electricity market in 2010, rail reform in 2013, motorways in 2014, driving licences in 2016, and audiovisual reform in 2019) and regularly takes up a field to deal, beyond the referral, with the underlying economic and competition issues.

The Autorité is regularly sought by public authorities to explore ways of improving the competitive functioning of a sector or regions in difficulty. In this respect, opinions can be cited for example on:

- the functioning of the agricultural sector (Opinion 18-A-04 of 3 May 2018);
- the dairy crisis (Opinion 09-A-48 of 2 October 2009);
- issues related to the high cost of living in French overseas territories (Opinion 09-A-21 of 24 June 2009);
- fuel prices in French overseas territories (Opinion 09-A-45 of 8 September 2009);
- the cost of building materials in La Réunion and Mayotte (Opinion 18-A-09 of 3 October 2018);
- price differences between French overseas territories and mainland France for consumer goods (Opinion 19-A-12 of 4 July 2019).

## Guidelines for economic stakeholders

Opinions and sector-specific inquiries also have an educational dimension: they make it possible to avert the initiation of litigation by providing companies with a detailed analysis for the sector. Decision makers therefore benefit from a clear framework and can identify the competitive risks to

which they may potentially be exposed so they can adapt their strategy and modify their behaviour if necessary. A good illustration of this approach is the opinion issued in 2015 on agreements by purchasing offices. It had given operators a number of resources to carry out a self-assessment of their draft or current agreements, alerting them of competitive risks.

## The sector-specific inquiry, a tool particularly suited to investigating digital technology early on

The Autorité must constantly ensure that its tools are well adapted to meet the challenges raised by the rapid, profound and complex changes in the French economy. In this respect, issues relating to digital technology and the digitisation of the economy are covered with special investigation and monitoring.

To explore these new issues, the sector-specific inquiry can contribute to this process (cross-disciplinary discussion, in-depth analysis of market functioning, full spectrum, broad public consultation). For this reason, the Autorité carried out two wide-ranging sector-specific surveys: one in the online advertising sector: one on "search" (2010) and the other on "display" (2018) online advertising.

## The Autorité's sector-specific inquiries

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
Car maintenance and repair	2012
Telecom bundling	2010
Online advertising	2010
Affiliation contracts in mass retail distribution	2010
Role of train stations and intermodality	2009

# 360

**OVERVIEW OF THE MAIN OPINIONS ISSUED OVER THE PAST 10 YEARS.**



**2010 MASS RETAIL DISTRIBUTION**

FACED WITH THE WORRYING LEVEL OF CONCENTRATION IN CERTAIN CATCHMENT AREAS AND THE DIFFICULTY OF CREATING NEW STORES, THE AUTORITÉ MADE A SERIES OF RECOMMENDATIONS TO REVITALISE COMPETITION AND PROMOTE MOBILITY AMONG RETAILERS.

Opinion 10-A-26 of 7 December 2010



**2012 VEHICLE REPAIR**

NOTING A SHARP INCREASE IN THE COSTS OF CAR MAINTENANCE AND REPAIR, THE AUTORITÉ DECIDED TO ACT BY MAKING RECOMMENDATIONS TO BOOST COMPETITION IN ORDER TO LOWER PRICES. THE GOVERNMENT ADOPTED THEM.

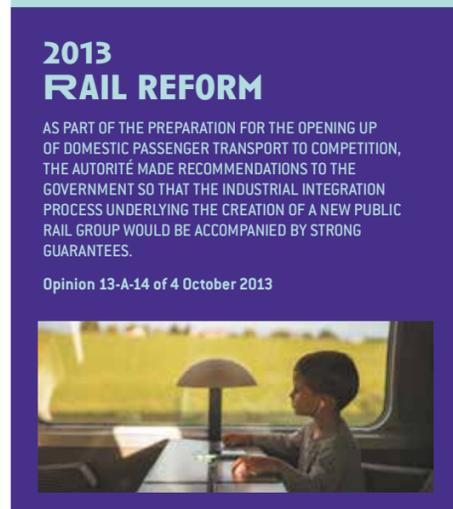
Opinion 12-A-21 dated 8 October 2012



**2012 E-COMMERCE**

THE AUTORITÉ CARRIED OUT AN IN-DEPTH ANALYSIS OF THE COMPETITIVE FUNCTIONING OF THIS DISTRIBUTION CHANNEL, WHICH HAS BECOME INDISPENSABLE IN FRANCE. ON THIS OCCASION, IT RECALLED THE LIMITS NOT TO BE CROSSED BY MANUFACTURERS AND DISTRIBUTORS.

Opinion 12-A-20 of 18 September 2012



**2013 RAIL REFORM**

AS PART OF THE PREPARATION FOR THE OPENING UP OF DOMESTIC PASSENGER TRANSPORT TO COMPETITION, THE AUTORITÉ MADE RECOMMENDATIONS TO THE GOVERNMENT SO THAT THE INDUSTRIAL INTEGRATION PROCESS UNDERLYING THE CREATION OF A NEW PUBLIC RAIL GROUP WOULD BE ACCOMPANIED BY STRONG GUARANTEES.

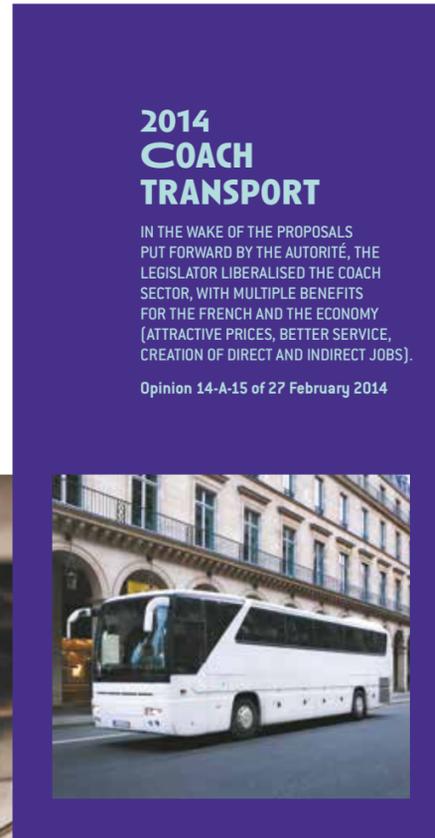
Opinion 13-A-14 of 4 October 2013



**2014 HIGHWAYS**

AFTER A REQUEST FOR AN OPINION BY THE FINANCE COMMITTEE OF THE NATIONAL ASSEMBLY (ASSEMBLÉE NATIONALE), THE AUTORITÉ MADE RECOMMENDATIONS TO FURTHER REGULATE THE SECTOR IN FAVOUR OF THE STATE AND USERS.

Opinion 14-A-13 of 17 September 2014



**2014 COACH TRANSPORT**

IN THE WAKE OF THE PROPOSALS PUT FORWARD BY THE AUTORITÉ, THE LEGISLATOR LIBERALISED THE COACH SECTOR, WITH MULTIPLE BENEFITS FOR THE FRENCH AND THE ECONOMY (ATTRACTIVE PRICES, BETTER SERVICE, CREATION OF DIRECT AND INDIRECT JOBS).

Opinion 14-A-15 of 27 February 2014



**2015 REGULATED LEGAL PROFESSIONS**

THE AUTORITÉ MADE 80 PROPOSALS TO MODERNISE THE REGULATED LEGAL PROFESSIONS. ITS OPINION LARGELY INSPIRED THE 2015 REFORM, WHICH IS UNPARALLELED IN THE WORLD. UNDER THE NEW FRAMEWORK, THE AUTORITÉ WAS GIVEN NEW REGULATORY POWERS.

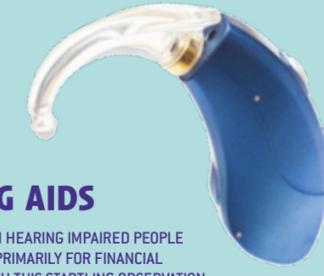
Opinion 15-A-02 of 9 January 2015



**2016 DRIVING LICENCES**

AFTER A REFERRAL BY THE GOVERNMENT, THE AUTORITÉ WELCOMED THE VARIOUS REFORMS, WHICH ARE AIMED AT GREATER ECONOMIC EFFICIENCY, BUT DREW ATTENTION TO THE NEED TO ENSURE GREATER EQUALITY OF OPPORTUNITY AMONG CANDIDATES FOR THE EXAMINATION AND IN COMPETITION AMONG DRIVING SCHOOLS.

Opinions 15-A-15, 16-A-04 and 16-A-07



**2016 HEARING AIDS**

IN FRANCE 1 MILLION HEARING IMPAIRED PEOPLE ARE NOT EQUIPPED, PRIMARILY FOR FINANCIAL REASONS. FACED WITH THIS STARTLING OBSERVATION, THE AUTORITÉ DECIDED TO PROPOSE WAYS FOR THE PUBLIC AUTHORITIES TO REMEDY IT, WHICH RECEIVED A FAVOURABLE RESPONSE.

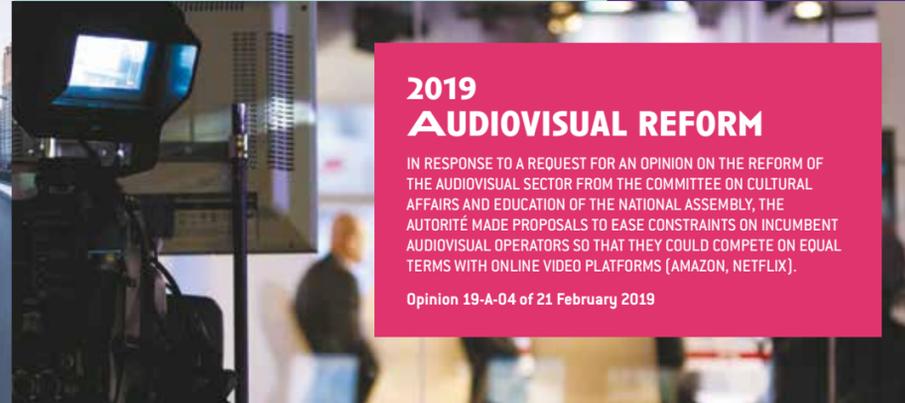
Opinion 16-A-24 of 14 December 2016



**2018 ONLINE ADVERTISING**

IN AN ONGOING PROCESS OF ANTICIPATING MARKET DEVELOPMENTS, THE AUTORITÉ CONDUCTED A SECTOR-SPECIFIC INQUIRY IN THIS AREA TO IDENTIFY NEW ISSUES, UNDERSTAND THE NEW ECOSYSTEMS AND IDENTIFY EMERGING ISSUES.

Opinion 18-A-03 of 6 March 2018



**2019 AUDIOVISUAL REFORM**

IN RESPONSE TO A REQUEST FOR AN OPINION ON THE REFORM OF THE AUDIOVISUAL SECTOR FROM THE COMMITTEE ON CULTURAL AFFAIRS AND EDUCATION OF THE NATIONAL ASSEMBLY, THE AUTORITÉ MADE PROPOSALS TO EASE CONSTRAINTS ON INCUMBENT AUDIOVISUAL OPERATORS SO THAT THEY COULD COMPETE ON EQUAL TERMS WITH ONLINE VIDEO PLATFORMS (AMAZON, NETFLIX).

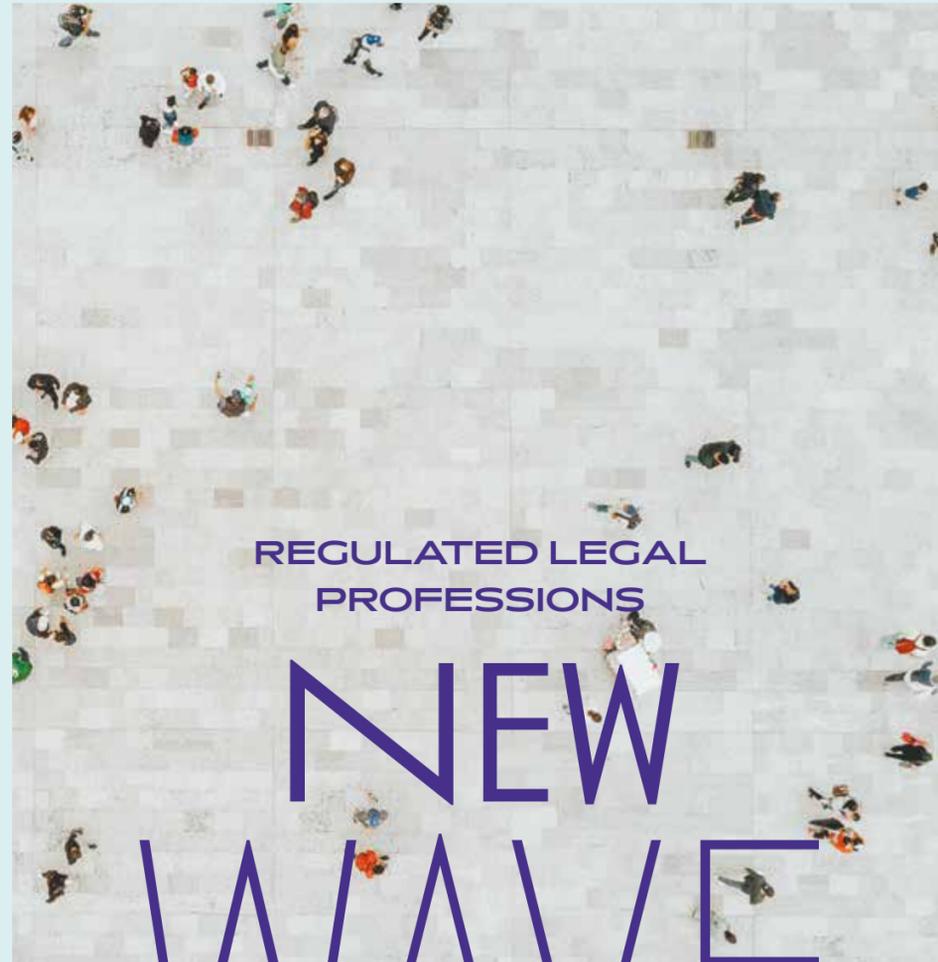
Opinion 19-A-04 of 21 February 2019



**2019 HEALTHCARE**

TO MAINTAIN THE HIGH LEVEL OF PROTECTION OF PUBLIC HEALTH AND ENABLE THE SECTOR TO COPE WITH THE PROFOUND CHANGES TAKING PLACE, THE AUTORITÉ MADE PROPOSALS TO SUPPORT THE MODERNISATION OF RETAIL PHARMACIES AND CHEMICAL PATHOLOGY LABORATORIES AND HELP THEM BENEFIT FROM ALL THE DEVELOPMENT OPPORTUNITIES AVAILABLE TO THEM.

Opinion 19-A-08 of 4 April 2019



REGULATED LEGAL  
PROFESSIONS

NEW  
WAVE

THE LAW OF 6 AUGUST 2015 GAVE THE AUTORITÉ NEW POWERS.  
IT IS RESPONSIBLE FOR INFORMING THE GOVERNMENT ON THE CONTROL  
OF REGULATED LEGAL PROFESSIONS, PARTICULARLY WITH REGARD  
TO DECISIONS CONCERNING FEES AND THE RATE AT WHICH NEW  
PROFESSIONALS ARE ESTABLISHED.

THIS REFORM, WHICH IS UNIQUE IN THE WORLD, IS BEGINNING  
TO BEAR FRUIT: IT HAS BROADENED ACCESS FOR THE YOUNGER  
GENERATIONS AND WOMEN, AND MODERNISED THE PROFESSIONS CONCERNED  
WITHOUT DESTABILISING EXISTING OFFICES.  
ASSESSMENT AND OVERVIEW OF THIS REFORM BASED ON  
A PROGRESSIVE AND REASONABLE EXPANSION.



## FURTHER EXPANSION OF THE NOTARIAL PROFESSION

### A very positive assessment of the first phase

The results of the first phase of expansion are very positive. Between 2016 and 2018, the number of offices increased by 30% (the number of private notaries by around 15%), i.e. more than 1,600 new professionals. While the number of offices had hardly changed in the last 10 years, creating a supply deficit in some areas, the gradual rebalancing of supply and demand desired by the legislator is well under way.

In addition to the quantitative aspect, the arrival of these new professionals in private practice has had a beneficial effect on the accessibility of notaries, providing clients with greater choice and shorter distances to travel. There are also new professional opportunities for qualified notaries who have hitherto practised as salaried notaries or assistants, and who can now have easier access to private practice. The reform has finally made it possible for more women and young people to join the profession. More than half of the new notaries appointed are women and the average age of the profession –now 47– has fallen by 2 years since 2016.

### New proposed map for 2018-2020

Following its usual practice, the Autorité carried out a broad public consultation to gather comments from concerned parties and received 843 contributions. In its opinion concerning 2018-2020, it made recommendations to maintain this momentum and achieve the desired balance by 2024 (installation of between 1,800 and 2,300 new notaries). The Autorité recommended the creation of additional offices for the installation of 700 new private notaries in 230 free installation areas out of a total of 306.

From a more qualitative standpoint, the Autorité offered several recommendations aimed at making implementation of the new map even more effective than the first one:

- provide for a transitional regime between the two maps to ensure that any appointments that remain are made, even if the previous map has expired;
- improve the appointment procedure in both the orange and green areas (where it recommended reforming the draw by making it electronic and limiting the number of applications per area and per individual);
- lower the barriers to entry faced by newly appointed notaries by relaxing communication rules and broadening the scope for discounts in fees;
- take up the specific situation of the notarial offices in the Bas-Rhin, Haut-Rhin and Moselle departments where the reform does not apply;
- continue to improve access for women and young people to offices by promoting the availability of statistics by gender, taking measures to facilitate the balance between the private and professional lives of notaries.

THIS NEW STAGE IN THE REFORM  
OF THE NOTARIAL PROFESSION  
SHOULD ENABLE FRENCH PEOPLE TO  
BENEFIT FROM THE SKILLS OF  
AROUND 11,000 PRIVATE NOTARIES IN  
AROUND 7,000 OFFICES BY 2020  
(I.E. AN INCREASE OF 53% COMPARED  
TO 1<sup>ST</sup> JANUARY 2016).

As in the previous phase, the government approved the proposals of the second phase, both in terms of zoning and the number of notaries to be appointed. The new order of 3 December 2018 recommends the creation of at least 479 offices and the appointment of 733 new notaries within the free settlement areas (i.e. an appointment target that exceeds the Autorité's recommendation of 700 appointments, due to taking into account the remainder of the 2016-2018 phase).

Opinion 18-A-08 of 31 July 2018



## CREATION OF NEW OFFICES FOR LAWYERS AT THE FRENCH ADMINISTRATIVE SUPREME COURT AND THE FRENCH SUPREME COURT

### Assessment: encouraging beginnings for the new offices and a start in modernising the profession

Without wishing to play down the difficulties involved in any company creation, the feedback from the recently appointed lawyers is positive overall. They made profits from the outset, achieving an average turnover per partner of €53,000 in the first six-month period of activity, i.e., an average profit of €27,000 (or €4,500 gross per month).

The French Administrative Supreme Court and Supreme Court Bar Association has taken on board the recommendations made by the Autorité in 2016, several of which have been implemented. It has thus relaxed the conditions for completing training (with the option of delaying one's studies at the end of each year); initiated a comprehensive publicity campaign targeting law students to draw attention to the profession; submitted a proposal to the Minister of Justice to create a board of directors of their training body that is independent from the Bar Association; and set up a transparency procedure for partnership and succession projects in existing law offices. The very positive developments will foster the modernisation of the legal profession at the French Administrative Supreme Court and French Supreme Court.

### New recommendations for 2018-2020

The Autorité noted in its latest opinion that the market remains highly concentrated around established offices, which capture a large part of institutional activity. It is more difficult for other participants to develop on the market, partly because of the obstacles to customer mobility, which are sometimes reinforced by professional rules that could evolve.

To improve the situation, the Autorité has made recommendations to facilitate the practice of this legal profession and to remove certain barriers. It has thus proposed a modification of the professional code of conduct which restricts the possibilities for lawyers in these courts to solicit a colleague's clients and take over a case without the latter's agreement. Finally, it recommended the creation of four additional offices during 2018-2020 in addition to the four offices already created over the previous two-year period. As a result of this process, the total number of offices will be increased to 68.

Opinion 18-A-11 of 25 October 2018

### Court bailiffs and judicial auctioneers: establishment in orange areas

The law provides that the Minister of Justice is the only competent authority to rule on requests for the creation of offices in the orange area. The Minister may refuse only after the Autorité has given its opinion. The refusal must be justified in light of the characteristics of the area (for example: demographic and economic situation, distribution and change of turnover and results achieved by existing offices).

In 2018, the Autorité issued 37 individual opinions on applications for the creation of offices in the orange area, including 29 regarding court bailiffs (including five

that were favourable, subject to conditions) and eight concerning judicial auctioneers (all unfavourable). In order to improve the predictability of its analyses, the Autorité previously adopted, in June 2018, a "framework opinion" for each of the professions.

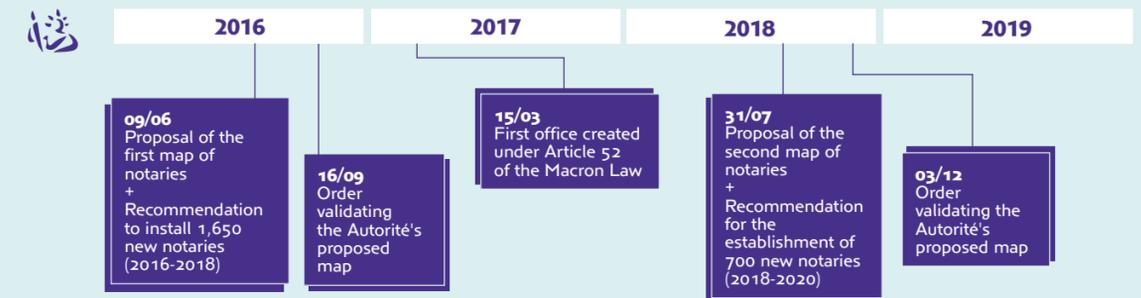
Framework Opinion 18-AH-001 of 18 June 2018 regarding requests for the creation of an office of court bailiff in controlled establishment areas.

Framework Opinion 18-CP-001 of 18 June 2018 regarding requests for the establishment of an office of judicial auctioneer in controlled establishment areas.

# MAIN STEPS

## IN THE ESTABLISHMENT OF NEW PROFESSIONALS

### NOTARIES



### LAWYERS AT THE FRENCH ADMINISTRATIVE SUPREME COURT AND FRENCH SUPREME COURT



### COURT BAILIFFS



### JUDICIAL AUCTIONEERS





# CHILD DISORDER WELL-BEING MINI-NATION CONNECTION

## 10 YEARS ANNIVERSARY

**THE AUTORITÉ CELEBRATED ITS 10TH ANNIVERSARY ON 5 MARCH 2019 ON AN EXCEPTIONAL DAY AT THE PALAIS BRONGNIART IN PARIS, WITH NEARLY 600 PEOPLE (INSTITUTIONS, FOREIGN COMPETITION AUTHORITIES, COMPANIES, LAWYERS, CONSUMER ASSOCIATIONS, ACADEMICS, JOURNALISTS, ETC.). A LOOK BACK AT THIS EVENT, WHICH WAS THE OCCASION FOR US TO REVIEW 10 YEARS OF ACTION AND LIST THE CHALLENGES OF THE COMING DECADE.**



Held under the patronage of the French President, the debates were organised around five round tables.

### The Autorité as a promoter of structural reforms

The Autorité, through its advisory role, increasingly plays a role in promoting structural reforms: two emblematic reforms covering coach transport and the regulated legal professions were put into perspective by Cécile Untermaier, Member of Parliament for the *département* Saône-et-Loire and Special Rapporteur on the regulated legal professions of the Law for Growth, Activity and Equal Economic Opportunities, and by Anne Yvrande-Billon, Vice-President of the rail and roads regulator, ARAFER.

### The Autorité confronts new challenges to competition policy

Competition policy faces new challenges: breakthroughs from digital technology, the growing power of internet platforms and international trade issues. Two key observers, Jean Tirole, Nobel Memorial Prize laureate in Economics, and Pascal Lamy, former Director General of the WTO and former Head of Cabinet of the President of the European Commission, gave their views.

### Focus on competition in telecoms

The telecoms sector is a prime example of a successful embrace of competition. The managers of the four main operators,

Stéphane Richard for Orange, Maxime Lombardini for Free, Alain Weill for SFR and Olivier Roussat, for Bouygues Telecom, gave their visions on this revolution in the presence of Alain Bazot, President of the consumer association UFC-Que Choisir.

### The results of 10 years of merger control

Didier Théophile, President of the Association of Lawyers Practising Competition Law, and Patrick Martin, Deputy President of Medef, the French Business Confederation, reviewed 10 years of merger control. On this occasion, Thierry Breton, Chairman and CEO of ATOS and former Minister of Economy, gave the point of view of a company active in the high-tech sector on mergers and acquisitions policy and presented his thoughts on how a company manager must take into account competition in his development strategy.

### Dynamism of European and international cooperation

The day ended with a resolutely European and international look at future areas of cooperation in the field of competition: bilateral cooperation, with the President of the German competition authority, Andreas Mundt; European policy, in the presence of the Director General for Competition of the European Commission, Johannes Laitenberger; and finally international cooperation with the head of international cooperation for the US Department of Justice's Antitrust Division, Roger Alford.

Watch the video of the entire day on [YouTube](#).



## A DAY MARKED BY ADVANCES FOR COMPETITION

In his speech, Prime Minister Édouard Philippe stressed the importance of the competition policy pursued over the past 10 years and announced strong measures to further boost competition in several areas. The twofold objective is to make certain sectors more competitive and to restore purchasing power to consumers.



**“FOR COMPANIES, YOU ARE THUS THE GUARANTORS OF A FORM OF ‘EQUAL ECONOMIC OPPORTUNITY’. FOR CONSUMERS, YOU ARE THE ‘WATCHDOG FOR PURCHASING POWER.’”**

Édouard Philippe, Prime Minister, Palais Brongniart, 5 March 2019

### AUTO REPAIR

The Prime Minister announced that the government would take measures under the Mobility Orientation Law to “significantly reduce the price” of spare parts, such as mirrors, headlights and glazing. These measures are directly inspired by the Autorité’s opinion of 2012, in which it recommended a supervised

end to the manufacturers’ monopoly on visible spare parts. The objective of all these measures is to save households money while reinvigorating “industry subcontractors,” the Prime Minister said.

### DRIVING LICENCES

The Prime Minister announced the introduction of an online driver’s licence comparator in order to be able to make an “informed choice among offers”.

### HOUSING

The Prime Minister indicated that competitive bidding at the end of the contract between co-owners and their managing agent would be made more efficient by increasing information provided to co-owners and making contracts easier to transfer. A requirement to submit standard contracts to facilitate comparisons would also be imposed.

### ONLINE SALE OF MEDICINAL PRODUCTS

While only 1% of drug sales occur online in France compared to 14% in Germany, Édouard Philippe announced the lifting of several restrictions on this new distribution method, such as a ban on pharmacies forming a group or the obligation to locate the storage location of medicinal products in the immediate vicinity of the pharmacy. These measures are in line with recommendations made by the Autorité in 2013, 2016 and 2019.

The Prime Minister stressed that competition is one of the best tools that has been found to foster innovation, improve quality and lower prices.

Source: [www.gouvernement.fr](http://www.gouvernement.fr)

THE GAZE OF THE MEDIA



# ADVOCACY, DIALOGUE AND PREVENTION

FOR SEVERAL YEARS NOW, THE AUTORITÉ HAS UNDERTAKEN A NUMBER OF ACTIONS AIMED AT DEVELOPING A COMPETITION CULTURE IN FRANCE. THIS IS BUILT NOT ONLY BY MEDIA COVERAGE OF ITS ACTIONS BUT ALSO BY THE DEVELOPMENT OF INCREASINGLY DIGITAL PUBLICITY. IT ALSO INVOLVES MORE TECHNICAL EDUCATION FOR PRACTITIONERS AND THEORISTS OF COMPETITION LAW. REVIEW OF DETAILS OF THE VARIOUS ACTIONS.

## MEDIA COVERAGE OF THE AUTORITÉ'S ACTIONS

### Media coverage of decisions and opinions

In 10 years, the Autorité has issued nearly 600 press releases and has regular exchanges with the various media to explain the context and scope of its decisions. Its coverage in the media contributes to raising awareness of competition law among companies and consumers and promotes prevention and deterrence.

In 2018, the Autorité issued 75 press releases.



Videos looking back at 10 years of actions to fight anticompetitive practices, control mergers and advise are available on YouTube.

### The development of digital communication

The Autorité actively communicates on social networks (Twitter, LinkedIn and YouTube) and is increasingly developing content specific to these new media (computer graphics, motion design, videos).

From January to December 2018, there were:

- 276 tweets published on Twitter and 890 followers for a 25% increase and a total of 4,407 followers;
- 86 posts published on LinkedIn and 3,078 additional accounts following the page for an increase of more than 76% and a total of 7,111 subscribers.

The Autorité is also preparing to revamp its institutional website, which will now offer, in addition to access to case law, content for the general public and educational materials.

## DEBATES ON COMPETITION

### “Les Rendez-vous de l’Autorité”

In 10 years, the Autorité has organised 16 conferences as part of the series “Les Rendez-vous de l’Autorité”. These events are an opportunity to focus on current topics (gun jumping, Internet giants, algorithms), to hear specialists and economic stakeholders on draft guidelines (settlements, merger control, leniency, no contest of objections procedure, fines) or on the functioning of economic sectors (digital technology, mass retail distribution, medicinal products, healthcare, online gambling). Such events give rise to exciting and constructive discussions between the Autorité and stakeholders (companies, judges, lawyers, academics and foreign competition authorities).



### Settlement procedure

In 2018, the Autorité organised a Rendez-vous on the settlement procedure. This event allowed stakeholders to exchange their views and experiences on settlements and thus contribute to the notice on the settlement procedure. This meeting also made it possible to compare French and European practice in settlement procedure and the consequences of the growth in actions for damages.

*All these debates are available on video on the website of the Autorité de la concurrence.*



### @Echelle

In early 2019, the Autorité launched a new event, @Echelle. The aim of the new format is to decipher the new challenges of competition law in the light of technological innovations and new commercial and industrial practices and to address the ongoing debates on adapting competition policy to these new realities.

### Blockchain

The first edition was devoted to blockchain (11 April 2019). This event, in the presence of MP Laure de la Raudière and Professor Thibault Schrepel, provided a better understanding of this new technology and its uses (for example, product traceability, food safety and diploma certification). Its

impact on competition law was also discussed from the point of view of the specific exclusionary practices of new forms of cartels (linked in particular to “smart contracts”) which blockchains can generate.

*Mini-interviews of the speakers are available on the Autorité’s YouTube channel.*

### Nasse seminar

With the Directorate General for Treasury, the Autorité is also organising the Philippe Nasse seminars (in honour of the former Vice-President of the *Conseil de la concurrence*), which take place three times a year at the Ministry of the Economy and

Finance. The proposed format consists of comparing the points of view of an economist and a lawyer on a competition-related subject. A representative of the Autorité is among the speakers. In 2018, three seminars were held on:

- selective distribution: recent developments and application to the luxury sector;
- new competitive issues in the banking and insurance sectors;
- conglomerate mergers.

*The reports of the debates are available on the website of the Directorate General for Treasury.*

## PUBLICATIONS

### “Les Essentiels” collection



The Autorité has launched a series of thematic studies to enable everyone to better understand competition issues. This course is aimed at competition law practitioners, economic stakeholders, professors and students in business law, economic law and competition law. This collection is intended to be primarily educational, and serve as a compliance tool for companies, which can access the Autorité’s perspective on the most sensitive subjects. The subjects are either cross-disciplinary, concerning a legal, economic and procedural concepts, or sector-specific. The objective is to summarise the Autorité’s decision-making practice and the case law of the French and European courts of review so that the reader can take a closer look at the issues of the subject under discussion. The first issue was devoted to loyalty rebates. It won the prize in the “best soft law” category at the Antitrust Writing Awards 2019 organised by Concurrences. The document can be ordered in hard copy from La Documentation Française; it is also

available free of charge in digital format on the Autorité de la concurrence’s website.

Future issues will focus on behavioural commitments (in 2019) and professional associations bodies (in 2020).

### Anniversary brochure

On the occasion of its 10<sup>th</sup> anniversary, the Autorité is offering an overview of its actions through a selection of dossiers: 10 anticompetitive practices, 10 merger control cases and 10 sector-specific opinions or investigations that have left their mark on the economic and daily life of the French.



*The brochure is available on the website of the Autorité de la concurrence.*

### Annual summary

Each year, the Autorité draws up an overview of its actions through an imaginative and accessible summary: an opportunity to discover, from a very concrete angle, the variety of subjects in which it is interested and to review the decisions that have marked the various economic sectors over the past year.



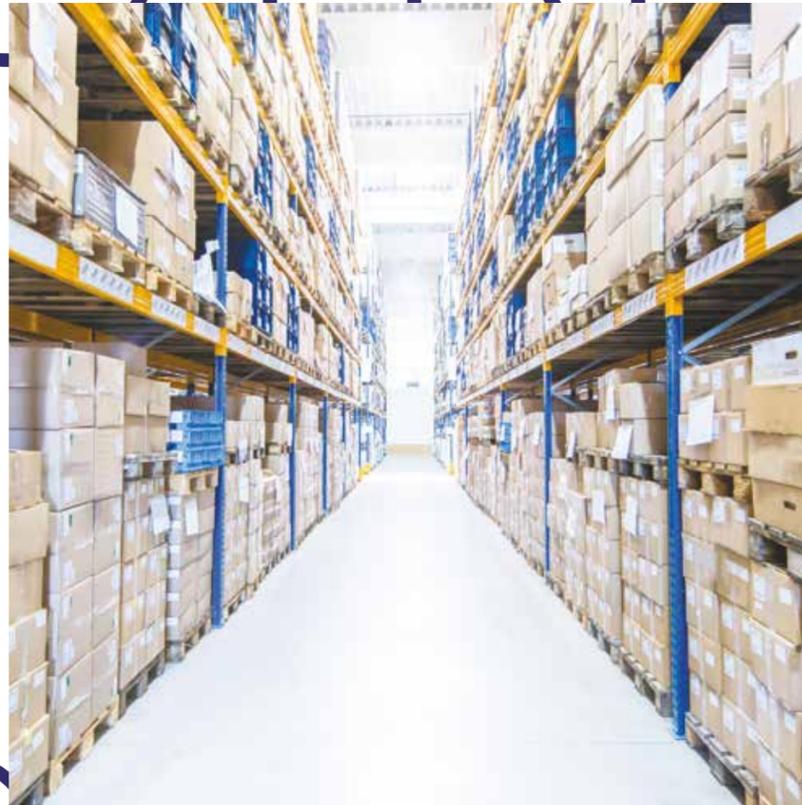
*The summaries are available on the website of the Autorité de la concurrence.*

**TRANSFORMATION**



**ITION**

DISTR



DISTRIBUTION

Purchases of housewares by the French (excluding DIY and furniture) amounted to €27.3 billion in 2017. This is a major item of expenditure for households, in which household appliances constitute a large share. In December 2018, the Autorité fined six major manufacturers €189 million for agreeing on price increases for all their white goods. Review of the largest fine imposed in 2018.

## HOUSEHOLD APPLIANCES

FINING  
A MAJOR CARTELSome of the largest  
manufacturers in the sector

Using evidence both provided by the DGCCRF and gathered during dawn raids by the Autorité at the headquarters of companies (e-mails, handwritten notes, slideshows, documents), the Autorité found and dismantled a major cartel. It has handed out fines to six household appliance manufacturers, including the most important in the sector - BSH (Bosch, Siemens, etc.), Candy Hoover, Electrolux, Indesit, Whirlpool and Eberhardt Frères (Liebherr) - for having consulted twice during secret meetings, between 2006 and 2009, on increases in recommended retail prices.

The Autorité also fined a second agreement (involving the same manufacturers except Electrolux) concerning the commercial conditions applied to kitchen installers, the aim of which was to reduce the cost of exhibition contracts.

## Jointly agreed "price rules"

It is common practice in this sector for manufacturers to provide their distributors with "recommended retail prices" for retail sales.

These indications correspond to the "price positioning" they recommend for the sale of their products to consumers. These prices, which are most often located at psychological "threshold price points", i.e. just below round figures (such as €499 for a washing machine, for example), are particularly sensitive for the most popular products, including entry-level ones, since the quantities sold can be very large.

Between September 2006 and January 2007, and between late May 2008 and April 2009, the manufacturers met several times to discuss the increases and to establish "price rules".



For example, in 2008, the commonly agreed rule was as follows:

- €20 increase for products sold for less than €200;
- €30 increase for products sold between €200 and €400;
- €50 increase for products sold at more than €400.



**Impact on distributors and consumers**

With joint fixing of recommended retail prices, manufacturers mechanically increased the wholesale prices charged to distributors and potentially impacted final prices charged to consumers. Given the market shares of the cartel participants (70% in 2012) and the well-known brands, the cartel involved a very high proportion of the market. While the bargaining power of distributors and the rise of Asian competitors (Samsung, LG) may have mitigated the effects of the cartel, the fact remains that these practices may have curbed the overall downward trend in prevailing prices in the sector.

In calculating the fines, the Autorité took into account the above as well as

**€189 M**

The amount of the fine handed out by the Autorité on six major companies in the household appliance sector involved in the cartel.

the requests for settlements submitted by all the parties involved in the cartel. By not contesting the facts, the companies were granted a substantial reduction in fines. BSH, which also sought to benefit from the leniency procedure, was granted an additional reduction in its fine for its active cooperation in the investigation, in particular by providing additional evidence which enabled the Autorité to fine specific practices.

Decision 18-D-24 of 5 December 2018

**Secret meetings**

As in many cartel cases, secret meetings were held regularly.

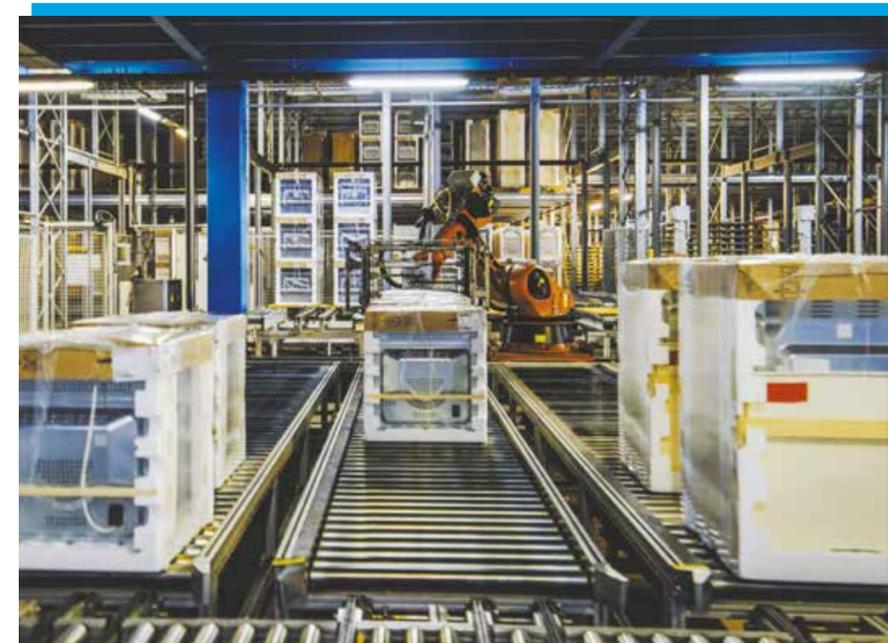
In this instance, discussions were held in the sidelines of official meetings of the trade association, GIFAM, or in restaurants (such as Ladurée or Corona Impérial) close to the trade association's headquarters in Paris.

In practice, the consultation on price increases took place in three stages. First, the managers defined the outlines of the price increases before the marketing managers then discussed their implementation in the various product categories ("cold", "washing", "dishwasher" and "cooking").

Finally, the managers met again to finalise the terms of the price increase and thus ensure better monitoring. In parallel with these secret meetings, manufacturers supplemented their discussions with telephone conversations.

**Many well-known brands concerned**

The cartel concerned basic household equipment: refrigerators, freezers, washing machines, tumble dryers, dishwashers, cooking hobs, cookers, ovens, whether built-in or free-standing, sold in specialised superstores, convenience stores, food superstores, remote sales or through kitchen installers. It reached a high proportion of the market (nearly 70%) and concerned brands that are well known to the general public such as Bosch, Siemens, Viva, Neff, Candy, Hoover, Rosières, Liebherr, Electrolux, Arthur Martin, AEG, Indesit, Ariston, Scholtès and Whirlpool.



The Autorité conditioned its green light on Cofigeo's takeover of the "ready meals" division of the Agripole group on sales aimed at avoiding an increase in prices for consumers. Using his power to take up a case and giving the reason of general interest of maintaining employment, the Minister of the Economy decided to clear the purchase without conditions.

## ACQUISITION OF WILLIAM SAURIN BY COFIGEO

## A SENSITIVE OPERATION



### Background

After having already given a decision in 2017 on the takeover of the "cooked meats" division as part of the dismantling of Financière Turenne Lafayette, the Autorité was asked in 2018 to clear the acquisition of Agripole's canned ready meals business by Cofigeo, owner of the Raynal & Roquelaure and Zapetti brands, among others.

### Sales deemed necessary to preserve competition

After a detailed examination, the Autorité considered that, in the absence of remedies, the new entity would become the undisputed leader in most markets for the preparation of canned ready

meals with a market share of more than 80% for Italian ready meals (ravioli and cannelloni) and more than 70% for exotic ready meals (couscous, chili con carne).

In addition, the Autorité noted that Cofigeo would concentrate all the well-known brands in the sector after the transaction: William Saurin, Panzani, Garbit, Raynal & Roquelaure and Zapetti. The creation of this quasi-monopoly was therefore likely to lead to a deterioration of competition and ultimately to price increases for consumers.

In order to clear the transaction with conditions to ensure sufficient competition to be maintained for consumers, the Autorité asked Cofigeo to sell its Zapetti brand and a production

# 80%

This is the share that the newly created entity could have obtained in certain markets.

site to another operator. The objective was to enable a competitor to quickly provide a credible alternative and thus avoid significant price increases on products purchased daily by the French population, particularly low-income families.

As Cofigeo did not propose any appropriate remedies, the Autorité decided to clear the transaction by imposing the requested sales, rather than blocking it altogether.

### The Minister's intervention

In response to Cofigeo's request, the Minister of the Economy decided, as provided by the law, to use for the first time his power to take up a case, which gives him the possibility "to rule on the transaction in question for reasons of general interest other than maintaining competition and, where appropriate, to compensate for the infringement caused to the latter by the transaction." After examining the case, he validated the acquisition without imposing any asset sales, considering that the economic consequences of the sales would have entailed a significant risk to employment.

Decision 18-DCC-95 of 14 June 2018

A company that makes commitments as part of a merger must meet them, or face the possibility of fines. The Autorité thus imposed a penalty of €20 million on Fnac/Darty for failing to fulfil its commitment to sell three stores, which was a condition for its clearance of the transaction. It also required the sale of two other stores to replace the unsold assets.



## ACQUISITION OF DARTY BY FNAC

## FINE FOR NON-COMPLIANCE WITH COMMITMENT TO SELL

### Conditional clearance for acquisition

In 2016, the Autorité had made clearance of Fnac's acquisition of Darty conditional on the sale of six stores located in Paris and the Paris region: one Fnac store and five Darty stores. The purpose of these sales was to maintain satisfactory competitive pressure on the markets for the retail sale of brown goods (televisions, hi-fi and audio equipment, etc.) and grey goods (personal computers, monitors, peripherals, telephony).

### Of the six stores, three were not sold by the agreed deadline

The Autorité found that Fnac/Darty had failed to fulfil its divestiture commitments. It provided no sales contract or buyer for the Fnac store.

The buyer presented to acquire two of the Darty stores was not approved because it did not have all the characteristics required to compete effectively with the new entity.

### Fnac/Darty has affected competition and limited consumer choice

The company's compliance with all of its commitments is paramount: being met, with only half of the commitments, the general balance of the decision is impaired insofar as the restoration of competition has been prevented in several catchment areas, thus depriving consumers of alternatives.

While the Autorité took into account in determining the fine the efforts made by Fnac/Darty at the start of the commitment period to sell the first three

stores, it considered that, faced with difficulties in finding a buyer for the other three stores, it was the responsibility of Fnac/Darty to take all appropriate measures to meet its commitments, including requesting the Autorité to replace the stores it could not sell with other stores.

The Autorité imposed a fine of €20 million on Fnac/Darty and required it to sell two other Darty stores in place of those not sold.

This is the first time that the Autorité has fined a company for non-compliance with the structural commitments that condition a merger.

Decision 18-D-16 of 27 July 2018

The Autorité cleared the acquisition of Jardiland by the InVivo group, which operates the Gamm Vert and Delbard retail chains, among others. However, in view of the risk of price increases in certain catchment areas, it cleared the transaction subject to the merged entity divesting itself of 11 stores.

## GARDENING EQUIPMENT

## ACQUISITION OF JARDILAND BY INVIVO GROUP



### Competition problems in several catchment areas

The Autorité considered that the transaction raised serious issues that competition would be affected in several local catchment areas. At the close of the transaction, InVivo would have held very large market shares, in excess of 60%, in several areas in various regions. In each of these areas, the takeover of company-owned Jardiland or franchise Esprit Jardiland stores was likely to lead to price increases or a deterioration in the diversity and quality of products and services, as the transaction would result

in the loss of a competitor. Consumers were likely to be deprived of an alternative, since competitors in these areas were unlikely to exert sufficient competitive pressure on the new entity.

### Changes of retailer to protect consumers from a price increase

The Autorité decided to clear the transaction, subject to the commitment to divest six outlets and terminate five franchise agreements in favour of one or more competing chains. Once approved by the Autorité, these buyers will make it

**60%**  
These are the market shares that InVivo would have held in certain catchment areas.

possible to maintain competition in the areas concerned and guarantee consumers a wide variety of gardening, DIY, outdoor and pet store products.

Decision 18-DCC-148 of 24 August 2018

The Autorité imposed a fine of €7 million on Stihl, one of the largest manufacturers of agricultural machinery, for preventing its authorised distributors from selling its products online. This decision provides an opportunity to clarify the framework applicable to selective distribution on the Internet for various sectors and products.



## RESTRICTION OF ONLINE SALES

## LIMITS NOT TO CROSS

### The choice of a network of authorised resellers

The Autorité has reaffirmed that a manufacturer is entitled to reserve the sale of its products to a network of specialised resellers for legitimate requirements such as the sale of high quality or technical products. This is "selective distribution" and Stihl may have recourse to it for its products - chainsaws, brush cutters, pruners, and battery pruners - which require organising assistance and advisory services to ensure their proper use and ensure user safety.

**€7 million fine**

### Be careful not to restrict competition disproportionately

The Autorité considered it excessive that Stihl should require hand delivery of its products. By requiring either in-store pick-up or personal delivery to the buyer's home, Stihl has de facto prohibited the sale of its products through its distributors' websites.

The Autorité considered that this prohibition went beyond what is necessary to protect the health of the consumer and therefore constituted a restriction of competition. Moreover, it was not required by the regulations governing the marketing of the products concerned, nor was it applied by Stihl's competitors or DIY superstores.

### Less competition harms consumers

By imposing hand delivery, Stihl has removed any value in online sales for distributors and consumers, who have therefore been unable to take full advantage of competition and benefit from more attractive prices (up to 10% lower).

Consequently, the Autorité imposed a penalty of €7 million on Stihl and ordered it to amend its selective distribution contracts to make it clear that authorised distributors have the possibility to sell all Stihl products online, without requiring personal delivery to the buyer.

Decision 18-D-23 of 24 October 2018

The Autorité conditionally cleared the acquisition of sole control of the Marie Brizard Wine & Spirits group (MBWS) by Compagnie Financière Européenne de Prises de Participation (Cofepp), of which it was already the main minority shareholder. In order to ensure a competitive structure in the port and tequila markets, the purchaser must sell its Pitters and Tiscasz brands to one or more competitors.

## WINES AND SPIRITS

## ACQUISITION OF MARIE BRIZARD BY COFEPP



sales, which are intended to ensure a range of choices in terms of spirits and prices for both large retailers and consumers.

### No problems identified in the vodka and whiskey markets

The Autorité considered that the transaction was not likely to raise competition concerns in the vodka and whiskey markets given the existence of alternatives for consumers. The new entity would continue to face competition in each of these markets from the mass retail sector, through its private labels, and from several global players, such as Diageo (Smirnoff), William Grant & Sons (Zubrowka Biala, Grant's), Bacardi Martini (Eristoff, William Lawson's) and Pernod Ricard (Long John).

In addition, the Autorité noted that these competitors had dynamic business strategies that discouraged the new entity from increasing its prices and that large retailers had significant countervailing power that could offset the new entity's significant positions.

Decision 19-DCC-36 of 28 February 2019

### mandatory sales of brands

### Divestitures to prevent the creation of quasi-monopolies in the tequila and port markets

The Autorité considered that the transaction could lead to quasi-monopolistic positions of Cofepp on the markets for the production of tequila and port. In order to address any risk of competition being affected, Cofepp has submitted structural commitments in each of these markets: the sale of the Pitters port and the Tiscasz tequila brands.

The transaction was therefore cleared subject to the implementation of these

### Many brands involved in the transaction

Cofepp heads a group of companies, including La Martiniquaise and Bardinet, active in the production and marketing of alcoholic beverages. It distributes many well-known brands such as Poliakov (vodka), Label 5 and Sir Edward's (whiskey), Cruz (port), Gibson's (gin), Tiscasz and Jose Cuervo (tequila) as well as Saint James and Old Nick (rum).

MBWS, which is also active in the spirits market, owns the Marie Brizard (liquor), Maison Gautier (brandy), San José (tequila), William Peel (whiskey) and Sobieski (vodka) brands.

### RAISING THE THRESHOLD OF BAN OF BELOW-COST SELLING AND LIMITING PROMOTIONS FOR FOOD PRODUCTS

## A VERY CONDITIONAL OPINION FROM THE AUTORITÉ

### Inflationary risks of the provision

Asked for its opinion on the draft ordinance, the Autorité expressed strong reservations about raising the threshold of ban of below-cost selling, considering that the change could have an inflationary effect of €600 million to €4.5 billion over two years and represent an additional cost of €10 to €78 annually for every household.

The Autorité also noted that the desired improvement in the situation of suppliers was not assured and that in any event it would be on a smaller scale than the increase in prices borne by consumers.

Finally, the Autorité expressed its reservations on limiting promotions for food products. This regulation, which prohibits promotions exceeding 34% of the price of a product, limits competition for suppliers and distributors with the risk of raising selling prices for consumers. In addition, regulating volumes (promotions limited to 25% of volumes purchased) could weaken struggling suppliers, who currently use many promotions, with a risk of repercussions on farmers.

### Alternative proposals

In order to rebalance trade relationships, the Autorité submitted alternative proposals to the government. In particular, it stressed the usefulness of seeking better implementation of the system of fines for restrictive business practices. It also recalled the benefits of contracting, which it promoted in several of its opinions, and indicated that price change index could be used in trade negotiations.

For farmers in particular, the Autorité noted again that it favours increasing the size of producer organisations and associations of producer organisations as well as upselling by interbranch associations.

Opinion 18-A-14 of 23 November 2018



# HEALTH



# CARE

Given the importance of the healthcare sector in the national economy and its tendency to evolve quickly, the Autorité takes a regular interest in it. After several months of investigation and a wide-ranging public consultation (1,600 pharmacists), the Autorité issued the conclusions of its sector-specific inquiry on the distribution of medicinal products and chemical pathology laboratories. It made a number of proposals to consolidate the pharmaceutical profession and looked at the situation of wholesale redistributors and chemical pathology laboratories.

## INQUIRY INTO THE HEALTHCARE SECTOR

# RECOMMENDATIONS TO STRENGTHEN THE PHARMACEUTICAL PROFESSION

### Develop the pharmacist's new missions

Ten years ago, the law "Hôpital, Patients, Santé et Territoires" (*"Hospital, Patients, Health and Territories"*) of 2009 gave pharmacists new missions. However, these provisions have for the most part gone unheeded due to lack of support. The Autorité identified a number of bottlenecks even though these missions correspond to clearly identified needs, such as promoting better treatment or developing new telediagnosis services.

While these missions are slowly becoming a reality with the successful testing of influenza vaccination in pharmacies, the Autorité encourages public authorities to provide the necessary framework for their practical implementation (pricing of services, adoption of specific measures, etc.). It was also in favour of pursuing the discussion on adding further missions, which could enable pharmacies

to move towards a "clinical pharmacy" role, such as:

- screening for non-communicable or infectious diseases;
- supervised delivery of certain medicinal products requiring a medical prescription for minor pathologies in emergency situations.

### Diversifying, in a limited way, funding possibilities for pharmacies

The strengthening of the retail pharmacy model and the development of the pharmacist's new missions (telemedicine, telediagnosis) require access to appropriate sources of funding. For this reason, the Autorité considers that France, like other European countries, could explore the possibility of a controlled opening of the capital of pharmacies, while imposing guarantees for strict respect for the professional independence of pharmacists.

In its opinion, the Autorité identifies several scenarios for gradual regulatory developments, with a range of guarantees.





### Enable French pharmacies to finally develop their online sales of medicinal products

Although online sales have been authorised in France since the end of 2012, its very restrictive framework prevents pharmacies – the only ones entitled to open a website – from developing or competing effectively with their European counterparts: only 1% of over-the-counter medicinal products are sold online in France, compared to 14% in Germany, for example.

Competing French-language websites, particularly in Belgium, are taking advantage of these restrictions to develop relationships with French patients. The websites of French pharmacies are held back by multiple constraints, which the protection of public health, a wholly legitimate objective, does not always justify.

The Autorité invited public authorities to ease the regulations and proposed:

- allowing pharmacies to use storage facilities further away from the pharmacy if necessary so that they have the space and logistical resources

necessary for the efficient and profitable development of this activity;

- allowing pharmacists to group, if they so wish, their online sales through a common site, which will enable more pharmacies to access this business and provide possible gains in efficiency;
- reconsidering the calculation for required hiring of assistant pharmacists so that it is based solely on the criterion of medicinal product sales made by the pharmacy, excluding sales of other product categories (health and beauty, hygiene, cosmetics).

### Enable pharmacists to communicate on their health and beauty and service offering

As medicinal products are unlike any other consumer products, they are subject to special advertising rules designed to preserve public health. All advertising for prescription-only medicines is therefore prohibited and advertising for over-the-counter medicinal products is regulated. The Autorité does not propose any changes to these rules, which are clearly justified.

## THE SALE OF OVER-THE-COUNTER MEDICINAL PRODUCTS IN SUPERMARKETS COULD REDUCE PRICES BY 15%.

The rules to which pharmacies are subject for advertising on health and beauty products are much more restrictive than those imposed on their competitors, including mass retail distributors, without any public healthcare reason justifying such a limitation. In addition, certain broad and imprecise ethical provisions often lead, in practice, to prohibit pharmacists from using any form of advertising, including when it does not concern medicinal products but cosmetic or health and beauty products.

The Autorité therefore made several proposals for the revision of the regulations with a twofold objective:

- make it easier to advertise health and beauty and cosmetic products;
- allow pharmacies to better promote the services they offer to patients.

### Partially ease the pharmaceutical monopoly while maintaining strict regulations

The *Code de la santé publique* (French Public Health Code) reserves the sale of medicinal products only to pharmacists (pharmaceutical monopoly) but also only to pharmacies (pharmacopoeial monopoly). Without calling into question the fully justified pharmaceutical monopoly, the Autorité proposes to open, in a partial and supervised manner, the sale of medicinal products outside pharmacies (supermarkets, health and beauty stores) but always under the authority of a pharmacist. Diversifying the locations for the distribution of medicinal products would make them more accessible and encourage greater price competition, thus benefiting the patient's purchasing power.

Only a limited number of products would be concerned:

- over-the-counter medicinal products (treatment of sore throats, colds, superficial wounds, etc.);
- *in vitro* diagnostic medical devices (HIV self-tests, blood glucose meters, cholesterol tests, Lyme disease diagnostic tests, etc.);
- certain medicinal plants (listed in the pharmacopoeia) and certain essential oils.

It would be required that a qualified, registered pharmacist be responsible for the delivery of these medicinal and other products in a dedicated area with a separate cash register. The professional independence of the pharmacist, present throughout operating hours, would be assured by additional requirements (no sales targets and implementation of a co-responsibility scheme for the company manager and the salaried pharmacist).

Opinion 19-A-08 of 4 April 2019

### Other recommendations

#### WHOLESALE REDISTRIBUTORS

The Autorité also studied the situation of wholesale redistributors and noted that their economic model is weakening. It invited public authorities to review their remuneration conditions, which are now based solely on the price of medicinal products, in order to bring them into line with their public service obligations.

#### CHEMICAL PATHOLOGY LABORATORIES

The Autorité also made proposals with regard to chemical pathology laboratories to enable them to modernise (revision of the rules on capital ownership and territorial network).



The Autorité fined Sanicorse nearly €200,000 for benefiting from its monopoly position by abruptly and significantly increasing the fees it charges to hospitals and clinics in Corsica region for handling infectious medical waste.

## DISPOSAL OF WASTE FROM HOSPITALS AND CLINICS IN CORSICA

## FINING OF ABUSIVE PRICE INCREASES



### Sanicorse, a monopoly in Corsica

Healthcare facilities are required by the *Code de la santé publique* (French Public Health Code) to process and dispose of their infectious medical waste according to stringent conditions and deadlines. To do this, they must use specialised service providers such as Sanicorse, which is the only company authorised to provide this type of service in Corsica region.

### Excessive and abusive price increases imposed on healthcare facilities

Following a report from the DGCCRF, the Autorité was able to establish that Sanicorse had abused its dominant position from 2011 to 2015. It took advantage of its monopoly and sought to deter the entry of competitors by increasing its fees abruptly, significantly, in an unjustified manner and over the long term.

The average rate increased by approximately 88% between 2010 and 2012. This general increase was accompanied by even more substantial individual increases, such as 194% in 2011 for the Castelluccio Hospital Centre and by 135% in 2012 for the Polyclinic of South Corsica.

These fee increases occurred while Sanicorse was threatening to terminate contracts or refraining from bidding on tenders issued. The Autorité noted that the strategy of significant price increases reflected Sanicorse's intention to discourage healthcare institutions from developing alternative solutions for the treatment of their infectious waste. With no alternative solution, the healthcare facilities were "taken hostage", in the words of the Polyclinic of South Corsica, and ultimately obliged to conclude mutual agreements at the rates set by Sanicorse.

These increases, which were mainly based on the increase in its costs and investments, could not be objectively justified by any of the circumstances put forward by Sanicorse.

### Practices that generated additional costs for hospitals and clinics in Corsica

These abusive practices generated an unjustified additional cost for healthcare facilities, which had no choice but to accept the conditions imposed by Sanicorse. This additional cost had all the more impact since some hospitals in Corsica are in serious financial difficulty, as the *Cour des comptes* (Court of Auditors) pointed out, and these funds could have been used to improve the quality of the public and private health service.

Decision 18-D-17 of 20 September 2018

### Unfair and excessive prices

Under both French and European competition law, companies in a dominant position can be fined when they abuse this position by imposing unfair selling prices in what is known as "exploitative abuse". In the present case, Sanicorse took advantage of its monopoly position in the market to impose abusive price increases on its captive customers.

On the basis of an investigation report sent by the DGCCRF, the Autorité fined the wholesale distributors of veterinary medicinal products (Alcyon, Coveto, Centravet, Hippocampe Caen, Agripharm et Chrysalide, Coveto Limoges, Vêto Santé, Elvetis and Neftys Pharma) and their professional organisation (Fédération de la Distribution du Médicament Vétérinaire, FDMV) for implementing several cartels.



## DISTRIBUTION OF VETERINARY MEDICINAL PRODUCTS

## CARTELS THAT IMPACTED PUBLIC ACCOUNTS

### "Non-aggression pacts" between the top three stakeholders in the sector

Alcyon, Centravet and Coveto, which accounted for 70% of veterinary medicinal product sales, had concluded "non-aggression pacts" amongst themselves. By not canvassing one other's customers (pharmacists, veterinarians and farmers' groups), the companies froze competition.

### A generalised agreement to benefit from the health emergency

In addition, taking advantage of the emergency situation during the implementation of three compulsory vaccination campaigns by the *Direction Générale de l'Alimentation* (General Directorate of Food) of the *ministère de l'Agriculture, de l'Alimentation et de la Pêche* (French Ministry of Agriculture and Fisheries) following the bluetongue disease epidemic, all wholesale distributors and the *Fédération de la Distribution du Médicament Vétérinaire* (professional organisation of medicinal

products distribution) agreed on the level of costs they would respectively present to the government in order to maximise the amount of compensation they would receive from the state for the logistics services provided to ensure the distribution of vaccines.

This strategy enabled companies to make substantial illegal gains (the level of reimbursement for logistics costs of 4 euro cents obtained from the administration was much higher than the actual costs incurred, which ranged

from 1 to 2.5 euro cents). The Autorité also established that the same companies had also jointly fixed the prices charged to veterinarians during the second and third compulsory vaccination campaigns.

### Serious practices that have misled the public purchaser in particular

These different cartel practices constitute particularly serious breaches of competition law.

In determining the amount of the fines, the Autorité took into account in particular the fact that wholesale distributors took advantage of the healthcare emergency and the absence of a call for tenders to knowingly mislead the public purchaser about the actual logistical costs of delivering vaccines and thus compromised the proper use of public funds.

All the parties in question did not contest the facts and benefited from a reduction in the fine as part of a settlement procedure.

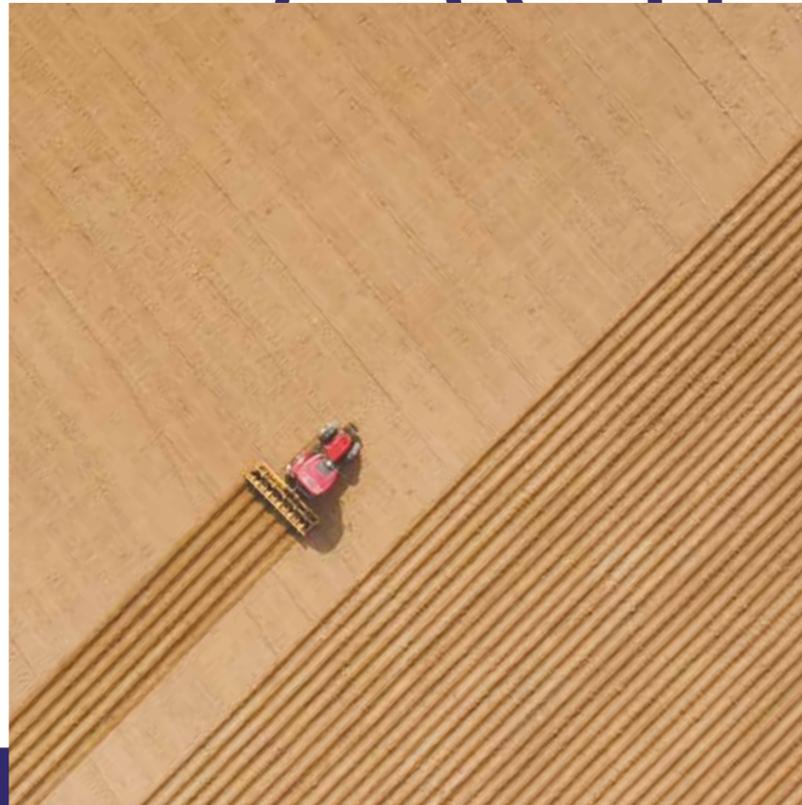
Decision 18-D-15 of 26 July 2018

### "LOL"

Some messages exchanged among the distributors during the epidemic show that they were fully aware of the difference between the price claimed and the cost incurred, as seen in the following example: "For fun, did you happen to multiply 49 million and €0.04 and €0.01 to see if it covered our costs (and the container of champagne LOL!)"

Classification mark 8725 of the decision

AGRI



CULTURE

E

At the request of the government, the Autorité issued an opinion that constitutes a true overview of the application of competition law to the agricultural sector. It recalls the applicable rules by putting them into context and offers advice to level the balance of power between producers and buyers.

#### AGRICULTURE AND COMPETITION

## A FRAMEWORK OPINION MUCH AWAITED BY THE SECTOR

#### Background for the referral

During the *États Généraux de l'Alimentation* (National Food Conference), producers, producer organisations and interbranch organisations from the agricultural sector expressed the need to legally secure their activities in respect of competition law. This need for legal security is particularly crucial in that the agricultural sector is confronted with specific characteristics (natural constraints, market imbalances and the Common Agricultural Policy (PAC)). Following the conference, the French Minister of the Economy and Finance submitted a request for an opinion to the Autorité. The objective: to give more visibility to stakeholders on what they can do to structure the sectors and adapt supply to demand as effectively as possible. The opinion will fuel the discussion at the DGCCRF, which must develop guidelines on the application of competition law to the sector.

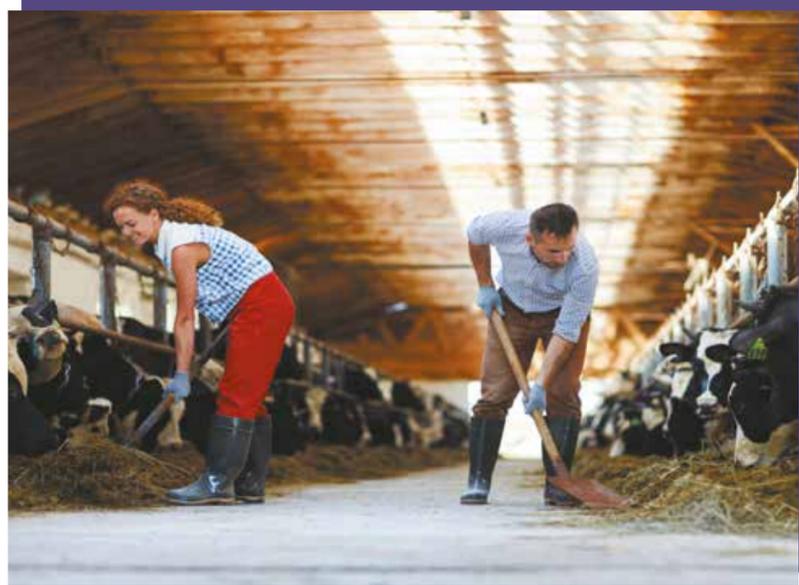
#### Producers grouped into producer organisations and associations of producer organisations ("horizontal" practices)

In order to remedy the imbalances in agricultural markets linked to the structure of atomized supply (472,000 French farms in 2016) and concentrated demand (17,600 agrifood companies and four large purchasing offices), the concentration of supply is a solution to strengthen the position of producers. However, these groupings must be compatible with competition law, which prohibits cartels. Recent developments in case law and the European legal framework have respectively clarified and extended the possibilities for cooperation within producer organisations (POs) and associations of producer organisations (APOs).

#### Focus on POs and APOs

Producer organisations (POs) and associations of producer organisations (APOs) make it possible for producers to set up horizontal cooperation structures to pool their resources. The main objective of these groupings is to rebalance trade relations with economic stakeholders upstream and downstream of their sector. There are currently 650 POs, primarily in the dairy, fruit and vegetable, livestock and meat sectors.

**CONCENTRATION OF SUPPLY IS A SOLUTION TO STRENGTHEN THE POSITION OF PRODUCERS, PROVIDED THAT IT COMPLIES WITH CERTAIN RULES.**



# 650

The number of producer organisations in France, primarily in the dairy, fruit and vegetable, livestock and meat sectors.

The conditions are now in place for the organizations to develop without fear. If they are in doubt as to the compatibility of their practices with competition law, the Autorité notes that POs and APOs may refer the matter to the European Commission for opinion.

- The judgement of 14 November 2017 of the European Court of Justice (known as the "Endives" judgement) clarified the legal framework. **Practices implemented within POs and APOs** (exchange of strategic information, collective fixing of minimum selling prices, consultation on volumes, etc.) are not subject to the application of competition law. On the other hand, **inter-POs (or inter-APOs) practices** are likely to be prohibited under cartel law.
- The Omnibus Regulation of 13 December 2017 extended the possibilities available to producers within POs and APOs, subject to compliance with certain conditions.

### Structuring of sectors through interbranch organisations (IBOs) ("vertical" agreements)

#### What IBOs can do

The *États Généraux de l'Alimentation* highlighted a strong demand for market transparency and the need to take better

#### What is an interbranch organisation (IBO)?

IBOs are "vertical" structures including stakeholders located at different levels of the supply chain (producers, processors and/or distributors). They are formed around common issues and act in the common interest of all their members. In France, for historical reasons, this form of organisation is very active in structuring the agricultural and food sectors.

account of production costs in determining the purchase prices of agricultural products. In this respect, the Autorité recalls that IBOs are allowed to publish anonymous and sufficiently aggregated historical statistical data.

Thus, IBOs may, for example, provide their members with general economic information, produce standard contracts, launch quality or upselling initiatives or promote products among consumers. IBOs may also make use of the option explicitly granted to them in the Omnibus Regulation to establish standard value-sharing clauses between farmers and their initial buyers.

#### What IBOs cannot do

Unlike POs and APOs, however, IBOs cannot implement volume regulation actions. The Common Market Organisation Regulation explicitly bans IBOs from fixing prices and quotas. Moreover, when they develop their own indicators, which can entail exchanges of strategic information within the IBO, they must ensure compliance with competition rules, for example in respect of the conditions for collecting information.

Lastly, the indicators and value-sharing clauses must not be of a prescriptive nature or become compulsory and must not be akin to price recommendations that could lead to a collective agreement on the price levels adopted by operators.

#### Tripartite approaches (producer – processor – distributor)

In the agricultural sector, the fluctuation of supply and demand on the markets prompted some stakeholders to use contracting in the form of tripartite agreements. The purpose of these approaches is to determine a sufficient margin for each of them according to their respective production costs.

#### Efficiency gains for all stakeholders

These tripartite approaches are very positive for the various parties: better remuneration and guaranteed outlets for the producer, a guarantee for the processor to make part of its infrastructure profitable, a guarantee for the distributor of a supply that meets its requirements, particularly in terms of quality, transparency and better quality for the consumer.

#### Caution above 30% market share

However, the Autorité emphasises that the stakeholders must remain cautious when they hold a market share above 30% (threshold provided for in the vertical restraints regulation), in particular if the contract is based on an exclusive relationship between a producer or producer group and its buyer. Indeed, if the threshold is exceeded for one of the agreements, the exemption from the competition rules will no longer apply.

#### Quality sectors: assuring upselling

The Autorité repeatedly pointed out the importance of upselling for producers: among other things, it makes it possible to meet the high expectations of consumers who are increasingly concerned about the quality and origin of the products they consume as well as to differentiate their products and be more competitive in exports.

For the establishment of these quality sectors, the Autorité recommends that producers rely on the exemption provisions specific to the agricultural sector: in this respect, the Common

Market Organisation Regulation provides that, in the cheese, dry ham and wine sectors, producers may use specific derogations from competition law or define binding rules to regulate the supply of products with a protected designation of origin (PDO) or a protected geographical indication (PGI). The Autorité is in favour of extending this provision to other products with a PGI or PDO.

Finally, the Autorité emphasises that these specific derogations from the competition rules are exclusively linked to volumes and cannot relate to prices. As before, the Autorité invites organisations in doubt about the legality of their practices or agreements to refer the matter to the European Commission for an opinion.

Opinion 18-A-04 of 3 May 2018



Following an investigation opened against manufacturers of agricultural tractors, the Autorité obtained that they change their commercial practices towards their dealers. Farmers will now be able to take advantage of competition when buying a tractor.

#### SALE OF AGRICULTURAL TRACTORS

## GUARANTEE CHOICE TO FARMERS



#### Restriction on dealers' commercial freedom

John Deere and AGCO (Massey Ferguson, Fendt, Laverda and Valtra brands) distribute their tractors through a network of dealers, most of whom have an exclusive territory.

While it may be accepted that dealers cannot canvass customers outside their territory, they must remain free to sell their tractors to any customer who so requests, regardless of their geographical location. However, the dealership contracts and the general terms and conditions of sale of the manufacturers were drafted in such a way as to cause uncertainty about the commercial options open to dealers. As a result, many dealers would refrain from responding to requests

from clients outside their territory or would request prior approval from their manufacturer.

#### Clarification of distribution rules to reaffirm dealers' commercial freedom

After the DGCCRF transferred evidence, the investigation services decided to open an investigation into these commercial practices. During the investigation, the manufacturers spontaneously took the initiative to clarify the distribution rules with their dealers. For its part, AGCO amended its dealership agreement and general terms and conditions of sale. John Deere ran an information campaign for its dealers to remind them that they are

free to respond to the requests of their customers, even if they are not based in the territory allocated by the brand.

#### More competition for farmers

Taking note of these initiatives, the Autorité's investigation services decided to close the investigation. Nonetheless, they will continue to keep a close eye on market behaviour and will check that dealers can actually market tractors in compliance with competition rules.

Thanks to these changes in behaviour, farmers will have easier access to commercial opportunities, as they will be able to get quotes from dealers for the various brands regardless of their geographic location.

■■■■ Press release of 7 March 2018

Following a report sent by the DGCCRF, the Autorité fined the *Syndicat général des vignerons réunis des Côtes-du-Rhône* for having prepared and distributed price instructions to its members.



#### CÔTES-DU-RHÔNE WINES

## TRADE ASSOCIATION FINED FOR ORGANISING A CARTEL

#### A "minimum price" set by the trade association

The Autorité was able to establish that beginning in 2010, the trade association prepared and disseminated annual price lists in order to increase the price of bulk wines. Once the target "minimum price" had been reached (2014), the trade association disseminated price recommendations in order to stabilise prices.

#### Broad dissemination of price instructions to winemakers

The details of the case show that price instructions were relayed in *Le Vigneron*, a magazine that is edited and disseminated by the trade association to producers, and newsletters sent to all members and "sector" meetings. These instructions were accompanied by arguments intended to encourage wine makers to make use of these price lists in their sales negotiations. The price recommendations related to all bulk wines covered by the Côtes du Rhône registered designation of origin (AOC), broken down by colour (white, rosé, red)

and, for red wines, by product range ("bottom shelf", "middle shelf", "top shelf").

#### The trade association established a price cartel

The role of a trade association is to help its members manage their companies. While it may disseminate information to assist its members in this regard, it must under no circumstances have a direct influence on the prices they charge. Winegrowers must determine their prices individually based on their own costs.

By establishing and disseminating price instructions to its members for each wine year between 2010 and 2017, the trade association concluded an anticompetitive agreement. The trade association will also have to notify its members of the decision of the Autorité via a newsletter using the same arrangements as those used to disseminate the price instructions which were subject to fines.

■■■■ Decision 18-D-06 of 23 May 2018

#### Risks of fines now much higher for trade associations

While until recently the amount of the fine to which an association was exposed could not exceed 3 million euros in France, the legal ceiling of the fine incurred will be significantly increased. The ECN+ Directive provides that it is 10% of the total turnover of member companies.

A number of cases show that trade associations may play a pivotal or "facilitating" role in the development and organisation of anticompetitive practices.

This trend should encourage them to be more cautious given the size of the potential financial risks they incur. The Autorité decided to address this subject in its next issue in the "Les Essentiels" collection, which will be published in 2020.

# TELECOMMS



# MEDIA

After a referral by the *Commission des affaires culturelles et de l'Éducation de l'Assemblée nationale* (Committee on Cultural Affairs and Education of the National Assembly) as part of the preparation of a draft law on the reform of the audiovisual sector, the Autorité issued an opinion in which it made recommendations to ease the constraints on incumbent stakeholders to enable them to compete on equal terms with online video platforms (Netflix, Amazon Prime) and online advertising giants (Google and Facebook).

## AUDIOVISUAL SECTOR

# AN ESSENTIAL AND URGENT REFORM

### The digital revolution: an unprecedented upheaval for the sector

Although digital terrestrial television broadcasting remains very popular today, the majority of consumers now access programmes via the triple play or quadruple play offers of Internet service providers (ISPs) or, without going through ISPs, via over-the-top (OTT) streaming, i.e., directly on the open Internet, for example via a smart TV, smartphone or computer.

### Numerous OTT platform projects

New projects include Salto, which its developers, TF1, M6 and France Télévisions, present as an alternative similar to Netflix. The proposed merger, which was referred to the Autorité by the Commission in mid-March 2019, is currently being examined. The Autorité will take a decision shortly.

With these new distribution methods, companies have entered the market and quickly met with great success. They include subscription video-on-demand (SVOD) platforms such as Netflix and Amazon Prime Video. These services make it possible to watch a film, a series, a fiction, a documentary "when you want, where you want and with the device you want", for a reduced price (€8 to €14 for Netflix, and without any additional cost for Amazon Prime subscribers). These non-linear services respond to new uses and offer more freedom to the consumer, who is now free from the programme schedules of traditional "linear" television channels. Companies like Netflix invest massively in the production of programmes, in particular "original" programming that they produce directly, while keeping all exploitation rights for all regions and for a very long time. As a result, their investment capacity is disproportionate to that of operators of national channels since their subscriber base is global, not national, and they retain full control over the catalogue of works over which they have rights.

**USING THESE NEW DISTRIBUTION METHODS, COMPANIES HAVE ENTERED THE MARKET AND HAVE QUICKLY MET WITH GREAT SUCCESS.**





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

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

- The number of pay-TV subscribers is falling due to the attractiveness of the platforms' non-linear programming, the richness of their premium content and their low cost. Pay-TV operators must therefore lower the prices of their subscriptions, which reduces their resources to invest in the most attractive programmes (sports, cinema and series).
- Free channels are faced with a reduction in individual viewing time, which gradually leads to a stagnation of their advertising income. In addition, advertisers are increasingly turning to the Internet to target their message, a service the channels cannot provide because of the regulatory framework for linear terrestrial television.

**Inadequate regulation**

The new options, which are attractive to viewers, are nearly unregulated, while for national incumbents, sector-specific regulation is still based on the historical model of linear terrestrial broadcasting. Once protective for the entire sector, this regulation, which was particularly developed in France compared to other European countries, now imposes asymmetrical legal constraints that weigh only on national incumbent stakeholders and limit their ability to adapt to market changes and meet consumer expectations. As a result, the incumbent stakeholders cannot develop targeted advertising and are subject to obligations to invest in content.

**The Autorité's recommendations: loosening constraints on television channels**

Economic and technological developments make it necessary to review existing regulations. The Autorité therefore proposes to ease these constraints.

**Advertising**

- Enable channels to offer new forms of targeted advertising using hardware.
- Open up prohibited sectors, i.e. allow broadcasting of advertisements for cinema, publishing and special offers in the distribution sector.

**Timetable of the draft audiovisual law**

● **Summer 2019**  
Presentation to the *Conseil des ministres* (Council of Ministers)

● **Second half of 2020**  
Parliamentary vote

**Programming**

The regulations require channels to contribute to the funding of film and audiovisual production and organise a complex system of compulsory investments that limit the freedom of the operator. In addition to these production obligations, there is a mandatory quota (75%) reserved for "independent" works but with very limited broadcasting and exploitation rights.

The operators are therefore disadvantaged in that, on the one hand, they cannot vertically integrate as do digital platforms that buy production studios and, on the other hand, they cannot acquire exclusive long-term rights to exploit a work through various services in France and/or abroad.

The Autorité therefore supports:

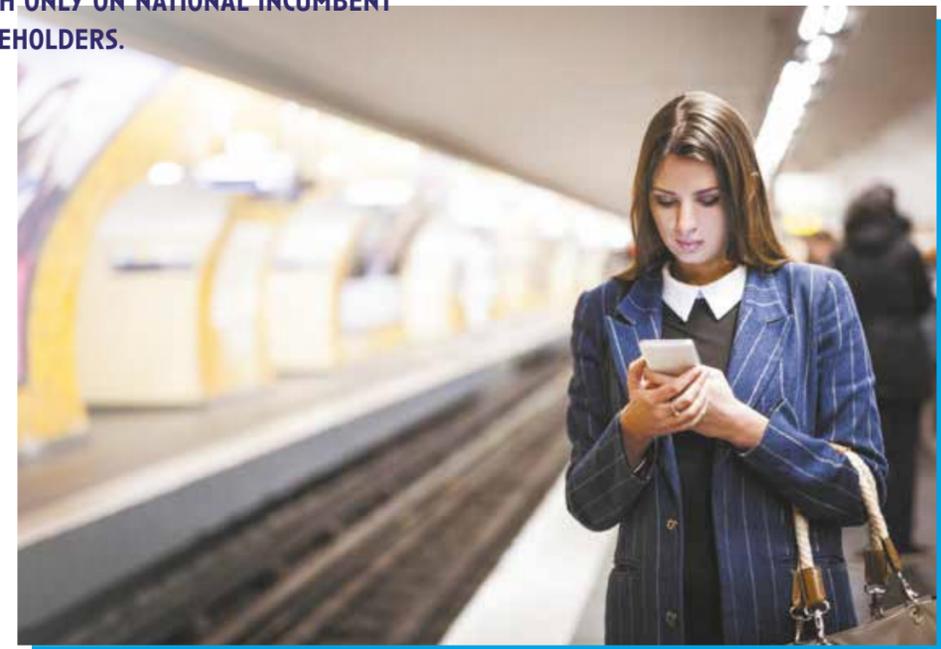
- relaxing obligations relating to investments in European and French works;
- reviewing the conditions for recourse to independent production;
- abolishing "prohibited days" for cinema, which prohibits the screening of films on Wednesdays and Fridays evenings, Saturdays and Sundays before 8.30 p.m. This provision no longer makes sense as the films are available at any time on SVOD platforms.

■■■■ **Opinion 19-A-04 of 21 February 2019**

**Reform as soon as possible**

All these adaptations are urgent to avoid incumbent stakeholders becoming blocked in their efforts to adjust and gradually marginalised on the national and international markets, which will ultimately harm the entire sector. The Autorité therefore recommends that, without waiting for the law to intervene, the provisions relating to advertising and production obligations in the decrees of 27 March 1992 and 2 July 2010 be quickly reformed.

**ONCE SERVING TO PROTECT THE ENTIRE SECTOR, THE CURRENT REGULATIONS NOW IMPOSE ASYMMETRICAL CONSTRAINTS WHICH WEIGH ONLY ON NATIONAL INCUMBENT STAKEHOLDERS.**



Canal Plus Group is committed to preserving its subscribers' freedom of choice in terms of decoders for receiving programs.

Following a consultation with TF1's competitors and customers and an analysis of the relevant markets, the Autorité unconditionally cleared the acquisition of sole control of Aufeminin by TF1 group.

## SATELLITE PAY TV

## KEEPING THE CHOICE OF TV DECODER



The decision appeared to be disproportionate to the objectives pursued and was regarded as abusive.

### Commitments proposed by GCP

In response to these competition concerns, GCP undertook to allow third party manufacturers to manufacture decoders that receive linear as well as non-linear (on demand) content, which was not previously possible. The set-top boxes will bear the "myCanal" logo to indicate to consumers that they can be used to receive the content included in the subscription plan.

The equipment in question must include a software access module that allows GCP to control the security of the signal.

The Autorité considered that these commitments, which will apply through to 31 December 2021, would meet the need to combat piracy while continuing to provide an alternative to the decoder rented by GCP. It decided to make these commitments binding and close the procedure.

Decision 18-D-14 of 24 July 2018

### Consumers deprived of alternatives in the choice of decoder

In order to combat piracy linked to the reception of packages via third party decoders, GCP decided to stop marketing card-only systems and to terminate the "Canal Ready" partnership agreements.

In their preliminary assessment, the investigation services considered that this decision was likely to exclude manufacturers of alternative satellite decoders from the market and to eliminate all competition in the downstream market, thus depriving consumers of the possibility of switching to decoders that may be cheaper or offer different functionalities.

### Background

The Autorité received a complaint from a satellite set-top box manufacturer that Canal Plus Group (GCP) had terminated the possibility of receiving Canal+ programmes via satellite set-top boxes other than its own.

In order to view television channels by satellite, consumers must have a decoder that decodes and then transforms the signal into pictures and sounds. Up until now, consumers wishing to access the satellite pay-TV packages of GCP had been able either to rent a decoder from GCP or buy a "Canal Ready" decoder from a retail outlet. The consumer would then insert a card provided by GCP in order to access the content ("card only" system).



## ONLINE AND TELEVISION ADVERTISING

## GREEN LIGHT TO THE ACQUISITION OF AUFEMININ BY TF1

### TF1's strategy: develop on the Internet

The TF1 group is mainly active in the sectors of free-to-air television (TF1, TMC, TFX, TF1 Séries Films and LCI) and pay-TV (TV Breizh, Histoire, Ushuaïa TV and Série Club). It markets the advertising space of its channels and certain third-party channels. The group also publishes websites and traditional paper magazines. It is controlled exclusively by the Bouygues group.

Aufeminin is active in the digital sector. It produces content on fashion, cuisine and health through the publication of websites (Aufeminin, Marmiton, My Little Paris, etc.) and a press title (Marmiton magazine). It markets its media advertising space. Before the transaction, Aufeminin was controlled by Axel Springer International. The transaction is part of TF1's strategy to diversify its business by strengthening its presence in online media.

### The Autorité rules out the risk of harm to competition

#### Online advertising markets

The Autorité considered that the transaction was not likely to have any effects on the markets for the sale of online advertising space in which TF1 and Aufeminin operate as the parties' combined market share remains limited (under 10%).

A specific analysis was carried out with regard to the effects related to the acquisition of Aufeminin's data by TF1. However, the presence of strong competitors – such as Google and Facebook – and the fact that the data acquired by TF1 is limited to the female target have ruled out any competition concerns.

#### Combined TV and online advertising

The transaction gives TF1, already active in selling television advertising,

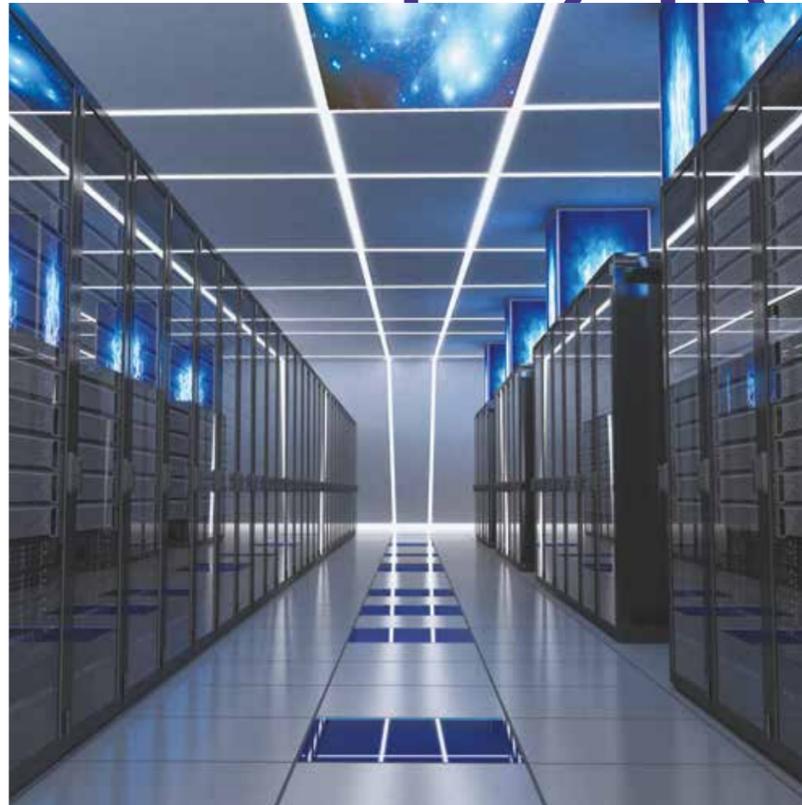
the opportunity to expand its activity in the online advertising market. While the new entity has the ability to implement a combined TV and online advertising strategy for advertisers, the strength of TF1's competitors such as Google and Facebook in the market for the sale of online advertising space precludes any competition concerns to the extent that these competitors will exert a significant constraint on the new entity.

#### Combined TV and press advertising

By acquiring a magazine (Marmiton Magazine), the transaction enables TF1 to expand its business selling advertising space in the written press. However, as offerings combining TV and print media advertising are not likely to develop, any problem for competition could be ruled out.

Decision 18-DCC-63 of 23 April 2018

DIGI



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As part of a major sector-specific inquiry on online advertising conducted at its own initiative, the Autorité focused on identifying new issues such as understanding emerging ecosystems and identifying tomorrow's challenges... Beyond the deciphering of an extraordinarily complex market, the inquiry revealed numerous concerns on the part of sector stakeholders. In the wake of this study, several litigation investigations were opened.

## ONLINE ADVERTISING

## LARGE-SCALE SECTOR-SPECIFIC INQUIRY

### Internet advertising: the leading advertising medium in France

The opinion focuses on display advertising; that is, tiles, banners, and skins that are integrated into website contents for viewing by Internet users and which include texts, images and videos. Display advertising is different from search advertising, which the Autorité examined in 2010 (Opinion 10-A-29 of 14 December 2010).

The sector witnessed sustained growth (12% in France in 2017), driven by the widespread use of programmatic advertising technology (which automates campaigns), the development of video advertising and the heavy reliance on social networks, search engines and video sharing platforms. One explanation for the success of online advertising, especially compared to television advertising, is that it can be targeted using collected data.

Vast datasets are collected as users navigate the Internet: customer data (interest areas, age, gender, language), contact information (email address, telephone number), usage data (pages

consulted, time spent at a site, etc.), purchasing data (products purchased, number of orders), geolocation data, interest areas, geographic data, socio-demographic data, etc.

It is now crucial for companies to access this data since it makes it possible to target ads and address an identified population. This major upheaval in the advertising sector led to the development of an entire ecosystem.

### The stakeholders

#### A sector characterised by the presence of numerous stakeholders

The study conducted by the Autorité exhaustively described and analysed the functioning of this new market, which is characterised by complex processes. The market has many participants, both in terms of publishers and intermediation service providers, whose processes are based on innovative high-tech services. While many companies have entered the online advertising market and been able to capture a part of it, the sector's competitive equilibrium is fragile, since companies are confronted with competition from global participants.



leading advertising medium  
ahead of television

### Continuing domination by two major operators: Google and Facebook

Facebook and Google, the two leaders of the online advertising sector, provide mainly free services to Internet users and generate most of their revenue from the sale of advertising services to publishers and advertisers. The success of their advertising services is based on their processing of the colossal volume of information they have gathered through the popularity of their sites. Both globally and in France, most of the revenue in this sector is generated by these two operators.

### A sizeable market

Estimated advertising investments: between €3.5 and €4.2 billion in 2016, with France ranking third in Europe after the United Kingdom and Germany.



**Certain practices highlighted**

A number of individual and collective practices have been identified by several players in the sector. Following the opinion, the investigation services carried out a preliminary examination of the evidence and decided to open several litigation investigations. An *inter partes* examination can establish whether these practices exist and whether they are in breach of competition law.

**Growing number of stakeholders and intermediaries**

The sector is currently characterised by an abundance of new stakeholders whose services are, to varying degrees, based on massive mining of data sources on individuals made possible by new information technology capabilities. The fundamental driver of the radical changes in this sector is the efficiency of targeting by these new forms of advertising which, according to their promoters, should enable greater efficiency than for other types of advertising in terms of return on investment.

The Autorité identified several significant competitive advantages that Google and Facebook have:

- strong popularity with Internet users (Google Search, YouTube, Chrome, Gmail and Maps for Google; Instagram, WhatsApp and the eponymous social network for Facebook);
- vertical integration and presence in both publishing and advertising intermediation;
- very powerful targeting capabilities;
- Google's specific search-related advantage for advertising.

**Problems brought to the attention of the Autorité**

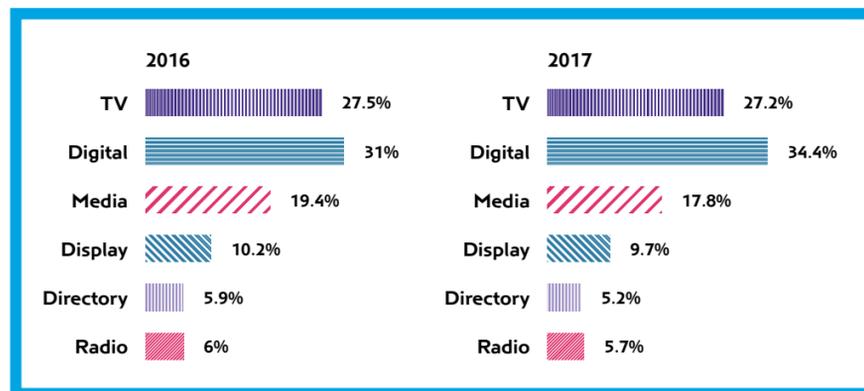
In the course of carrying the inquiry, many stakeholders described a range of situations and practices that could potentially have an effect on competition.

**Access to inventories and data collection**

Among the technical intermediaries, many stakeholders do not have proprietary sites where they can directly sell advertising space. Their position is fragile on many levels.

They are not in a position to offer advertisers access to inventories as extensive as those offered by Google and remain in a situation of uncertainty as regards their ability to collect data on third-party sites and applications in order to be able to offer personalised advertising (Internet users are increasingly reticent with regard to the mining of their data, which impacts the turnover and profitability of publishers and certain intermediaries whose activity relies on data mining).

**Annual change in the advertising market in France (by share of media investment)**



Source: Udecam, Syndicat des régies Internet (SRI), PWC, Observatoire de l'e-pub, 2017 report

**FOCUS ON CONCERNS EXPRESSED BY STAKEHOLDERS**

**Strategies involving bundling or tied sales, low prices, and exclusivities**

- Association of several intermediation services
- Association of intermediation services and supply of targeting data
- Association between an intermediation service and exclusive access to a site's inventory.

**Gearing effects**

Other stakeholders point to the gearing effect of key positions on certain services markets to develop other markets. The behaviours in question concern the media audit and media agency sectors, but also the supply of advertising services and of services for the use of advertiser data.

**Discriminatory treatment**

Certain publishers and intermediaries are of the opinion that they are subjected to different treatment by stakeholders they consider dominant in the advertising intermediation sector. These behaviours involve the possibility of monetising certain types of content and the access conditions of the demand-side platforms to marketplaces and certain inventories.

**Impediments to interoperability**

The development of impediments to interoperability in the advertising intermediation sector, which could affect the interconnection conditions of certain intermediaries with others in the context of real-time auctions and the deployment of campaigns of their advertiser customers.

**Restrictions on the possibilities of collecting and accessing certain data**

Certain large stakeholders apparently refuse to integrate tracking information from campaigns for certain advertising formats, supply data on qualification by audience impression, or supply research statistics for advertiser brands. Certain publishers consider that they are also subject to limitations regarding access to data generated by their services and distributed on other platforms.

Opinion 18-A-03 of 6 March 2018



The French and German competition authorities are launching a joint study on algorithms and their implications for competition law enforcement. The initiative demonstrates the importance that competition regulators attach to the issues raised by the development of digital technology.

## PARTNERSHIP

## UNDERSTANDING ALGORITHMS AND THEIR EFFECTS



### A joint study to better understand algorithms

In the light of this debate, the Bundeskartellamt and the Autorité de la concurrence decided to launch a joint project on the subject. The two competition authorities will address these issues and focus in particular on developing a typology of algorithms and studying their potential anticompetitive effects. They will also study new questions raised by the detection and analysis of algorithms: Which investigative methods? What burden of proof?

In May 2016, the two authorities carried out a first joint study, on the topic of Big data (available on the Autorité de la concurrence's website) in which certain questions relating to algorithms were addressed. The joint project will take up this analytical framework again and further examine it to improve the understanding of algorithms.

■■■■ Press release of 19 June 2018

### Algorithms, sources of opportunities but also of competitive risks

Constantly used in the digital economy, algorithms are increasingly structuring and sophisticated. In the context of digital services in particular, they make possible the use of real-time functionalities, for example, for classification or comparison purposes or for dynamic pricing.

In addition, in some areas, the use of algorithms could reduce the need for human intervention. In particular, the very high degree of automation and the machine-to-machine communication it induces raise new questions for competition authorities.

**THE INCREASING USE OF ALGORITHMS BY COMPANIES IS SUBJECT TO DEBATE REGARDING THEIR EFFECTS ON THE COMPETITIVE FUNCTIONING OF MARKETS AND, MORE BROADLY, ON SOCIETY.**

### For Isabelle de Silva, President of the Autorité de la concurrence and Andreas Mundt, President of the Bundeskartellamt:

"Algorithms provide many opportunities for the economy, for example facilitating innovative services, reducing search costs as well as inventory optimization. They may nevertheless carry adverse effects on competition. In the context of strategic interactions, they might facilitate collusion and assist in the implementation of cartels. Furthermore, there might be interdependencies between algorithms and the market power of the companies that make use of them. This can lead to additional barriers to market entry."

After receiving a complaint from an advertiser, the Autorité issued interim measures against Google. It asked it to clarify the rules of its advertising platform in order to make them more precise and intelligible and to guarantee their application with non-discriminatory conditions.



## ONLINE ADVERTISING

## INTERIM MEASURES AGAINST GOOGLE

### A dominant position which implies compliance with certain obligations

Considering that Google had abruptly suspended some of its accounts as of January 2018 and then refused most of the ads it wanted to run to promote its services, Amadeus (which offers the 118 001 directory enquiry service) referred the matter to the Autorité and requested interim measures.

While Google is free to define its policy on content allowed on Google Ads, in particular to protect consumers, it is nevertheless important –given its pre-eminent position in the market (90% of searches performed in France)– that the rules be implemented under objective and transparent conditions and do not result in discrimination against certain companies.

### Google must clarify the rules of its advertising platform

At that stage of the investigation, the Autorité considered that the reported practices were likely to characterise a sudden termination of commercial relations under conditions which were neither objective nor transparent and potentially discriminatory: suspension of accounts without warning, absence of clear mention of the alleged breaches and display of identical advertisements for

### Ex officio proceedings in matters of interim measures

If until now the parties had to refer a request for interim measures to the Autorité, henceforth, the ECN-Directive provides that the Autorité may impose interim measures *ex officio*.

competing advertisers. These practices abruptly and significantly affected call volumes, revenues (down 90% between 2017 and 2018) and Amadeus' profitability.

In view of the very significant effects on Amadeus' business, the Autorité issued interim measures in order to obtain from Google:

- clarification of the Google Ads rules it intends to apply to paid electronic information services;
- a review of Amadeus' situation in the light of these new rules;
- implementation of a procedure for suspending advertisers' accounts that provides formal warning and sufficient notice;
- training for its sales staff on the content of the new rules.

■■■■ Decision 19-MC-01 of 31 January 2019



For the first time, the Autorité examined the merger of two online platforms. After an in-depth investigation, it cleared, without conditions, the acquisition of Logic-Immo.com by SeLoger.com. In the course of the transaction, the Autorité developed an innovative approach that could be reused in the context of the examination of future merger transactions, in particular in the digital sector.

## ONLINE REAL ESTATE ADVERTISING

# LOGIC-IMMO AND SELOGER: MERGER OF TWO DIGITAL PLATFORMS

## A first in merger control

On 24 July 2017, the German group Axel Springer, owner of the online real estate portal SeLoger, notified the Autorité of its planned acquisition of the French company Concept Multimédia, itself publisher of the portal Logic-Immo.com and the real estate ad magazines *Logic-Immo* and *Lux Résidence*.

For the first time, the Autorité was asked to rule on a merger involving two major online platforms, both of which specialise in the distribution of real estate advertisements by real estate professionals to Internet users.



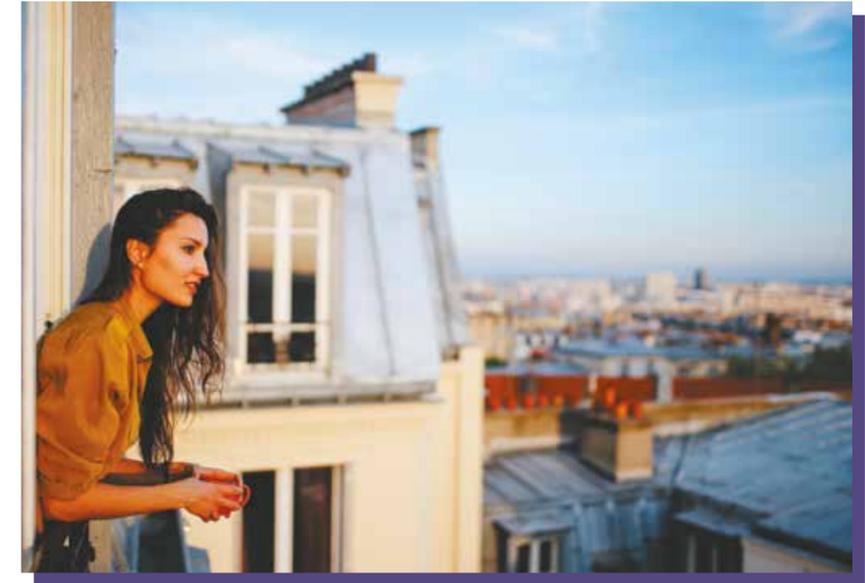
## An unprecedented methodology and approach

The Autorité's analysis was based on a broad consultation of all professionals in the sector (portals, real estate agencies, federations), on the analysis of numerous internal documents of the parties, several economic studies and, for the first time and in an innovative way, on the results of an online questionnaire administered by the Autorité to more than 30,000 real estate agencies.

While the analysis assessed the ability of SeLoger and Logic-Immo's current competitors, such as Le Bon Coin, to compete with the new entity, it also examined the countervailing power of potential competition, in particular from the major global players in the digital economy. The Autorité thus examined in detail the impact that the development or entry of GAFAs, and in particular Facebook with its "Marketplace" platform, could have on the real estate classified ad market in France. In this respect, it took into account in particular the characteristics which may make it difficult to enter the French market

**1<sup>ST</sup>**  
review of a transaction  
between two online  
platforms

in the short term (see specific regulations). On the other hand, it considered the Bien'ici portal, created at the initiative of real estate professionals and offering new services, as a credible new entrant and noted the weight of Le Bon Coin in the market.



**30,000**  
estate agents were  
contacted by the  
Autorité via an online  
questionnaire.

## Unconditional clearance

In light of its examination, the Autorité considered that the transaction would not significantly harm competition.

First of all, it considered that the transaction would not encourage the new entity to increase its prices, in which case the real estate agencies would be able to turn in the vast majority of cases to the other portals, first and foremost Le Bon Coin. After the transaction, the latter will remain the market leader in terms of audience and is likely to exert increasing competitive pressure, in particular due to its recent acquisition of AVendreALouer.

Secondly, the Autorité considered that the risk of significant elimination of competition resulting from the introduction of a bundled service offer between the two portals could not be demonstrated. While such an offer may lead to a decrease in the number of ads and turnover of the merged entity's competitors, it considered that this reduction would remain limited and was not likely to intensify in the long term.

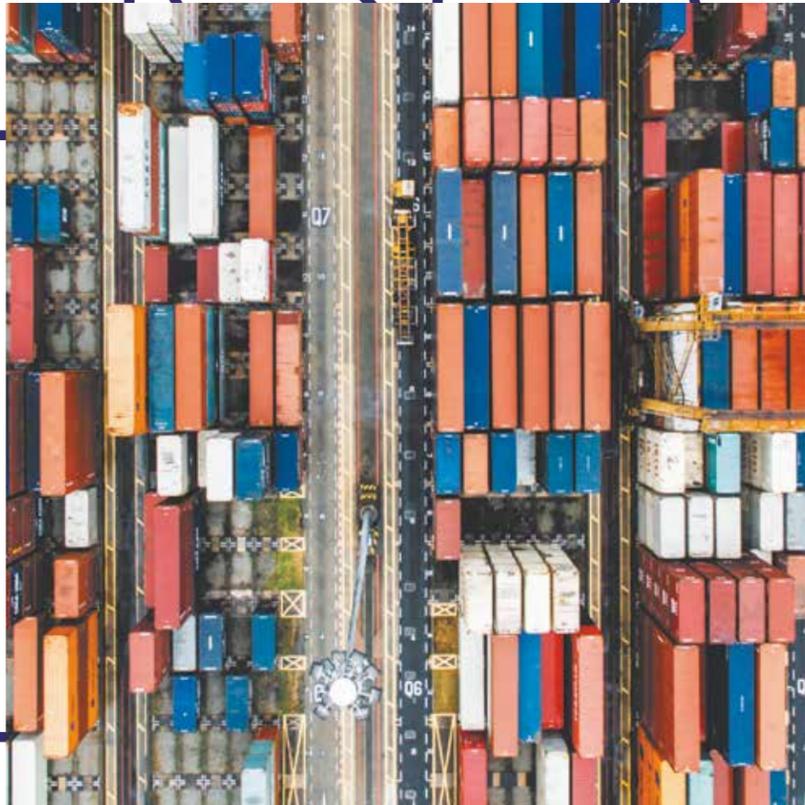
Thirdly, the risk that the new entity and the Le Bon Coin group, which until then had not coordinated their behaviours, would be encouraged to do so by creating or strengthening a collective dominant position, could also be ruled out insofar as the detection condition, one of the three criteria necessary to identify such an effect, is not met. Indeed, there must be a sufficient degree of market transparency so each oligopolist can know the behaviour of each of the other members in order to ensure that none deviates from it (i.e., the "detection condition"). However, in the present case, while some prices for publishing real estate advertisements online are public, the public price grids of portals are only applied to a certain category of customers, the practice in the sector being to differentiate prices, based on direct negotiations, which are likely to lead to significant discount rates.

According to the decision, the Autorité considered that the transaction was not likely to harm competition on the markets concerned and could therefore be cleared without conditions.

Decision 18-DCC-18 of 1 February 2018



# FRENCH OVERSEAS TERRITORIES



At the request of the Minister of the Economy, the Autorité analysed price trends on the markets for consumer goods in the French overseas territories since its previous opinion in 2009, and the causes likely to explain the maintenance of a significant and persistent price differential with markets in mainland France. Its evaluation also covered the marketing of clearance goods (mainly cheap imported meat) as well as maritime transport and port services, the cost of which has a significant impact on retail market resale prices.

## CONSUMER GOODS IN FRENCH OVERSEAS TERRITORIES

# AN ACCURATE SURVEY OF PRICE DIFFERENCES WITH MAINLAND FRANCE

The observation of price levels in these territories shows that persistent and significant differences remain with those in mainland France, to the detriment of household purchasing power, business competitiveness and growth in the overseas territories. For example, in 2015, the Insee (French National Institute for Statistics and Economic Research) recorded prices that were higher by 12.5% in Guadeloupe, by 12.3% in Martinique, by 11.6% in French Guiana and by 7.1% in La Réunion.

In 2009, the Autorité issued an opinion on consumer goods in French overseas territories which made a number of recommendations. With this new opinion, it reassesses the competitive situation in

these sectors, taking into account in particular the impact of the measures put in place over the past 10 years. In particular, the Autorité examined the following eight issues:

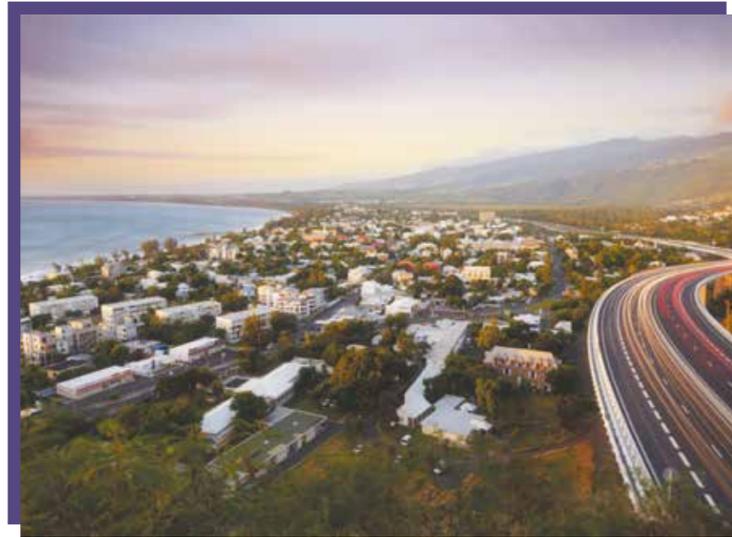
### Are price differences due to high margins?

While some levels of margin or profitability may appear higher than those observed on average in mainland France, the weight of each operator taken separately is too low to explain how these margins can be responsible for most of the price differentials. However, taken together, the margins of the stakeholders in consumer goods has a greater impact. The approach fees (fees added to the

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questionnaires and hearings with the main stakeholders in the consumer goods sector in French overseas territories.

purchase price such as customs duties, delivery fees, etc.) represent 16% of a distributor's total cost. Passed along by distributors in the final price to the consumer, they explain on average a large part of the price differences with mainland France.



#### Can the dock dues system be improved?

Dock dues are a tax applicable to most products imported into the French overseas territories, collected by local authorities and initially designed to protect local production. The debate on its renewal could provide an opportunity to clarify its objectives. The Autorité recommends simplifying the dock dues rate grid and making it consistent between nearby territories, reviewing the rates applicable to imported products for which there is no equivalent in local production and simplifying the input exemption system.

#### Does the degree of concentration in retail distribution require measures?

The French overseas territories are narrow markets due to their geographical characteristics and are dominated by a small number of retailers. New entrants are discouraged from entering the market. Admittedly, there is a specific tool, the structural injunction, which makes it possible to act on the market structure to restore effective competition, but its conditions of application, which are too restrictive, should be eased.

#### Should quality-price protection evolve?

Quality-price protection is a system based on a "basket" of current consumer goods sold at a moderate price that was developed in consultation with all the stakeholders concerned (carriers, importers, producers, processors, distributors, etc.). In place since 2013, the list of goods, negotiated each year, is subject to a maximum overall price set by prefectural decree, with merchants free to offer a lower price to encourage competition. The Autorité notes that there are difficulties in implementing the system. It recommends preparing the negotiations, encouraging the participation of all economic stakeholders and creating a price comparator for goods on the quality price protection list in order to improve its visibility and usefulness for consumers.

#### What is the outcome of the ban on exclusive import rights?

The prohibition of exclusive import agreements, introduced by the Lurel Law in 2012, has given rise to several procedures implemented by the Autorité. It made it possible to establish more fluid relations between wholesale importers and suppliers.

The Autorité notes that a significant proportion of the integrated overseas distribution groups are also present as wholesale importers on the wholesale market and are likely to favour their stores in terms of prices and sales promotion. For an integrated stakeholder with de facto exclusivity vis-à-vis a supplier, it recommends introducing a prohibition on any discrimination against its third-party distributor customers while favouring distributors within its group.

#### Do freight and port services represent a significant part of the price gap?

Maritime freight transport accounts for almost all (>95%) of trade in consumer goods between mainland France and French overseas territories. In this context, ports are the main, if not the only, entry point to these territories.

While costs related to maritime transport and port services (freight, fuel, handling, etc.) on average represent a limited share (less than 10%) of the purchase cost of imported goods, the Autorité notes that they have a greater impact on the prices of goods with low added value (such as basic commodities).

#### Is local production competitive with imported goods, including so-called clearance goods?

Local production remains generally uncompetitive compared to imported goods, despite the costs of approach and the specific taxation in the French overseas territories. The main reason is the narrowness of overseas markets and the high number of farms, which prevent economies of scale.

In recent years, there has been an increase in imports of clearance food products (in particular milk, and frozen poultry, pork and beef) marketed at prices lower than those in mainland France. Recourse to these products makes it possible to meet the demand for products at prices that are accessible to as many people as possible, particularly the most modest households. Consequently, these products make it possible to extend the available range, mainly of locally produced fresh meat, and cannot currently be considered as competitors of locally produced products,

as seen in particular by the difference in terms of price and manufacturing methods.

In this context, the Autorité recommends pursuing efficient structuring of the sectors and encouraging the differentiation of local products through quality signs.

#### Measures to enable the development of e-commerce in French overseas territories

Despite the opportunities it presents, online trade in French overseas territories has been slow to develop. As delivery costs represent a major obstacle, the Autorité recommends that, in order to encourage the grouped shipment of parcels, the regulations should be adapted to allow for a single customs formality. It also recommends tightening controls on compliance with the obligation not to charge any costs to overseas consumers under the guarantee of conformity. As dock dues involve great

complexity, lack of transparency and consequences on prices, it recommends for products sold in BtoC e-commerce to adopt dock dues that have a reduced and single rate and excluding transport costs from its base. Finally, it considers it useful to adopt regulation requiring that consumer information on "taxes and dock dues" be clearly displayed, as well as a regulation transposing the prohibitions of the European regulation on geoblocking to situations involving a consumer in the French overseas territories and a site based in mainland France.

Opinion 19-A-12



Finding strong price differences with mainland France, the Autorité issued an opinion to the government in which it makes several recommendations.



#### BUILDING MATERIALS IN LA RÉUNION AND MAYOTTE

# RECOMMENDATIONS FOR LOWERING CONSTRUCTION PRICES

## Background

In the context of fighting the high cost of living, the Minister of the Economy and Finance asked the Autorité for an opinion on the competitive situation in the building materials markets in La Réunion and Mayotte.

This request for an opinion comes in the context of an acute housing crisis in French overseas territories, creating major social difficulties. Due to their strong demographic dynamics, La Réunion and Mayotte even more, are experiencing a growing demand for social and intermediate housing. The effectiveness of housing policy is therefore dependent on controlling costs in this sector, at the risk of being unable to fund necessary new housing. In its opinion, the Autorité proposes solutions to reduce the cost of building social housing and public engineering structures, which require large quantities of construction materials (such as the coastal road in La Réunion, for example).

## Significant additional costs

The situation is worrying: the prices of building materials, such as cement, aggregates, façade rendering, structural wood, roofing sheet metal and ceramic tiles, are 39% higher in La Réunion and 35% higher in Mayotte than in mainland

**THE SITUATION IS WORRYING: THE PRICES OF BUILDING MATERIALS, SUCH AS CEMENT, AGGREGATES, FAÇADE RENDERING, STRUCTURAL WOOD, ROOFING SHEET METAL AND CERAMIC TILES, ARE 39% HIGHER IN LA RÉUNION AND 35% HIGHER IN MAYOTTE THAN IN MAINLAND FRANCE.**

France. These high prices have a significant economic impact as building materials account for nearly one third of the cost of building a home on these islands. By reducing the price level to that of the mainland, this cost would fall by an average of 12%. This issue is crucial in a context of housing crisis and high population growth in the region.

## Reasons behind the price differences

In the French overseas territories, the small size of the markets and their remoteness from the main sources of supply are natural barriers to achieving prices similar to those found in mainland France. However, these specific features alone are not enough to explain the large price differences. These can be explained by other factors, such as transport (a large majority of materials are imported) and storage difficulties (scarcity of land), the regulations applicable to construction

(standards unsuited to the specific characteristics of the French overseas territories) and the high degree of concentration in certain markets (presence of oligopolies composed of highly integrated stakeholders).

## Recommendations

### Simplify standardisation and certification

- **By adapting standards to local constraints.** The Autorité suggests analysing both how appropriate a standard or regulation is for the overseas territories, and its effectiveness in relation to the specific characteristics of La Réunion and Mayotte. When the analysis is concluded, a decision will be made as to whether it should be kept, changed or removed.
- **By facilitating equivalence certification and on-site certification.** The Autorité suggests setting up a system of certification by equivalence based on the model of a table of correspondence between EC-standard products and foreign products deemed to be of equivalent quality. This solution has the advantage of reducing manufacturing and transport costs and facilitates the use of imports from the immediate area. Similarly, the Autorité would like

building materials to be certified on-site by establishing national certification offices locally and accrediting local institutions capable of carrying out performance tests.

The Autorité made a number of proposals for different policy tools.

### Act on the market structure

- **By bringing in new companies.** The ability or inability of a market to welcome new entrants plays an essential role in price formation, as illustrated by the cement markets in Mayotte and La Réunion and the wood market in La Réunion, where the arrival of importers led to lower prices. Such market developments should be encouraged.
- **By pooling spaces for storage and procurement of materials.** The Autorité recommends initiating the development of organisations in each *département* for the pooling of purchases of building materials and storage centres.
- **By setting up a network for importing cement directly from Mauritius.** The Autorité recommends studying the development of imports from Mauritius, focusing first of all on cement, a vital material for the construction sector, subject to compliance with European or equivalent standards.

### By promoting the development of local building materials industries.

Developing local industries for the production of building materials would limit imports, an important factor of extra costs, and would generate new industries that create local jobs and know-how. In this respect, insulation from biomass such as wood and compressed earth bricks from Mayotte appear promising.

### Promote better understanding of price formation

It is essential to improve public authorities' knowledge of markets, in particular the varying wholesale and retail prices and the level of mark-up. To this end, the obligation to publish stakeholders' company accounts must be a priority. For more detailed items that are protected by business secrecy, a functional division could be implemented between the technical services and the members of the OPMR (Observatory of Prices, Margins and Revenues) themselves, whose access would be limited to aggregated data.

■■■■■ Opinion 18-A-09 of 3 October 2018



The Autorité attaches particular importance to its mission of protecting competition in French overseas territories and devotes a significant part of its activity to it. Strictly banned since 2013, exclusive import agreements have a negative impact on the purchasing power of overseas populations and the Autorité is therefore committed to sanctioning them. Here's a look back at the latest actions in this area, aiming at revitalising upstream competition in order to encourage lower retail prices.

#### DISTRIBUTION OF CONSUMER GOODS IN FRENCH OVERSEAS TERRITORIES

## FIGHTING EXCLUSIVE IMPORT AGREEMENTS

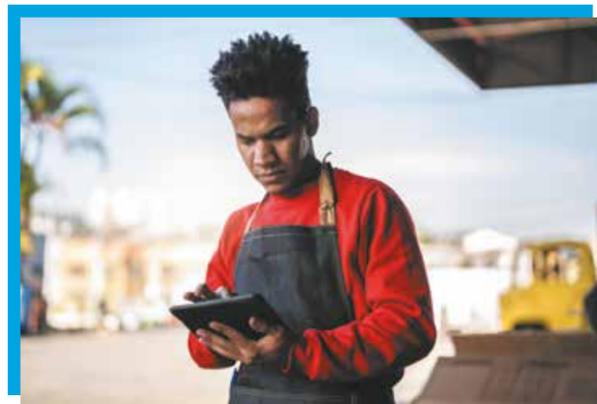
### WALLIS AND FUTUNA

#### Fine handed out to wholesaler General Import for exclusive import agreements for consumer goods

In 2018, the Autorité fined wholesale-importer General Import and its parent company for continuing to implement exclusive import agreements after the entry into force of the Lurel law, which prohibits this type of agreement since March 2013.

The suppliers and products concerned were Sun Rice (rice), Heinz (Pacific Corned Beef cans and Golden Circle products: drinks, soft drinks, fruit juices and canned fruit), Campbell Arnott's (biscuits), Chelsea (sugar) and Anchor (powdered milk).

These practices have hindered the development of competing wholesale importers and reduced competition between wholesalers that retailers were entitled to expect for their supplies.



The situation led to an increase in the price of many basic food products for consumers in Wallis and Futuna, where purchasing power is much lower than in mainland France.

The Autorité fined General Import and its parent company ADLP Holding €250,000 (30 million Pacific francs) on.

It also instructed them to inform in writing each of the suppliers concerned by the prohibited exclusions of this decision.

Decision 18-D-21 of 8 October 2018



### LA RÉUNION – FRENCH WEST INDIES – FRENCH GUIANA

#### Fine handed out to three companies for maintaining import exclusivity for termite traps

The Autorité also fined three companies for continuing to implement agreements containing exclusive import rights for termite traps after the entry into force of the Lurel Law.

Located in the intertropical zone, the French overseas territories are a fertile ground for termite infestation. To combat this scourge, the legislative and regulatory framework imposes strict measures to protect buildings. To do this, buyers and owners can use different preventive or curative eradication methods such as biocide-soaked bait traps.

Dow Agrosciences markets under the Senti Tech™ brand the only biocide-based bait trap whose effectiveness is currently certified in the French overseas territories. These traps are imported into each of the territories concerned by a single wholesale importer who markets them to companies specialising in termite control.

Following an investigation by the DGCCRF,

the Autorité carried out an investigation and found that Dow Agrosciences had maintained exclusive import clauses in its contracts with Emeraude in La Réunion and CTC in the French West Indies and French Guiana.

As a result, the Autorité handed out fines worth €60,000 to Dow Agrosciences, €10,000 to Emeraude and €5,000 to CTC. In addition, it instructed Dow Agrosciences to remove from its contracts, for the next two years, any provision introducing exclusive import rights and to inform all companies using Senti Tech™ products of this within two months by letter.

Decision 18-D-03 of 20 February 2018

Find the results of 10 years of action in French overseas territories on page 94.

# 10 YEARS OF ACTION IN FRENCH OVERSEAS TERRITORIES

THE HIGH COST OF LIVING OVERSEAS IS A MAJOR CONCERN OF THE AUTORITÉ AND ITS ACTION OVER THE PAST 10 YEARS FOCUSED ON THE MOST SENSITIVE EXPENSES IN TERMS OF THE PURCHASING POWER OF THE LOCAL POPULATION: CONSUMER GOODS, FUEL, TELEPHONE AND INTERNET AND HOUSING (BUILDING MATERIALS).

PRESERVING PURCHASING POWER, REDUCING PRICE DIFFERENCES WITH MAINLAND FRANCE AND MAINTAINING A DIVERSIFIED SUPPLY: THE AUTORITÉ ACTS BOTH ON THE STRUCTURE OF THE MARKET TO PREVENT THE CREATION OF MONOPOLIES (CONTROL OF MERGERS AND ACQUISITIONS) AND ON BEHAVIOUR BY FINING CARTELS, ABUSES OF DOMINANT POSITION AND EXCLUSIVE IMPORT AGREEMENTS.

AS PART OF ITS ADVISORY FUNCTIONS, IT ALSO REGULARLY PUTS ITS EXPERTISE AT THE SERVICE OF PUBLIC AUTHORITIES BY DRAWING UP IN-DEPTH DIAGNOSES AND MAKING RECOMMENDATIONS.

OVERVIEW.



## TELECOMMUNICATIONS

**The transition to the digital economy and the spread of new technologies are major challenges for French overseas territories. Opening up is an important tool to boost the regional economy. This requires that the Internet and telephony are accessible and reliable. The Autorité thus ensures that incumbent operators do not abuse their privileged position to hinder the market entry of new stakeholders, degrade the quality of services or increase the price of their service contracts.**

### Enable the development of alternative operators

Price discrimination among consumers according to their operator, excessive wholesale prices, degraded quality of services (telephone assistance, underwater cables connected to mainland France)... The Autorité repeatedly fined the incumbent operator for hindering the development of smaller operators and new entrants.

For example, it fined France Telecom €27.6 million in 2009 for unduly hindering the development of new competing operators in the fixed-line and Internet access markets in the départements of Martinique, Guadeloupe, French Guiana and La Réunion ([Decision 09-D-24 of 28 July 2009](#)).

Orange and its subsidiary Orange Caraïbe were fined €63 million for anticompetitive practices in the mobile phone market in the area of French West Indies and Guiana ([Decision 09-D-36 of 9 December 2009](#)).

In 2014, SFR and its subsidiary in La Réunion, SRR, were fined nearly €46 million for having introduced abusive rate differentiation in La Réunion and Mayotte between mobile calls made to other customers in SRR's network and more expensive calls made to its competitors' networks in the retail market. The operator was also fined in 2017 for the same practices in the corporate market ([Decisions 14-D-05 of 13 June 2014 and 15-D-17 of 30 November 2015](#)).

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### Improve the quality of service

In 2009, the Autorité also implemented a commitment procedure that led France Telecom to rapidly improve the quality of service to Internet users in the Caribbean and La Réunion: setting up a telephone assistance service with convenient schedules, and the availability of local contacts to respond to requests from third-party operators ([Decision 09-D-11 of 18 March 2009](#)).

### Monitor the impact of operator mergers and prevent price increases

As part of the takeover of SFR by Numericable in 2014, the Autorité required Numericable to divest itself of the mobile telephony business of Outremer Télécom (Only), given the very high market shares it would have acquired (66% in La Réunion and 90% in Mayotte - [Decision 14-DCC-160 of 30 October 2014](#)). In view of the practices implemented by Altice/Numericable with regard to Outremer Télécom (OMT) before its sale, the Autorité sanctioned Numéricable €15 million in 2016 for non-compliance with its commitments ([Decision 16-D-07 of 19 April 2016](#)). ■■■■



# FUEL

## FUEL

**One of the triggers of the uproar against the high cost of living is the price of fuel. It is indeed a significant expense for individuals and professionals (fishermen, transporters). In order to address the lack of transparency and the upward trend in retail prices, the Autorité made recommendations that led to concrete measures by the government. In addition, it also keeps careful watch to prevent the negative effects that may result from the acquisition of transport and storage infrastructure in the French West Indies as well as La Réunion.**

### Recommendations to improve price regulation

In the French overseas territories, fuel is supplied through monopolistic mechanisms: purchase, freight, refining and storage monopoly in the French West Indies and French Guiana; monopoly only of freight and storage in La Réunion. In 2009, the French Secretary of State for the overseas territories referred the situation to the Autorité, which found that retail price regulation had failed. On the one hand, it recommended strengthening upstream regulation in order to better regulate monopolies and to ultimately assure supplies at the best price, and on the other hand, reviewing the retail price cap, leaving the prefect the possibility of monitoring them in the event of abnormal market functioning ([Opinion 09-A-21 of 24 June 2009](#)).

In 2010 and 2013, it examined and welcomed several draft decrees, considering that they were in line with its recommendations and that the transparency of the sector's operations and the conditions for regulation would be improved ([Opinions 10-A-03 of 3 February 2010, 10-A-16 of 28 July 2010 and 13-A-21 of 27 November 2013](#)).

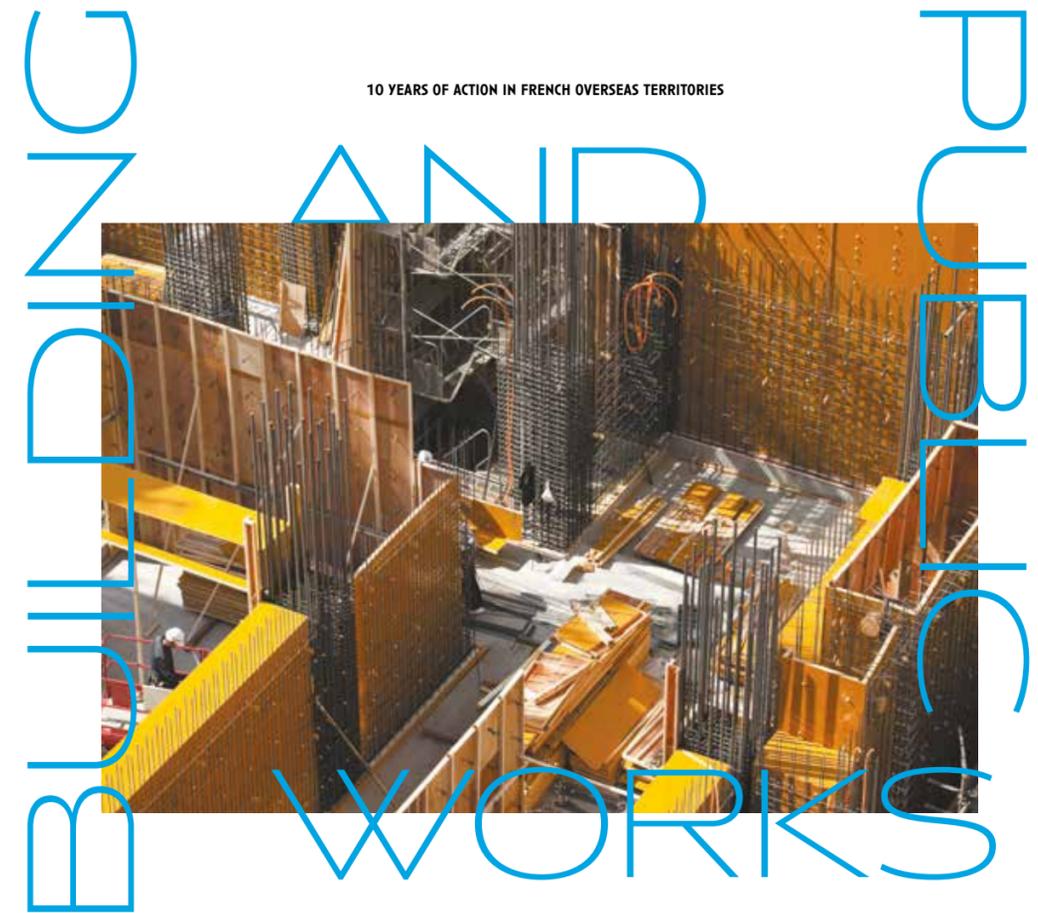
### Vigilant control over the acquisition of storage and transport infrastructure

In 2015, the Autorité conditioned its commitments the purchase of the Société Anonyme de la Raffinerie des Antilles (SARA) and then the Société Réunionnaise de Produits Pétroliers (SRPP) by the Rubis group.

In particular, Rubis undertook to assure its competitors permanent and non-discriminatory access to storage and transport infrastructure or to certain services.

More specifically with regard to SARA, it agreed:

- not to increase SARA's supply costs (in order to prevent an increase in the selling prices of petroleum products at all stages of distribution),
- to supply any third party with fuel and LPG on transparent and non-discriminatory terms. ([Decisions 15-DCC-54 of 13 May 2015 and 15-DCC-104 of 30 July 2015](#)). ■■■■



## BUILDING AND PUBLIC WORKS

**The prices of building materials are on average 39% higher in La Réunion than in mainland France and 35% higher in Mayotte, a much greater difference than that observed for the general price level (+7%). The matter is crucial, given a housing crisis and population growth in these overseas territories. The Autorité is active on several fronts: in 2018, it issued a framework opinion setting out recommendations to address structural dysfunctions and also regularly fines the behaviour of companies that result in higher costs for building materials.**

### Recommendations to lower the prices of building materials in La Réunion and Mayotte

Finding major price discrepancies with mainland France, the Autorité issued an opinion to the government in which it makes several recommendations to improve the situation. They focus on three areas:

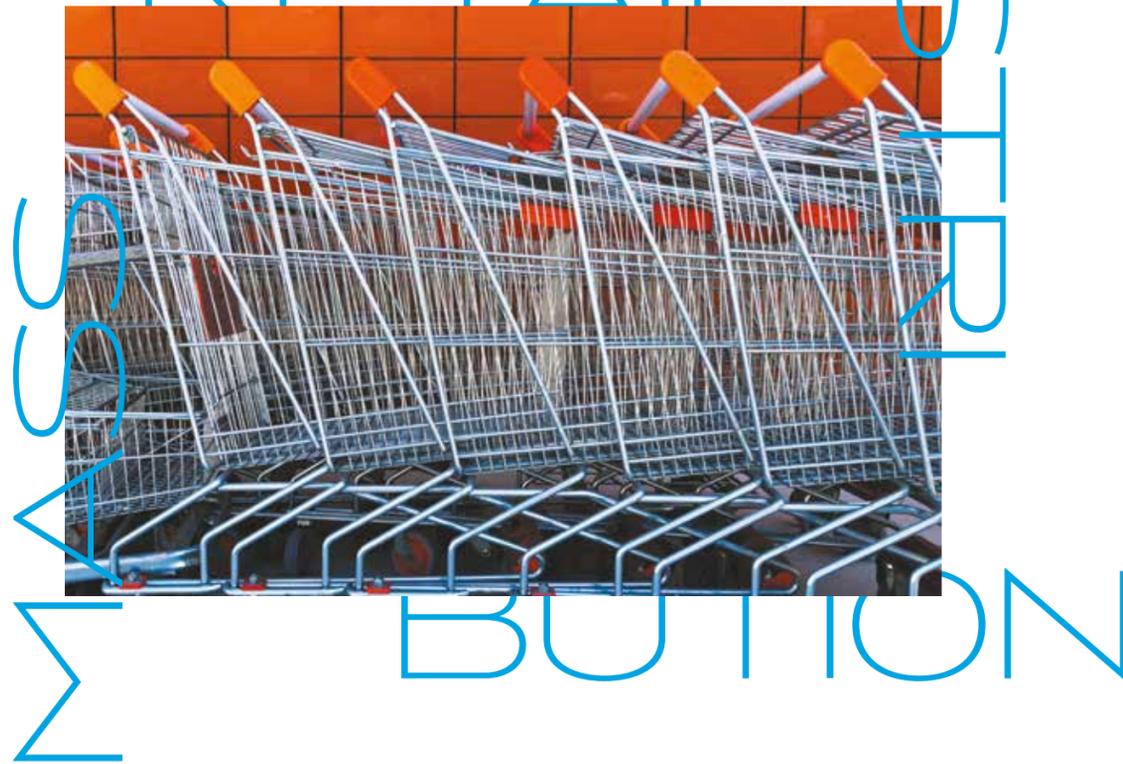
- simplify standardisation and certification by adapting standards to local constraints and facilitating equivalence certification and on-site certification;
- act on the market structure by bringing in new stakeholders and strengthening small operators, pooling storage and purchasing spaces for materials, setting up a direct cement import sector from Mauritius and promoting the development of local materials sectors;
- promote better information on price formation by improving cost transparency and developing statistical information ([Opinion 18-A-09 of 3 October 2018](#)).

### Fighting cartels

The Autorité imposed a fine of more than €380,000 on several companies in the public works sector in Saint-Pierre-et-Miquelon for setting up cartels which distorted or even eliminated competition both upstream in the production of aggregates, and downstream in the award of public works contracts ([Decision 12-D-06 of 26 January 2012](#)). Several companies were also fined €5 million for reaching an agreement in the sectors for welded mesh and metal reinforcement used by construction companies in La Réunion. These practices have affected all public works activities in La Réunion, particularly the Tamarins coastal road construction project ([Decision 16-D-09 of 12 May 2016](#)). ■■■■

## RETAIL

## DISTRIBUTION

MASS RETAIL  
DISTRIBUTION

**Prices of everyday consumer goods in French overseas territories are significantly higher than in mainland France. Transport costs and the level of taxes are not sufficient to explain the situation, which also results from the practices of certain operators: exclusive import rights.**

**In addition, in order to preserve the functioning of competition in a territory where concentration is already high, the law has extended the Autorité's ability to intervene so it may control smaller transactions.**

**Actively fighting exclusive import agreements**

Exclusive import agreements between manufacturers and importers have been extremely common in French overseas territories for decades. This type of contract prevents distributors from competing with wholesale importers and therefore tends to favour maintaining prices high. This is why since March 2013, the Lurel law has prohibited these practices. The Autorité intervened on several occasions to end them and, in some cases, to impose fines:

- In 2015, it obtained from several large manufacturers in mainland France (Bolton Solitaire, Danone, Johnson & Johnson Santé et Beauté France and Pernod-Ricard) that they stop the exclusive distribution of their products in French overseas territories and that they regularly organise call for tender to select their importing partners on a non-exclusive basis (Decision 15-D-14 of 10 September 2015).

- In 2016, the Autorité sanctioned Henkel and its wholesale importers for implementing exclusive import contracts after the deadline of 22 March 2013, set by law (Decision 16-D-15 of 6 July 2016).
- In 2017, Materne, which markets compotes and dessert brands in La Réunion and Mayotte, was in turn fined for the same type of practice (Decision 17-D-14 of 27 July 2017).
- In 2018, the Autorité fined Dow Agrosociences, which markets termite traps in La Réunion, the French West Indies and French Guiana (Decision 18-D-03 of 20 February 2018).
- In 2018, the wholesale importer General Import and its parent company were fined for having benefited from exclusive import rights in Wallis and Futuna for consumer goods (rice, canned food, drinks, biscuits, sugar, milk powder) (Decision 18-D-21 of 8 October 2018).

**More extensive merger control than in mainland France**

The mass retail distribution sector is highly concentrated, with some companies holding very large market shares of commercial real estate. The Autorité has extensive powers to control the acquisition of retailers and/or stores through a specific threshold of control lower than in mainland France (€5 million for the French overseas territories target compared with €15 million in France) in order to prevent the monopolisation of shopping areas. In 10 years, the Autorité controlled nearly fifteen transactions in the retail food sector, such as the acquisition in Martinique of a Cora hypermarket by Bernard Hayot Group in 2011, two hypermarkets operated under the Leclerc banner by Groupe Parfait in 2012 and a Géant Casino hypermarket by Bernard Hayot Group in 2018, as well as the acquisition in Guadeloupe of the Cora Desmarais hypermarket operated under

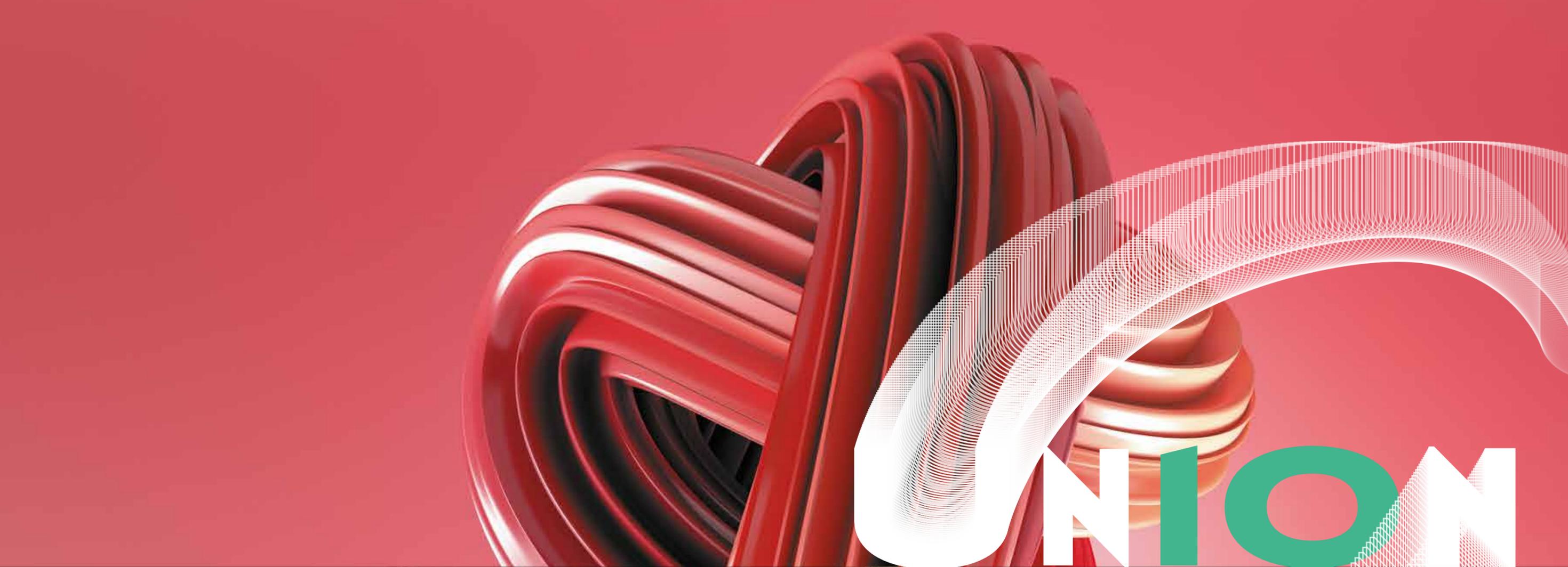
the Cora banner by Sodex Desmarais in 2011 and the acquisition by JKS Finances of a store operated under the Géant Casino brand in French Guiana in 2017.

**A spur for public authorities**

At the request of the French Secretary of State for overseas territories regarding the competitive situation in the overseas territories, the Autorité issued an opinion in 2009 on the mechanisms for importing and marketing consumer goods in the French overseas territories (Opinion 09-A-45 of 8 September 2009). It recommended improving the functioning of competitive mechanisms in order to revitalise the consumer goods sector, which is the only way to lower prices for consumers. Ten years later, this time for the Minister of the Economy, the Autorité issued a new opinion, which reviews the current state of price trends on these markets and analyses the

causes likely to explain the significant and persistent price gap with mainland France. Its assessment also focused on the impact of the marketing of clearance goods on local producers as well as on maritime transport and port services, the cost of which has a significant impact on retail market resale prices (Opinion 19-A-12).





# OUR

## EXTERNAL VALUES

We are committed to ensuring the protection of economic public policy, 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.

## INDEPENDENCE

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 diagnoses and proposals.

## INTERNAL VALUES

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 *inter partes* nature of the procedure.

## DIALOGUE

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.

## COMMITMENT

We are committed to the proper competitive functioning of markets and make use of all the legal tools at our disposal. We carry out our missions 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 the 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 the consultations with stakeholders, makes our action more effective and legitimate.

## OPENNESS

We bring together profiles, disciplines and nationalities to create a modern vision of competition. We promote 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 soon as practicable. We strive to provide an expert view of competition issues based on thorough investigation and in-depth knowledge, particularly of strategic and emerging markets.

## PURSUIT OF EXCELLENCE

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.

# VALUES

# THE BOARD

## INDEPENDENCE AND COLLECTIVE RESPONSIBILITY

The Autorité's board is made up of five permanent members (the President and four Vice-Presidents) and 12 non-permanent members, who are appointed for 5-year terms that cannot be revoked. The legislator wanted to ensure they come from very different backgrounds: lawyers, university law and economics professors, company managers, heads of professional and consumer organisations share their points of view during deliberations. This diversity enhances the debate and the neutrality of deliberations and, as such, is a guarantee to their richness and legitimacy. The board also keeps its promises in terms of gender parity with 9 women and 8 men.

# OF THE AUTORITÉ



### 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 *Conseil d'État* (French Administrative Supreme Court)

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

**Irène Luc**, Vice-President, Judge



## 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**, Chief Operating Officer, Asset Management at Meridiam
- Alexandre Menais**, Executive Vice-President and General Secretary at ATOS
- Marie-Laure Sauty de Chalon**, CEO of the company Factor K
- Laurence Borrel-Prat**, Lawyer registered with the Paris Bar

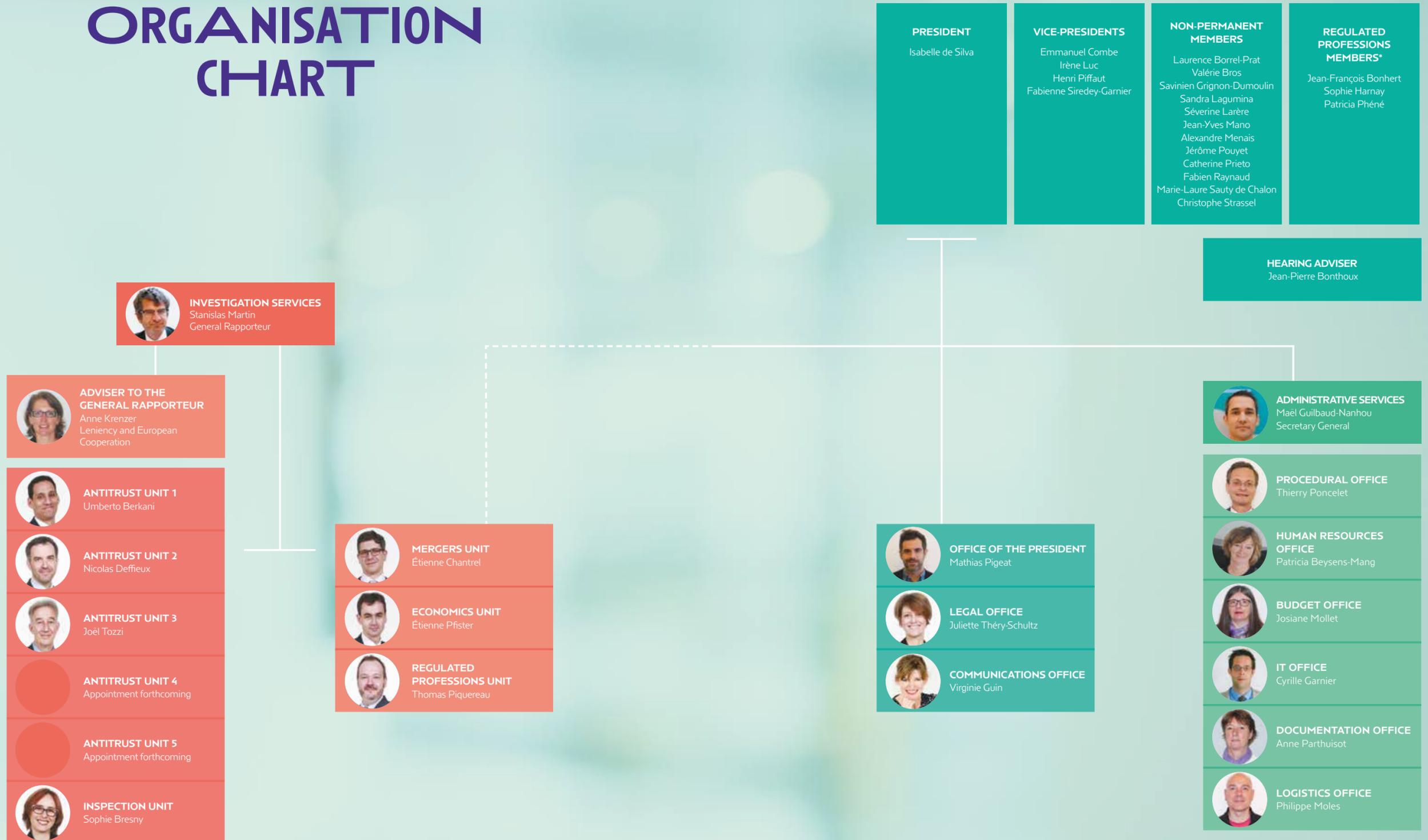


## MEMBERS FROM THE PUBLIC SECTOR

### From left to right

- Jérôme Pouyet**, First class Research fellow at the University of Cergy-Pontoise, at the CNRS and associate professor at ESSEC Business School
- Séverine Larere**, *Maître des requêtes* at the *Conseil d'État* (French Administrative Supreme Court)
- Savinien Grignon-Dumoulin**, General counsel at the *Cour de Cassation* (French Supreme Court)
- Fabien Raynaud**, President of the 6<sup>th</sup> chamber of the litigation division of the *Conseil d'État* (French Administrative Supreme Court)
- Catherine Prieto**, Professor of Law at the *École de droit de la Sorbonne, Université Paris 1 Panthéon-Sorbonne*
- Christophe Strassel**, Senior judge at the *Cour des comptes* (French Court of Auditors)

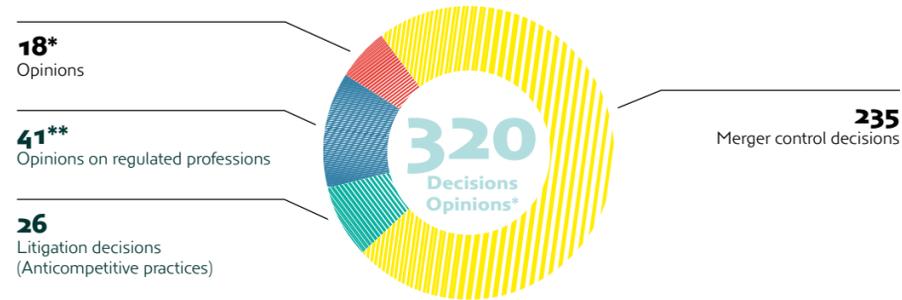
# ORGANISATION CHART



\*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].

# 2018 KEY FIGURES

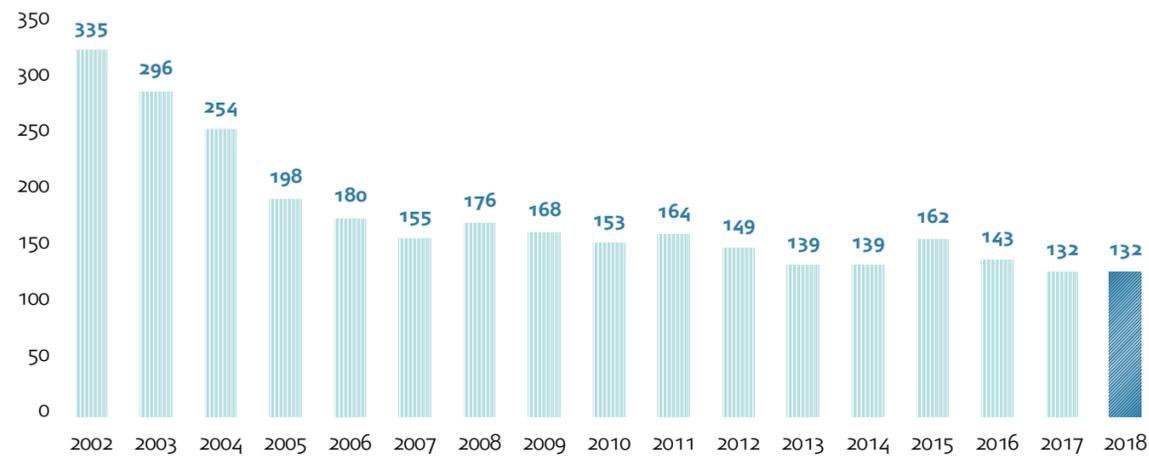
## ACTIVITY REPORT



\*including 6 leniency opinions. \*\*including 37 opinions issued on individual requests for the establishment of court bailiffs and judicial auctioneers in "orange areas".

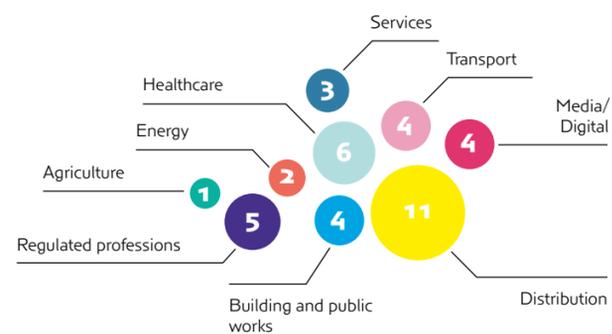
## ONGOING CASES

Case load (excluding mergers)



## ECONOMIC SECTORS

Economic sectors in which the Autorité was most active in 2018 in terms of its antitrust litigation and consultative functions (excluding merger review decisions).



## MERGERS

Clearances without commitments	230
Clearances subject to commitments	4*
Clearance subject to injunctions	1**
Inapplicability decisions	0
<b>Total</b>	<b>235</b>

\*All four decisions were issued in Phase 1. \*\*Decision issued in Phase 2.

## FINES

Total amount of financial penalties (in millions of euros)



### Type of practices sanctioned

Abuses of a dominant position	2
Anticompetitive agreements	8
Non-compliance with commitments (mergers and antitrust)	2
Exclusive imports in French overseas territories	2
<b>Total fining decisions</b>	<b>14</b>

## APPEAL COURT PROCEEDINGS

Status as at 31 May 2019

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Number of appeals filed	12	8	6	10	10	14	8	9	5	8
Number of decisions upheld:	11	5	6	7	8	13	7	9	3	2
• appeal dismissed, inadmissible or withdrawn	9	5	5	5	7	9	5	4	3	2
• partial amendment/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>	–	–
Total appeals examined	12	8	6	10	10	14	8	9	3	2
Cases pending	0	0	0	0	0	0	0	0	2	6
% decisions upheld/total appeals examined	91	62	100	70	80	93	87	100	100	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-19  
7. Decisions 16-D-09, 16-D-11, 16-D-14, 16-D-20 and 16-D-28

These statistics may evolve according to the rulings handed down by the French Supreme Court and the relevant Court of Appeal, as applicable. Rulings subsequent to appeals filed against 2018 decisions are not yet fully known at the time of writing of this report.

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 also be consulted at **autoritedelaconcurrence.fr**



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