ANNUAL REPORT 2021

A SOURCE OF OXYGEN FOR THE ECONOMY

Autorité de la concurrence


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INTERVIEW WITH BENOÎT CŒURÉ,
PRESIDENT OF THE AUTORITÉ DE LA CONCURRENCE

I HOPE THAT THE AUTORITÉ WILL CONTINUE TO PLAY A LEADING ROLE IN SUPPORTING THE NECESSARY TRANSFORMATIONS OF THE FRENCH ECONOMY.

Competition as a source of oxygen for the economy

You have recently taken over as head of the institution. What direction do you intend to take? And what priorities have you identified?

It has been an honour for me to join an institution that enjoys unquestioned independence and is respected in Europe and throughout the world. Every day, I realise how fortunate I am to work with highly competent, motivated and committed teams who continually come up with new ideas and solutions, and who have a strong sense of public service. I would also like to pay special tribute to Isabelle de Silva, who can look back on a rich and innovative term of office, characterised in particular by the strong impetus given to the digital economy. Finally, I am delighted to be able to work in a collegial environment: the wide diversity of human resources and professional talents that make up the Board, which was partially renewed in April 2022, generates a highly stimulating energy and openness, thereby guaranteeing measured and balanced decisions.

I hope that the Autorité will continue to play a leading role in supporting the necessary transformations of the French economy. In this regard, the Autorité's work has had a significant impact over the period 2011-2021, with an estimated gain for the economy of approximately €18.5 billion.

The French economy is confronted with major challenges both in the long term – the development of new digital markets that are consolidating the strategic (and sometimes abusive) role of large players, challenges in terms of data collection, protection and sharing by market players, the urgency of the fight against climate change, as well as in the short term – the multiple consequences of the Covid-19 crisis and the war in Ukraine, and the purchasing power crisis. In all these areas, competition policy has a role to play, often supporting other public policy instruments, and by working in coordination with industry regulators.

€18,5 Billion

gain for the French economy thanks to the work of the Autorité over the period 2011-2021

In 2022, the Autorité will deploy its action over multiple objectives: continuing to take action for the sound competitive functioning of digital markets, participating in the efforts to tackle climate change, helping safeguard the purchasing power of consumers in times of crisis, and countering anticompetitive practices that have an impact on public resources. To achieve these objectives, we will continue to foster a competition culture, guarantee the effectiveness and responsiveness of our work and, finally, ensure that this work is smoothly coordinated with other public policy levers.

As you mentioned, digital technology is playing an increasingly important role in the activities of the Autorité. What approach is the Autorité taking in this regard?

The digitisation of the economy permeates our work, through multiple channels. Whether in the area of litigation, the advisory function or merger control, the Autorité is seeing ever more cases involving new technologies, online services or the practices of major digital market players.

Confronted with these powerful new developments, the Autorité has recently set up a specialised department, the Digital Economy Unit, which is made up of engineers, lawyers, economists and data scientists. This unit is developing extensive expertise in all digital-related areas, and is actively involved in investigations against anticompetitive practices. The unit is also piloting the sectoral study on cloud computing, which will keep us busy throughout 2022. This team will be reinforced if necessary, but we also need to enhance our collective efficiency. As such, in 2021, the Autorité and the 'Pôle d'expertise de la régulation numérique' (Digital Platform Expertise for the Public) of the Ministry of the Economy signed an agreement setting out the terms and conditions of their cooperation. Among other things, the Platform can provide the Autorité with technical assistance, in particular in the areas of data analysis, source code, computer programmes and algorithmic processing. Similarly, I had the opportunity to call for better networking of the expertise resources of the European competition authorities and the European Commission.

With the rise of digitisation, the Autorité needs to work pragmatically and, above all, rapidly. When the conditions allow, imposing interim measures and/or negotiated procedures can be extremely useful. In this regard, I can think of two recent cases. In the case brought by Critéo against Facebook, the latter proposed commitments that were finally accepted after being improved at the request of the Board. Google, in the related rights case, also opted to propose commitments, in order to close a procedure in which the first stage had seen the Autorité impose unprecedented interim measures that Google had unfortunately not complied with – something for which it was fined.

Faced with the power of the digital giants, a new regulation will be put in place with the agreement on the DMA, which is seen as a decisive step forward for the future of Europe in the digital arena. What is the Autorité's position on this subject?

The adoption, under the French presidency of the European Union, of the EU's Digital Markets Act ("DMA"), a unique regulation that complements antitrust regulation, is indeed a crucial step. It had become essential to regulate the behaviour of the major platforms with clear, predictable rules that are adapted to present-day realities.
This will make it possible to rebalance power relations, to the benefit of consumers and business customers. Let us be clear: the DMA will not replace the remit of competition authorities. On the contrary, the two domains are complementary.

The European Commission will implement the DMA, assisted as necessary by the national competition authorities, which can investigate possible infringements and transmit their findings to the Commission. But the national authorities and the Commission will continue their antitrust enforcement, which may enrich the DMA in the future, as well as – let us not forget – their work in the area of merger control, which remains a powerful tool for keeping the market power of the major players in check.

THE ADOPTION, UNDER THE FRENCH PRESIDENCY OF THE EUROPEAN UNION, OF THE EU DIGITAL MARKETS ACT, A UNIQUE REGULATION THAT COMPLEMENTS ANTITRUST REGULATION, IS A CRUCIAL STEP.

In this regard, the DMA strengthens the mechanism of Article 22 of the Merger Regulation by providing national authorities and the European Commission with an additional source of information on the acquisitions by the major platforms covered by the text.
The case law for using this expanded range of instruments will be clarified in the coming months within the European Competition Network.

THE ECONOMIC SITUATION AND THE NATIONAL ELECTIONS HAVE CLEARLY HIGHLIGHTED THE FACT THAT PURCHASING POWER IS THE MAIN CONCERN OF THE FRENCH PUBLIC.

Purchasing power is the main concern of the French public. How can the work of the Autorité have a positive impact on this issue?

The economic situation and the national elections have clearly highlighted the fact that purchasing power is the main concern of the French public. Of course, tackling inflation is primarily the responsibility of the European Central Bank, but the Autorité can help support purchasing power. First, it takes action against illegal practices and unjustified rents, in particular cartels. The French public are not always aware of it, but with the precious support of the DGCCRF (Directorate General for Competition Policy, Consumer Affairs and Fraud Control), the Autorité oversees, detects, investigates and imposes fines. It regularly dismantles cartels involving daily life products, including washing powder, flour, shampoo, dairy products, sandwiches or fruit compotes. In some cases, the anticompetitive agreements can also harm companies - the floor coverings cartel and the parcel transport cartel are good examples - or they affect public authorities when public tenders are distorted.

Secondly, in the context of merger control, the Autorité ensures that the risk of price rises in the catchment areas concerned by mergers and acquisitions is limited and that the diversity of supply is not compromised.

Finally, the Autorité is continually identifying sources of purchasing power and proposing regulatory or legislative reforms accordingly. Many of its ideas in support of purchasing power have been accepted and have come into force. I can highlight of course the opening up of coach transport, measures relating to driving licences, hearing aids and also car spare parts, even if, in the latter case, it took ten years for the Government to follow us! More than ever, we will remain a proactive force to help the economy overcome a challenging context, whether in the area of consumer products, services, agriculture or energy.

We will continue to pay particular attention to the island territories where competition faces specific obstacles - I am referring in particular to the French overseas territories and Corsica, as well as New Caledonia and Polynesia, whose competition authorities are our partners.

In the area of merger control, the Autorité has recently had to take several unprecedented decisions, or will need to issue decisions on a number of highly anticipated cases.

2021 was a particularly active year in terms of merger control, with the Autorité issuing a record 272 decisions. Against the backdrop of restructuring in various economic sectors, the Autorité strives to apply competition law with pragmatism and realism. On referral from the European Commission, the Autorité examined, for example, the acquisition of Conforama by Mobilux, which owns the But group. This case was a first for the Autorité, since despite the competitive risks identified, both downstream in certain catchment areas and upstream for bed manufacturers and franchisees in the French overseas territories, we decided to clear the transaction without any commitments, pursuant to the "failing firm defence" - an exception rarely invoked as it is governed by very strict criteria, which in this case were met.

Another important decision in recent months was the second formal blocking of a merger (the first was in 2020). This was the takeover of the 'Pipeline Méditerranée-Rhône', a 760 km long pipeline network that supplies refined products to depots in south-eastern France, by the Ardian group. This takeover entailed significant risks of price increases for the transport of hydrocarbons in the south of France, deteriorated quality of services and limiting investments, which no remedy could avert.

Among the highly anticipated cases currently being examined is of course the proposed takeover of M6 by TF1, two major channels in the audiovisual landscape. This large-scale operation required the opening of an in-depth examination phase and mobilised significant resources within the investigation services. Numerous hearings were held, a survey of 1,000 advertisers was conducted, and market tests were carried out to gather the views of operators in the main sectors concerned (i.e., markets for the acquisition of rights, television service publishing and distribution, and advertising). The examination is ongoing, with a decision expected by the end of the summer.

We are seeing an increase in actions for damages. Are you keeping a close eye on this phenomenon?

As a preliminary point, it is useful to recall that the fines imposed by the Autorité are administrative in nature and they sanction practices that disrupt the economic public order: they are therefore not paid to the victim but to the Treasury.

Downstream of the Autorité's work, the victims of anticompetitive practices may seek compensation for their losses. They are even strongly encouraged to do so by the directive of 2014, transposed into French law in 2017, which facilitates their access to evidence and allows them to base their request directly on the competition authorities' finding of infringement. Since this transposition, there has been a noticeable rise in actions for damages brought before national courts, with damages obtained that can be very substantial. The new applicable provisions in terms of cooperation between the courts and the Autorité should further encourage the development of these actions in the future. The specialised judicial courts and the administrative courts may seek the opinion of the Autorité regarding the assessment of the loss for which compensation is sought.

This was the case for the administrative court in Strasbourg, which relied on the observations provided by the Autorité to issue its decision on 20 October 2021, in which it ordered several of the companies involved in the cartel in the school bus transport sector in the Bas-Rhin region to pay the European Collectivity of Alsace €2 million euros, with interest, for the damage suffered.

THE RISE IN THE NUMBER OF ACTIONS FOR DAMAGES HELPS STRENGTHEN THE EFFECTIVENESS AND DETERRENT EFFECT OF COMPETITION LAW.

In addition to the legitimacy of the principle of compensating victims, this rise in the number of actions for damages helps strengthen the effectiveness and deterrent effect of competition law, which the Autorité can only welcome.

The fight against climate change is one of the Autorité's priorities. Are the reflections and actions progressing in this area?

Sustainable development goals (laid down by the climate law at the national level and by the Green Deal at the European level) will play an increasingly important role in the Autorité's interventions, prompting it to adapt its analysis to these new challenges.

The Autorité is mobilising all its resources and its "sustainable development network" is responsible for developing the expertise of its departments on these topics. The Autorité will focus in particular on the most harmful anticompetitive practices in terms of sustainable development and will ensure that it supports companies wishing to promote virtuous practices, in the spirit of the horizontal guidelines currently being drawn up by the European Commission.


A COMMITED

VISION

THE AUTORITÉ AT A GLANCE

A GAIN FOR THE ECONOMY THROUGH THE WORK OF THE AUTORITÉ FROM 2011 TO 2021

€18.5 billion

EXPERTS

193 agents

17 board members

AN INDEPENDENT AND COMMITTED INSTITUTION

The Autorité de la concurrence is the institution responsible in France for ensuring the smooth functioning of competition on the market. As an independent administrative authority, it operates with a Board structure and is made up of a wide range of profiles, which fosters debate and ensures the impartiality of the deliberations.

EUROPEAN NETWORK

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

FINES FOR 2021

€873.7

million

BUDGET

€23.84

million

MISSIONS

SANCTIONING ANTICOMPETITIVE PRACTICES

The Autorité ensures that anticompetitive agreements and abusive behaviours, which can have a serious impact, are punished. These practices include horizontal agreements between competitors (in particular "cartels" that can result in price rises), vertical agreements between suppliers and distributors, or abuses (exclusionary or exploitative abuses) by actors in a dominant position. These practices harm consumers, downstream businesses, the public finances in the case of agreements in public tenders, and affect market efficiency by reducing the incentives for companies to improve.

CONTROLLING MERGERS

As the watchdog for the competitive structure of markets on the French territory, the Autorité examines proposed takeovers and mergers that exceed a certain size. It therefore ensures, upstream, that these transactions do not lead to too strong dominant positions or monopolies, which would reduce the competitive dynamics in the areas concerned. If there are risks of harm to competition, its clearance decisions are conditional on suitable solutions being put in place (structural or behavioural remedies) or it may block the transaction.

ADVISING POLICYMAKERS

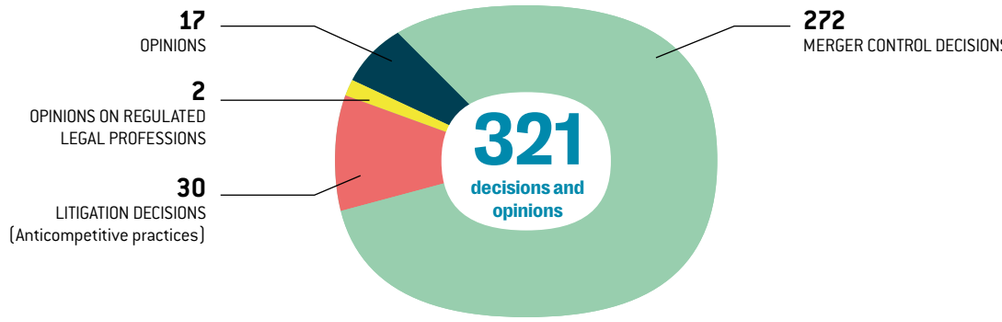
The Autorité has a general advisory and expertise remit, which allows it to play, in a way, a role as competition advocate. Its expertise is frequently called on by the Government and the parliamentary committees on competition-related questions, and draft legislative and regulatory texts.
It then evaluates the impact of a reform on the competitive functioning of a given sector and identifies possible risks of distortion that may arise with the new text. The Autorité also has the power to start proceedings ex-officio.

REGULATING LEGAL PROFESSIONS

The Autorité is tasked with regulating the seven regulated legal professions: notaries, court bailiffs, commercial court registrars, judicial administrators, judicial agents, judicial auctioneers, lawyers at the French Supreme Courts (Conseil d'État and the Cour de cassation). Every two years, it must make proposals to the Government regarding the evolution of tariffs as well as the establishment of new professionals. It therefore actively participates in implementing a reform that is thoroughly modernising these professions.

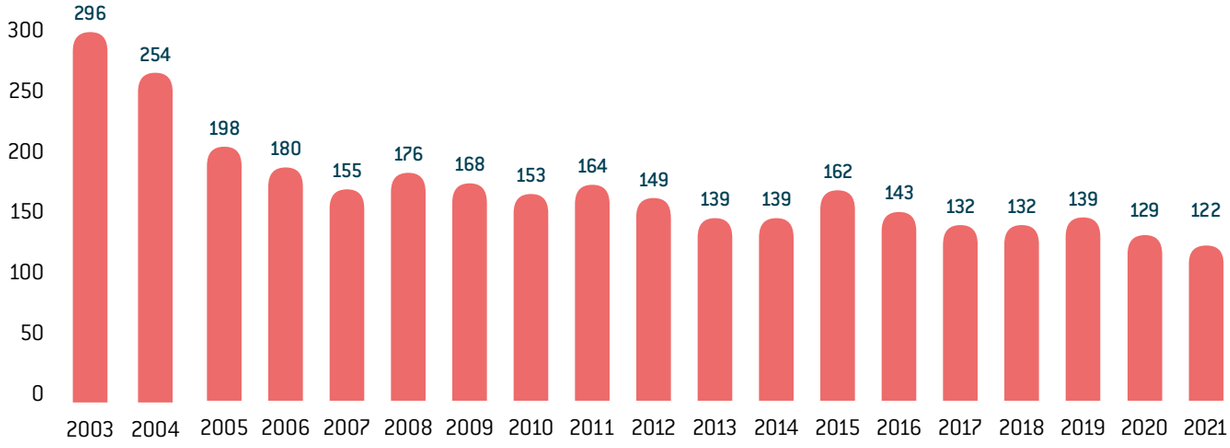
2021 KEY FIGURES

Activity report



Ongoing cases

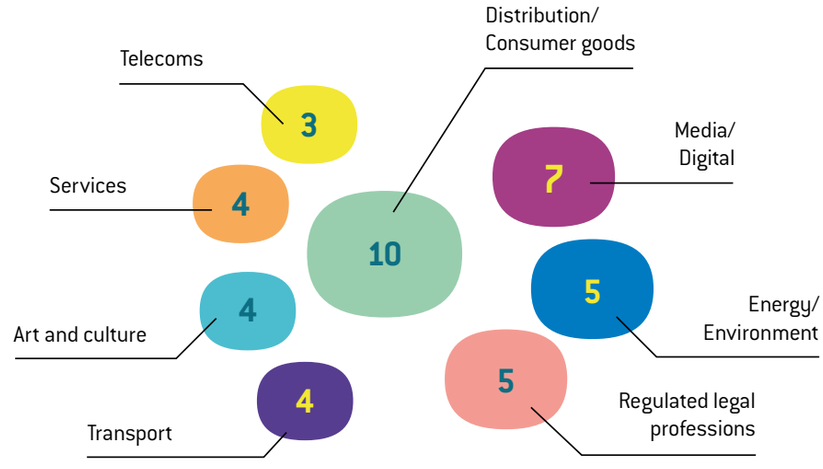
Case load (excluding mergers)



With 122 cases, the case load of open cases has never been so low.

Economic sectors

Economic sectors in which the Autorité intervened the most in 2021, in the context of its litigation and consultative roles
(excluding merger control decisions)

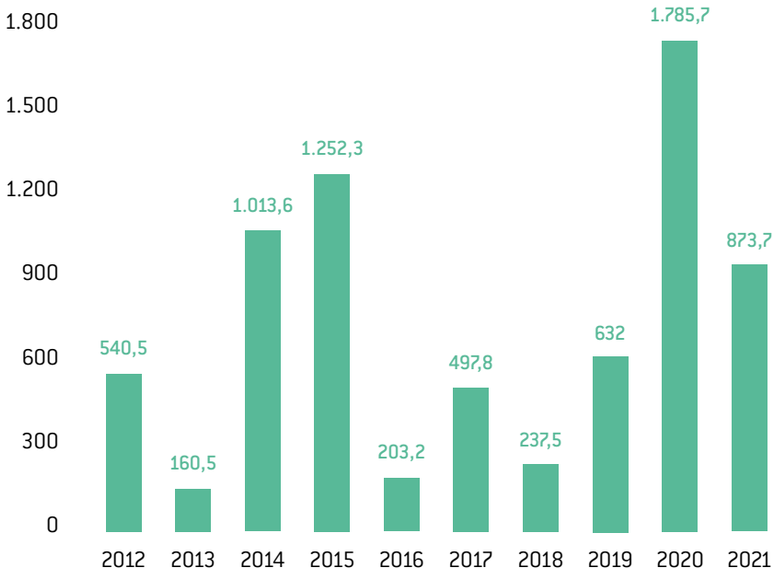


Mergers

Clearances without commitments	261
Clearances subject to commitments	10
Clearance subject to injunctions	0
Inapplicability decision	0
Decision to block	1
Total	**272**

Fines

Evolution of financial penalties (in millions of euros)



€719.7 million
Average annual amount (2012-2021)

Type of practices sanctioned

Abuse of a dominant position	3
Anticompetitive agreements	7
Exclusive import agreements	1
Obstructing an investigation	3
Total number of decisions to issue fines	**14**

Appeal court proceedings

Status as of 14 April 2022

	2016	2017	2018	2019	2020	2021
Number of appeals filed	**9**	**5**	**9**	**12**	**13**	**11**
Number of decisions upheld:	9	5	7	10	4	–
• appeal dismissed, inadmissible or withdrawn	4	4	5	6	4	–
• partial revision/decision on the merits of the case	5[1]	1[2]	2[3]	4[4]	–	–
Total appeals examined	**9**	**5**	**9**	**10**	**5**	**–**
Pending cases	0	0	0	2	8	–
% of decisions upheld/total appeals examined*	**100**	**100**	**77**	**100**	**80**	**NS**

1. Decisions 16-D-09, 16-D-11, 16-D-14, 16-D-20 and 16-D-28
2. Decision 17-D-25
3. Decisions 18-D-21 and 18-D-23
4. Decisions 19-MC-01, 19-D-09, 19-D-19 and 19-D-26

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

THE MAIN FINES FOR 2021

€873.7 M

This is the total amount of fines handed down in 2021.

10%

of the group's worldwide turnover

This is the amount of the penalty for infringements of competition law (French Commercial Code).

Where do the proceeds from these fines go?

The rate of recovery of fines is very high and usually reaches 100%. Paid to the State, the funds are incorporated into the general budget and therefore contribute to the financing of general interest expenses (education, justice, hospitals, etc.).

The decisions mentioned may have been the subject of appeals and counter appeals.
This information is available on the website of the Autorité de la concurrence.

Downstream? The compensation procedure for victims

The victims of anticompetitive practices may rely on the decisions of the Autorité to bring an action for damages before the competent court. For example, in February 2021, the Commercial Court of Paris ordered Google to pay more than €1 million in damages to Oxone, a company providing directory enquiries services, 8th ch., judgment of 10 February 2021). But also in October 2021, the Administrative Court of Strasbourg ordered seven companies involved in anticompetitive practices to compensate the damage suffered by the European Community of Alsace, in the amount of €2 million (Administrative Court of Strasbourg, 20 October 2021, No. 1903573). The seven companies had previously been fined by the Autorité for collusion with a view to winning a public contract to provide school transport services in the Bas-Rhin region.

MERGER CONTROL

A VERY ACTIVE YEAR

In a context of economic recovery, the Autorité examined a record number of transactions.

272 DECISIONS,
MANY OF WHICH INVOLVING BRANDS YOU KNOW

1 blocked merger in the transport of hydrocarbons by pipeline. The Autorité blocked the takeover of Société du Pipeline Méditerranée-Rhône by the Ardian group

10 CLEARANCE DECISIONS SUBJECT TO COMMITMENTS

3 REFERRALS FROM THE EUROPEAN COMMISSION

RESPONSIVENESS AND VIGILANCE

Although the general public is most familiar with the Autorité's fining decisions, it actually has a very diverse range of intervention methods at its disposal to deal with all situations. This sometimes involves intervening upstream in markets and positions that are evolving very quickly, by making full use of the tool of interim measures. It may also be a question of ensuring the smooth progress of the investigation or the proper implementation of the issued decisions. A look back at an eventful year, which illustrates the effectiveness of these tools.

INTERIM MEASURES, A VALUABLE TOOL

In the event of a situation requiring rapid intervention, and if there is serious and immediate harm to competition, the Autorité may be required to issue interim measures pending a decision on the merits of the case. While up until now, the Autorité had to be referred to by a complainant, the Autorité can now impose urgent interim measures on its own initiative, since the transposition of the European directive known as ECN+ (Ordinance no. 2021-649 of 26 May 2021).

By imposing interim measures, the Autorité can therefore prevent, during the investigation into the merits of the case, a potentially anticompetitive practice from seriously and irreparably harming the interests of an economic sector or the company that is the victim. This decision is made, if necessary, in a very short time, within a few months. In the case involving the rejection of the request for interim measures concerning Apple's implementation of the ATT prompt (Decision 21-D-07 of 17 March 2021, for more details on this decision, see p. 54), the Autorité rapidly intervened, even before the implementation of Apple's new iOS. It was a similar situation for the interim measures ordered in the context of related rights, since the decision was made in April 2020 (Decision 20-MC-01 of 9 April 2020), barely nine months after the entry into force of the law on related rights and the implementation of Google's practices that were disputed by press publishers and news agencies. A pioneer in this area, the Autorité regularly uses this powerful tool to achieve a high level of responsiveness and has taken 114 decisions in 12 years.

ENSURING THE SMOOTH PROGRESSION OF THE INVESTIGATION: THREE CASES INVOLVING OBSTRUCTION IN 2021...

The provisions on obstruction are crucial in ensuring the effectiveness of the Autorité's investigative and fact-finding powers. The company under investigation is therefore subject to an obligation of active and good-faith cooperation, which implies in particular that it responds to requests for information sent by the Autorité and that it does not obstruct the smooth conduct of the investigation, for example by breaking seals, failing to respond or providing incorrect or incomplete information, or by interfering with emails during visits and dawn raids. If this is not the case, the company may face penalties that can be substantial.

In July 2021, the Autorité imposed a fine of €5,000 on Nixon, a company active in the watch sector, for failing, over a 5-month period, to respond to a request for information sent in the framework of assistance to the Greek competition authority.
While this company argued it had undergone restructuring measures, this situation alone can in no event justify a complete failure to respond (Decision 21-D-16 of 9 July 2021).

Furthermore, in December 2021, the Autorité also fined Mayotte Channel Gateway (MCG), which manages and operates the port of Longoni in Mayotte, and its parent company (Société Nel Import Export) in the amount of €100,000 for a similar behaviour, which involved failing to respond to requests for information from the investigation services. The latter had sent a questionnaire to MCG and despite several reminders, two extensions of the deadline for responses and a double reminder of the penalties incurred in the event of failure to respond, the companies had not provided the Autorité with any response whatsoever, ten months after the questionnaire was sent (Decision 21-D-28 of 9 December 2021).

THE PROVISIONS ON OBSTRUCTION ARE CRUCIAL IN ENSURING THE EFFECTIVENESS OF THE AUTORITÉ'S INVESTIGATIVE AND FACT-FINDING POWERS.

Finally, in May 2021, the Autorité fined the Fleury Michon group €100,000 for obstructing the investigation in the cold meats cartel case, which had resulted in a fine of €93 million being handed out in July 2020. During the investigation, it was revealed that the group had not informed the investigation services of the change in its corporate structure, even though an internal restructuring operation had led to the delisting of Fleury Michon Charcuterie. The Fleury Michon group not only failed to report this transaction to the investigation services, but also actively misled them after the statement of objections was sent, with its lawyers filing documents in the name and on behalf of Fleury Michon Charcuterie, even though the company no longer existed. Finally, the Fleury Michon group attempted to further profit from its own misconduct by arguing, during the proceedings that resulted in the decision fining the cartel, that Fleury Michon LS (the company having absorbed Fleury Michon Charcuterie) should be exonerated from the case because it had not personally received the statement of objections (Decision 21-D-10 of 3 May 2021).

PERIODIC PENALTY PAYMENTS IN THE EVENT OF NON-COMPLIANCE WITH INJUNCTIONS

The Autorité may order a party committing anticompetitive practices to take or desist from a given action. The aim is precisely, through injunctions either to cease a given action or to modify the party's conduct in the future, to restore competitive functioning. In the event of non-compliance with an injunction issued, the Autorité has the option of imposing a fine. Indeed, it was led to take this course of action in July 2021, by fining Google €500 million for having disregarded various injunctions imposed in the context of its decision relating to the remuneration of related rights. While the Autorité may impose a fine of up to 10% of worldwide sales excluding taxes when it fines anticompetitive practices, it also has the option of imposing periodic penalty payments of up to 5% of total average daily sales for each day's delay from the date it sets, to compel the parties concerned to comply with the injunctions. To ensure the effective enforcement of its injunctions in the related rights case, the Autorité used this tool by imposing a penalty of €300,000 per day's delay at the end of a two-month period starting from the formal request to reopen negotiations made by each of the complainants (Decision 21-D-17 of 12 July 2021 on compliance with the injunctions issued against Google in decision 20-MC-01 of 9 April 2020, for more details on this decision, see p. 49).

RESOURCES FOR A PROACTIVE POLICY

Tomorrow is prepared for today... in particular by strategically prioritising cases and by an effective and proactive detection policy. In this regard, 2021 marks a turning point, with the adoption of new provisions strengthening the investigative powers of the Autorité and introducing the principle of "discretionary jurisdiction" into the statutory provisions. This new power will allow it to identify targets more effectively going forward, and enable the judicious allocation of its resources.

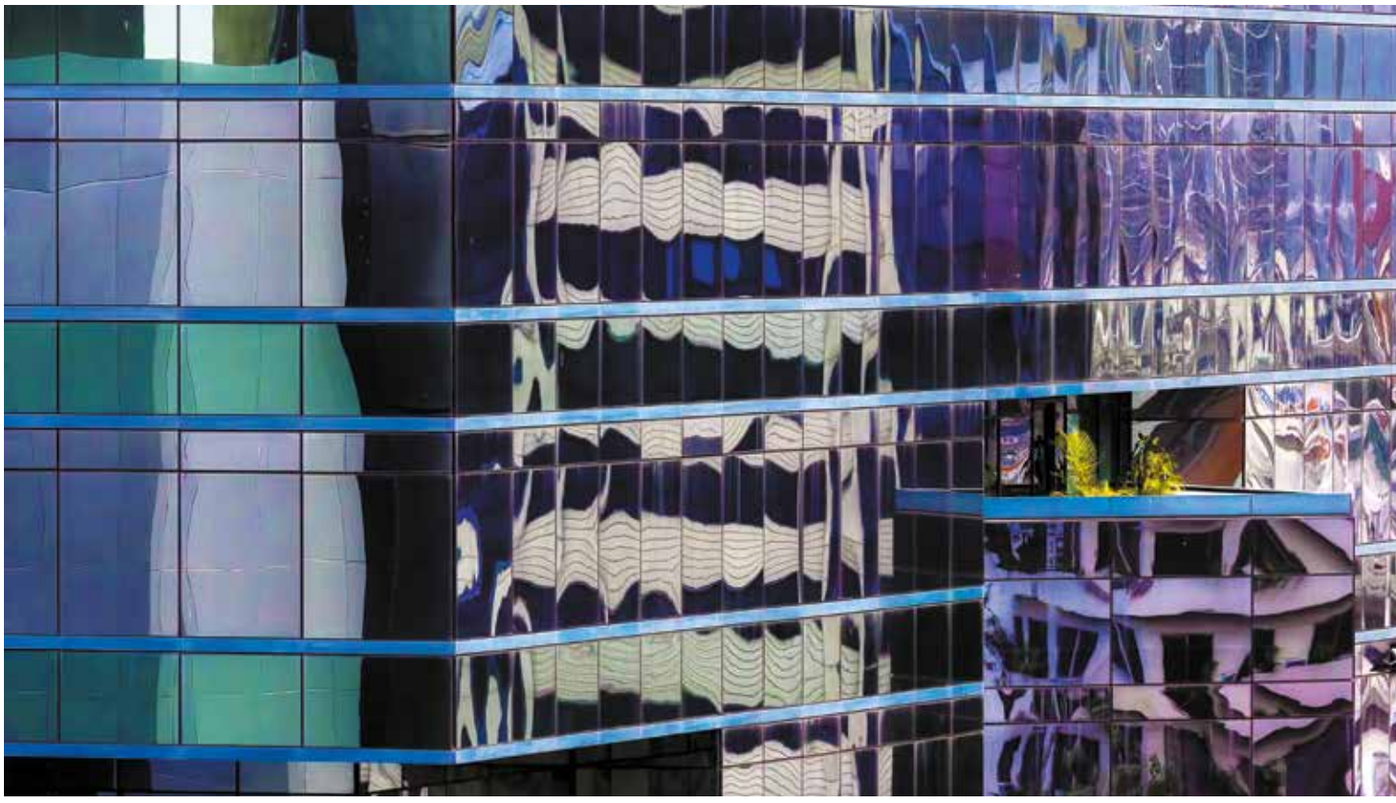
ENHANCED INVESTIGATIVE POWERS TO MEET TODAY'S CHALLENGES

In the area of investigations, the powers of the Autorité have been substantially enhanced with the so-called DDADUE law in 2020, and subsequently by the ordinance transposing the ECN+ directive in 2021. The DDADUE law, firstly, improved the procedures for detecting anticompetitive practices, by modernising the legal regime applicable to dawn raids: a single liberty and custody judge will now have national jurisdiction to authorise dawn raids taking place simultaneously in multiple places in the country, while the support of judicial police officers, who ensure the smooth conduct of these operations, will be rationalised (Law no. 2020-1508 of 3 December 2020).

The process of improving the effectiveness of its investigative powers subsequently continued with the publication of the ordinance transposing the ECN+ directive, which lays down the rules on access to digital data and the admissibility of evidence. In the context of their investigations, competition authorities are now faced with an exponential volume of digital data within companies, much of which is stored on remote servers or clouds. These new functional uses adopted by companies could entail a challenge for the organisation of dawn raids in terms of access to the storage locations and the fact that the seized data carriers are encrypted. With the aim of safeguarding the effectiveness of investigations and to ensure that procedures are secure, the new provisions eliminate these issues by providing for the possibility for agents from the Autorité de la concurrence and the DGCCRF to access, regardless of the storage location (computer cloud and servers), the information accessible to the persons and companies questioned (e-mails, instant messaging, etc.)

In addition, the new provisions now place the Autorité's procedures under the "freedom of evidence" standard applicable in criminal matters, which will broaden the scope of admissible evidence (Ordinance 2021-649 of 26 May 2021).

On this point, the directive stated that "National Competition Authorities should be able to consider relevant evidence, irrespective of whether it is written, oral, or in an electronic or recorded form. This should include the ability to consider covert recordings made by natural or legal persons which are not public authorities, provided those recordings are not the sole source of evidence [...]. Similarly, NCAs should be able to consider electronic messages as relevant evidence, irrespective of whether those messages appear to be unread or have been deleted" (Directive No. 2019/1 of the European Parliament and of the Council of 11 December 2018, Recital 73).



A POLICY OF TARGETED DAWN RAIDS, FOR THE INTEREST AND WELFARE OF CONSUMERS

In the area of investigations, the Autorité targets strategic sectors for the smooth functioning of the economy, and investigates where the collective interest and the welfare of consumers are likely to be most jeopardised. In 2021, dawn raids were carried out in November in the mass food retail distribution sector, and in July in the pharmacy data collection and processing sector. The investigation services carried out these dawn raids, upon the following authorisation of a liberty and custody judge, at several companies and sometimes at the homes of some of their employees, to ascertain whether they had engaged in anticompetitive practices in the sectors concerned. At this stage, such interventions assume that the companies involved are innocent until proven guilty with regard to the alleged practices, which only a full investigation into the merits of the case can establish, as the case may be (Press Releases of 10 November 2021 and 9 July 2021).

THE AUTORITÉ WILL NOW HAVE THE OPTION TO SET ITS OWN PRIORITIES AND REJECT COMPLAINTS

DISCRETIONARY PROSECUTION: A NEW POWER FOR THE AUTORITÉ

The Autorité and, on the front line, its investigation services are faced with increasingly complex cases. In order to carry out its missions with the same demanding level of efficiency, the time had come to invest in a new planning and prioritisation tool. Provided for in the Ordinance transposing the ECN+ Directive, the Autorité will now have the power to set its own priorities and reject complaints that do not correspond to these priorities.

This power, known as "discretionary jurisdiction", will allow it to better allocate its resources, which can be fully devoted to the rapid resolution of the most important cases (Ordinance 2021-649 of 26 May 2021).

A MODERNISED EUROPEAN COMPETITION REGULATION

To confront the new challenges of market regulation in Europe, competition law and policy are being modernised, adapted and harmonised for even more efficient and faster application. In France, these developments resulted in 2021 in the transposition of the ECN+ Directive, which enhances the powers and tools of the Autorité, the revision of the procedural notice on fines, which is a further important step towards the convergence of the rules applicable to fines within the Internal Market, and the adoption of the Digital Markets Act, which will ensure comprehensive regulation of the major players in the digital sector. Not to mention the cooperation mechanisms that are continually being strengthened between authorities and are leading to greater convergence.

TRANSPOSITION OF THE ECN+ DIRECTIVE, SIGNIFICANT PROGRESS AND ENHANCED POWERS

Directive (EU) 2019/1 of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, the ECN+ directive, was transposed into domestic law with Ordinance 2021-649 of 26 May 2021.
This text strengthens and extends the powers of the Autorité and the other national competition authorities of the European Union, for the benefit of the consistent application of European competition law. The Autorité's prerogatives, which were already largely aligned with the high standard established by the ECN+ Directive, have nevertheless advanced significantly.

- The Autorité will now have the option **to set its own priorities and reject complaints that do not correspond to these priorities.** This **"discretionary jurisdiction"** power will allow it to better allocate its resources, which can be fully devoted to the rapid resolution of the most important cases.
- The Autorité will now have the possibility of **starting proceedings ex officio to impose interim measures,** no longer simply following a request made by a company, incidentally to an application on the merits. The Autorité will therefore be able to intervene without delay, on its own initiative, when it identifies any conduct that could harm competition, in particular in sectors where market conditions are rapidly evolving.
- The possibility for the Autorité to issue **structural injunctions** (e.g. the divestiture of a subsidiary or business) in the context of litigation, is fully established, thereby aligning its powers with those of the European Commission.
- The directive harmonises the leniency procedure at the European level. This procedure, whereby a company which discloses a serious infringement of the competition rules to the Autorité may apply for an exemption from the financial penalty incurred, is now fully enshrined in national positive law and largely takes over the terms of the **leniency** programme implemented so far by the

Autorité in a soft law framework. Another important advance: the incentive for companies to expose possible secret cartels is further strengthened by the fact that immunity from criminal penalties (or a reduced fine) may also be obtained, under conditions, by natural persons belonging to the staff of the company which first submitted a leniency application.

• The possibility for the Autorité to **access the data of companies which are the subject of an investigation, regardless of where the data is stored, and to access the encryption keys, is fully established, in order to safeguard the effectiveness of investigations,** in the face of new methods of data protection and the latest storage methods for computer data. In addition, the new provisions subject the Autorité's proceedings to the "freedom of evidence" standard, applicable in criminal matters, which will broaden the scope of admissible evidence.

• The **system of financial penalties is now more of a deterrent** and better harmonised at European level. Organisations - now "associations of undertakings" - are no longer subject to a specific penalty regime for infringement of the competition rules (they previously benefited from a fine ceiling of €3 million), but are now subject to a much higher ceiling, equal to 10% of the total turnover of the companies belonging to the association. This will apply in particular to professional trade associations and professional bodies.

• The **criteria for determining the amount of the fines** will now be unified and aligned with those used by the European Commission, based solely on the traditional notions of the seriousness and duration of the infringement, with the reference previously made in the law to the notion of "harm to the economy" being removed.

• Finally, **European cooperation between national competition authorities** has been strengthened (mutual information obligations between the authorities of the European Competition Network, extension of assistance between authorities, in particular for inspections, notification of procedural documents and recovery of fines) (Ordinance 2021-649 of 26 May 2021).

REVISION OF THE PROCEDURAL NOTICE ON FINES, MODERNISATION AND HARMONISATION

On 30 July 2021, the Autorité issued a new procedural notice on fines, which repeals and replaces the previous notice of 16 May 2011. The principle of publishing the methodology for calculating financial penalties is part of a transparency approach designed to meet the needs of companies for legal certainty and predictability. The new procedural notice is therefore an important further step towards the convergence of competition rules and will promote a

consistent application of penalties within the internal market.
This update, which follows up on a public consultation, first draws, the consequences of the new applicable statutory provisions resulting from Ordinance 2021-649 of 26 May 2021 transposing the ECN+ Directive. Moreover, the Autorité has made a number of additional adjustments based on its work over the past ten years, the case law of the review courts and the practice of the European Commission.

Among the key developments in the new procedural notice are:
• the reference to **the notion of harm to the economy** has been eliminated;
• the ceiling of fines, €3 million, has been eliminated for **associations of undertakings** and the fining regime of up to 10% of turnover has been aligned;
• details on the method for calculating the **basic amount of the fine** have been added, also for the cases justifying an adaptation of this method, in particular in the presence of two-sided or multi-sided markets, which are crucial in the digital economy;
• The indicative list of factors that the Autorité may take into account in assessing the **seriousness of practices** has been updated, and now explicitly includes innovation and the environment among the parameters of competition affected by the infringement;
• the **possibility of adding to the basic amount** an additional amount of between 15% and 25% of the value of sales for the most serious practices of horizontal agreements and abuses of dominant positions;
• taking into account the **duration of the infringement as a parameter in its own right** for calculating fines, by aligning the coefficient for taking into account the duration with that provided for in the European Commission's guidelines and, when the infringement period is less than one year, by calculating the duration on a pro rata temporis basis of the undertaking's participation in the infringement;
• taking into account new **mitigating circumstances** as criteria for individualising the fine, in particular when the undertaking has implemented compensation measures during the course of the proceedings that specifically benefit the victims of the practice;
• the possibility of **increasing the fine** where it is clear from the evidence at the Autorité's disposal that the estimated illicit gains made by the undertaking concerned as a result of the infringement in question exceed the amount of the financial penalty which the Autorité could impose;
• taking into account, in the **assessment of repetition**, of fines imposed by other EU competition authorities and by the European courts.

THE AUTORITÉ HAS BEEN STRONGLY COMMITTED TO AMBITIOUS EU LEGISLATION ON DIGITAL MARKETS, BEING INVOLVED IN THE NEGOTIATIONS FROM THE OUTSET, IN ORDER TO PROMOTE AN ACTIVE ROLE FOR NATIONAL COMPETITION AUTHORITIES IN THE IMPLEMENTATION OF THE TEXT.

THE DIGITAL MARKETS ACT, THE COMPLEMENTARY TOOL TO COMPETITION POLICY

The Digital Markets Act (DMA) aims to combat certain practices implemented by major digital platforms that are deemed harmful to two guiding principles: contestability and fairness of markets.
This new legislation will represent a structuring pillar in the regulation of digital platforms in Europe. It will benefit user companies that depend on these platforms to offer their services in the single market, who will benefit from a fairer business environment; innovators and technology start-ups, who will have new opportunities to compete and innovate in the online platform environment; and finally consumers, who will benefit from a wider choice of services of better quality, more opportunities to switch providers if they wish, direct access to services and fairer prices.

The DMA was drafted on the principle of self-enforcing regulation: once the digital platforms covered by this text have been designated by the Commission on the basis of objective qualitative and quantitative criteria as 'gatekeepers', they will be subject to rules that are precisely laid down in the text, in advance, without the need for the Commission to demonstrate the existence of a dominant position, abuse, or to define a market. These obligations and prohibitions were, for the most part, enacted by analysing anti-competitive practices that had been fined in the past by various competition authorities in Europe, as well as on the basis of various studies and sector-specific inquiries, and cover many components:
• access to data and data mining;
• the opening of mobile ecosystems and the free choice of end users;
• interoperability;
• targeted advertising;
• bundled offers;
• transparency obligations.

For example, gatekeepers will have to allow user companies to access data generated by their activities on their platform, or allow user companies to promote their offerings and enter into contracts with their customers outside their platform. They will, however, be prohibited from preventing consumers from accessing the services of companies outside

their platforms, or from giving the services and products they offer a more favourable treatment in terms of ranking than comparable services and products offered by third parties on their platform.

Regarding the acquisitions component, the DMA imposes an obligation on gatekeepers to notify any proposed acquisition in which the target assets provide services in the digital sector or any other economic sector that makes it possible to collect digital data. This information will be communicated by the Commission to the competent national authorities, which will be able to use it for merger control purposes, relying on the referral possibilities provided for in Article 22 of Regulation 139/2004.

The DMA will therefore constitute a powerful complementary tool to competition law and will effectively reinforce the fight against some of the most harmful practices implemented by very important gatekeepers.

The Autorité has been strongly committed to an ambitious and effective DMA, being involved in the negotiations from the outset, in order to promote an active role for national competition authorities in implementing the text, with the aim of ensuring optimal coordination between competition law and the DMA, to ensure that the DMA is as effective as possible. This involvement was demonstrated, firstly, by the Autorité's participation in interministerial discussions aimed at determining the position of the French authorities at the Council of Ministers, and secondly, by discussions with its European counterparts, which resulted in the publication of a joint document by the ECN members. The Autorité also participated, under the aegis of the Permanent Representation of France to the EU, in the negotiations conducted by the Council of the European Union in the context of the French Presidency of the European Union, and was called upon in particular to provide technical expertise on issues of particular relevance to its expertise.

The Council and the Parliament reached a provisional political agreement on the draft regulation on 24 March 2021. T**he centre of gravity of this text will be European:** the European Commission will have sole competence in implementing the powers provided for in the DMA (including the power to designate gatekeepers, update the list of obligations, conduct market investigations, impose fines, including fines up to the limit of 10% of the total worldwide turnover generated during the previous financial year, or 20% in cases of reoffending, etc.).

The national authorities responsible for enforcing the competition rules will nevertheless have to work in close coordination with the European Commission in order to support the latter in implementing the text and ensure that the DMA is smoothly coordinated with competition law.

The DMA therefore provides for the possibility for Member States to empower the national authorities responsible for enforcing the competition rules to conduct investigations into possible breaches of the obligations under the DMA and to transmit their findings to the Commission.

Cooperation and exchange of information between national competition authorities and the Commission will take place in particular through the European Competition Network (ECN), which has proven to be an extremely effective vehicle for cooperation and coordination over the last 20 years.

The complementarity between competition law and the DMA, which was a source of inspiration for drafting the text, will also constitute a guiding principle for the future. Competition law will remain at the forefront of ensuring open and fair digital markets, but it will also help make the DMA adaptable, for example by identifying new abusive practices that will make it possible, where appropriate, to update obligations listed in the DMA.

The DMA will be implemented within six months of its entry into force.

INTERNATIONAL CONVERGENCE

In addition to a strong presence in European and international fora (ECN, ICN, OECD, UNCTAD), the Autorité also participates in the work of the G7 competition authorities (Canada, France, Germany, Italy, Japan, United Kingdom, United States).

The adoption of a common understanding "on competition in the digital economy", under the French presidency and signed in Chantilly in 2019, was a first step in building a common and ambitious vision around digital issues.

The initiative has been set out for the long term, with the competition component of the G7 cooperation being continued in 2021 under the UK's G7 presidency, resulting in the creation of the "Compendium of approaches to improving competition in digital markets". This document identifies and compiles the decision-making and advisory practice in the digital economy of the competition authorities of the G7 countries, the European Commission's Directorate General for Competition and the competition authorities of four guest countries (Australia, India, South Africa and South Korea).

The collection of experiences of each is structured around four areas:
1. **The responses of competition authorities** to competition concerns raised by digital markets (decisions, opinions, sector enquiries or technical studies).
2. **The professionalisation of the competition authorities' services** with the creation of specialised teams on digital issues.
3. **The development of legislative reform proposals** at national or European level.
4. **The importance of cooperation** at national level between regulators or international level between competition authorities (Press release of 29 November 2021).

SUSTAINABLE DEVELOPMENT AND COMPETITION, A GROWING ASSOCIATION

Our world is undergoing major societal upheaval, including the urgent need to create a more sustainable and resilient society. Sustainable development has therefore become an important current topic for competition authorities both at the European level, with the ambitions of the Green Deal and the revision of the block exemption regulations, and at the national level, with the Autorité's stated desire to invest in these areas. Sustainable development issues are now playing an increasingly important role in litigation and advisory proceedings, and are also emerging in the assessments carried out in the context of merger control, particularly in the examination of new markets. Review of a year of progress.

THE CONTOURS OF A CLARIFIED LEGAL FRAMEWORK ARE TAKING SHAPE

When it comes to sustainable development, companies have started to take part in the change. While, at first glance, competition policy would not appear to be at the forefront of sustainability issues, competition law and sustainable development nevertheless find a meeting point to the extent that, by safeguarding the competitive process, competition law protects and promotes not only consumer welfare, which is increasingly expressed towards sustainable products, but also sustainable innovations. Even more directly, competition law provides a framework for the initiatives envisaged by the economic actors in the area of sustainable development. Nevertheless, in some cases, these initiatives may potentially contradict competition law. The examination of these initiatives by competition authorities then makes it possible to secure cooperation agreements that are favourable to sustainable development and that generate positive effects in terms of public interest that offset the negative effects on competition while sufficiently benefiting consumers.

In France, the Autorité is aware of the difficulty for economic actors to ensure, in certain cases, that their agreements do not create issues with respect to competition rules. That is why the investigation services carry out in-depth reflections on these topics, within a dedicated internal network (Sustainable Development Network) and why the Autorité participates in the various projects undertaken in international forums, whether at the OECD, within the European Competition Network or the International Competition Network, one of the major themes of the 2021 edition of which was devoted to sustainability (To watch the ICN conference, Sustainable Development and Competition Law, 13 October 2021, https://icn2021budapest.hu/site/).

At the European level, the process of revising the rules on horizontal cooperation agreements between companies is also underway. The aim is to adapt the current

rules to the economic and societal changes that have taken place over the last ten years in terms of digital and green transitions. The draft guidelines include a new chapter on the assessment of horizontal agreements pursuing sustainability objectives. It therefore clarifies for businesses when they can lawfully cooperate with competitors, including, as the case may be, through individual exemption in the most complex situations. In particular, the draft gives "special attention to agreements that set sustainability standards, as this is expected to be the most common form of cooperation to achieve sustainability objectives" (EC Press Release, 1 March 2022 and Explanatory Note accompanying the draft revised Horizontal HBER and Guidelines).

ADVISORY ACTION: REQUESTS FOR AN OPINION IN THE CONTEXT OF GROWING PUBLIC ACTION AS REGARDS THE TRANSITION

The green transition prioritised by the Government and Parliament has prompted the adoption of new regulatory frameworks in various sectors. In this context, and pursuant to Article L. 462-1 of the French Commercial Code, the Autorité is required to consider draft bills that present sustainable development considerations in interaction with competition issues.
For example, in 2021, the Autorité was asked to give its opinion on the criteria for allocating the markets for the collection, transport and regeneration of used oils as part of the implementation of a new extended producer responsibility (EPR) scheme for mineral or synthetic lubricating or industrial oils.
In particular, the Autorité considered that the contemplated criteria were not relevant given the historical structure of the market and existing competitive pressures. The Autorité's Opinion (Opinion 21-A-13 of 11 October 2021) was followed with respect to this recommendation and the Ministerial Order of 27 October 2021 does not therefore contain said criteria.

ENFORCEMENT ACTION: A GRADUALLY EXPANDING DECISION-MAKING PRACTICE

The Autorité also acts in the domain of litigation, with a focus on identifying anti-competitive practices that could harm sustainable development.

Floor covering cartel

As the Autorité indicated when it issued fines against the floor covering cartel, practices that have a negative impact in terms of sustainable development are considered particularly serious. In this case, the three main manufacturers of PVC and linoleum flooring had, inter alia, refrained from competing on the basis of the merits of their respective products with regard to environmental criteria, by avoiding using this as a selling point, even though the environmental performance of floor coverings, particularly with regard to emissions of volatile organic compounds, has become one of the main criteria of choice for client distributors, businesses or private consumers. The Autorité found that this agreement may have deterred companies from improving the technical performance of their products and investing in innovative processes intended to improve their environmental performance (Decision 17-D-20 of 18 October 2017).

Following this fine, several French hospitals decided to initiate proceedings in 2022 for compensation for the damage they suffered as a result of the overcharging of millions of meters of linoleum flooring.

Road transport

In September 2021, the Autorité fined anticompetitive practices that disrupted the digital transition in the road transport sector, with potentially negative effects on the environment. In this sector, various organisations had joined forces to boycott or incite road transport companies to boycott new digital intermediation platforms that offered optimisation services which made it possible to eliminate a level of intermediation, or reduce empty returns by road transport companies. Nevertheless, according to ADEME, a 1% reduction in empty returns would result in a 0.70% reduction in greenhouse gas emissions. The Autorité therefore took into account the fact that the practices impeded efforts to improve environmental efficiency of the sector when setting the fine (Decision 21-D-21 of 9 September 2021).

NEW "GREEN" CONSIDERATIONS EXAMINED IN THE CONTEXT OF MERGER CONTROL

Sustainable development issues also apply to merger control, which ensures in particular that mergers between competitors do not impair innovation. Indeed, by ensuring that mergers do not harm competition, the Autorité safeguards and encourages innovation, so that companies continue to develop new technologies, new know-how or better products that lead to environmental and sustainable improvements.
In terms of merger control, defining the relevant markets is an essential step, insofar as this makes it possible to identify the scope within which competition between companies takes place and to assess, in a second stage, the respective market powers of the players involved. As part of the examination of transactions submitted to it, the Autorité is increasingly inclined to define and examine what are known as new "green" markets.

For example, during the examination of the transaction relating to the stake acquired by Storengy, a subsidiary of Engie, in DMSE, the Autorité examined, for the first time in

AS PART OF THE EXAMINATION OF TRANSACTIONS SUBMITTED TO IT, THE AUTORITÉ IS INCREASINGLY INCLINED TO DEFINE AND EXAMINE WHAT ARE KNOWN AS NEW "GREEN" MARKETS.

January 2021, the markets for the production and distribution of hydrogen, as well as the market for the development, construction and installation of hydrogen stations. The Autorité considered that although after the transaction, DMSE would be the only operator active on the hydrogen distribution market in the Dijon area, this position was not necessarily problematic, given the emerging and rapidly expanding nature of the market. Taking into account the existence of potential competitors and the absence of barriers to entry on this market, it considered that this situation did not raise competition concerns. Furthermore, given the importance of electricity in the process of producing hydrogen by electrolysis, the Autorité also assessed the effects of the transaction on the market for the retail supply of electricity. In this framework, it questioned the need to identify a separate segment of "green electricity" retail supply, grouping together the green electricity offerings that rely on electricity generated from renewable sources or covered by guarantee of origin certificates. In this regard, the Autorité noted the growing development of these offerings, which are primarily based on the system of certificates of origin and on the increasing demand from consumers (companies, local authorities and individuals).

In light of these factors, the Autorité found that there was less substitutability between the retail supply of green electricity and that of traditional electricity, a finding that seems to suggest the existence of a specific market for the retail supply of green electricity. Nevertheless, the Autorité decided to leave this question open at this stage, as the competitive analysis remained unchanged, regardless of the segmentation applied.

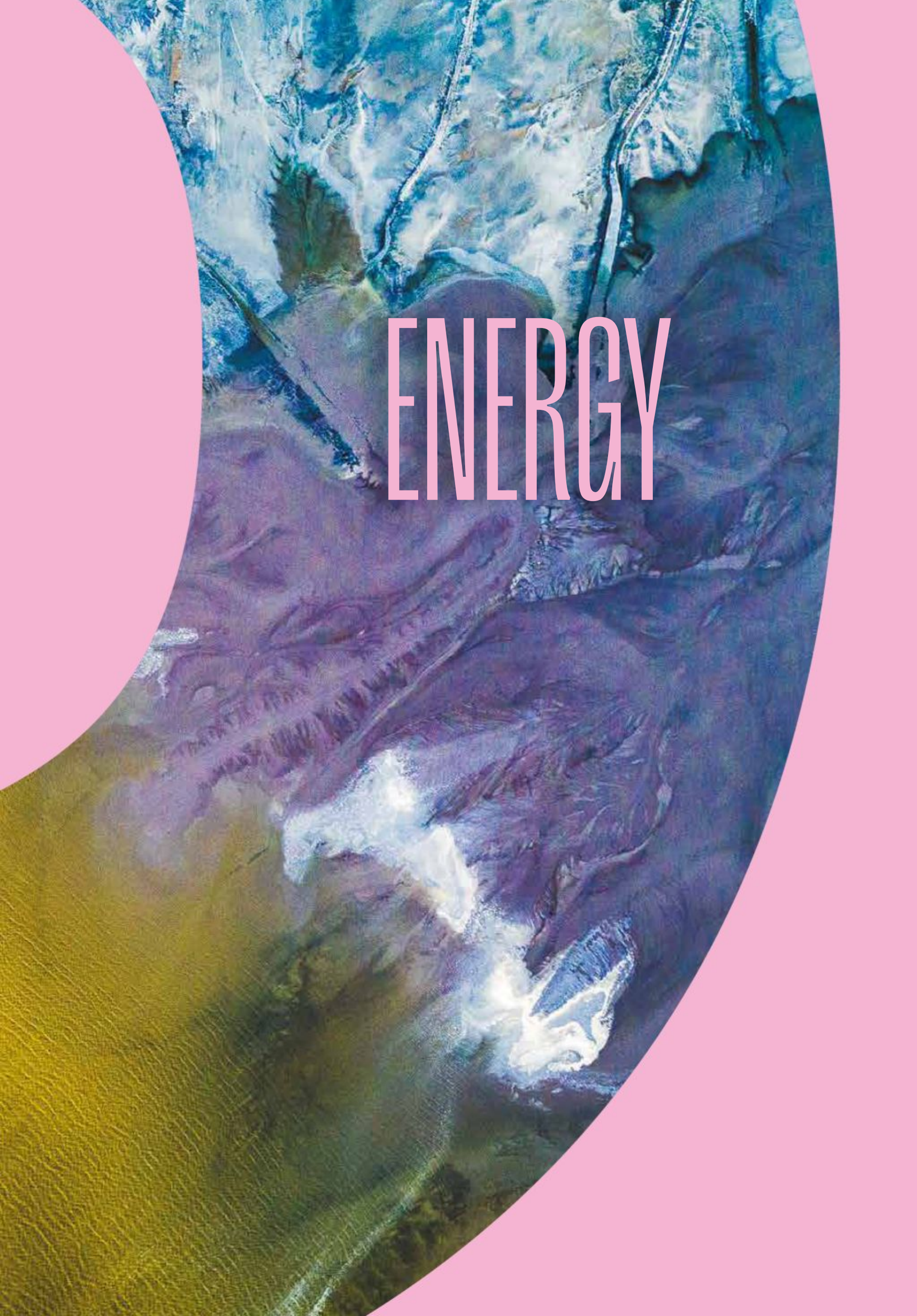
At the end of its analysis, the Autorité therefore cleared this transaction without imposing any specific conditions (Decision 21-DCC-18 of 29 January 2021).
Conversely, in May 2021, the Autorité adopted a decision to block the proposed acquisition by the Ardian group, which is active in the transport, telecoms and renewable energy sectors, of Société du Pipeline Méditerranée-Rhône (SPMR), which is active in the transport of hydrocarbons through pipelines. Among other things, the Ardian group claimed that it would steer the target's commercial policy in the direction of energy transition and that this "gain" was specific to the planned merger. While the Autorité rejected this analysis given the facts of the case, it nevertheless clarified that environmental gains could, in theory, be admissible to counterbalance the risks of harm to competition associated with a merger (Decision 21-DCC-79 of 12 May 2021, for more details on this decision, see p. 94).

Finally, in October 2021, the Autorité examined the creation of the GMOB joint venture by AGI, EDF PEI, Genak and SAFO, which planned to operate in the sector of public charging stations for electric vehicles in Guadeloupe and, in a second phase, in Martinique and French Guiana. On this occasion, the Autorité examined for the first time the upstream market for the supply of electric vehicle charging points and the downstream market for the installation and operation of electric vehicle charging points. At the end of its analysis, the Autorité cleared this transaction without imposing any specific conditions (Decision 21-DCC-172 of 1 October 2021, for more details on this decision, see p. 92).

APPLYING THE ENVIRONMENTAL CRITERION AS A PARAMETER FOR ASSESSING THE SERIOUSNESS OF PRACTICES

The Autorité announced in July 2021 that it intended to adapt its assessment of seriousness in its procedural notice on the setting of fines, by updating the list of factors that it may take into account in assessing the seriousness of practices. The Autorité now explicitly states that environmental damage will constitute a criterion for assessing the seriousness of a practice, when it calculates the fine to be imposed on the company in question. In doing so, the Autorité aims to underscore the fact that anticompetitive practices that have an impact on the environment may be considered more serious and that companies found guilty of such breaches may be subject to heavier fines. (Procedural Notice on the setting of fines, 30 July 2021).


CREATIVE


ENERGY

For regulated competition

IN THE WORDS OF EMMANUEL COMBE,
VICE-PRESIDENT OF THE AUTORITÉ DE LA CONCURRENCE

The public often have an ambivalent view of competition: as consumers we're grateful for it, as employees we fear it, as citizens we debate it. For some, it is a healthy form of emulation, which allows the most deserving to assert their talents. Indeed, economist Frédéric Bastiat keenly noted in his day that destroying competition is like "killing intelligence". Competition is the antithesis of arbitrariness, privilege and unjustified rents: it embodies "the democratic law in essence". For others, competition is like a selection process, at the end of which a company finds itself alone on the market and will entrench its position by resorting to unfair means, to the detriment of the most fragile. To recall the words of J.F. Proudhon, "competition kills competition".

In fact, there is an element of truth to both of these opposing views. On the one hand, every day we can see the beneficial effects of new players entering the market: on prices, quality and diversity of products, as well as the incentive to innovate. For example, in the case of France, the strengthening of competition in air transport, ride-hailing services, mobile telephony

and notarial offices are all recent, concrete examples of the benefits of this invisible but powerful force.

On the other hand, we also witness that dominant companies abuse their positions to block the entry of new, equally efficient competitors, or to discriminate against their customers. In oligopolistic markets, companies sometimes engage in collective cartel practices that artificially raise prices, without any benefits for customers. The first victims of these practices are often other companies, whose competitiveness is negatively affected.

These two visions, as opposed as they may be, are not irreconcilable, as long as we adopt a dynamic vision. Experience shows us that a company that has initially beaten the competition on its merits may subsequently be tempted to maintain its market power by resorting to artificial practices. The competition process will then grind to a permanent halt: competition will have "killed competition".

Once competition is no longer self-sustaining, the intervention of a "visible hand" becomes essential. This visible hand is that of regulated competition.

In this regard, competition policy, and in particular its antitrust component, plays a decisive role. It is clearly no coincidence that more than 130 jurisdictions around the world now have competition laws and authorities to enforce them. This is the case in France with the Autorité de la concurrence, a leading institution in the service of economic public order.

In the exercise of its enforcement remit, the Autorité de la concurrence has demonstrated its steadfast determination to combat a broad spectrum of anticompetitive practices, using all the tools provided by the legislator: interim measures, fines, injunctions, etc. The subtlety of a competition policy lies in drawing a dividing line between what falls under a company's own merit, and what is unjustifiable, particularly in terms of abuse. This definition of course is constantly evolving, in line with the practices of companies.

But regulating competition is not limited to enforcement. The challenge is also to create new areas for competition in our country, if these areas are constrained by excessive or inadequate regulation. In this respect, the Autorité de la concurrence, in its advisory role, provides guidance to the Government and the national representation on the potential for competition that could be unshackled if the regulations were better adapted to today's world.

In particular, the rise of digital technology and e-commerce makes it possible for new business models to emerge, which cater to new needs. The challenge is not to deregulate everything: the imperatives of quality and safety will always justify maintaining a minimal level of protective regulations. The challenge is to ensure that the level of regulation is justified and proportionate to the pursued objective, and that it does not lead to excessive restrictions on competition, by maintaining artificial rents. This is a fundamental challenge for our country: in a world of disruption and innovation, the economic growth of tomorrow will depend in large part on our ability to allow new giants to emerge and grow.

Through its enforcement and advisory remit, the Autorité de la concurrence plays a comprehensive role in this regulation of competition, with the aim of ensuring the conditions of a competitive market, for the greatest benefit of all: more competitive prices, diversified products, the growth of new players, stronger incentives to innovate.

ONCE COMPETITION IS NO LONGER SELF-SUSTAINING, THE INTERVENTION OF A "VISIBLE HAND" BECOMES ESSENTIAL. THIS VISIBLE HAND IS THAT OF REGULATED COMPETITION.

Lower prices and more purchasing power

Purchasing power is a major concern for the French public, especially during times of crisis. On a competitive market, companies compete for market shares, which among other things is reflected in more attractive prices for consumers. Companies also benefit as the customers of other companies. This benefits the economy as a whole, which becomes more efficient.

Well-regulated competition has beneficial effects. There are a range of benefits of competition in economic terms, but these benefits can sometimes be found in unexpected places...

Quality and diversity

Pressure from competitors drives companies to improve and differentiate themselves. This is reflected in the quality of the products and services they offer. Manufacturing quality, pre- and post-sales service performance, delivery times... The result is more choice for consumers, but also for companies, as consumers of intermediate goods.

Innovation at the service of growth and employment

On a competitive market, companies are driven to innovate so that they can stand out. Competition is a constant stimulus for companies to develop different and sometimes more efficient business models. It gives opportunity to those who are forward-looking and comfortable with risk, and opens up new spaces for new ideas, new formats and innovative production processes. This ripple effect contributes to growth and, in general, to the dynamism of the economy.

COMPETITION, A POWERFUL LEVER

Competition represents a stimulus to the economy and, when it is effective, generates significant benefits, especially for consumers. It obliges the established operators to control their costs, improve the quality of their products and innovate in order to set themselves apart. In this perspective, tackling unjustified monopolies, artificial barriers to entry and collusive practices makes it possible to ensure that products and services offered to consumers are competitively priced. In this way, competition is a vector for enhancing purchasing power and helps tackle the high cost of living, which is more urgent than ever in the current economic climate.

STIMULATING COMPETITION

In a context of disruption brought about by the Covid-19 pandemic as well as the war in Ukraine, purchasing power is the main concern of the French public, as individuals are confronted with rising prices for their spending on basic necessities: everyday consumer goods, fuel, materials, energy... In this regard, competition policy is a useful lever to bolster the purchasing power of the French public, in particular through its impact on prices. Indeed, competition prompts established companies to raise their game and remain efficient, by keeping their production costs under control and by innovating. Competition therefore avoids unjustified monopolistic situations or excessive market power that leads to higher prices or lower quality products. Moreover, competition favours the entry of new, more efficient and often less expensive operators. For consumers, competition means competitive prices, but also sometimes an increase in the size of the market and a diverse offering, which allows everyone to find the product that suits them best.

As the French public have realised, competition means having a choice and being able to benefit from the most competitive prices. They apply this in practice on a daily basis, in particular by using the Internet as a tool for comparing offers, and as a medium for shopping.

TACKLING ANTICOMPETITIVE PRACTICES

Energy, healthcare, cars, fuels, food ... on referral or on its own initiative, the Autorité intervenes in all economic sectors of the country. In particular, the Autorité's enforcement remit is aimed at combating cartels, arrangements that drive up prices and rip off customers, without any trade-off in terms of efficiency. These unlawful practices result in significant "overpricing" situations, which can be a substantial burden for consumers and businesses alike. To give an order of magnitude, various economic studies have identified average prices up to 17% higher in Europe!
The Autorité is regularly called upon to dismantle anticompetitive agreements that are impacting

either consumers (consumer goods) or companies that consume intermediate goods (inputs), with the result that their competitiveness is negatively affected.
For example, in 2021, the Autorité dismantled a cartel between industrial sandwich manufacturers that had the effect of increasing the price paid by mass-market retailers for manufactured products to be sold under their own brand name (private label), with an ultimate impact on the price paid by consumers (Decision 21-D-09 of 24 March 2021, for more details on this case, see p. 63).

Cartels also have a negative impact on taxpayers, when the primary victims of these practices are local and regional public authorities or the state. In recent months, the Autorité has fined various companies that had distorted public calls for tender. In particular, it fined:
• following an investigation by the DGCCRF in the medical transport contracts of Val d'Ariège and Pays d'Olmes hospitals, an ambulance company for participating in a cartel (Decision 22-D-04 of 2 February 2022; for more details on this case, see p. 77),
• several companies for a cartel in the waste collection and management sector in Haute-Savoie (Decision 22-D-08 of 3 March 2022, for more details on this case, see p. 95),
• a subsidiary of the Vinci group for having exchanged information with another company during a call for tenders organised by the urban community of Lille for the maintenance and transformation of its building management systems (Decision 21-D-05 of 4 March 2021).

17%

The average level of overpricing by cartels in Europe according to various economic studies.

Besides anticompetitive agreements, competition policy also protects consumers and businesses from abusive behaviour by dominant players. These abuses, which can take various forms (strategies to foreclose competitors, obstruct the entry of new players, pricing practices, discriminatory treatment of customers, etc.), are likely to ultimately deprive customers, both consumers and businesses, of competitive prices and a more diversified offering. For example, the Autorité recently fined Google (online advertising) and EDF (access to the files of customers on TRV tariffs), respectively in 2021 and 2022 (Decision 21-D-11 of 7 June 2021, for more details on this case, see p. 52 and Decision 22-D-06 of 22 February 2022, for more details on this case, see p. 90).

ACTING ON THE STRUCTURE OF THE MARKET

Acting upstream by examining takeovers and mergers

While mergers and acquisitions can be beneficial for growth, by allowing businesses to achieve synergies and critical mass, too much market concentration can be harmful for the economy and consumers. Indeed, companies that acquire or strengthen their market power through a takeover may be tempted to charge higher prices than was the case previously, diminish the quality of the services offered or slow down the pace of innovation. In this respect, merger control is a powerful safeguard, allowing a sufficient level of competition to be maintained after the transaction has been completed.

THE FRENCH PUBLIC AND COMPETITION

The French public strongly condemn cartels: an Ifop poll revealed that the majority of French consumers regard cartels as being as serious, or even more serious, than theft. By way of comparison, in other international studies, cartels are never regarded as being as serious as theft (IFOP survey available on the Autorité's website).

In the case of retail distribution of products such as clothing, toys or organic products, the Autorité has been called upon, in recent years, to examine numerous merger-acquisition transactions, which were likely to harm competition in certain catchment areas. In problematic areas for competition, the Autorité has intervened and obtained commitments regarding the divestiture of stores. For example, this was the case in 2021 concerning:

- the takeover of 128 La Halle stores by Chaussea, which was cleared subject to the divestiture of four outlets in Dole, Lure, Manosque and Saint-Memmie (for an overview of the main mergers in the clothing sector, see p. 72).
- the takeover of the 95 Maxi Toys stores by Fijace (King Jouet group) which was cleared subject to the divestiture of three outlets in the Meurthe-et Moselle, Isère and Var departments (Decision 21-DCC-144 of 12 August 2021, for more details, see p. 66).
- the takeover of 100 Bio c'Bon stores by Carrefour, which received the green light from the Autorité subject to the divestiture of eight Bio c'Bon stores by Carrefour. These commitments, intended to bring the market shares of the new entity in the organic products distribution segment to a reasonable level, will allow competing chains to bolster their presence or set up in the areas concerned (Decision 21-DCC-161 of 10 September 2021, for more details, see p. 71).

In certain rare cases, when no remedies (commitments or injunctions) can effectively resolve the identified harm to competition, the Autorité may even be required to block a merger-acquisition transaction. For example, in 2021, the Autorité formally blocked a transaction involving the takeover of Société du Pipeline Méditerranée-Rhône by the Ardian group. The transaction involved the takeover of control of the pipeline supplying all the depots in the south-east of France with refinery products (diesel, petrol, domestic fuel oil and jet fuel). The Autorité considered that this pipeline constituted an essential infrastructure and believed that the takeover would have given Ardian a monopoly position, with risks of tariff increases following the transaction. The evidence gathered during the investigation showed that a rise in prices would be passed on to consumers, rather than customers shifting to alternative modes of transport. During the investigation, user companies indicated in this respect that: *"[a] too large an increase in the tariff will undoubtedly be reflected in the price at the pump"* and that *"[t]his increase would de facto be passed on in full to consumers, regardless of the percentage"* (Decision 21-DCC-79 of 12 May 2021, for more details, see p. 94).

Acting downstream: devising tailored solutions and monitoring behaviour

Some regions, in particular on account of their size and distance from the mainland, already have significant levels of concentration. This is the case, for example, in island economies, where local competition is limited, thereby having a direct impact on general price levels (significantly higher than in mainland France).

Specific means of action

To deal with these kinds of situations, the legislator has given the Autorité a specific mean of action to intervene in French overseas territories, through a structural injunction power. The Autorité can now impose structural injunctions on a dominant company or group of companies that raises "competition concerns" due to high prices or margins, compared to the average prices or margins generally observed in the sector in question. The Autorité can also issue structural injunctions in the event of anticompetitive practices and thereby require a company or group of companies to divest some of its assets, such as a subsidiary or a business line (Ordinance 2020-1508 of 3 December 2020, No. 2021-649 of 26 May 2021). In its opinion concerning the competitive situation in Corsica, the Autorité considered that, given the specific structural characteristics of the so-called 'île de Beauté', which make it particularly difficult for new players to set up outlets and which could affect the smooth functioning of certain local markets, transposing this tool to Corsica could be envisaged. Beyond Corsica, this system could be extended to address similar competition issues in other metropolitan areas with comparable geographic and economic characteristics.

In-depth diagnosis and recommendations

In the context of its advisory role, the Autorité also regularly offers up its expertise at the request of the Government, in order to provide in-depth insight into the specific characteristics of these territories. At the request of the Government, the Autorité examined in particular the situation of the overseas markets in 2019 (Opinion 19-A-12 of 4 July 2019) and then that of Corsica in 2020 (Opinion 20-A-11 of 17 November 2020) in order to make recommendations to improve the competitive functioning of these island economies. In connection with its Opinion on Corsica, in 2021 the Autorité also decided to examine, this time in the context of litigation proceedings, the behaviour of players in the fuel supply, storage and distribution sector on the island (Decision 21-SO-17 of 15 December 2021, for more details, see p. 89).

OPENING UP SECTORS TO COMPETITION

2021 saw the completion of two major sectoral reforms for the opening up of competition, which were supported by the Autorité de la concurrence, through its opinions: the partial opening up to competition of visible car parts and the opening up of high-speed rail services. There is no doubt that these two major advances will have significant and lasting benefits for consumers when it comes to their mobility-related costs.

Spare parts for cars: major progress for consumers

Owning a car is expensive. In addition to the price of fuel, the cost of maintenance and repairs is also constantly rising. In France, visible car parts (front wings, bonnets, bumpers, windshields, lights, mirrors, etc.) were until now protected by design rights and copyright. In accordance with these provisions, only the car manufacturer can distribute these parts to the various repairers. But the lines are shifting and, from 1 January 2023, the sale of visible car parts will be partially open to competition.

As such, all equipment suppliers will be able to sell spare parts in glass, whether they are original equipment manufacturers (meaning that they have produced the glazing for new vehicles) or independent. For all other visible spare parts (e.g. mirrors, optical and body parts), the equipment suppliers who manufactured the original part will also be able to sell products, alongside the manufacturers. Finally, all equipment suppliers will be able to produce and sell these parts after a period of 10 years from the registration of the design of the part, compared to 25 years currently.

The Autorité welcomes this step forward in favour of consumers and the dynamism of the automotive industry, which represents the culmination of a long-standing commitment on this issue. As early as 2012, after studying the competitive functioning of the sector, the Autorité had recommended the gradual and controlled lifting of the de facto monopoly held by the manufacturers on visible spare parts, starting in particular with glass parts. The Autorité considered that this opening up to competition would lead to a price decrease for these parts, while ensuring a more efficient operation of the sector. In its opinion, the Autorité had estimated that the gradual lifting of this protection should, in the long run, result in an average decrease of around 6 to 15% in the price of visible parts for consumers and that it would also allow carmakers and equipment suppliers to protect themselves against the risk of being unprepared if the market were to be opened up at the European level (Opinion 12-A-21 of 8 October 2012).

At the Autorité's 10th anniversary in 2019, Prime Minister Édouard Philippe had announced his intention to implement this measure, which was eventually introduced into the draft law to combat climate disruption and strengthen resilience, voted in Parliament in the summer of 2021. At the referral of members of Parliament, on 13 August, the Constitutional Council validated the law, paving the way to the partial opening to competition for these spare parts (Law No 2021-1104 of 22 August 2021 on combating climate disruption and strengthening resilience to its effects).

In the rail sector

The opening of the railways for passengers on the main lines became a reality at 7:26 a.m. on 18 December 2021, with the departure from the Gare de Lyon of the first train of the company Trenitalia on French rails. This step marks the end of the SNCF monopoly and the arrival of other competitors in the years to come.

This opening to competition will dynamise the rail sector as a whole and allow users to enjoy cheaper tickets and more varied services, and much more... As underscored by Bernard Roman, Chairman of the Transport Regulatory Authority (ART): *"opening up the market is by no means an end in itself: by leading to lower prices, improved quality of service and the development of innovations, it represents, on the contrary, a potentially very powerful lever for improving and developing the rail system, to the benefit of its users, as the feedback from European countries that are more advanced in this process clearly shows."* (Study on the opening of passenger rail transport services to competition, 2022 edition, ART).

THE PARTIAL OPENING OF SALES OF VISIBLE CAR PARTS TO COMPETITION COULD RESULT IN AN AVERAGE DECREASE IN THE PRICE OF VISIBLE PARTS FOR CONSUMERS OF AROUND 6 TO 15%.

In 2012, the Autorité supported this opening up by issuing two opinions on access to passenger stations for new entrants, making recommendations to the public authorities, the sector-specific regulator and the SNCF, with a view to ensuring that the opening up to competition proceeds smoothly (Opinion 11-A-15 of 29 September 2011 on a draft decree on passenger stations and other service infrastructures of the rail network and Opinion 11-A-16 of 29 September 2011 on the proposed separation of the accounts of the passenger station activity within SNCF).

The prospects of this opening up to competition have prompted the sector to prepare, by undergoing comprehensive modernisation. The Autorité accompanied this reform process, regularly being requested by the Government to provide information on the competitive impact of the draft law and its implementing decrees (Opinion 13-A-14 of 4 October 2013 concerning the draft law on railway reform, Opinion 15-A-01 of 6 January 2015 concerning the draft decrees drawn up for the application of the law on railway reform). Many of the recommendations made were taken into account in the law of 4 August 2014 on railway reform.

At the regional level, the opening up of regional express trains (TER) is also underway. The Southern Region was the first region in France to open its rail network to competition. For the occasion, the President of the region declared: *"This expansion of the offering will lead to more journeys and therefore more revenue. It's a virtuous circle!"* (Press Release Région Sud, 25 October 2021).

COMPETITION AT THE SERVICE OF INNOVATION

Competition is a valuable incentive for companies to raise their game and continually improve to keep their place among competitors. This is reflected in productivity gains, improved product quality and the launch of innovations, sometimes driven by new actors. In a world where innovation is becoming the key factor of growth, competition policy plays a central role: it is a remarkable lever to preserve and encourage this capacity to innovate. As such, the Autorité uncompromisingly fines the foreclosure strategies that established companies may be tempted to implement against new entrants.
In the area of merger control, competition policy is evolving in order to have the means at its disposal to combat so-called "killer acquisitions", whose very objective is to prevent the development of new competition, driven by innovation.

ANTICOMPETITIVE AGREEMENTS: TAKING ACTION AGAINST COLLECTIVE PRACTICES THAT HOLD BACK THE EMERGENCE OF INNOVATIONS

For established companies, innovation can be a challenge to their position, especially when this innovation is driven by new players. This challenge to the established order may arise from the arrival of new products or services on the market, but also from the emergence of a new business model, which redefines the contours of the market. It then becomes a veritable threat to the established order and the existing operators are forced to reposition themselves. Faced with these changes, some actors may be tempted to safeguard their position by applying illegal practices aimed at preventing or slowing down the transition to new technologies.

The decision issued by the Autorité in September 2021 in the road freight sector illustrates this kind of behaviour. In this case, several players in the sector (freight exchanges, hauliers' associations, trade unions) were fined for hindering the arrival and development of new digital players offering services that put shipper customers in touch with hauliers through an online interface, using immediate geolocation methods. The Autorité considered that these practices were all the more serious as they concerned a sector that was undergoing a profound evolution, marked by the emergence of new IT and digital technologies that made it possible to optimise transport management (Decision 21-D-21 of 9 September 2021).

Similarly, two years earlier, the Autorité had handed out fines worth €415 million to the four companies that had traditionally issued meal vouchers, for cartel practices. In particular, they had made a series of arrangements aimed at locking the market, by controlling the entry of new players and agreeing that they would all refrain from issuing digital meal vouchers (in the form of cards or mobile applications).

The Autorité found that these practices had not only harmed competition but also obstructed technological innovation, by preventing the development of digital meal vouchers (Decision 19-D-25 of 17 December 2019). This case continued in 2021 with the filing of an action for damages before the Commercial Court by more than 1,000 restaurant

owners on the basis of the Autorité's decision, against the companies issuing meal vouchers.

CONCENTRATIONS BELOW THE THRESHOLDS: ACTING PREVENTIVELY TO AVOID ATTEMPTS TO BLOCK INNOVATION

In order to prevent companies from creating excessively strong market positions, mergers are subject to the clearance of the Autorité de la concurrence when the total worldwide sales of all the companies involved exceed €150 million and the total sales in France of at least two of the companies involved exceed €50 million. Above a certain size, the European Commission has jurisdiction.

In recent years, and in particular with the development of digital technology, competition authorities have gradually come to realise that this framework has certain limitations. In particular, it appeared that certain transactions involving highly innovative emerging players could escape their control, given the low level of revenues of the target company. This "blind spot" in regulation, which opens the possibility for a dominant company to buy up its various smaller competitors without a prior examination, can be problematic from the perspective of the competitive dynamics of markets and maintaining incentives to innovate.
The Autorité has proposed remedying this shortcoming on various occasions, without affecting current legislation, by using the referral mechanism provided for in Article 22 of Regulation No. 139/2004. It therefore welcomed the European Commission's announcement in 2020 that it would now be possible for national competition authorities to refer sensitive mergers to it for review, even when they do not meet the criteria for examination at the national level.

Shortly after this announcement, this new approach was put into practice for the first time, with the Commission's decision to open proceedings to examine the takeover of Grail by Illumina, following a referral request by the Autorité de la concurrence, which was joined by several Member States of the European Union and the European Economic Area (Belgium, Greece, Iceland, the Netherlands and Norway). The operation consisted in the takeover by a powerful U.S. healthcare company of an innovative company working on the development of a cancer screening blood test based on genomic sequencing technology (Press Release, 20 April 2021, for more details on this transaction, see p. 80).

Executive Vice-President Margrethe Vestager, in charge of competition policy, stated that the European Commission, had "opened an in-depth investigation precisely to assess whether the proposed transaction, which will combine the activities of Illumina and GRAIL, would threaten the ability of developers of cancer detection tests to effectively compete in this area and bring innovative products to the market" (EC Press Release, 22 July 2021).*

This renewed approach to Article 22 makes it possible to mobilise this tool more effectively at the European level. This will make it possible to scrutinise takeovers of high-value companies more effectively, particularly in the areas of digital innovation, health or biotech, by taking into account the possible impact of these takeovers on innovation and the launch of innovative products.

* The Commission's decision to examine this case is the subject of an appeal pending before the General Court of the European Union.

THIS RENEWED APPROACH TO ARTICLE 22 MAKES IT POSSIBLE TO MOBILISE THIS TOOL MORE EFFECTIVELY AT THE EUROPEAN LEVEL.

PROVIDING GUIDANCE, SUPPORTING, INSPIRING

Enforcement is not the only tool at the Autorité's disposal for improving the functioning of the economy; it plays a range of other roles than just policeman. Whether through its many opinions or its proactive approach to compliance, the Autorité is at the same time a think tank for devising reforms, a force for expertise alongside the public authorities and a guide to the competition rules for economic stakeholders. Such committed action aims at deepening and promoting the culture of competition.

COMPLIANCE WITH COMPETITION RULES: A STRATEGIC CHALLENGE

In the face of major social, societal, environmental and economic challenges, the question of responsibility is a key challenge for companies. In this regard, compliance has become an essential tool for good corporate governance and for securing the future of companies. More and more of them are committing to this approach and seeking ethical and responsible consistency, with regard to both their employees and their customers. Compliance can even become an argument for competitiveness or differentiation. Conversely, not respecting the rules can have a significant reputational cost (a company that is fined may suffer the consequences of a tarnished image among its customers, employees or the general public). Business leaders are therefore required to position themselves either by meeting minimal expectations in this regard, or by making their commitment a key element.

Although, in certain areas (anti-corruption measures, anti-money laundering, etc.), implementing a compliance process is a legal obligation, this is not actually the case in the area of competition. Nevertheless, implementing actions to promote compliance with the competition rules is strongly advised in view of the significant risks in the event of breaches. This will allow companies to manage their activities more effectively, by avoiding, in particular, the constraints related to investigations, possible fines which can be substantial, as well as the risk of damage to their reputation.

In order to assist companies of whatever size, who are showing a growing interest in compliance programmes, the Autorité has decided to give a new impetus to its work in this area. In the first instance, in 2021, it made available a dedicated online space to companies that brings together all useful resources and information. Second, the Autorité decided to update its framework document, 10 years after the publication of its first document in 2012. In this document, the Autorité reiterated that compliance is everyone's concern, and that it is the duty, and in the interest, of economic stakeholders to take all necessary measures to conduct their activities in compliance with

competition rules. It also indicated that, while the development of compliance and competition culture in recent years has enabled a significant amount of economic stakeholders to develop competition compliance programmes, companies should still continue to be encouraged to develop such programmes, either on an autonomous basis or by integrating them into a general compliance policy (in the areas of anti-corruption and anti-money laundering, data protection, environmental policy, etc.) and to devote the resources necessary to ensure success.

The definitive framework document, which was published in May 2022, is a collection of "best practices" to help make these programmes effective. Having reiterated the benefits generated by these programmes, the document highlights the conditions and criteria that must be met for them to be effective and specifies the role that the various actors can play in this respect (Framework document of 24 May 2022 on compliance programmes in the area of competition law, available in the Compliance section).

SECTOR-SPECIFIC INQUIRIES ON OWN INITIATIVE: EDUCATION AND FORESIGHT

The Autorité's advisory role has grown steadily in recent years. While its expertise is often sought by the government and parliamentary committees, for example to analyse the functioning of a market, examine the regulation of a sector or profession, or study the competitive impact of draft laws or decrees, the Autorité also regularly launches sector-specific inquiries on its own initiative.

There may be various criteria for making these choices. The Autorité may choose to focus on a given sector owing to significant public interest issues (health, mobility, purchasing power, etc.) or because it has identified the existence of untapped sources of growth and/or Malthusian regulations. For examples, we can cite the sector-specific inquiries on visible car parts, long-distance coach transport and hearing aids, which have led to important reforms. The Autorité may also wish to explore the emerging and complex issues relating to the development of e-commerce, online advertising, FinTech (for more details, see p. 57) or the Cloud (for more details, see p. 62). From this perspective, conducting sector-specific inquiries of this type is a crucial and strategic investment that allows the Autorité to deepen its understanding of the phenomena at work and the technologies in place, and to anticipate new issues that may arise in the future in different markets. This approach allows the Autorité to anticipate the future and base its future decisions on in-depth and robust reflections.

From a procedural perspective, the Autorité generally issues its conclusions following a comprehensive investigation, which includes a broad consultation of all market players. Interviews, targeted questionnaires, online consultation and sessions of the college are organised in succession to understand the functioning of the sector in as much detail as possible. In its opinions, the Autorité describes the main outlines and operating mechanisms of the sectors studied. This meticulous work allows it, when it receives a referral or if it is informed of competitive issues in the sector, to have a highly precise analysis framework, whereby it can examine its cases more effectively. Moreover, it should be noted that for companies, sector-specific inquiries provide an analytical framework that can guide them in their compliance efforts.

OUT OF THE BOX ADVOCACY

The Autorité regularly implements communication actions to make its action accessible to small businesses, the general public and students.
For example, it creates infographics and videos to accompany its opinions and decisions, and publishes practical guides, such as the guide for SMEs or the guide dedicated to professional bodies.
Some of its work is less conventional, including the creation of a "Don't stop the competition" playlist which is available on online music platforms, as well as a series of educational cards entitled "Competition is in our nature", which present the main concepts of competition. The Autorité's educational productions are also used in the context of teaching in high schools given that, since 2020, competition law has been integrated into the curriculum of the economics and social sciences course.

THE NEED TO LINK PUBLIC POLICIES

The digital and tech sector is one of the leading concerns of competition authorities. Yet the challenges entailed by the digitisation of the economy, and in particular the rise of platforms, go well beyond competition policy and cover in particular questions of sovereignty, protection of personal data, pluralism and even the freedom and independence of the press. The decisions taken by competition authorities around the world therefore need to find linking points with these other issues, and rule on practices that are also likely to contravene other public policies (as was the case in the Google related rights case) or on "opportunistic" practices that involve undertakings taking advantage of the necessary implementation of public policies to put up additional barriers to entry around their ecosystem (as was the case in the Apple app tracking transparency case).
The Autorité is fully mobilised to meet these contemporary challenges, from issues related to the dominance of large platforms, to the use of personal data, to the cloud and perhaps the metaverses of tomorrow...

RELATED RIGHTS: FRANCE LEADS THE WAY IN EUROPE

With the adoption of the directive on related rights, the European legislator pursued the objective of establishing a regime of legal protection for publishers and press agencies, taking into account the specificities of their sector and its role within a democratic society. France was the first European country to transpose this directive, in 2019. The ambition to reconfigure the balance of power between publishers and news agencies, on the one hand, and online platforms, on the other, is therefore one of the main objectives of the French law, which aims to give publishers the means to achieve a stabilised cooperation with digital players, by providing for appropriate remuneration for the use of their content (Law No. 2019-775 of 24 July 2019).

From November 2019 on, several unions representing publishers or news agencies referred the matter to the Autorité, arguing that Google had abused its dominant position by making any good faith negotiation impossible, and by having imposed zero remuneration for their related rights. In April 2020, the Autorité decided to issue interim measures against Google, requiring it to negotiate in good faith with publishers and news agencies for the reuse of their protected content (Decision 20-MC-01 of 9 April 2020). The publishers and news agencies still considered that they were unable to negotiate with Google, and referred the matter to the Autorité again in the summer of 2020, for non-compliance with the injunction. In July 2021, the Autorité then fined the search engine €500 million for non-compliance with the injunctions, and ordered it to comply under penalty of daily fines of up to €900,000 per day of delay (Decision 21-D-17 of 12 July 2021, for more details, see p. 49). Considering that the commit-

ments subsequently proposed by Google addressed the competition concerns expressed, the Autorité made them binding and closed the procedure (Decision 22-D-13 of 21 June 2022).

By mobilising the tools of competition law to fight abuses of dominant positions, the Autorité indirectly helps safeguard the pluralism of the press and free, high-quality information.

PROTECTION OF PERSONAL DATA, PRIVACY, SELF-PREFERENCING: KEY CONCEPTS CENTRAL TO THE ANALYSES

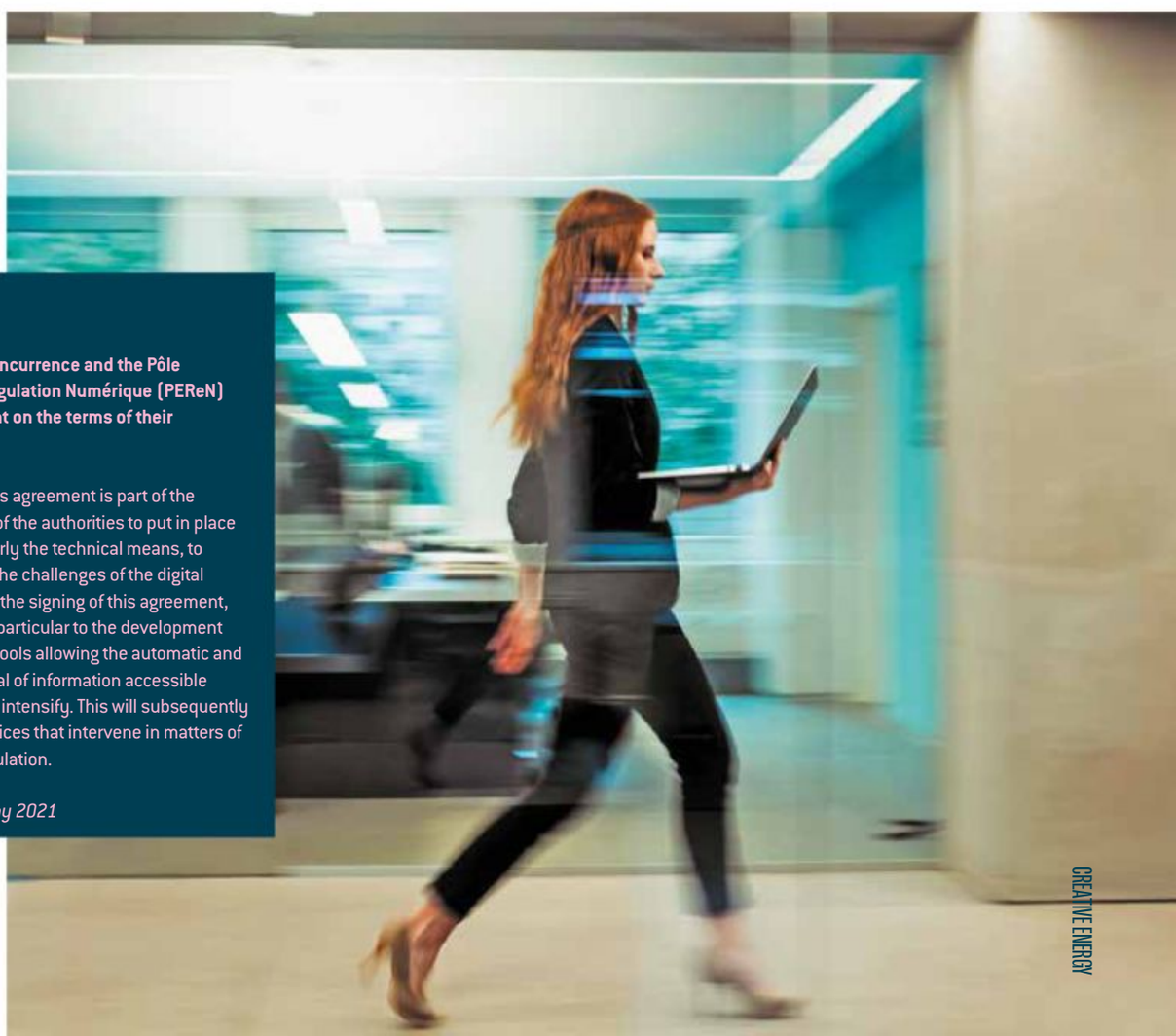
The implementation of the GDPR (General Data Protection Regulation that came into force in 2018) and the 2009 ePrivacy Directive oblige platforms to adapt their policies vis-à-vis personal data, in particular to comply with the principle of collecting consent. These necessary adaptations prompt new and sometimes complex situations, and are carried out under the watchful eye of the competition authorities, who in particular must ensure that no distortion of competition occurs as a result of these changes.

In the context of its policy to strengthen privacy protection for its customers, in September 2020 Apple announced, upon updating its iOS 14, its intention to introduce a consent request for installing a new app. Having received a complaint from associations representing the various players in the online advertising sector, the Autorité found that the conditions for issuing interim measures were not met and that Apple's introduction of a new feature in its operating system, allowing iPhone and iPad users to block the collection of their personal data, did not appear to be an abusive practice and could be regarded as necessary and proportionate to the objective pursued (Decision 21-D-07 of 17 March 2021, for more details, see p. 54).

Moreover, the diversification of platforms and the vast expansion of their ecosystem are likely to facilitate the application of discriminatory practices, the main risk being that they could attempt to favour their own services and subsidiaries to the detriment of third-party operators. Several recent cases illustrate the growing importance of these issues.

For example, in the Apple case, the Autorité decided to pursue the investigation into the merits of the case in order to verify whether the changes introduced did not lead to discrimination (self-preferencing) and in particular whether the consent window for personalised advertising, the App tracking transparency (ATT), rolled out by Apple, was not more restrictive for third parties than for its own services.

This same concept of self-preferencing can be found at the heart of the Google Shopping case. In this case, which had a particularly structuring impact on competition law, the European Commission had handed Google a fine worth €2.42 billion in June 2017 for abusing its dominant position by favouring its own comparison shopping service over competing comparison shopping services. These practices had led to a fall in traffic for almost all competing product comparison sites, potentially foreclosing them from the market, leading to price increases and less innovation (European Commission, 27 June 2017 Google, Alphabet v. Commission). The General Court upheld this decision in 2021, ruling that Google's self-preferencing had a certain form of abnormality and indicated that *"in view of its 'superdominant' position, its role as a gateway to the internet and the very high barriers to entry on the market for general search services, it was under a stronger obligation not to allow its behaviour to impair genuine, undistorted competition on the related market for specialised comparison shopping search services."* (General Court, 10 Nov. 2021, Google, Alphabet v. Commission, pt. 183).



GOOD TO KNOW

The Autorité de la concurrence and the Pôle d'Expertise de la Régulation Numérique (PEReN) signed an agreement on the terms of their cooperation

The conclusion of this agreement is part of the general willingness of the authorities to put in place the means, particularly the technical means, to effectively address the challenges of the digital economy. Thanks to the signing of this agreement, the work devoted in particular to the development and optimisation of tools allowing the automatic and standardised retrieval of information accessible online will be able to intensify. This will subsequently benefit all State services that intervene in matters of digital platforms regulation.

Press release, 11 May 2021

In France, the Autorité also fined Google in 2021 for abusing its dominant position in the market for ad servers for publishers of websites and mobile apps. Servers act as aggregators of advertising inventory offerings, and offer these inventories on demand via marketplace platforms. In this case, the Autorité found that Google had given preferential treatment to its proprietary technologies in the interactions between its ad server and its bidding platform, to the detriment of its competitors and publishers. As Google did not contest the facts, the Autorité accepted the principle of a settlement. The commitments proposed by Google will change the way its DFP ad server and AdX bidding platform operate. (Decision 21-D-11 of 7 June 2021, for more details, see p. 52).

SERVICES AND NEW TECHNOLOGIES: HIGHLY STRATEGIC ISSUES

The rise of digital technologies is fostering the emergence of new ecosystems and the appearance of services based on new, essential facilities. In order to understand these changes, the Autorité initiated several large-scale sector-specific inquiries to study in depth the issues raised by these rapidly expanding phenomena. At the European level, the behaviour of certain players is also currently being closely scrutinised in the context of litigation procedures.

Cloud computing

In January 2022, the Autorité announced the launch of a broad sector-specific inquiry into the market for cloud services (data storage via a cloud). Although these markets are dominated by primarily American and Chinese giants (known as hyperscalers), they are currently heavily invested by French and European players, whose activity is undergoing rapid expansion, with an average annual growth expected to exceed 25% in the coming years. The Autorité intends to conduct a comprehensive analysis of the competitive functioning of the sector, with the objective of examining the competitive dynamics, the players, their contractual relationships (alliances, partnerships) but also to study more broadly the consequences of the emergence of the cloud in all sectors of the economy, in close collaboration with the sectoral authorities. Several months of study will be required, with final findings expected in early 2023 (Press Release, 27 January 2022).

As regards litigation, a coalition of around 30 European cloud players Coalition for a Level Playing Field, including eight French companies, filed a complaint with the European Commission against Microsoft in early 2021, concerning its OneDrive storage offering. Microsoft was accused of tying its cloud offering to its other software offerings, such as Teams or Windows Services, thereby creating a barrier for its competitors. The issue is particularly important for consumers' freedom of choice in terms of their digital tools, in particular as regards storage and sharing. Another group of companies, including French player OVH Cloud, also filed a complaint against Microsoft with the European Commission in the summer of 2021, for practices that allegedly limit consumer choice in the market for cloud computing services via tied selling and preferential pricing when its customers for office softwares (Microsoft office 365 suite that includes Word, Excel, Teams, etc.) install the software on their Azure cloud platform.

FinTech and BigTech

The banking and financial sector is currently undergoing profound changes, characterised by the development of FinTech and BigTech companies and their business models which differ from those of the traditional, established players, in particular as regards the emergence of innovative payment methods for consumers and new diversified services. In particular, contactless payment by bank card, mobile phone and connected smartwatch has developed to a significant extent, in conjunction with the rise of e-commerce. All of these services, channels and alternative payment methods are based on recent technological developments, in particular cloud computing and blockchain, which, although not specific to the payments sector, are likely to have a profound and lasting impact on the way this sector works.

A STRONGER REGULATION OF DIGITAL GIANTS TO BE PUT IN PLACE WITH THE DIGITAL MARKETS ACT

Legislation intended to ensure fair and open digital markets is on its way to being adopted at the European level with the Digital Markets Act (DMA). This regulation provides a powerful additional tool to effectively combat some of the most harmful behaviours of 'gatekeepers'. It will become a complementary instrument to competition policy, allowing for rapid action on digital markets that evolve very rapidly and where the damages caused by certain practices can be irreversible. Indeed, whereas up until now competition authorities have intervened ex-post, with the DMA, the regulation will also become ex-ante, with a list of obligations or prohibitions that will be laid down a priori for these platforms under supervision. The European Competition Network will play a central role in the coordination between national authorities and the Commission, to ensure coordination between competition law and the DMA. It is in this spirit that the European Competition Network has published a joint document setting out a concrete vision of the contribution that national competition authorities could make in the specific implementation of the DMA.

Joint paper of the heads of the national competition authorities of the European Union, How national competition agencies can strengthen the DMA, available in the Autorité's press release of 23 June 2021. (For more details on the DMA, see our dossier on Europe, p. 24).

In its sector-specific inquiry published in April 2021, the Autorité highlighted the great "agility" of FinTech to develop new innovative services while seizing the opportunities created by regulation. It also noted that the traditional banking actors resorted to various strategies to keep abreast of the most innovative segments of the market: takeovers via acquisitions, equity investments, internal development, etc. Finally, the overview presented in its study highlighted the emergence of large Big Tech platforms, which enjoy multiple advantages. In the Autorité's view, this in-depth assessment is an essential preliminary step. It will subsequently allow the Autorité to address effectively the various competitive harms that may arise from the risks identified. These include the risk of strengthening the market power of BigTech and foreclosing consumers, the risk linked to data ownership by payment service providers managing accounts, the competitive risks associated with the use of blockchain, and the risk of calling into question the universal banking model and marginalising the traditional banking players (Opinion 21-A-05 of 29 April 2021, for more details, see p. 57).

As regards litigation, the behaviour of certain players is already being closely scrutinised at the European level. This is the case in particular for Apple, whose payment system is being closely examined by the competition authorities. Indeed, the European Commission opened an investigation in June 2020 to assess whether Apple's behaviour as regards Apple Pay violated EU competition rules (EC Press Release, 16 June 2020). Margrethe Vestager stated in this regard that'*"it is important that Apple's measures do not deny consumers the benefits of new payment technologies, including better choice, quality, innovation and competitive prices"*. For its part, the Dutch competition authority (Autoriteit Consument & Markt - ACM), fined Apple for preventing dating apps, such as Tinder, Bumble and Meetic, from using other payment systems in addition to Apple's system, within the AppStore. Noting Apple's failure to comply with its decision, the ACM fined it €5 million per week until it brought its behaviour into compliance. In June 2022, the ACM agreed to Apple's proposal to change its terms as regards dating apps. Different payment methods will now be authorised in Dutch dating apps (ACM Decision, 11 June 2022).

THE RISE OF DIGITAL TECHNOLOGIES IS FOSTERING THE EMERGENCE OF NEW ECOSYSTEMS AND THE APPEARANCE OF SERVICES BASED ON NEW ESSENTIAL FACILITIES. IN ORDER TO UNDERSTAND THESE CHANGES, THE AUTORITÉ INITIATED SEVERAL LARGE-SCALE SECTOR-SPECIFIC INQUIRIES TO STUDY IN DEPTH THE ISSUES RAISED BY THESE RAPIDLY EXPANDING PHENOMENA.


FRESH AIR

FOR THE ECONOMY


DIGITAL

REMUNERATION
OFRELATED RIGHTS

The aftermath of the litigation with Google

In April 2020, in the context of interim measures, the Autorité had enjoined Google to negotiate in good faith with news publishers and agencies the remuneration due for the use of their protected content. One year later, the Autorité fined the search engine €500 million for non-compliance with these injunctions, and ordered it to comply with the injunctions subject to daily penalty payments. In June 2022, the Autorité accepted Google's commitments and made them binding.

THE COMPLAINT FROM SEVERAL PUBLISHERS AND NEWS AGENCIES

The Syndicat des éditeurs de presse magazine (SEPM), the Alliance de Presse d'information Générale (APIG) and Agence France Presse (AFP) respectively lodged a complaint with the Autorité, at the end of August/beginning of September 2020, regarding non-compliance with the injunctions issued against Google in its decision 20-MC-01 of 9 April 2020 (Press release of 9 April 2020).

As a reminder, in its interim measures decision, the Autorité had found that following the adoption of Law No 2019-775 of 24 July 2019 aimed at creating a related right for the benefit of press agencies and publishers, transposing European Directive 2019/790 of 17 April 2019 on copyright and related rights in the Digital Single Market, Google had unilaterally decided that it would no longer display excerpts from articles, photographs and videos within its various services, unless the publishers gave it permission to do so free of charge.

At the time, the Autorité considered that this conduct was likely to constitute abuse of a dominant position on the market for generalist search services (unfair transaction conditions imposed on publishers and press agencies, circumvention of the law on related rights, discrimination) and that it caused serious and immediate harm to the press sector. Pending the decision on the merits, it issued seven injunctions against Google. This decision was upheld by the Paris Court of Appeal in a ruling dated 8 October 2020, and became final (as Google did not appeal to the French Supreme Court).

NON-COMPLIANCE WITH THE INJUNCTIONS

Following a comprehensive adversarial investigation, which prompted it to take into consideration a large quantity of documents relating to the negotiations (e-mails, minutes of meetings, etc.), the Autorité found that Google had not complied with several

injunctions issued in April 2020, and in particular **injunction 1, the most important one, relating to the obligation to negotiate in good faith.**

Shifting the negotiations to the new Showcase service

By imposing on publishers and the AFP an overarching discussion about them joining a new partnership, including a new service called "Showcase", Google refused, as it has been requested to do on several occasions, to have a specific discussion on the remuneration due for its current uses of content protected by related rights. Furthermore, Google also unjustifiably narrowed the scope of the negotiation by considering that only the advertising revenues of the Google Search pages displaying content should be taken into account in determining the remuneration due. The Autorité considered that this position, which meant that revenues from other Google services and all indirect revenues related to this content would be excluded, was in breach of the Law and to the Autorité's decision.

Google's refusal to negotiate with news agencies for remuneration for related rights

Google told the AFP and the Fédération Française des Agences de Presse, on several occasions, that as press agencies, they could not enjoy remuneration for their content reused by third party publishers in the latter's publications. The Autorité considered that this negotiating attitude was inconsistent with the decision of 9 April 2020, which was itself based on the terms of the law, to consider that press agencies could invoke related rights.

The refusal to negotiate with press publishers that did not have "General and Political Information" certification

Finally, Google excluded all the press that did not fall under the category of "General and Political Information" (or IPG) certification from the discussion, even though these publishers were unquestionably concerned by the new law. The Autorité considered that this negotiating position was inconsistent with its decision and that this breach was all the more serious since, according to Google's own assessments, the direct revenues it earned from "non-IPG" content were higher than those it earned from "IPG" content.

These breaches were exacerbated by the **violation of injunction 2, which required Google to provide the information necessary for a transparent assessment of the remuneration.**
In this regard, Google's failure to communicate information to make its proposals transparent was a critical obstacle to good faith negotiations, especially since there is substantial information asymmetry between Google and the press publishers and news agencies, both in terms of data relating to visits to Google's pages and services on which content protected by the Law is displayed, and in terms of the revenues that Google earns from the current use of protected content.

Finally, the Autorité found a breach in terms of the **obligations to ensure neutrality of negotiations with respect to the display of protected content (injunction 5) and with respect to the economic relations existing between Google and publishers and press agencies (injunction 6).**

Google's failure to take measures to ensure neutrality in the way it indexes, classifies and presents protected content from publishers and news agencies in its services was likely to place publishers in a constrained situation.

IN SHORT

Milestone dates for related rights in France

17 April 2019
Adoption of the European Directive on copyright and related rights in the digital single market

24 July 2019
Transposition of the Directive with the adoption of a French law to create a related right for news agencies and press publishers

9 April 2020
In a world first, the Autorité orders Google to negotiate remuneration in good faith and issues 7 injunctions

Furthermore, the fact of linking the remuneration of related rights for current uses of protected content to participation in new Google services and/or the use of Google services constitutes a departure from the objectives of the injunctions to the benefit of Google, which is likely to further enhance its position on the market for generalist search services.

EXTREMELY SERIOUS PRACTICES

Non-compliance with an injunction constitutes, in itself, a practice of exceptional seriousness. The Autorité considered that Google's behaviour was part of a deliberate, elaborate and systematic strategy of non-compliance with Injunction 1 and appeared to be the continuation of a long-standing strategy aimed at opposing the very principle of related rights (during the discussion of the Directive on related rights, and subsequently to minimise its concrete scope as much as possible). This strategy, implemented at the worldwide level, consists of:

- avoiding or limiting as much as possible the payment of remuneration to publishers,
- using the Showcase service to resolve the fundamental debate on the attribution of specific rights to publishers and agencies for the reuse of press content,
- and, finally, using the negotiations on related rights to obtain, via Showcase, the production of new content from press publishers, as well as the subscription by the latter to the SwG service, which allows Google to collect additional income from subscriptions to press titles.

THE FINE AND THE PERIODIC PENALTY PAYMENTS

In light of all the elements, the Autorité imposed a fine of €500 million on Google and ordered it to:

- make an offer of remuneration that meets the requirements of the Law and the Decision for the current use of protected content on Google's services to those complainants who so request;
- ensure that this offer has the information provided for in Article L. 218-4 of the Intellectual Property Code: an estimate of the total revenue it generates in France by displaying protected content on its services, indicating the share of revenue generated by the publisher or news agency that has requested the offer of remuneration. This estimate must describe a number of revenue items detailed in the decision.

Finally, in order to ensure that the injunctions were effectively complied with, the Autorité added periodic penalties of up to €900,000 per day of delay, if Google did not comply within two months.

The Autorité reiterated that Google remained bound by the injunctions as confirmed by the Paris Court of Appeal in its judgment of 8 October 2020 until the publication by the Autorité of the decision on the merits of the case.

Compliance with the injunctions remains subject to the control of the Autorité, which may be referred to again by any publisher or news agency in accordance with Article L. 464-3 of the French Commercial Code, until the date on which the Autorité issues its decision on the merits of the case.

GOOGLE'S COMMITMENTS

In the context of the investigation into the merits of the case, Google submitted a set of commitments, which were subjected to a market test.

Following a hearing in April 2022 before the Board of the Autorité, Google successively sent four new versions of these commitments as well as a final offer on 9 May 2022, in order to address both the concerns expressed in the market test and those of the Board of the Autorité.

In particular, Google committed to:

- negotiate in good faith, with news agencies and press publishers that so request, the remuneration due for any reuse of protected content on its services,
- provide them with information enabling a transparent evaluation of the remuneration proposed by Google,
- take the necessary steps to ensure that the negotiations do not affect the crawling, ranking or presentation of the protected content and do not affect any other economic relationship that may exist between Google and the news agencies and press publishers,
- make a proposal for remuneration within three months of the start of negotiations. If there no agreement was reached, the parties would have the option of referring the matter to an arbitration tribunal to determine the amount of remuneration.

An independent monitoring trustee approved by the Autorité will ensure the implementation of the commitments made and would supervise the negotiations between Google and the press publishers and news agencies.

The Autorité considered that the commitments proposed would likely put an end to the competition concerns expressed and would be substantial, credible and verifiable. It therefore decided to accept them and make them binding in its decision of 21 June 2022. They will apply for a period of five years and be renewable once for a period of five years.

Decision 21-D-17 of 12 July 2021

Decision 22-D-13 of 21 June 2022

8 October 2020
The Paris Court of Appeal upholds the Autorité's emergency decision, Google does not appeal

12 July 2021
The Autorité fines Google for non-compliance with injunctions and imposes periodic penalty payments

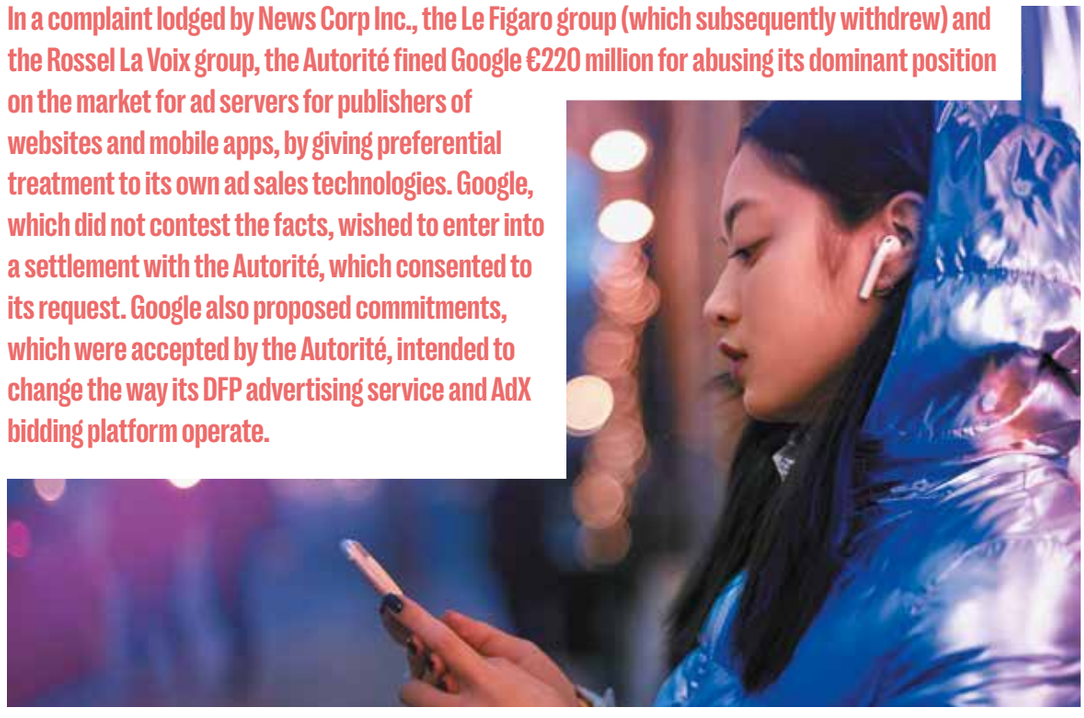
15 December 2021 31 January 2022
Market test on Google's proposed commitments

21 June 2022
Decision on the merits of the case. The Autorité accepts Google's commitments and makes them binding

ONLINE ADVERTISING

Google fined for favouring its own services

In a complaint lodged by News Corp Inc., the Le Figaro group (which subsequently withdrew) and the Rossel La Voix group, the Autorité fined Google €220 million for abusing its dominant position on the market for ad servers for publishers of websites and mobile apps, by giving preferential treatment to its own ad sales technologies. Google, which did not contest the facts, wished to enter into a settlement with the Autorité, which consented to its request. Google also proposed commitments, which were accepted by the Autorité, intended to change the way its DFP advertising service and AdX bidding platform operate.



ADVERTISING TECHNOLOGIES FOR PUBLISHERS OF WEBSITES AND MOBILE APPS

In order to market the advertising space on their websites and apps, publishers use various types of technology, in particular ad server technology and programmatic advertising platforms.
With a view to optimising their revenues, publishers tend to offer the same advertising space for sale via multiple bidding platforms simultaneously. In contrast, publishers generally use a single ad server to organise the competition between the different bidding platforms. As a result, the interoperability of an ad server with the bidding platforms determines both the revenue that publishers derive from their advertising spaces and their ability to market them, and the attractiveness of the bidding platforms.

PREFERENTIAL TREATMENT

The Autorité found that Google had given preferential treatment to its proprietary technologies offered under the Google Ad Manager brand, both with respect to the operation of the DFP ad server (which allows publishers of websites and mobile apps to sell their ad space), and its AdX SSP (which organises the bidding processes that allow publishers to sell their "impressions" or advertising inventory to advertisers) to the detriment of its competitors and publishers.

SERIOUS PRACTICES WITH SIGNIFICANT EFFECTS ON THE MARKETS

These practices are all the more serious as they took place in a market that is still emerging and growing rapidly, and could

have affected the ability of competitors to develop on the market. In particular, the practices limited the attractiveness of third-party ad servers and SSPs from the point of view of publishers, and enabled Google to substantially grow its already high market share and revenues. In this regard, the Autorité noted that several of Google's competitors had experienced significant difficulties during the period the practices were applied, while Google enjoyed strong growth in its business and revenues, even growing its already substantial market share in a fast-growing market.

THIS INNOVATIVE DECISION MAKES IT POSSIBLE FOR THE FIRST TIME TO ANALYSE IN COMPETITION LAW A CONDUCT THAT ORIGINATES IN THE COMPLEX ALGORITHMIC BIDDING PROCESSES THROUGH WHICH ONLINE DISPLAY ADVERTISING FUNCTIONS.

However, it was not only competitors that were affected by these practices. Indeed, publishers were also deprived of the possibility of fully taking advantage of competition between the various SSPs. In particular, publishers were unable to obtain the best offers from the SSPs, and in particular from Google's AdX platform, which, already pre-eminent, saw the competitive pressure exerted by its competitors diminish on account of the practices.

In this respect, press groups, some of which had initiated the complaint lodged with the Autorité, and whose business model had been seriously impaired by the decline in sales of print subscriptions and the associated drop in advertising revenues, were particularly affected by Google's practices. These practices occurred despite the fact that Google had been regularly warned about the importance of compliance with competition rules by both the European Commission and the Autorité, and could therefore not claim to have been unaware.

FINES AND COMMITMENTS

Google, which did not contest the facts, wished to benefit from a settlement procedure. In the light of all these elements and in accordance with the terms of the settlement, the Autorité handed out a fine worth €220 million on Google. Google also proposed commitments to improve the interoperability of Google Ad Manager services with third-party ad server and sales platform solutions, and to phase out rules that favoured Google. The Autorité accepted these commitments and made them binding in its decision.

Decision 21-D-11 of 7 June 2021

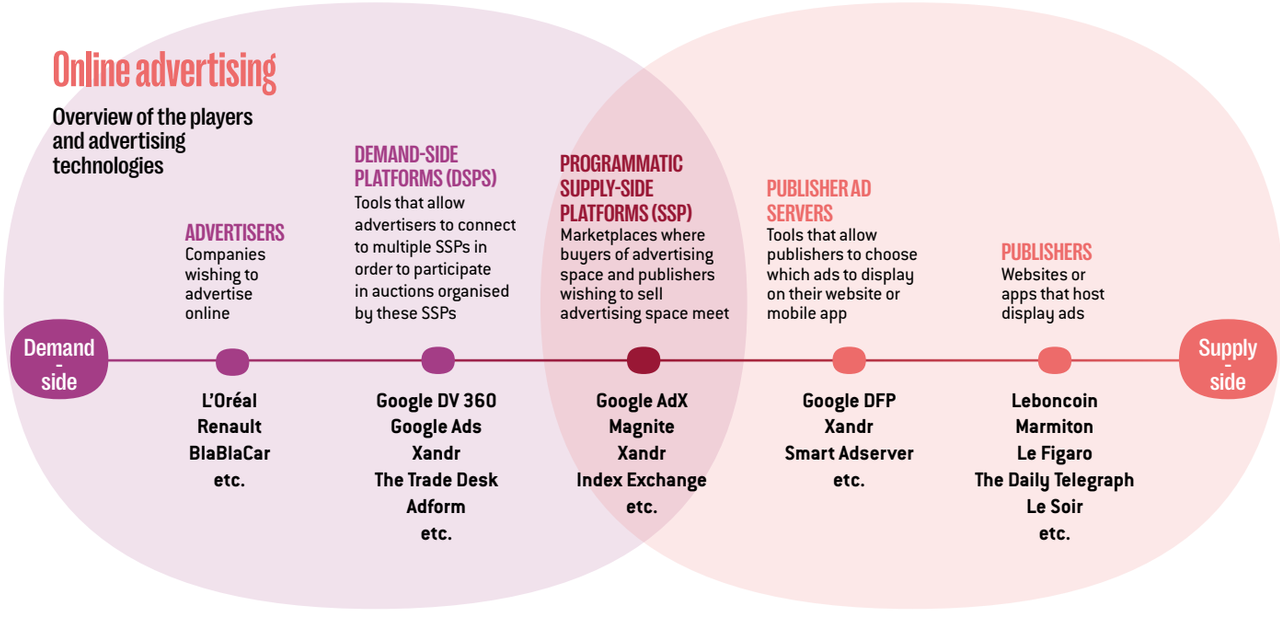
IN SHORT

Previous cases

The Commission had previously fined Google on various occasions: the Google Shopping case (27 June 2017), Google Android case (18 July 2018) and the Google Search AdSense case (20 March 2019). The Autorité had also already been obliged to fine it during the Google Gibmedia case (19 December 2019) for imposing non-objective, non-transparent and discriminatory operating rules on advertisers using its Google Ads platform.

Online advertising

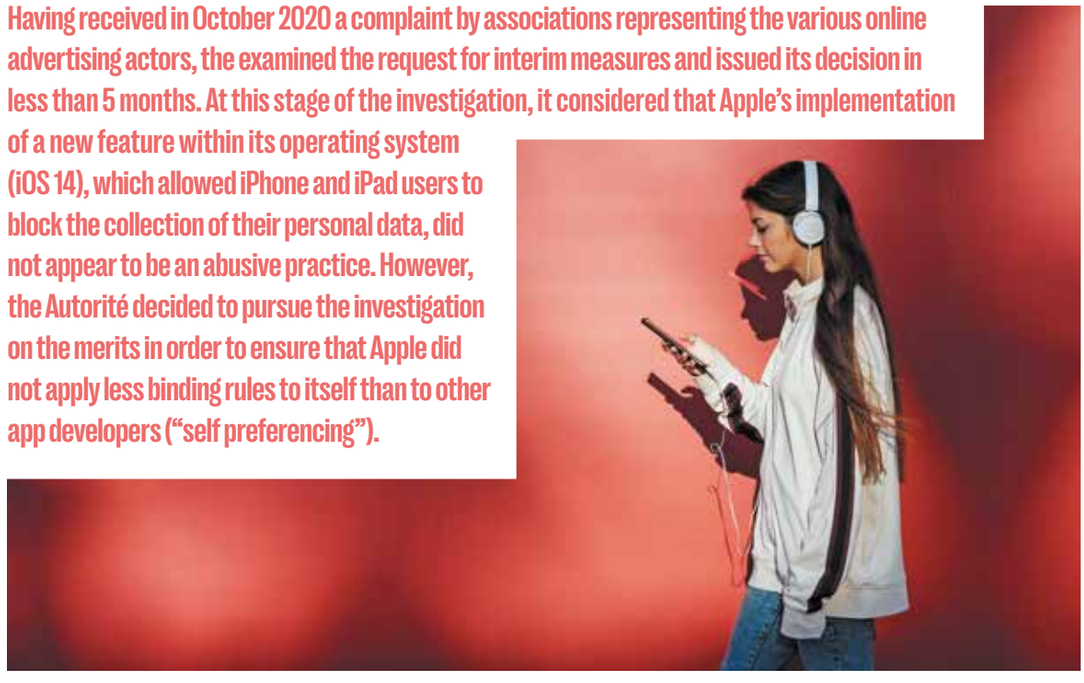
Overview of the players and advertising technologies



The operators cited are examples (non-exhaustive list)

No interim measures against Apple, but the investigation continues on the merits

Having received in October 2020 a complaint by associations representing the various online advertising actors, the examined the request for interim measures and issued its decision in less than 5 months. At this stage of the investigation, it considered that Apple's implementation of a new feature within its operating system (iOS 14), which allowed iPhone and iPad users to block the collection of their personal data, did not appear to be an abusive practice. However, the Autorité decided to pursue the investigation on the merits in order to ensure that Apple did not apply less binding rules to itself than to other app developers ("self preferencing").



THE ACTIVATION OF A USER CONSENT SYSTEM TO STRENGTHEN THE PROTECTION OF PERSONAL DATA

At the conference of 22 June 2020 for app developers, Apple announced that as part of its policy to strengthen the protection of its customers' privacy, it would implement a feature called ATT (App Tracking Transparency), in September 2020 (Implementation was subsequently postponed until late March/early April 2021).

When an iPhone owner views an app downloaded from the App Store, a pop-up window appears asking for explicit consent to share personal data with third parties for advertising purposes. If consent is given, third parties can access the Identifier for Advertisers (IDFA), which identifies each Apple device and allows ad tracking of the owner of the phone. This tracking of activity offers the possibility to implement targeted advertising, which is the source of funding for many online apps and sites.

In concrete terms, with the installation of iOS 14, iPhone and iPad owners are now able to opt out of having an app track them to send them personalised ads.

THE COMPLAINT OF THE ONLINE ADVERTISING ACTORS

The online advertising actors (media, Internet agencies, advertising agencies, technical intermediaries, publishers, mobile marketing agencies) criticise Apple for requiring app developers to use the ATT framework in order to access the IDFA identifier. Collecting consent via the ATT framework appears to be a condition for the ad tracking of the user on third-party sites, which would then allow targeted advertising to be addressed to the user. According to these actors, Apple imposed unfair trading conditions on app developers, which would characterise an abuse of a dominant position. They claim, firstly, that the ATT prompt is redundant and superfluous, as the obligation to obtain consent already weighs on app developers under the provisions of the GDPR and the e-Privacy Directive. Secondly, they believe that Apple is therefore imposing undue additional obligations on app developers. They therefore requested the Autorité to issue interim measures.

REJECTION OF THE REQUEST FOR INTERIM MEASURES

To determine whether the request for interim measures was well-founded, the Autorité conducted an extensive investigation under urgent procedure, interviewing numerous professionals representing the various online advertising professions. The debates, during the hearing of 10 February 2021 enabled each of the stakeholders to put forward their position and add to the information collected during the investigation. The Autorité also benefited from the expertise of the CNIL (Data protection agency) on the various questions relating to the application of privacy legislation raised by the case.

IN SHORT

A company, even if it is a structuring platform, has the freedom in principle to set rules for access to its services, provided that they:
- do not disregard applicable laws and regulations
- are not anticompetitive
- can be regarded as necessary and proportionate to the objective pursued.

Having analysed the matter, the Autorité took the view, in the context of a preliminary examination, that the introduction of the ATT framework did not appear to constitute an abuse of a dominant position by Apple, leading to the imposition of unfair trading conditions.

The legitimate exercise of a business strategy with respect to personal data protection

In particular, the Autorité noted that the introduction of the ATT framework was part of Apple's long-standing strategy to protect the privacy of users of its iOS products. It also noted that a company, even if it is in a dominant position or can be considered as a structuring platform, has the freedom in principle to set the rules of access to its services.

The implementation of a mandatory formalised framework, according to the format and wording defined by Apple, could help ensure that users were correctly informed. In this regard, the Autorité noted that the requirement to collect the ATT consent had not immediately been implemented by Apple (its effective date having been postponed to March-April 2021) and that it allowed for some flexibility for app developers.

In particular, they have control over the sentence defining, in the ATT prompt, the purpose of the personal data tracking across third-party sites; they have the possibility to delay the triggering of the ATT framework, by refraining during this period from using the IDFA, to track activity on third-party sites; finally, they have the possibility to show two more screens to the user, before and after the appearance of the ATT prompt, in order to explain why they need to be able to carry out activity tracking (for example to finance the app or the service offered), and convince the user to reconsider their response.

The existence of any self-preferencing will be examined in detail in the context of the case on the merits

The Autorité rejected the request for interim measures, but nonetheless pursued the investigation into the merits of the case. This investigation should make it possible to verify that Apple's implementation of the ATT framework cannot be considered as a form of discrimination or "self preferencing", which could in particular be the case if Apple unjustifiably applied more restrictive rules to third party operators than those it applies to itself for similar processes.

Decision 21-D-07 of 17 March 2021

BANKING

& SERVICES

An in-depth analysis of FinTech and BigTech

On its own initiative, in April 2021, the Autorité issued an opinion in which it describes the developments that are likely to upset the competitive balance that has hitherto existed in the payments sector. In this regard, it highlighted various areas of concern and underscored in particular the risks associated with the strengthening of the market power of large digital platforms, the locking of consumers into an ecosystem, and the risk of the eventual marginalisation of traditional banking players.

AN OPINION ON A CHANGING SECTOR

Driven by technological innovation and several regulatory changes at EU level (in particular the adoption of the first and second Payment Services Directives), the payments sector has evolved significantly in recent times: new players - FinTech and BigTech - have developed, alongside traditional banking actors, innovative payment methods for consumers and new diversified services (account management, VAT payment assistance for SMEs, etc.).

- "**FinTech**" brings together a wide range of entities with varied profiles and business models: these can be small innovative start-ups, but also well-established players from other business sectors with a well-developed customer base (such as Orange and Carrefour).
- "**BigTech**" groups together the major digital players known as GAFAM (Google, Amazon, Facebook, Apple and Microsoft), present in Europe and the United States in particular, and BATX (Baidu, Alibaba, Tencent and Xiaomi), which have acquired strong positions in Asia and are starting to develop in Europe and the United States.

THE EMERGENCE OF MULTIPLE NEW SERVICES

In the wake of the second Payment Services Directive, new payment initiation services and account information services have emerged. In particular, contactless payment by bank card, mobile phone and connected smartwatch has developed in conjunction with the rise of e-commerce.

All of the services, channels and alternative payment methods are based on recent technological developments, in particular cloud computing and blockchain. The latter two technologies, although not specific to the

payments sector, are likely to bring about profound and lasting changes to the way this sector operates.

COMPETITIVE ANALYSIS

In its investigation, the Autorité highlighted the great "agility" of FinTech to develop new innovative services while seizing the opportunities created by regulation.

Furthermore, it notes that the traditional banking actors are using various strategies to keep abreast of the most innovative segments of the market: takeovers via acquisitions, equity investments, internal development, etc. Finally, its opinion highlights the emergence of large Big Tech platforms, which enjoy multiple advantages:

- they enjoy considerable financial strength, which allows them to make substantial investments in various new technologies that facilitate the development of innovative payment solutions;
- they control ecosystems with very large user communities and have access to large data sets;
- they are able to offer integrated solutions that make a fluid and efficient "customer journey" possible;
- they have lower marginal costs than traditional banks, which enhances their ability to offer their payment solutions free of charge;
- they rely on the banking sector for the effecting of payments, but are not subject to the same regulatory constraints as banking actors;
- they enjoy a strong reputation that facilitates user loyalty.

THE RISKS IDENTIFIED

• A risk of strengthening the market power of Big Tech and locking-in of consumers

The data collected by Big Tech in the context of their core business activities could give them a significant advantage in the payments industry and, conversely, the data collected via the payment services they offer could allow them to make their respective platforms even more attractive.

Furthermore, the opening or closing of effective access to the NFC (Near Field Communication) antenna on smartphones (technology which enables contactless payment by mobile phone) has a real impact on the ability of the actors who have developed contactless mobile payment solutions to offer their services on devices equipped with these antennas.

Moreover, the pre-installation of mobile contactless payment solutions in certain phones (or the introduction of ergonomic shortcuts that facilitate access to a given solution) could present risks for competition, for

example if the result was that consumers were locked into an ecosystem, and thus potentially exposed them to abusive behaviour.

• A risk linked to the holding of data by payment service providers managing accounts

In the context of the implementation of the European regulation, it must be ensured that the development of the businesses of providers of payment initiation and account information services is not hindered, in particular by restrictions that make access to data less fluid or adversely affect the experience of customers using the services offered by these partners.

• The competition risks associated with the use of blockchain

The competition risks that may arise from using blockchain technology, while not specific to the payments industry, could materialise in the payments industry. These risks may fall under the rules prohibiting anticompetitive agreements as well as those prohibiting abuse of a dominant position, and may be caused in particular by the actor(s) controlling access to the blockchain or to blockchain users.

• The risk of the universal banking model being called into question and the marginalisation of traditional banking players

While the current developments in the payments sector are leading to more supply and an improvement in the quality and diversity of products and services offered at attractive prices to consumers, they are also likely to lead to a profound change in the way the sector operates. The universal banking model, which allows certain services which are deemed "unprofitable" to be provided in isolation, such as the deposit and cashing of cheques and cash, could therefore be called into question. .

While a scenario in which FinTech breaks away completely from the banking system by creating its own infrastructure seems unlikely today, it is nevertheless clear that, without having the experience of banks in the payments sector, BigTech has mastered, or even controlled, certain innovative technologies which could, in the future, play a decisive role in the service chain. Their presence in the payments sector could therefore be strengthened, in particular through the conclusion of new partnerships with banking players. There is therefore a risk that traditional banking actors will ultimately find themselves confined to operative tasks involving significant fixed costs (regulatory burden, physical network, payment infrastructures), while being marginalised in the value distribution chain.

Opinion 21-A-05 of 29 April 2021

An investigation at the European level

The European Commission has released the preliminary findings of its investigation into Apple's mobile payment system, Apple Pay, finding at this stage that the company is abusing its dominant position in the markets for mobile wallets on iOS devices. By restricting access to a standard technology that facilitates contactless payments in stores using Near Field Communication (NFC) (or "tap and go") mobile devices, Apple is restricting competition in the mobile wallet market on iOS.

Excerpts from the EC press release, 2 May 2022.

To discover our infographics

Opening of a major sector-specific inquiry

The digital sector has been one of the Autorité's key priorities for several years now. In January 2022, the Autorité announced its intention to focus more specifically on the emergence of new essential facilities and, consequently, decided to start proceedings ex-officio to assess the conditions for the competitive functioning of the strategic cloud sector.

A FAST-GROWING SECTOR SUPPORTED BY THE PUBLIC AUTHORITIES

The cloud offers multiple advantages for consumers, companies and public administrations, with easy and fast access to computing resources. It also allows for new types of work organisation, which has been particularly useful during the crisis caused by the COVID-19 epidemic.

This opinion comes at a time when the French and European cloud market is booming, with average annual growth expected to exceed 25% over the next few years, resulting in strong value creation challenges for the economy.

This growth in the cloud is accompanied by significant support from public authorities in the research and development of innovative technologies, in order to support the digitisation of the economy as well as European and French industry. The recent national plan to support the French cloud industry is a good illustration of this.

IN SHORT

What is the cloud?

The cloud represents all shared services, accessible via the Internet, on demand, paid per use and, by extension, some of the underlying infrastructures (notably data centres).

Examples of cloud services are online document storage, online email and video streaming services.

AN IN-DEPTH ANALYSIS OF A COMPLEX ECOSYSTEM

The purpose of the Autorité's opinion is to conduct an overall analysis of how competition functions in this sector. In this context, the Investigation Services will examine in particular the competitive dynamics of the sector and the presence of players in the various segments of the value chain, as well as their contractual relationships, in an environment in which multiple alliances and partnerships are concluded for the provision of cloud services.

The focus will also be on defining the relevant markets, assessing the position and competitive advantages of the various players involved and examining the commercial practices that may be put in place.

The Autorité may also, where appropriate, make proposals to improve the competitive functioning of the sector.

Press release of 27 January 2022

A task force with varied skills

Given the scope of this opinion and the complex nature of the technologies used in this sector, the Autorité, for the first time in its advisory capacity, has decided to set up an investigation team with varied profiles (lawyers, economists and data scientists) from the newly created Digital Economy Unit, from units specialising in these competition issues and from the Autorité's Chief Economist's team.

Schedule

January 2022
The Autorité starts proceedings on its own initiative

Summer 2022
Public consultation

Early 2023
Conclusions of the investigation

MASS RETAIL DISTRIBUTION

RETAILER'S OWN BRAND SANDWICHES

Dismantling a sophisticated cartel

On March 2021, the Autorité handed out fines worth €24.5 million on the three main companies supplying mass-market retailers with sandwiches to be sold under their respective own brands. For almost six years, the three companies had developed and implemented a plan to share volumes and customers and to agree on prices. A look back at a cartel dismantled, once again, thanks to the leniency procedure.

A CARTEL SET UP IN THE CONTEXT OF RESPONSES TO CALLS FOR TENDER ISSUED BY MASS RETAIL DISTRIBUTION

Mass-market food retailers (Carrefour, Casino, Leclerc, Lidl, Système U, etc.), and service stations generally use call for tender procedures to obtain supplies of industrial sandwiches which are then sold under retailer's own brand labels. It was to respond to these calls for tender that the three manufacturers set up a system of secret consultation enabling them to distort competition.

FROM "PRICE WARS" TO "NON-AGGRESSION PACTS"

After a period in 2009-2010 during which the companies competed fiercely on price, each trying to gain market shares from the mass-market food retailers, the three companies - Roland Monterrat, La Toque Angevine (hereinafter "LTA") and Snacking Services (hereinafter "Daunat") decided at the end of 2010 to conclude a "non-aggression pact" to put an end to what they described as a "price war" between them and freeze their respective positions.

IN SHORT

The non-aggression pact

The aim of the non-aggression pact was to neutralise price competition between the companies involved, by exchanging strategic and confidential information on the main negotiating parameters of private label sandwiches with the mass retail distribution sector.

This made it possible to freeze the positions of the operators, while maintaining their margin levels.

IN SHORT

Cover bids, code names and "leaders"

So as not to arouse the suspicions of the retailers, the cartel members submitted 'cover bids' on references for which they had agreed that they should not win the call for tender. For example, a text message dated 30 May 2013, sent by one of the companies to its competitor, informed it of a current call for tenders, stating that *"it's a sham consultation and we are responding 10/15% above the usual prices".*

In addition, the working documents used internally relating to the exchanges between the three companies contained references intended to *"disguise the terminology used as best as possible to avoid any risk that the practices are discovered".* For example, the terms "Daunat O" and "Daunat S" referred to the companies LTA and Roland Monterrat, respectively, in reference, according to Daunat, to the location of the headquarters of these companies, located to the west and south of Daunat's headquarters

A "leader" was also appointed for each client, so as to better organise the exchanges between the cartel members. In addition, following telephone meetings, follow-up tables were often drawn up to group together the quotes given for each of the competitors and each of the references for the various calls for tender.

SECRET EXCHANGES REGARDING PRICES AND CUSTOMERS

Discussions took place during "secret and informal" encounters (lunches, dinners, meetings) and, on a more regular basis, during telephone calls or by text messages or emails, sometimes sent to and from non-business email addresses.

In practice, they each sent their draft prices to their competitors by email before responding to calls for tender from mass-market retailers and, to a lesser extent, service stations. The companies then called each other to discuss them and, if necessary, adjust their offers before responding to the retailers. By way of illustration, an email sent by one of the three companies to its two competitors on 17 September 2012 includes the following statement: "As we are not present in these markets, please let us know if you consider our proposals to be too low." In addition to the discussions on the awarding of calls for tender, Roland Monterrat, LTA and Daunat also referred on several occasions to the negotiations conducted with the mass-market food retailers concerning changes to prices in the context of contracts in progress.

THIS PRACTICE REDUCED COMPETITION FOR NEARLY SIX YEARS

These practices are very serious in nature. By sharing markets and agreeing on prices, the three main manufacturers of retailers' own brand industrial sandwiches, which account for almost 90% of the market, i.e., almost all sales of retailers' own brand industrial sandwiches, impeded effective competition. This allowed them to raise their prices without fear of fightback from their competitors.

million
fine handed out to the three main French manufacturers of retailer's own brand industrial sandwiches

The secret and relatively sophisticated arrangement remained remarkably stable over time. It continued uninterrupted for almost six years (between September 2010 and September 2016), without any of the participants deviating or attempting to deviate from the agreement. The companies adhered to the practices, meaning that no retaliatory action was necessary.

THE EFFECTIVENESS OF THE LENIENCY PROCEDURE

Further proof that the danger often comes from within... the practices were revealed thanks to the leniency procedure, which allows undertakings that have participated in a cartel to disclose its existence to the Autorité and obtain, under certain conditions, the benefit of a total or partial exemption from financial penalty. In this case, Roland Monterrat was the first company to apply for leniency, and avoided any penalties, benefiting from immunity. The other two companies, LTA and Daunat, also decided to apply for leniency after the investigation services of the Autorité had carried out dawn raids at their premises. They were granted reductions in penalties, proportionate to the relevance of the documents and information provided for the investigation.

REDUCED FINES DUE TO THE THREE LENIENCY APPLICATIONS

The Autorité handed down a total fine of €24.5 million, which takes into account the leniency applications, among other things. Roland Monterrat was fully exonerated from the fine for having brought the existence of the cartel to the attention of the Autorité and cooperating throughout the procedure.

LTA and Daunat, the second and third leniency applicants, were granted fine reductions of 35% and 30% respectively in view of the added value of the information they provided, which made it possible to establish the existence of certain exchanges. Daunat also benefited from the "leniency plus" scheme, which involves granting an additional exemption to a second-tier applicant if it provides indisputable evidence of additional facts that have a direct impact on establishing the amount of the financial penalties. This company also received an additional reduction of approximately €5 million, due to the fact that its financial difficulties were taken into account.

Decision 21-D-09 of 24 March 2021

IN SHORT

Leniency is the preferred approach for exiting a cartel

Leniency is an effective instrument for detecting cartels in the face of increasingly sophisticated methods of concealing anticompetitive practices (secret meetings, use of code names, encrypted messages or even phones used purely for the cartel, keeping compromising documents at home, etc.), and the vast majority of EU Member States' competition authorities have a similar programme.

Leniency is a powerful factor in destabilising cartels insofar as it introduces a very strong incentive to "repent" to the Autorité, with the possibility of total or partial exemption from financial penalties.

TOY SECTOR

Takeover of MaxiToys by Prenatal and King Jouet

During the course of 2021, the Autorité was required to examine a large-scale takeover in the toy sector, which took place in two stages. In August, firstly, with the examination of the takeover of 95 Maxi Toys stores in France by Fijace (King Jouet group), in the context of a collective procedure. Subsequently, in October, with the examination, following a referral from the European Commission, of the joint control acquisition of the Maxi Toys stores in France by Prénatal Retail Group, alongside Fijace.

PARTIES TO THE TRANSACTION

Through the company Distritoys, which it jointly controls with the Prénatal Retail Group, Fijace operates more than 250 toy superstores under the King Jouet brand, mainly in France. The Maxi Toys brand (which has since ceased trading), whose head office was located in Belgium, operates more than 110 toy superstores, mainly in France, but also in Belgium, Switzerland and Luxembourg.

Maxi Toys and King jouet are two major players in the French market for retail distribution of toys, on which not only are specialised superstores active (PicwicToys, La Grande Récré, Joué Club, etc.), but also large grocery store chains, superstores specialising in culture and recreation, and pure players in the e-commerce sector (such as Amazon, Cdiscount, etc.).

AN INITIAL CLEARANCE DECISION IN AUGUST FOR THE ACQUISITION OF SOLE CONTROL OF MAXI TOYS BY FIJACE

On 29 July 2020, Fijace and its subsidiary New MT notified the Autorité of their plan to take over 95 outlets operating under the Maxi Toys brand in France. As a reminder, the transaction was part of a collective procedure opened by the Commercial Court of Hainaut for the benefit of the Maxi Toys group, and on 5 August 2020, the Autorité exceptionally granted a derogation allowing Fijace to proceed with the completion of the transaction, without waiting for the final decision.

The Autorité then analysed the consequences of the merger between the Maxi Toys and King Jouet distribution networks, and considered that, in almost all the areas where the two brands would be present, consumers would continue to benefit from sufficient alternative offerings, meaning that the new entity would not have an incentive to raise the price of its toys or lower the quality of its stores. On the other hand, competitive risks had been identified in certain areas.

Consequently, the Autorité cleared the transaction subject to the divestiture of three stores located in Cosnes-et-Romain (54), Isle d'Abeau (38) and Saint-Maximin-la-Sainte Baume (83) to ensure that a sufficient level of competition is maintained, and that the interests of consumers are safeguarded in the relevant catchment areas.

A SECOND CLEARANCE DECISION IN NOVEMBER FOR THE JOINT CONTROL OF PRENATAL AND FIJACE

On 26 October 2021, the European Commission referred to the Autorité de la concurrence the examination of the joint control acquisition of 95 Maxi Toys stores in France by Prenatal Retail Group (hereinafter "PRG"), alongside Fijace. The Autorité found that almost all Prenatal's activities in the toy retail distribution sector were related to its controlling interest in the King Jouet network. In this context, the Autorité therefore ensured that the conclusions it had reached in its decision of August 2021 were still valid. It also studied the effects of the transaction in four new catchment areas, taking into account the opening of four stores under the King Jouet brand name since 12 August 2021. Finally, the Autorité completed its analysis by including the overlapping activities of Atida, a company controlled by Prenatal's parent company, and the activities of the King Jouet and Maxi Toys networks. In view of Atida's very marginal activity in France, the Autorité considered that the transaction did not raise competition concerns other than those identified in the decision of August.

Since the commitments given by Fijace and New MT in the context of Decision 21-DCC-144 were already enforceable against PRG, the Autorité considered that they did not need to be repeated in the context of the second decision. The Autorité therefore unconditionally cleared the transaction.

Decision 21-DCC-144 of 12 August 2021

Decision 21-DCC-210 of 15 November 2021

IN SHORT

Divestiture does not mean closure of stores, but takeover with change of store name

The divestitures of the outlets that are the subject of commitments is intended to safeguard sufficiently dynamic competition at the local level. The aim is to allow a competitor to take over the stores and their activities in order to safeguard competition in the area in question, thereby ensuring that consumers have a diversified offering in terms of prices and product range. For the divestitures to be approved by the Autorité, it must be ensured that the stores are taken over under proper conditions of viability.

Green light for Michelin's takeover of Allopneus

Following the European Commission's referral of 21 October 2021, the Michelin group notified the Autorité of its plan to acquire sole control of Allopneus and its subsidiaries, over which it previously exercised joint control alongside Hevea. After a detailed analysis, the Autorité unconditionally accepted the transaction, considering that it was not likely to affect competition in the sector.

PARTIES TO THE TRANSACTION

The Michelin Group is active in the tyre production and distribution sectors. In particular, it manufactures tyres under the Michelin, BF Goodrich and Kleber brands and operates the Euromaster retail network in France.

The Allopneus group is mainly active in the online retail sector for replacement tyres, through its website Allopneus.com. Although the Michelin group previously held joint control of Allopneus, the Autorité carried out a detailed analysis of the competitive effects of Michelin's takeover of the remaining capital, initially held by Hevea, insofar as Michelin would be able, once the transaction was completed, to define and benefit fully from the current operational policy of Allopneus.

A TRANSACTION THAT IS NOT LIKELY TO AFFECT COMPETITION

The Autorité was able to rule out any competitive risk related to the horizontal overlap of the parties' activities on the markets for the wholesale and retail distribution of replacement tyres and the retail distribution of spare parts and automotive accessories. Furthermore, the Autorité considered that Allopneus did not have a unique role in stimulating competition on the markets. Consequently, if it were to change its positioning after being taken over, it would not harm the level of competition.

With regard to the combination of the upstream and downstream activities of the parties, the Autorité ruled out any competitive risk through vertical effects. Only Michelin is present on the market for the manufacture and marketing of new replacement tyres, while both companies are present on the markets for the retail distribution of new replacement tyres. In particular, it considered that, following the transaction, there would still be alternative outlets to Allopneus for Michelin's competing manufacturers. However, the Autorité found that consumers of online tyres checked multiple sources of information before making their purchase, and that they were price-sensitive. In this context, and insofar as the reputation of Allopneus and the unique nature of its fitting network do not give it a comparative advantage over its competitors, the Autorité considered that any attempt by Michelin to promote its products in a preferential manner on the Allopneus website would not have any anticompetitive effect.

Decision 21-DCC-268 of 28 December 2021

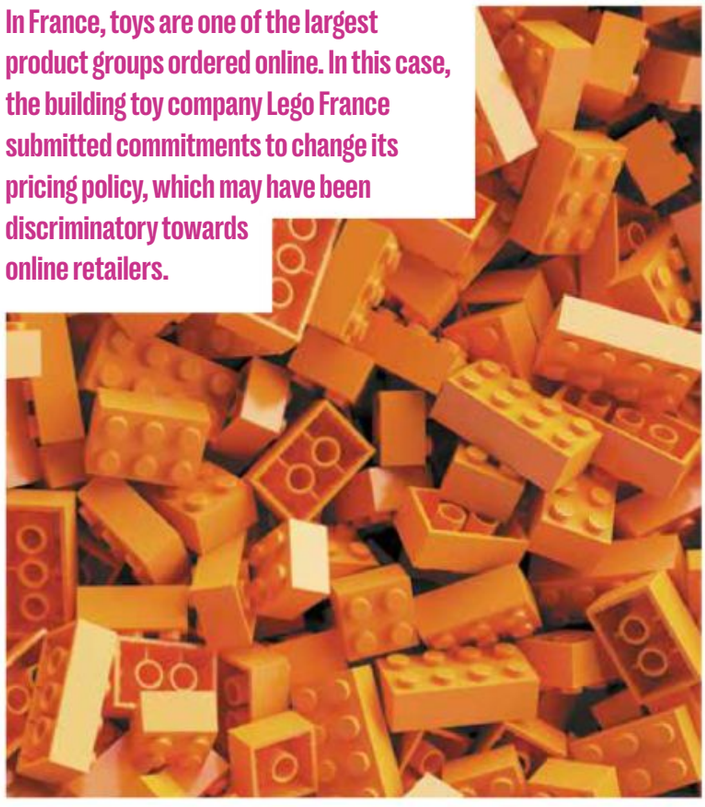
IN SHORT

Horizontal and vertical effects

Horizontal effects are examined when the parties to the transaction are actual or potential competitors in one or more relevant markets. The Autorité examines the incentives of merged companies to raise their prices following a merger to form a single economic entity. Vertical effects are examined when the transaction brings together players from different levels of the value chain (e.g. a producer acquiring a distributor or vice versa): does the transaction make it more difficult for competitors to enter the markets in which the new entity is active? Can the transaction enable the entity to eliminate competitors or penalise them by increasing their costs?

Lego commits to adapt its pricing policy

In France, toys are one of the largest product groups ordered online. In this case, the building toy company Lego France submitted commitments to change its pricing policy, which may have been discriminatory towards online retailers.



A PRICING POLICY THAT DISADVANTAGED ONLINE SALES

At the end of 2013, Lego revised its commercial policy with regard to distributors, opting to increase the price of all of its products by 15% and, at the same time, establish a system of "functional discounts" of up to 13%, which was likely to compensate this price increase for distributors.

However, there was a significant difference in the discount applied (of up to 7 to 9 percentage points depending on the period) to the detriment of operators that only sold Lego products online (the pure players) compared to the other types of distributors selling via stores. This discrepancy was linked to the fact that certain criteria for granting the discount excluded de facto operators that were exclusively active on the Internet.

This situation prompted Cdiscount and EMC Distribution (the reference listing centre of the Casino group) to refer the matter to the Autorité. During the investigation, competition concerns were expressed regarding this discount scheme, insofar as such a price differentiation is likely to disadvantage operators selling exclusively on the Internet, and thus reduce the competitive pressure that they can exert on other resellers.

COMMITMENTS MADE BINDING

In order to address these competition concerns, Lego France proposed various commitments, which, following a market test and exchanges with the Autorité, were substantially modified.

By redefining the criteria for granting its "functional discount" in such a way that treats the different categories of sellers fairly, and by improving transparency, Lego guarantees accessibility to this discount for all distributors, whether they are large distribution chains, players specialising in e-commerce, or small specialist stores. Consumers will therefore be in a position to fully benefit from competition. The Autorité considered that these commitments met its competition concerns and therefore made them binding and closed the procedure. The Autorité will be particularly vigilant in monitoring the implementation of the commitments and will receive an annual report from Lego to verify it.

Decision 21-D-02 of 27 January 2021

To discover our infographics

CONSUMER GOODS

The takeover of Bio c'Bon under conditions

In September 2021, the Autorité cleared the takeover of 100 Bio c'Bon stores by Carrefour, subject to the divestiture of eight stores. Following a comprehensive investigation, backed up in particular by a consumer survey, the Autorité recognised for the first time in its analysis the existence of a market for organic products.

A FIRST FOR THE AUTORITÉ

Carrefour and Bio c' Bon are two distribution groups of mainly food products, and are active throughout France. They both primarily distribute food products from organic agriculture through their networks of specialised stores. Following a judicial liquidation procedure, the Carrefour Group had notified the Autorité of its plan to acquire 100 shops operated under the brand Bio c' Bon.

For the first time, the Autorité recognised the existence of organic product markets in this case, identifying, on the one hand, a supply market, and on the other hand, a market for the distribution of mainly food products from organic agriculture.

NO COMPETITION RISKS IN THE SUPPLY MARKET FOR ORGANIC PRODUCTS

Given the modest market shares of the parties in the supply market, the Autorité considered that the transaction was unlikely to significantly increase the new entity's purchasing power with respect to organic product suppliers. After consulting with the suppliers of the parties in the context of a market test, the Autorité also found that the transaction would not place these suppliers in a situation of economic dependency vis-à-vis the new entity.

RISKS OF HARM TO COMPETITION ON THE MARKETS FOR THE DISTRIBUTION OF ORGANIC PRODUCTS IN 10 IDENTIFIED AREAS

At the end of its analysis, however, the Autorité considered that the transaction raised risks of harm to competition in four catchment areas surrounding the acquired stores in Paris (located on rue de Cléry, rue de Bourgogne, rue Lecourbe and rue du Poteau) and in six areas outside Paris (Levallois-Perret, Nancy, Puteaux, Toulouse rue des Frères Lion, Toulouse rue Paul Vidal and Toulouse rue Rémusat).

In effect, in these areas, the transaction was likely to reduce competitive pressure given the position of the new entity at the end of the transaction, and could lead to price rises or a reduction in the diversity of the offering, to the detriment of consumers.

CARREFOUR COMMITTED TO DIVESTING EIGHT STORES

To address these concerns, Carrefour undertook to divest 8 Bio c' Bon or Carrefour stores in these areas. These commitments will reduce the market shares of the new entity to a reasonable level, in any event less than 50%, and allow competing brands to strengthen their presence or establish themselves in the areas concerned.

Decision 21-DCC-161 of 10 September 2021

CLOTHING OVER

CHILDREN

Acquisition of Cyrillus by MGA Paris (Des Petits Hauts and Harris Wilson)

Decision 21-DCC-77 of 5 May 2021

Acquisition of children's clothes and toy shops Catimini, Z and Kidiliz by the Idkids Group (Okaïdi, Jacadi and Oxybul)

Decision 21-DCC-128 of 22 July 2021

SPORT

Acquisition of Go Sport by Financière Immobilière Bordelaise

Decision 21-DCC-125 of 15 July 2021

FOOTWEAR

Acquisition of 128 La Halle shops by Chausséa

Decision 21-DCC-73 of 20 May 2021

Acquisition of 210 Minelli stores by Stéphane Collaert (San Marina)

Decision 22-DCC-11 of 31 January 2021

WOMEN MEN

Acquisition of JOTT by L Catterton Europe (BA&SH)

Decision 21-DCC-09 of 19 January 2021

Acquisition of GAP by Financière Immobilière Bordelaise

Decision 21-DCC-115 of 25 June 2021

Acquisition of 366 La Halle stores by the Beaumanoir group, which operates the Cache Cache, Morgan and Bonobo brands

Decision 21-DCC-43 of 24 March 2021

VIEW

Mobotix and its wholesalers fined for cartel

Following a report by the DGCCRF, in November 2021 the Autorité fined Mobotix and several of its wholesalers €1.4 million for agreeing on the selling prices of video surveillance devices and restricting the online sale of these products.

MOBOTIX AND ITS AUTHORISED DISTRIBUTION NETWORK

Mobotix manufactures and sells cameras and video surveillance systems to authorised wholesalers, who are referred to as AMD (Authorized Mobotix Distributor). These wholesalers are responsible for promoting and developing a network of resellers-installers to which they resell Mobotix products, which are then marketed to the end customers.

THE MANUFACTURER DIRECTED THE PRICING POLICY OF ITS RESELLERS-INSTALLERS

The evidence in the case showed that Mobotix communicated to wholesalers lists of recommended resale prices for all the products it marketed, and displayed these on its website. It was also found that all Mobotix invoices indicated a so-called "recommended" resale price for each product.

To ensure that the retail prices displayed by the resellers-installers were homogeneous and identical to the prices it advertised, Mobotix used a set of clauses in its contracts with its wholesalers requiring that they do not to communicate any prices other than the recommended retail prices and that they ensure retailers comply with the advertised prices. Mobotix therefore turned resale prices into imposed prices.

This agreement between Mobotix and its wholesalers was intended to ensure stable margins at all levels of the value chain.

WHOLESALERS WERE ASKED TO CHOOSE RESELLERS-INSTALLERS WITH LIMITED ONLINE SALES

Furthermore, Mobotix's contracts with three of its wholesalers, ACTN, Be IP and EDOX, contained a set of clauses encouraging these wholesalers to select only resellers with limited online sales. This request by Mobotix to its wholesalers was intended to limit the online sales of its products.

PRACTICES WHICH LIMITED PRICE COMPETITION, AMONG OTHER THINGS

The Autorité considered that these practices, which lasted between six and seven years depending on the wholesaler and affected more than two thirds of Mobotix's sales in France, were relatively serious.

The price fixing by Mobotix and its wholesalers meant that the selling prices of the products were harmonised at the retail level. The restriction of online sales also deprived end customers from competition among online resellers through comparing products and potentially benefitting from a more competitive price. In light of these elements, the Autorité imposed a total fine of €1.4 million against Mobotix.

Decision 21-D-26 of 8 November 2021

Continual vigilance

Committed to tackling the high cost of living in the French overseas territories, the Autorité regularly applies the provision prohibiting exclusive import agreements, introduced by the Lurel law, which has proved particularly useful and is starting to produce structural effects. One example is the fine handed out to Cattier champagnes in 2021. Moreover, the Autorité does not hesitate to fine abusive behaviours which are likely to disrupt the functioning of economically significant local sectors.

CATTIER FINED FOR HAVING SET UP AN EXCLUSIVE IMPORT AGREEMENT FOR THE DISTRIBUTION OF ITS CHAMPAGNES IN LA REUNION ISLAND

Following a report sent by the Minister of the Economy (DGCCRF), the Autorité established that champagne producer Cattier had disregarded the Lurel Law by granting an exclusive import agreement for the distribution of its range of champagnes under the Cattier brand in Reunion Island. The practice put in place hindered the development of competing importer-wholesalers in Reunion Island and prevented retailers from enabling competition among wholesalers for their supplies of Cattier brand champagne.

Consumers in Reunion Island were therefore prevented from benefiting from the prices they would have been entitled to expect under normal competition conditions.

In light of all these elements, the Autorité imposed a €5,000 fine on Cattier. The company Chrysyl (operating under the trade name "Le Vinarock"), which benefited from these exclusive import agreements in the territory of Reunion Island, was not prosecuted by the Autorité, given its judicial liquidation on 24 May 2017.

Decision 21-D-23 of 7 October 2021

TEREOS OCÉAN INDIEN FINED FOR ABUSE OF A DOMINANT POSITION

The "cane-sugar-rum" sector is crucial in Reunion Island, where more than 3,400 sugarcane plantations are located, making it the second largest area of the French overseas territories in terms of number of farms, behind Guadeloupe (approximately 4,300 plantations). The sugarcane industry is the source of 18,000 direct and indirect jobs, i.e. 9% of the active population, and nearly 13% of private sector jobs.

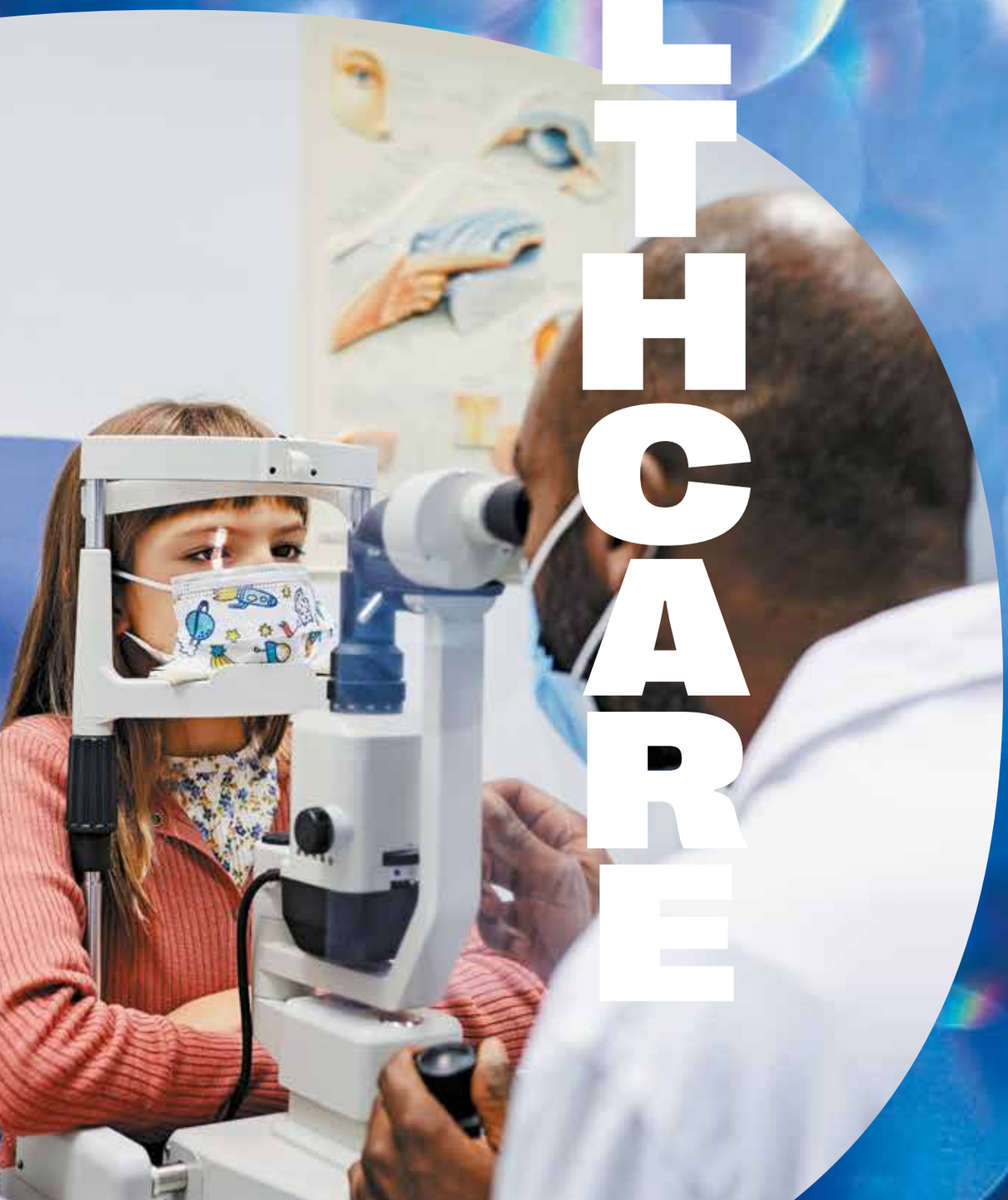
Following a complaint lodged by the company Réunionnaise du Rhum, in November 2021 the Autorité fined the sugar and molasses producer Tereos Océan Indien (TOI) for having, inter alia, locked in the possibility of exiting the supply contract for molasses, a product used to make local rum and of which it is the sole supplier on the island. The practices in question related to a significant share of the market for local molasses sold to distilleries (90 to 95%) and lasted eight years.

The Autorité noted that the prohibitive amount of the financial clause for exiting the contract (€5 million) had, in fact, deprived the distilleries of the possibility of renegotiating the clauses and, moreover, considered that the inclusion of a clause prohibiting the distilleries from reselling molasses on the Reunion market had excessively limited their potential outlets.

In calculating the fine, the Autorité nevertheless admitted that the damage to the economy was limited. It also took account of the ceiling then applicable to so-called simplified procedures. In light of all these elements, the Autorité imposed a €750,000 fine on Tereos Océan Indien.

Decision 21-D-25 of 2 November 2021

HEALTHCARE



Beware of unjustified groupings

Following an investigation conducted by the DGCCRF into the medical transport contracts of Val d'Ariège and Pays d'Olmes hospitals, several companies that had participated in a cartel accepted the settlement proposed by the DGCCRF. As the company Ambulances Sannac had refused to settle, the case was referred to the Autorité, which, following a litigation procedure, handed down a fine.

HOSPITALS' CALLS FOR TENDER FOR MEDICAL TRANSPORT

In 2015, the Val d'Ariège and Pays d'Olmes hospital centres issued calls for tender to renew their medical transport (ambulance transport) contracts. In response, the companies Ariège Ambulances, Cazal, Haute Ariège, Ollivier and Sannac, which had previously formed an economic interest group, joined Ensales, the outgoing contract holder. All the companies in a position to respond to these calls for tender therefore joined together to present a single offer.

A GROUPING WITHOUT ANY TECHNICAL OR ECONOMIC JUSTIFICATION

Independent and competing companies grouping together in response to a call for tenders is not illegal in itself. These groups may have a beneficial effect on competition if they allow the companies within them to compete when they would not have been able to do so on their own, or to compete on the basis of a more competitive or better quality bid. Conversely, setting up such a grouping may be anticompetitive if it causes an artificial reduction in the number of candidate companies, or in reality conceals an anticompetitive price or market sharing agreement.

In this case, the evidence in the file case showed that this group was oversized in relation to the size of the contracts in question. Indeed, in terms of both vehicles and personnel, it brought together resources that were totally disproportionate to those of the historical contract holders, even though there were no developments justifying the use of such resources.

SERIOUS PRACTICES FOR PUBLIC HOSPITALS

It is clear from the statements of several members of the group that its aim was to eliminate the remaining competition and agree on the prices offered to the hospitals. Setting up this group made it de facto impossible for hospitals to request alternative proposals and enable competition, even though this is the whole point of public procurement. This cartel completely foreclosed competition and, for certain contracts, raised the prices paid by the hospitals compared to the previous period.

The Autorité also considered that these practices were implemented to the detriment of local and regional public authorities working to realise their mission in the public interest, and that they were therefore of a serious nature.

In light of all these elements, the Autorité imposed a €32,600 fine on Sannac and its parent company Mafanel.

Decision 22-D-04 of 2 February 2022

Resale price maintenance and restrictions on internet sales

Chanel, Ray Ban, Prada, Burberry, TAG Heuer... These well-known eyewear brands have been at the centre of anticompetitive practices for many years. Following dawn raids and a report transmitted by the DGCCRF, the Autorité fined various brands and manufacturers in the sunglasses and eyeglass frames sector, including the leading supplier in Europe and the world. The practices involved? Having imposed retail prices on opticians and prohibiting them from selling online.

RESTRICTING THE PRICING FREEDOM OF OPTICIANS BY LUXOTTICA, LOGO AND LVMH

The Autorité established that LVMH and Logo (for the TAG Heuer brand), as well as Luxottica (for all its brands, including Chanel, Ray-Ban, Oakley, Prada, Burberry, Bulgari, Dolce & Gabanna, Armani, Michael Kors, Miu Miu and Ralph Lauren) restricted the pricing freedom of their retailers.

With regard to LVMH and Logo, they are accused of having inserted clauses into their contracts providing for a framework of prices and promotions applied by opticians. In addition, Logo provided recommended prices, monitored the prices applied by opticians and intervened against any who offered discounts. These practices covered the periods from September 1999 to 2015 for LVMH and from 2002 to 2015 for Logo.

With regard to Luxottica, the Autorité noted that, between 2005 and 2014, it had also communicated so-called "recommended" prices to its retailers and had encouraged them to maintain a certain level of selling prices for its products, in particular through contractual provisions that could be interpreted as prohibiting discounts, promotions or sales. It was also established that Luxottica had imposed certain restrictions on its distributors with regard to their advertising

of prices, and had monitored these prices, requesting the help of some of its distributors to "counteract any observed discrepancies". According to the manager of an optical store, this monitoring by competitors was akin to a veritable "price police".

Opticians who continued to ignore Luxottica's instructions were subjected to retaliatory measures: delayed or suspended deliveries to their stores, withdrawal of authorisation required to distribute certain Luxottica brands and even blocking their accounts to prevent them from placing orders.

These anticompetitive practices were very serious and had an impact on consumers, some of whom were captive and vulnerable, given that the purchase of glasses and, in some cases, sunglasses, is a necessity. They also caused clear harm to the economy, to the extent that they concerned well-known brands, affected intra-brand competition (price competition for the same product within different networks) over a long period of time, and involved a significant proportion of retailers, including major national retail chains such as Alain Afflelou, Krys, GrandVision and even Optical Center.

PROHIBITIONS ON ONLINE SALES IMPOSED ON DISTRIBUTORS BY CHANEL, LUXOTTICA AND LVMH

Clauses in the licensing agreements between Chanel and Luxottica (from 1999 to 2014) and between LVMH and Logo (from 2004 to 2015), as well as clauses in the authorised retailer charters signed by Luxottica and its authorised retailers (from 2002 to 2013) for the Chanel, Prada, Dolce & Gabbana and Bulgari brands, prohibited online sales of sunglasses and eyeglass frames by opticians.

These practices had a considerable level of seriousness, as they have the effect of depriving opticians and consumers of a sales channel generally characterised by competitive prices.

Nevertheless, the Autorité considered that the damage caused to the economy had been very limited, due to the limited growth in online sales, at least for eyeglass frames.

million worth of fines handed out to several brands and manufacturers of eyewear

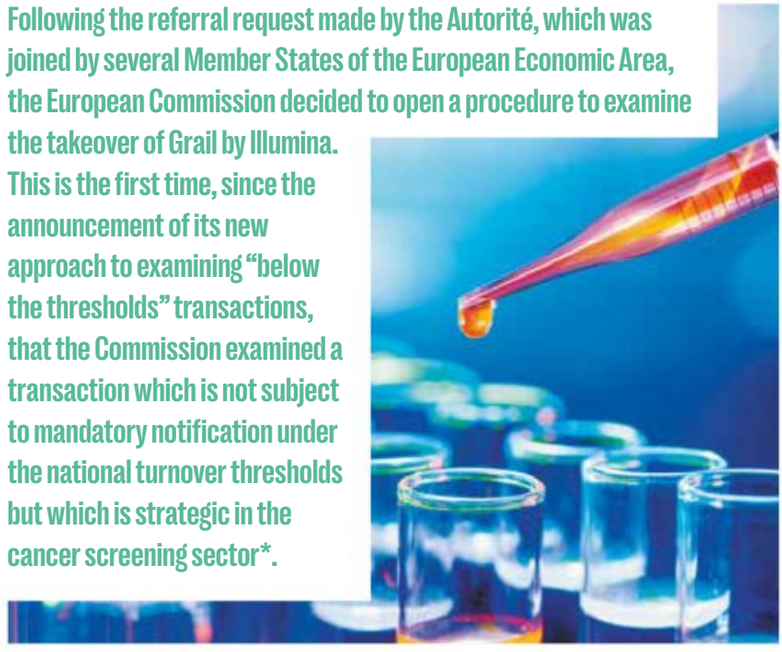
SUBSTANTIAL FINES

In light of all these elements, and taking into account, that LVMH did not dispute the facts, and, for Logo, its financial situation and its judicial liquidation procedure since 2016, the Autorité imposed total fines worth €125.8 million (including €125.74 million for Luxottica).

Decision 21-D-20 of 22 July 2021

Examination of a planned strategic takeover under the thresholds

Following the referral request made by the Autorité, which was joined by several Member States of the European Economic Area, the European Commission decided to open a procedure to examine the takeover of Grail by Illumina. This is the first time, since the announcement of its new approach to examining "below the thresholds" transactions, that the Commission examined a transaction which is not subject to mandatory notification under the national turnover thresholds but which is strategic in the cancer screening sector*.



TAKEOVER OF AN INNOVATIVE BIOTECH COMPANY BY THE WORLD LEADER IN GENOMIC SEQUENCING

On 20 September 2020, Illumina Inc. (hereinafter "Illumina"), an American genomic sequencing company, announced its intention to acquire US-based Grail for a transaction amount of approximately $8 billion. The planned takeover concerned, firstly, a powerful U.S. healthcare company, and secondly, an innovative company working on the development of a cancer screening blood test based on genomic sequencing technology.

After a preliminary analysis, the Autorité asked the European Commission to examine the case, considering that the criteria of affecting trade between Member States and significantly affecting competition on French territory were met. In particular, the Autorité found that Illumina is active in Europe, where it markets next generation genomic sequencers which are widely used, in particular by research laboratories. However, these products are necessary for Grail and its competitors to develop their business in the cancer screening test sector.

The Autorité considered that, as a result of the transaction, there was a risk that Illumina could make access to its sequencers more complex for Grail's competitors, by increasing their price or lowering their quality. Given Illumina's influence in the genome sequencer sector, such a strategy could have a significant impact on competition in the cancer screening test sector.

THE OPENING OF AN IN-DEPTH INVESTIGATION

In the context of the examination of this transaction, the Commission identified competition concerns in the emerging market for the development and marketing of cancer screening tests based on sequencing technologies. As a result, it announced on 22 July 2020 the opening an in-depth examination.

Observing a case of gun jumping, with the transaction completed without its authorisation, the European Commission issued interim measures under periodic penalty payments on 29 October 2021. This is the first time that the Commission has adopted interim measures following the early completion of a merger. The interim measures are intended to prevent potentially irreparable adverse effects of the transaction on competition, as well as possible irreversible integration of the parties to the merger, pending the outcome of the Commission's investigation.

Press release from the Autorité, 20 April 2021

EU Communication, 20 April 2021

European Commission press releases, 22 July and 29 October 2021

* This case is currently being appealed before the General Court of the European Union.

A sector in rapid transformation

Since the reform of the sector in 2010, the biologist network has continued to restructure itself. The Autorité is accompanying this development throughout France by monitoring the many mergers and takeovers. A look back at two of the year's cases in which the Autorité's action ensured a sufficient level of competition in the areas concerned.

TAKEOVER OF ORIADE-NOVIALE BY BIOGROUP

In the course of the examination of the transaction, the Autorité found that it did not raise competition concerns on the upstream supply markets among suppliers, and the market for specialised chemical pathology tests.

On the other hand, it pointed to serious risks of harm to competition in the market for so-called "routine" chemical pathology examinations (which are commonly prescribed and performed by all laboratories, including biochemistry or haematology labs) in Isère, Rhône and Haute-Savoie.

Within these regions, the strengthening of the new entity's position on the market is not offset by a credible and sufficient alternative offer from competing operators. To maintain a sufficient level of competition in these areas, the new entity has committed to divest eight medical analysis sites.

The divestiture of these sites was carried out in the context of a fix-it-first mechanism, which allows the Autorité to directly approve the buyer of the divested asset in the context of the clearance decision. In this case, the Eurofins group took over the eight sites.
In view of the commitments made by Biogroup, the Autorité cleared the transaction.

Decision 21-DCC-131 of 29 July 2021

ACQUISITION OF LABEXA BY CERBA

The analysis of the transaction showed that it did not affect competition in the supply markets among suppliers. Nor did it raise any competition problems in the 'routine' chemical pathology markets in most of the local areas studied. However, the Autorité considered that there were serious risks of harm to competition in the market for "routine" chemical pathology tests in the Hautes-Pyrénées. To maintain competitive intensity in this territory, the new entity committed to divest a medical analysis site currently owned by Labexa and located in Maubourguet. The aim of this divestiture is to remove the overlapping activities resulting from the transaction in this area.

The decision stipulates that this divestiture must be approved by the Autorité, so that it can ensure that the buyer is independent of the new entity and is therefore able to stimulate competition. An independent divestiture trustee approved by the Autorité will ensure the implementation of the commitments.

In view of the commitments made by Cerba, the Autorité cleared the transaction.

Decision 21-DCC-261 of 23 December 2021

ART AND CULTURE

Effective tools to safeguard competition

The music industry is currently undergoing profound transformations, including, in particular, a diversification of the companies' businesses and the arrival of integrated international operators and digital platforms, in a context of a public health crisis that has affected the live performance sector in particular. Referred by the Cultural affairs and Education Committee of the French National Assembly, in May 2021 the Autorité issued an opinion on the contemporary music sector in which it highlighted the intervention tools at its disposal to preserve the competitive efficiency.

Referral of the Cultural Affairs and Education Committee of the French National Assembly

The Cultural Affairs and Education Committee of the French National Assembly (Assemblée nationale) asked the Autorité for an opinion on current developments in the contemporary music sector, underlining in particular *"a phenomenon of concentration affecting concert halls and contemporary music festivals, as well as ticketing and artist production"*, and the *"risk of the emergence of dominant positions, and in artistic matters, a risk to creative and cultural diversity"*.

A SECTOR IN RAPID TRANSFORMATION

The music industry has undergone major transformations over the past 20 years, in particular as a result of the digital revolution. On the one hand, the Autorité has identified a change in the ways and means of listening to recorded music. In the context of the "crisis in the record industry", the recorded music sector in France saw its turnover fall by half between 2000 and 2010, going from nearly €1 billion to €554 million. Nevertheless, since 2015, the sector has been experiencing a growth phase again, thanks in particular to the emergence of digitally recorded music. On the other hand, the

IN SHORT

What do we mean by "contemporary music"?

This is a concept used by the government since the 1990s and which designates a group of four musical genres:
- Amplified music (pop/rock, reggae, electronic music);
- variety music;
- jazz and improvised music;
- world and traditional music.

of all music sales in 2020 were generated via streaming

development of digital techniques and services has prompted a change in the relationship between record companies and artists, allowing the latter direct access to production, distribution and promotion facilities, via social networks for example.

The diversification strategies of certain actors

Given these novel circumstances, the operators have been obliged to look for drivers of growth. **Record labels** in particular have started to expand their business activities, especially in the field of live entertainment, by acquiring or launching companies dedicated to the production of shows, the organisation of festivals, and the operation of venues and ticket offices.

These vertical integration strategies have allowed certain actors to be present simultaneously throughout the value chain of the sector. For example, the Vivendi group, which owns the record label Universal Music, produces shows and festivals (Brive festival, Les Déferlantes, Garorock) via Olympia Production, operates the L'Olympia concert hall in Paris and runs a ticketing business via See Tickets (formerly Digitick).

This strategy can also be observed at Warner Music, which develops touring activities (production, organisation and promotion of concerts) through its company Décibels Productions. Similarly, Sony Music produces shows and tours through its subsidiary Arachnée Productions and organises the We Love Green festival in Paris through its stake in the organising company WLG.

This vertical integration strategy concerns both **independent labels,** such as Wagram Music and Because, and **venue operators,** such as the Fimalac group (which operates the Salle Pleyel and venues such as the Zenith and Arenas), which have launched into the production of shows or are developing other business areas such as ticket reservations, management of the artist's work, and the use of an artist's image to promote products or brands.

Several **actors from the audiovisual and media sectors** have also entered the contemporary music sector, including Lagardère and Morgane Production, which have developed their business of operating venues and/or organising shows, as well as TF1, which produces certain artists, via its subsidiary Play Two. This diversification could allow for synergies between different business areas (production, media and venue operation).

The development of international actors in France

Besides the diversification of actors in the music industry, the Autorité observed the significant expansion of international actors in France, in particular the groups Live Nation and Anschutz Entertainment Group (AEG), which have set up or taken stakes in the organisation of major festivals (Lollapalooza in Paris, Main Square in Arras, in particular for Live Nation) and the operation of venues (Accor Arena - formerly the Paris Bercy Sports Palace - in the case of AEG). Live Nation, the leading music company in the organisation of shows, organises 40,000 shows worldwide for more than 5,000 artists such as Metallica, Ariana Grande, Pink and Bon Jovi, as well as around 100 festivals. It also operates show venues and the ticketing company Ticketmaster, the second largest operator in the sector in France after Fnac. For its part, AEG produces shows for artists such as the Rolling Stones, Taylor Swift, Bruno Mars, Enrique Iglesias, Céline Dion, and Ed Sheeran, and organises festivals such as Rock en Seine in France. AEG is also active in the operation of more than 300 theatres and show venues worldwide. Among other things, it operates the O2 Arena in London, The Colosseum at Caesar's Palace in Las Vegas, the Tele2 Arena in Stockholm and the Mercedes Platz in Berlin, as well as dozens of arena venues around the world.

The development of musical platforms

GAFA, for their part, have become major players in the music sector through their recorded music distribution and video

streaming businesses. Their respective weight and strategies in this area differ significantly. Google has significant heft through its operation of YouTube, a platform on which 76 million music videos are viewed every day in France. For its part, Apple has developed iTunes, its online music download store. Moreover, Apple and Amazon are developing their music streaming services: Apple Music and Amazon Music Unlimited. Finally, outside Europe, Facebook has launched a Music Videos service that hosts music videos. Its Instagram platform is used by a wide range of artists to promote their activities.

Some platforms have also expanded to include certain live activities, although these are still marginal for the time being. As regards live entertainment, Facebook makes it possible to organise live performances, including musical performances, thanks to its livestream feature. Similarly, Google offers artists the opportunity to stream live content through its YouTube service. Furthermore, the TikTok platform, published by ByteDance, also allows live streaming of musical content and has rapidly taken an important position, in particular among younger audiences.

A RANGE OF INTERVENTION TOOLS TO SAFEGUARD THE COMPETITIVE DYNAMICS OF THE SECTOR

All of these transformations have given rise to various concerns among the actors and the public authorities. In this regard, the Autorité reiterates that the reflections on their impact on the diversity and plurality of artistic creation are primarily the responsibility of the authorities and bodies responsible for cultural policy at national and local level.

At the end of its analysis, the Autorité reaffirms that it has the necessary tools to ensure the competitive functioning of the sector, whether through the mobilisation of its ex-ante intervention tools (merger control) or ex-post (enforcement against anticompetitive practices).

Merger control

In effect, the Autorité has jurisdiction to examine concentration operations including mergers, takeovers or the establishment of joint ventures, provided that the transaction in question meets the turnover thresholds laid down by law. Specific thresholds are also provided for at the European Union level and, when these are reached, the European Commission has therefore jurisdiction to examine these transactions in a "one-stop shop" approach.

Under this linking rationale, it is therefore either the Autorité or the European Commission that decides whether to clear, subject to conditions, or block transactions that may take place in the sector. In the context of its analysis, the Autorité (or the Commission, as the case may be) is required to examine the anticompetitive effects that are likely to be generated by the transaction. It also takes into account any efficiency gains that may result, such as economies of scale or range effects. For example, the Autorité has examined the acquisition of sole control of Deezer by The Access Industries (Decision 16-DCC-97 of 24 June 2016) and the acquisition of joint control of Kyro Concept, a ticketing IT manager, by Fimalac and Fnac (Decision 14-DCC-53 of 11 April 2014).

Anticompetitive practices

Furthermore, the Autorité has the means of action at its disposal in the context of its powers to fight anticompetitive practices. As such, it may be required to fine any anticompetitive agreements or abuses of dominant position that it has identified, and restore competition on the markets. In 2012, for example, it fined the Fnac ticketing service, its subsidiary France Billet and Ticketnet €9.3 million for two cartel practices (Decision 12-D-27 of 20 December 2012).

Opinion 21-A-08 of 27 May 2021

22

million people in France regularly use music streaming platforms such as Apple Music, Google Play Music, YouTube Music, Amazon, Deezer and Spotify

Reopening of cinemas: the Autorité mobilises its resources

The health emergency linked to the Covid-19 pandemic profoundly affected the film industry. In a context marked by a large backlog of films waiting to be shown on cinema screens, the Autorité issued an opinion on the possibilities of concerted action between distributors to regulate the release schedule of films when cinemas reopened in 2021. Mindful of providing companies with the best possible support during this exceptionally difficult period, the Autorité endeavoured to provide a general analysis grid of the conditions that could make this temporary consultation compatible with competition law.

THE REFERRAL BY THE CINEMA OMBUDSMAN

In February 2021, the Autorité received a referral from the Cinema Ombudsman ("Médiateur du cinema") regarding the possibility of making an arrangement between film distributors, with a view to the temporary implementation of a regulated release schedule for films, until the situation returned to normal.

Noting that there was a significant congestion of cinema screens, a congestion which would reach unprecedented proportions when cinemas reopened in 2021, the Ombudsman expressed the wish that "the opinion issued by the Autorité should lay down the framework of what can be done at this stage", so as to enable distributors to enter into negotiations.

By mid-March 2021, the backlog of unscreened films was estimated at around 400, which implied, according to the "Bureau de liaison des organisations du cinema", releasing between 50 and 60 films per week to clear the backlog within a reasonable time frame (by way of comparison, according to the Ombudsman, since 2016, the average number of unscreened films released each week had been around 14).

TAKING INTO ACCOUNT AN EXCEPTIONAL CONTEXT

Since the onset of the health emergency and in line with the joint statement issued by the European Competition Network towards businesses in March 2020, the Autorité has always been mindful of informing companies about the compatibility with competition law of contemplated cooperative behaviour

meant to respond to the crisis. In this case, the Autorité wanted to take into account the exceptional context on account of the Covid-19 pandemic, as well as the inadequacy of the current mechanisms to deal with the growing situation of screen congestion. For this reason, it undertook to provide, in the context of its Opinion, a general analysis grid featuring assessment elements, in order to inform companies as to how the envisaged agreement could meet the requirements necessary to obtain an individual exemption.

AN AGREEMENT THAT MAY QUALIFY FOR AN EXEMPTION

As the law stands, the Autorité considered that a temporary consultation of this type was likely to constitute an horizontal agreement prohibited by national and European competition law, but indicated that, in a litigation framework, it could benefit from an individual exemption, provided four conditions were met:

• **demonstrate that the agreement would contribute to promoting economic progress.** In this respect, in its referral, the Ombudsman argued that the agreement would aim at safeguarding the diversity of the cinema offering, and the widest possible distribution of films in accordance with the general interest, in an exceptional period characterised both by the build-up of an unprecedented backlog of films and by likely health-related restrictions when cinemas reopened. Moreover, in a previous opinion issued in 2009 (09-A-50 of 8 October 2009), the Autorité recalled that cultural objectives could be accepted as part of economic progress. Furthermore, agreements that improve production and distribution through better services or quality are recognised as sources of qualitative economic progress.

• **demonstrate that the net effect of the agreement would be at least neutral from the point of view of the cinema operators and that the agreement would not be detrimental to spectators,** by giving them access to a diversified offering and all types of films.

• **establish that the alternative options to having distributors agree amongst themselves on a release schedule for films would be inadequate,** such as, for example, programming commitments or deviating from the release schedule by broadcasting films directly on video-on-demand platforms or television channels.

• **demonstrate that competition would be safeguarded for a substantial portion of the film distribution business, and that the players involved in this process would continue to compete on many parameters** not covered by the agreement. Distributors could, in this regard, undertake to demonstrate that the arrangement would be limited in time, would pertain only to the release date of the films in cinemas and that, if necessary, competition between them could subsist on all other parameters, such as the number of cinemas in which the films would be shown, the number of copies of the films, the screening times, the length of time the films would be on release, as well as the commercial negotiations with the cinema operators on both the selection of films and the economic parameters of the contracts.

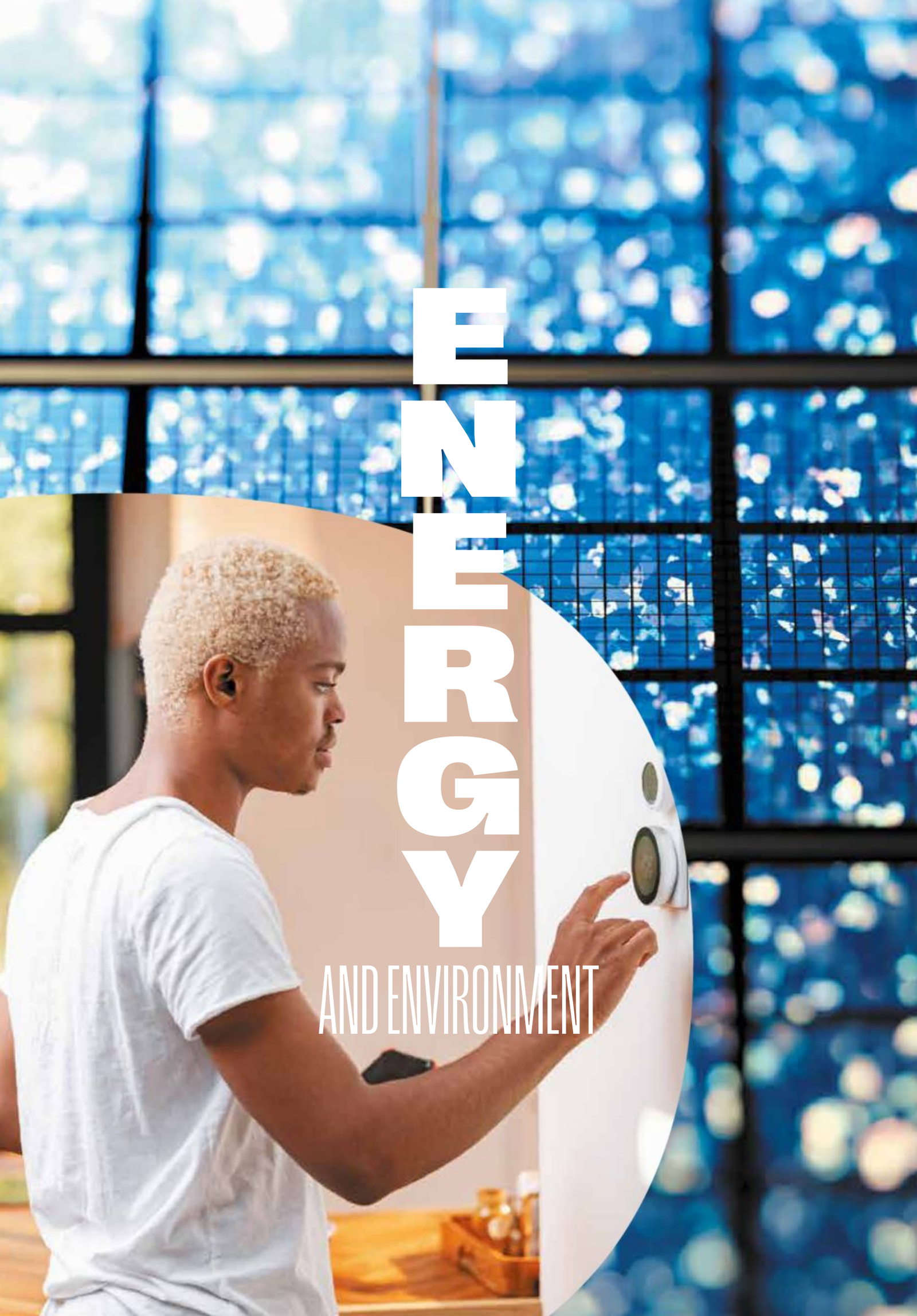
Opinion 21-A-03 of 16 April 2021

To discover our infographics

IN SHORT

An unprecedented backlog of unscreened films

When cinemas reopened in May 2021, distributors were obliged not only to release films which could not be released in 2020, but also to re-release certain films that had already been shown in cinemas in October 2020 and whose release had been interrupted due to the second lockdown of cinemas, in particular the films that had won awards at the 2021 César Awards Ceremony. Furthermore, they also had to show films scheduled for release in 2021.



ENERGY

AND ENVIRONMENT

The Autorité starts ex-officio proceedings regarding alleged practices in Corsica

The Autorité mobilised all its resources to tackle the high cost of living in the island territories. In Corsica, frequent car use, combined with long journeys, weighs heavily on household fuel budgets. In the wake of an initial overall diagnosis of the competitive situation in Corsica, conducted in 2020 as part of its advisory remit, the Autorité decided in 2021 to start ex-officio proceedings to examine the practices implemented in the fuel supply, storage and distribution sector on the island.

THE DIAGNOSIS MADE DURING THE 2020 SECTOR-SPECIFIC INQUIRY

In the context of its opinion (20-A-11 of 17 November 2020), the Autorité had already examined the functioning of competition in this sector. It had found that despite a reduced VAT rate of 13%, compared to 20% on the mainland, there was a significant discrepancy in the price of fuels between Corsica and the mainland, about + 6.7% for diesel and + 5.3% for SP95 (INSEE 2015 data). This discrepancy has a considerable impact on the budget of Corsican households, which are highly dependent on cars for getting about. Corsica is therefore one of the regions of France with the highest number of households in a situation of energy vulnerability.

In view of the various legal and structural constraints identified, the Autorité recommended that the Government adopt a new legal framework applicable to operators of storage infrastructure constituting an "essential facility" in order to guarantee security of supply more effectively and also to prevent low capacities from giving rise to excessively frequent impositions of quotas or occurrence of shortages, which have negative repercussions for fuel distribution players and, ultimately, for Corsican consumers.

On the other hand, the Autorité had recommended examining the relevance of implementing structural measures on the fuel distribution markets in Corsica, insofar as the legislative and regulatory framework might allow (such territorial differentiation measures raising questions of constitutionality), to correct the observed failings (possibility for the Autorité to impose remedies in the event of serious competition concerns or failings on the wholesale markets, possibility of imposing structural injunctions in the event of companies being in a dominant position, possibility of introducing price regulation as a last resort).

PROCEEDINGS STARTED IN THE WAKE OF THE OPINION

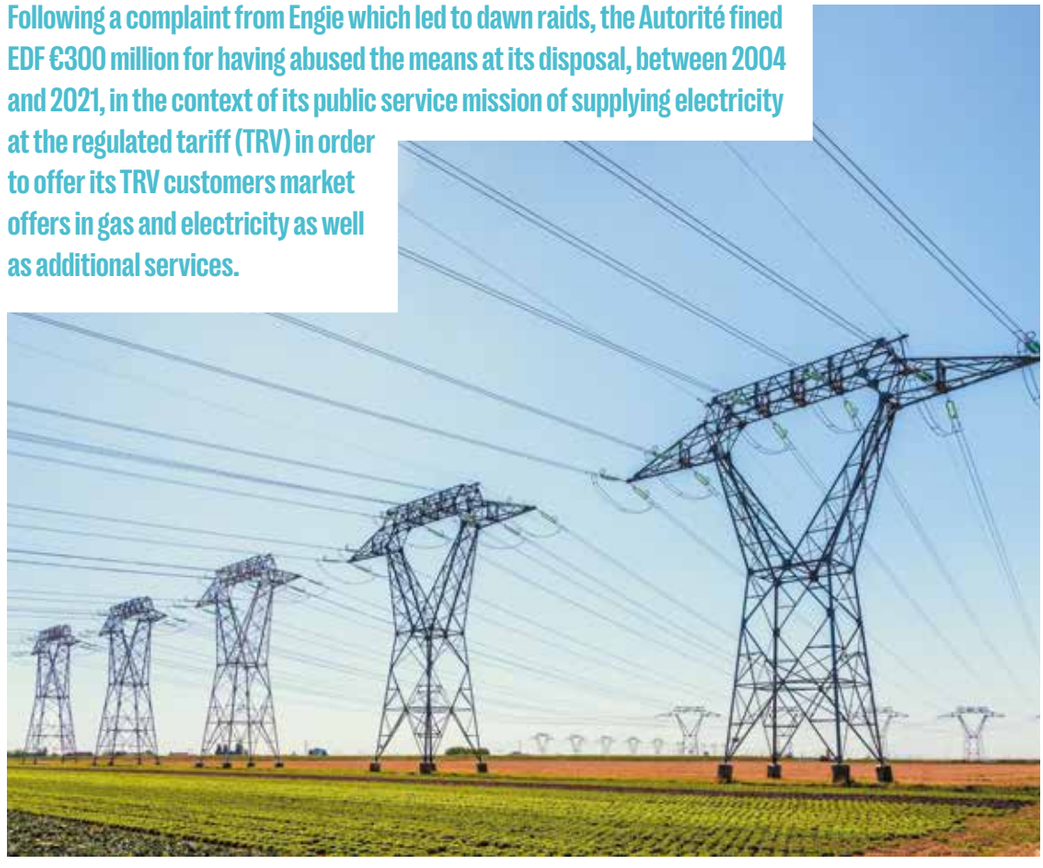
Following the opinion, an investigation was conducted by the investigation units in the sector for a few months, after which the Autorité decided to start ex-officio proceedings regarding the alleged practices. If the investigation units suspect anticompetitive practices, they may follow up by sending a statement of objections to the undertakings or professional bodies concerned. Where appropriate, such statement of objections shall open adversarial proceedings allowing one or more of the entities concerned to exercise their rights of defence.

This decision to start ex-officio proceedings does not prejudge the guilt of any undertaking or association of undertakings. If objections are eventually notified, only an adversarial investigation that guarantees the exercise of the rights of defence of the parties concerned would enable the Board to determine, after exchanging written observations and following an oral hearing, whether or not these objections are well-founded.

Decision 21-SO-17 of 15 December 2021

EDF fined for abuse of dominant position

Following a complaint from Engie which led to dawn raids, the Autorité fined EDF €300 million for having abused the means at its disposal, between 2004 and 2021, in the context of its public service mission of supplying electricity at the regulated tariff (TRV) in order to offer its TRV customers market offers in gas and electricity as well as additional services.



THE CONTEXT OF THE GRADUAL OPENING OF THE ELECTRICITY SECTOR TO COMPETITION

The practices implemented by EDF took place during the period when the sector was opening to competition. This process started with directive 96/92/EC and gradually continued, first for large companies and then for all consumers, both professionals and private customers. Since 2007, all consumers in France, including private residential customers are eligible for market offers. Some regulated electricity tariffs (TRV) have gradually been phased out. For example, the 'TRV Vert' (Green), intended for companies with very high consumption, and the 'TRV Jaune' (Yellow), intended for companies whose contracted power was between 36 kVA and 250 kVA, was phased out on 1 January 2016. Only the 'TRV Bleu' (Blue) was retained for private individuals.

ABUSE OF A DOMINANT POSITION

The elements of the case showed that EDF used the non-replicable means at its disposal in the context of its public service mission of supplying electricity at the TRV tariff - respectively the files of the customers on the TRV tariff and its commercial infrastructure dedicated to its activity at the TRV tariff - to propose to its customers on the TRV tariff market offers in gas and electricity, as well as additional services.

EDF therefore exploited its status as operator of the TRV tariff for electricity, with a rationale of conquering sales markets. In particular, in view of the phasing out of the TRV Yellow and Green, EDF used the commercial infrastructure dedicated to the supply of electricity at the TRV tariff, and in particular the data from its TRV customers' files, in order to safeguard its market share and limit the development of its competitors. The use of this data also enabled EDF to detect customers' needs in terms of gas supply and energy services, and propose offers to them in addition to the supply of electricity.

By using the human and technical resources linked to the TRVs, which were not replicable by its competitors, EDF benefited from a non-replicable competitive advantage. The practices therefore helped EDF consolidate its position throughout the energy sector, and obstruct the development of alternative suppliers.

A NEGOTIATED PROCEDURE WITH THE AUTORITÉ

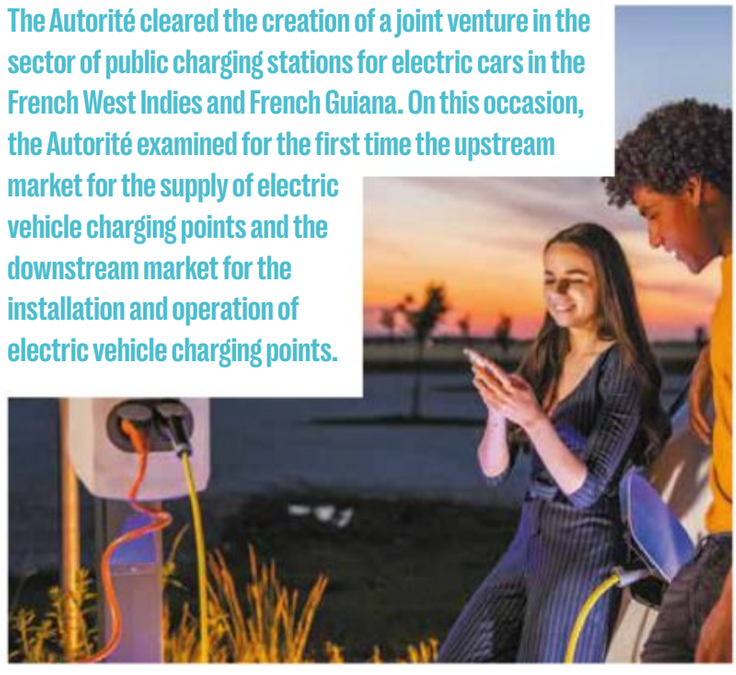
In the context of the investigation conducted by the Autorité, EDF requested the benefit of the settlement procedure. This procedure allows a company that does not contest the charges brought against it to obtain a financial penalty within a range negotiated with the General Rapporteur, setting a maximum and minimum amount. EDF also proposed various commitments: firstly, to make its files of customers on the TRV Blue tariff available to alternative electricity suppliers who so requested, and secondly, to separate the process of signing up TRV Blue customers and prospects by telephone on the one hand, from customers and prospects in market offers on the other hand.

In view of all these elements, the Board of the Autorité fined EDF and its subsidiaries a total of €300 million and made the proposed commitments binding for a renewable period of three years.

Decision 22-D-06 of 22 February 2022

Green light for the creation of a joint venture in the French West Indies and French Guiana

The Autorité cleared the creation of a joint venture in the sector of public charging stations for electric cars in the French West Indies and French Guiana. On this occasion, the Autorité examined for the first time the upstream market for the supply of electric vehicle charging points and the downstream market for the installation and operation of electric vehicle charging points.



THE DEPLOYMENT OF AN ELECTRIC MOBILITY SERVICE OFFER

The notified transaction consisted in the creation of a joint venture called GMOB, established by AGI, EDF PEI (a subsidiary of EDF), Genak and SAFO, whose purpose is to offer electric mobility services in Guadeloupe to professional and residential customers, via the installation of electric vehicles charging points on the island.

In its later stages of development, GMOB could deploy its offer in Martinique and then in French Guiana. The activity will mainly consist in operating a network of electric vehicles charging stations to the benefit of users.

NO COMPETITION RISKS IDENTIFIED

At the end of its analysis, the Autorité considered that the transaction did not lead to overlapping activities between the parties and the joint venture in the market for the installation and operation of charging stations, as only GMOB would be active in the market for public charging stations.

On the other hand, certain EDF subsidiaries and GMOB in Guadeloupe purchase electric vehicle charging stations on the upstream supply market, and this market was therefore analysed. Given the low level of activity by the parties in this market (which includes actors such as Schneider, Siemens and Tritium), the Autorité considered that the transaction did not raise competition concerns of a horizontal nature.

It also ruled out the risk of vertical effects between the electricity supply market and the market for the installation and operation of charging stations, considering that EDF PEI was subject to strict sectoral regulation, both in terms of tariffs and technical aspects, given its monopoly on the supply of electricity at retail level in Guadeloupe, Martinique and French Guiana.

Finally, it found that there was no risk of coordination between the parent companies on the market for the generation and wholesale of electricity, due to the asymmetry of the positions of these two companies in these territories.

Decision 21-DCC-172 of 1 October 2021

Clearance subject to conditions for the takeover of Suez RV OSIS by Veolia

Upon referral from the European Commission, in April 2021 the Autorité examined and cleared, subject to the divestiture of assets, the takeover by SARP (a subsidiary of Veolia) of Suez RV OSIS (a subsidiary of Suez). These companies are both primarily active in the maintenance of facilities and sanitation networks, and industrial cleaning in France.

A DETAILED ANALYSIS OF DIFFERENT MARKETS

SARP and Suez RV OSIS primarily offer cleaning services, and more specifically maintenance of sanitation networks and facilities. In order to analyse the effect of this takeover on competition, the Autorité surveyed the competitors and customers of the parties to the transaction in this sector. This market test allowed for an in-depth examination of the structure and functioning of this sector, and made it possible to identify certain activities that needed to be closely analysed in particular.

As such, for the first time, the Autorité considered the existence of new markets relating to the maintenance of sanitation networks and facilities, hygiene in buildings and the inspection of sanitation networks.

IN SHORT

This transaction was examined independently of the takeover of Suez by Veolia, announced on 30 August 2020 and cleared on 14 December 2021 by the European Commission. In the transaction examined by the Autorité, Veolia acquired the shares of Suez RV OSIS directly from the Suez group.

COMPETITION ISSUES IN ÎLE-DE-FRANCE

Upon completion of its analysis, the Autorité found that the parties would together hold significant positions in the maintenance of sanitation networks and facilities for local public authorities in the Île-de-France region, with no other competitors able to effectively counterbalance their market power. It therefore considered that the transaction entailed a risk of harm to competition, by strengthening SARP on this market and depriving the local public authorities of a competitive alternative.

STRUCTURAL COMMITMENTS

In order to remedy the risks of harm to competition identified by the Autorité, SARP undertook to divest eight Suez RV OSIS branches, located mainly in the Île de France region. In light of these divestiture commitments, the Autorité cleared the transaction following a phase 1 examination.

Decision 21-DCC-71 of 28 April 2021

TRANSPORT OF HYDROCARBONS BY PIPELINE

Blocking of a merger

Since no suitable remedies in the form of injunctions or commitments could be envisaged, the Autorité decided to block a proposed transaction on the market for the transport of petroleum products through pipelines in the south of France.

THE PROPOSED TRANSACTION

SPMR owns and operates the Mediterranean-Rhône Pipeline (hereinafter "PMR"), a 760 km long pipeline network that supplies refinery products including diesel, gasoline, heating oil and jet fuel to depots in south-eastern France. Its shareholding is divided among multiple shareholders, so that no single shareholder can make strategic decisions.

The transaction submitted to the Autorité for examination consisted of the takeover by Ardian of ENI's shares, which gave Ardian de facto exclusive control of the pipeline.

SIGNIFICANT RISKS IDENTIFIED BY THE AUTORITÉ

The Autorité considered that the transaction would have allowed Ardian to have sole decision-making power regarding the commercial policy of the PMR and thus regarding price levels. Ardian, which is not a user, would have had an interest in increasing prices more substantially, fully capitalising on the monopoly situation of the PMR. In the same sense, in order to maximise its profits, Ardian could have decided to degrade the quality of services offered by the PMR or limit investments.

Furthermore, the Autorité considered that this pipeline constituted an essential facility insofar as:

- the PMR is in a de facto monopoly position on the market for the transport of refined petroleum products by pipeline in the south of France, as the other modes of transport (rail, road and river) for refined petroleum products do not constitute a real alternative for customers.
- the PMR is a facility that cannot be replicated by a competitor, given the significant investment required to build a pipeline and the regulatory constraints of the authorisation regime. Finally, the Autorité noted that although this infrastructure is subject to State control, this only pertains to safeguarding the security of France's oil supply and not competition rules. This legal and regulatory framework alone did not therefore make it possible to rule out the risks of harm to competition identified.

BLOCKING THE TRANSACTION AS THE ONLY SOLUTION TO SAFEGUARD COMPETITION

Given the inadequacy of the proposed commitments and the impossibility of issuing effective injunctions to remedy the identified competition concerns, the Autorité decided to block the transaction.

Decision 21-DCC-79 of 12 May 2021

A precedent in this area: the withdrawal of the Pisto/Trapil transaction

As a reminder, following an in-depth investigation, the Autorité de la concurrence had previously identified significant competitive risks during the examination of another transaction concerning oil pipelines (acquisition of sole control of Trapil by Pisto) in 2020. In the absence of sector-specific regulation, the transaction could therefore have had the effect of giving the new entity a long-lasting market power that could not be challenged by a competitor.
Ultimately, the parties withdrew the transaction.

To read the press release of 24 July 2020

WASTE COLLECTION AND MANAGEMENT IN HAUTE-SAVOIE

Fining a cartel in the context of public tenders

Following dawn raids and a report prepared by the local network of the Minister of the Economy (the Auvergne-Rhône-Alpes inter-regional competition investigation brigade), the Autorité handed out fines worth €1.5 million to four companies for distorting the call for tender procedures launched by various local and regional public authorities in Haute-Savoie between 2010 and 2018 for the collection and management of their waste.

A MARKET-SHARING OF THE CALL FOR TENDER ISSUED BY THE LOCAL AND REGIONAL PUBLIC AUTHORITIES

Two types of contracts were affected by the practices:

- several contracts for the collection and management of non-hazardous waste, to which the companies Ortec Environnement, Excoffier Recyclage and Trigénium responded;
- a contract for the collection and management of hazardous waste in which TREDI and Excoffier Frères companies participated.

In response to calls for tender issued by local and regional public authorities for the collection and management of non-hazardous waste, Ortec Environnement, Excoffier Recyclage and Trigénium companies set up an overall plan of market-sharing by means of cover bids.

Practically speaking, the companies exchanged confidential information before submitting their bids, agreeing on the "prices to be stated". Then, to benefit each other, they submitted cover bids including all or part of the prices transmitted. These cover bids involved submitting an allegedly competitive offer that was deliberately higher, so that the designated company would be certain to obtain the contract in question.

With regard to the collection and management of hazardous waste, TREDI sent Excoffier Frères an email setting out its group's policy on responding to calls for tender. In this context, TREDI then informed it of its decision to submit a bid for a call for tender launched by the Annemasse urban community.

PRACTICES WHICH MISLED THE LOCAL AND REGIONAL PUBLIC AUTHORITIES AND AFFECTED THEIR BUDGETS

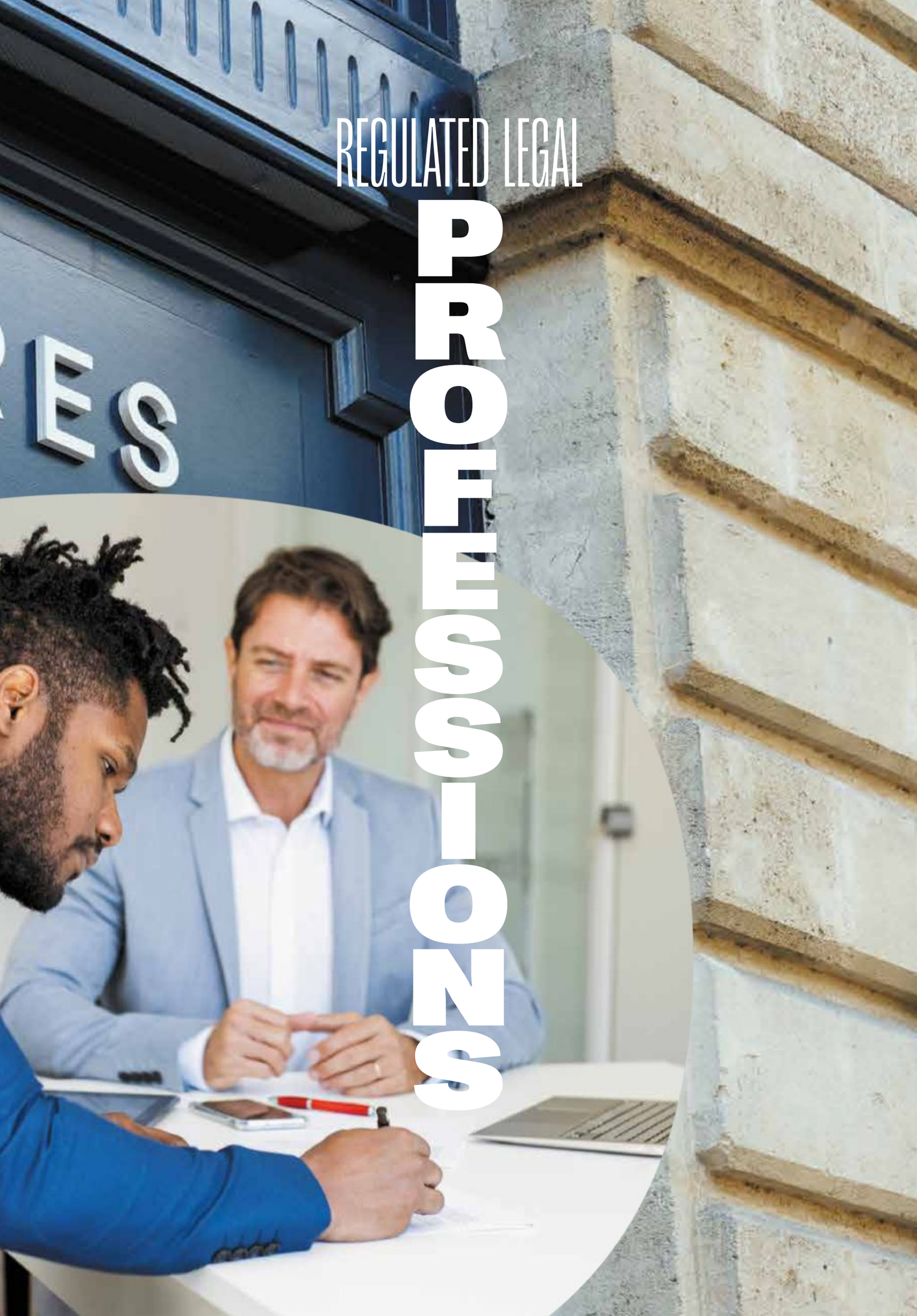
These various practices were designed to limit the intensity of competition between companies.

Indeed, the competitive integrity of the market presupposes that each party makes its own strategic and commercial policy choices completely independently, without any inside information concerning one or more competitors. However, through their exchanges prior to the submission of their offers, the companies impeded the free setting of prices and misled public procurement agents about the reality of competition. In doing so, they encouraged an artificial sharing of the market and neutralised the competition process requested by the local authorities concerned, thus leading to price increases. They have therefore seriously undermined economic public policy and generated additional costs that affected the budgets of the local and regional public authorities.

THE COMPANIES DID NOT DISPUTE THE FACTS

The companies in question did not contest the facts and requested the benefit of a settlement procedure. The settlement procedure allows a company that does not contest the charges brought against it to obtain a financial penalty within a range proposed by the General Rapporteur and agreed by the parties, setting a maximum and minimum amount. In the end, the Autorité fined the four companies €1.5 million.

Decision 22-D-08 of 3 March 2022

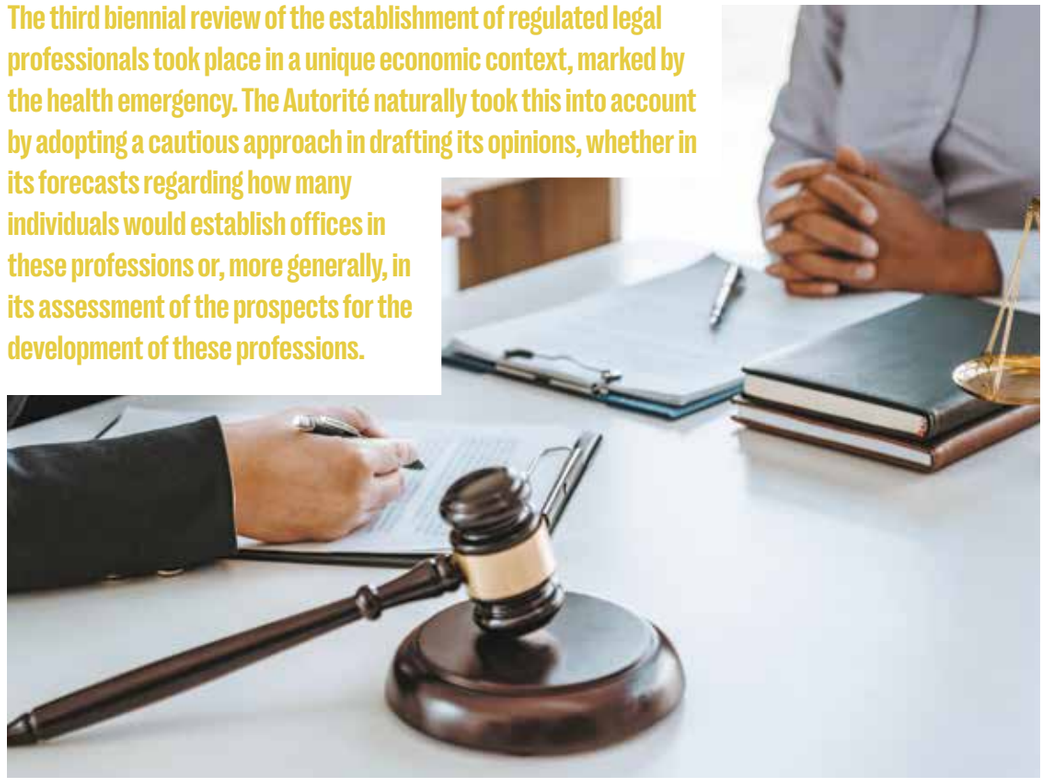


REGULATED LEGAL PROFESSIONS

NOTARIES, COURT BAILIFFS, JUDICIAL AUCTIONEERS, LAWYERS AT THE FRENCH ADMINISTRATIVE SUPREME COURT

New establishments for 2021-2023

The third biennial review of the establishment of regulated legal professionals took place in a unique economic context, marked by the health emergency. The Autorité naturally took this into account by adopting a cautious approach in drafting its opinions, whether in its forecasts regarding how many individuals would establish offices in these professions or, more generally, in its assessment of the prospects for the development of these professions.



A NEW STAGE IN THE APPLICATION OF THE PROVISIONS OF THE "MACRON LAW"

For the third time since the entry into force of Law No. 2015-990 of 6 August 2015 on growth, activity and equality of economic opportunities (known as the "Macron Law"), the Autorité de la concurrence proposed to the Ministers of Justice and the Economy maps of establishment areas for notaries, court bailiffs and judicial auctioneers, together with recommendations regarding the pace of creation of new offices for the period 2021-2023.

THE ADOPTION OF A NEW OPINION ON THE FREEDOM OF ESTABLISHMENT OF NOTARIES

In its Opinion of 28 April 2021, the Autorité drafted a new proposed map for the establishment of new notaries over the period 2021-2023, following a public consultation.

A longer-term horizon

It moved from 2024 to 2029 the long-term horizon on which it bases its assessment of the need for new notaries to set up their offices, estimated at between 2,400 and 2,600 new individuals, and slowed down the pace of new offices being set up for the next two-year period to allow this objective to be reached.

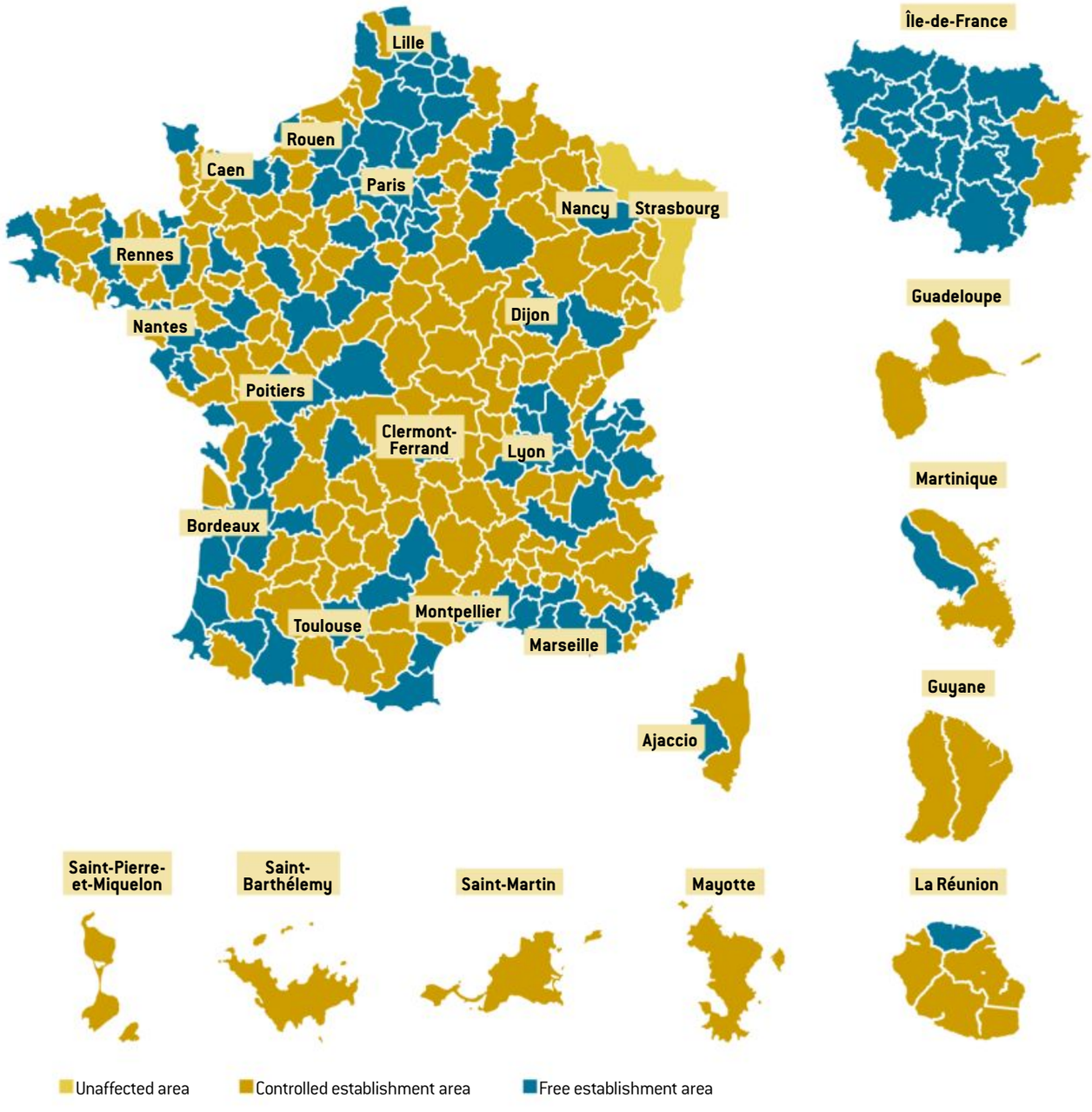
IN SHORT

A large number of candidacies

In 2019, as in 2016, more than 25,000 applications were registered on the Chancellery's dedicated website, OPM, within the first 24 hours of candidacies opening.

According to the Directorate General for Civil Affairs and Justice (Direction des Affaires Civiles et du Sceau - DACS), there are 33 unfilled appointments under the first map and at least 87 under the second.

Proposed maps of establishment areas and recommendations for the notary profession for the period 2021-2023



A limited number of additional notarial offices to take the crisis into account

In drawing up this new map, the Autorité first updated the demarcation of establishment areas, by integrating the update of the employment zones carried out by INSEE in 2020, and made local adjustments in Guadeloupe and Martinique to take into account the setting up of new offices. It therefore reduced the total number of establishment areas from 306 to 293.

While the first two maps, for the periods 2016-2018 and 2018-2020, had set a target of 1,650 and 733 new notaries respectively, the Autorité recommended to the Government that 250 new notaries should set up their offices in 112 free establishment areas, over the next two years, based on an intermediate scenario of "lasting crisis".

Furthermore, in its opinion, the Autorité was pleased to note that several reforms had been initiated in line with its previous recommendations and made nine qualitative recommendations to be implemented in the next two-year period. The Autorité welcomed the fact that, by Ministerial regulation of 11 August 2021, the Government had adopted the map of establishment areas that the Autorité had proposed for notaries for the period 2021-2023, as well as its recommendations on the number of offices to be set up in different areas of the territory.

Opinion 21-A-04 of 28 April 2021

Access the map of establishment areas for the notary profession for the period 2021-2023

REVISED MAP PROPOSALS FOR COURT BAILIFFS AND JUDICIAL AUCTIONEERS

The first maps for the establishment of court bailiffs and judicial auctioneers, 2017-2019, had set a target of 202 and 42 appointments respectively.
In December 2019, the Autorité had proposed new maps of establishment areas and recommended the setting up of offices allowing the establishment of 100 court bailiffs and three judicial auctioneers over the validity period of the next map (initially 2020-2022). However, the health emergency in March 2020 prompted the Government to ask the Autorité, by letter dated 22 July 2020, to draw up new proposals for maps for court bailiffs and judicial auctioneers, so as to take into account the implications of the new health context on their economic situation.

In April 2021, the Autorité therefore drew up two new map proposals, along with new recommendations for the setting up of offices. It noted in these proposals that both professions had considerably suffered from the health emergency, in particular due to the following:
• for judicial auctioneers, the fall in collective procedures linked to the implementation of public aid to companies;
• for court bailiffs, the sharp drop in demand, due to the disrupted operation of the courts and the suspension of most enforced recovery activities. In addition, the health context meant that judicial auctioneers and court bailiffs faced serious difficulties in conducting some of their duties, which, like judicial sales, are difficult to perform remotely.
As was the case for notaries, the Autorité therefore moved from 2026 to 2029 the long-term horizon which it uses to assess the need for new establishments of court bailiffs and judicial auctioneers, who will merge into the new profession of "commissioner of justice" on 1 July 2022.
Moreover, in view of the potential for the setting up of offices, which it estimates at between 575 and 630 commissioners of justice by 2029, the Autorité revised its biennial recommendations, initially set out in Opinions 19-A-16 and 19-A-17. It therefore recommended to the Government that additional offices be set up, which would allow, over the period of validity of the next map (2021-2023), the establishment of 50 new court bailiffs in 22 free establishment areas (instead of 100 appointments added to the remainder of 59 offices in its initial proposal), and of no new judicial auctioneers (instead of the three appointments added to the remainder of six offices initially planned).
The Autorité is pleased that the Government has adopted the revised maps and the accompanying recommendations in two regulations dated 20 July 2021.

Deliberation 2021/01 of 28 April 2021 adopting a new proposal for a map of establishment areas for offices, together with recommendations regarding the pace for setting up new offices of court bailiffs, attached to Opinion 19-A-16 of 2 December 2019 relating to freedom of establishment of court bailiffs

Deliberation 2021/02 of 28 April 2021 adopting a new proposal for a map of establishment areas for offices, together with recommendations regarding the pace for setting up new offices of judicial auctioneers, attached to Opinion 19-A-17 of 2 December 2019 relating to freedom of establishment of judicial auctioneers

THE ADOPTION OF A NEW OPINION ON THE FREEDOM OF ESTABLISHMENT OF LAWYERS AT THE FRENCH ADMINISTRATIVE SUPREME COURT

After two initial opinions that led, in 2016, to the setting up of four offices, and then in 2018, to the setting up of four additional offices (taking the total number of positions from 60 before the reform to 68 today), the Autorité repeated the exercise by issuing a new opinion to the Government on the freedom of establishment of lawyers at the French Administrative Supreme Court and French Supreme Court for the period 2021-2023.

Taking into account the impact of the health emergency on the profession (decrease in the turnover of lawyers at the French Administrative Supreme Court by 15% in 2020 compared to the previous year, in particular due to a slowdown in activity before the French Supreme Court), the foreseeable evolution of the litigation proceedings brought before the high courts, and the economic situation of current professionals as well as those who benefited from freedom of establishment, the Autorité proposed to the Government the setting up of two offices by 2023.

In addition, the Autorité welcomed the changes to the regime for lawyers at the French Administrative Supreme Court in accordance with the recommendations made in its previous opinions, in particular with regard to the composition of the examination board for the Bar examination, the governance and conduct of training, the rules governing communication and the ethics of the profession.

Finally, the Autorité issued new qualitative recommendations:
• introducing greater transparency on the criteria used to rank candidates for the offices set up;
• providing more information on how to become a lawyer at the French Administrative Supreme Court and French Supreme Court, by further developing communication measures aimed at raising awareness of the profession among students and by expanding training opportunities for legal professionals.

The Autorité welcomes the fact that the Government has adopted, by Ministerial regulation of 20 April 2021, the principle of setting up the two offices recommended by the Autorité.

Opinion 21-A-02 of 23 March 2021

New establishments for 2021-2023

250
new notaries

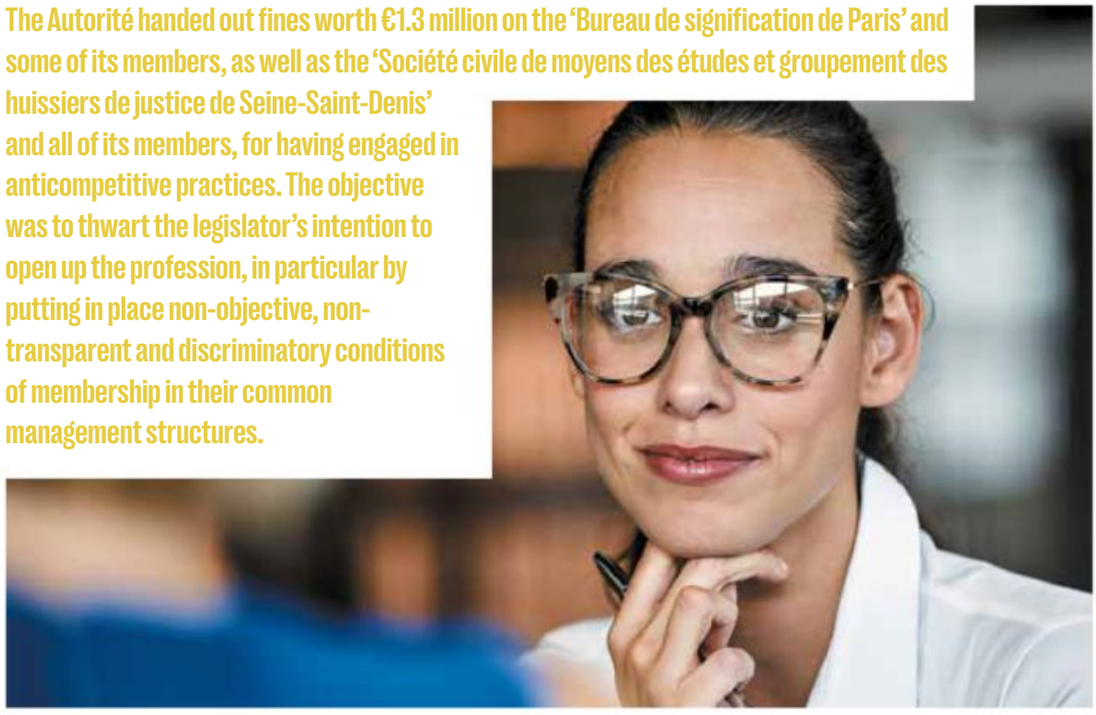
50
new court bailiffs

2
offices of lawyers to the French Administrative Supreme Court and French Supreme Court

No
judicial auctioneers

Fining an anticompetitive agreement in Paris and Seine-Saint-Denis

The Autorité handed out fines worth €1.3 million on the 'Bureau de signification de Paris' and some of its members, as well as the 'Société civile de moyens des études et groupement des huissiers de justice de Seine-Saint-Denis' and all of its members, for having engaged in anticompetitive practices. The objective was to thwart the legislator's intention to open up the profession, in particular by putting in place non-objective, non-transparent and discriminatory conditions of membership in their common management structures.



NON-OBJECTIVE, NON-TRANSPARENT AND DISCRIMINATORY MEMBERSHIP CONDITIONS FOR NEW PROFESSIONALS

The Autorité considered that the conditions of membership in the 'Bureau de signification de Paris' (BSP) and 'Société civile de moyens des études et groupement des huissiers de justice de Seine-Saint-Denis' (SCM 93) were anticompetitive insofar as, firstly, membership in these joint offices confers a significant competitive advantage on their members, and secondly, these conditions were laid down or applied in a non-objective, non-transparent and discriminatory manner.

In this regard, by offering immediate access to a pooled notification service (a formality whereby an individual is informed of the content of a legal deed) by sworn clerks, membership in the BSP and SCM 93 allowed affiliated offices to significantly reduce their operating costs, while significantly improving the quality of service offered to their customers. Since this significant competitive advantage could not otherwise be enjoyed, membership in the BSP and SCM 93 is of strategic interest to all court bailiffs' offices in their respective department, especially for newly established offices.

Moreover, the BSP and SCM 93 proposed and then implemented non-objective, non-transparent and discriminatory membership conditions that were adopted by their members at their general meeting, in particular at the expense of court bailiffs

holding office pursuant to the "Macron Law". As such, BSP and SCM 93 demanded from the candidates for membership, primarily court bailiffs holding office pursuant to the "Macron Law", payment of a prohibitive entry fee (between €100,000 and €300,000).

A CUSTOMER ALLOCATION CLAUSE

The Autorité also imposed a penalty on SCM 93 and its members for anticompetitive agreement, as they had inserted a customer allocation clause in the internal rules of procedure of SCM 93. Indeed, this was a stipulation aimed at prohibiting bailiffs from taking certain steps to "procure business or to divert business that a colleague would or should be in charge of". This is one of the most serious practices in competition law.

THE OBJECTIVE OF THWARTING THE LEGISLATOR'S INTENTION TO OPEN UP THE PROFESSION

The changes to the membership conditions of the services of BSP and SCM 93 occurred almost concurrently with the adoption and entry into force of the "Macron Law". In Seine-Saint-Denis, the insertion of a customer allocation clause in the internal rules of procedure of SCM 93 also came a few months after the adoption of Law No. 2016-1547 of 18 November 2016 on the modernisation of justice in the 21st century, which authorised personalised solicitation by court bailiffs. The objective pursued by BSP and SCM 93 was then clearly in evidence: "to protect fellow court bailiffs as much as possible and close our office to new players. [...] since the departmental chamber will be abolished, only the joint office will remain as a control body".

In both cases, the practices were all the more serious as they were intended to thwart the legislator's intention to foster the establishment of new court bailiffs' offices in the departments concerned. For the record, Paris and Seine-Saint-Denis are among the areas where the Autorité has identified the most significant potential for setting up new court bailiffs' offices.

DETERRENT BUT PROPORTIONATE PENALTIES

In Paris, the BCS and its members did not dispute the fact that they had adopted membership requirements that were laid down or applied in a non-objective, non-transparent and discriminatory manner. They therefore benefited from a settlement procedure, at the end of which they were fined for a total amount of €858,800.
In Seine-Saint-Denis, the accused were handed down penalties for both anticompetitive agreements (membership conditions and customer allocation). However, as it had been placed in judicial liquidation, no financial penalty was imposed on SCM 93 and only the members concerned were fined €485,350 (an amount that takes into account the financial difficulties of some of them).

Finally, in order to broadly inform the public of the unlawful nature of these different practices, the BSP, on the one hand, and the SCM 93 and its members on the other, had to publish a summary of the case in specialised media ("Journal des huissiers de justice" and/or website of the section of the court bailiffs of the national chamber of commissioners of justice: www.huissier-justice.fr).

Decision 22-D-01 of 13 January 2022

Decision 22-D-02 of 13 January 2022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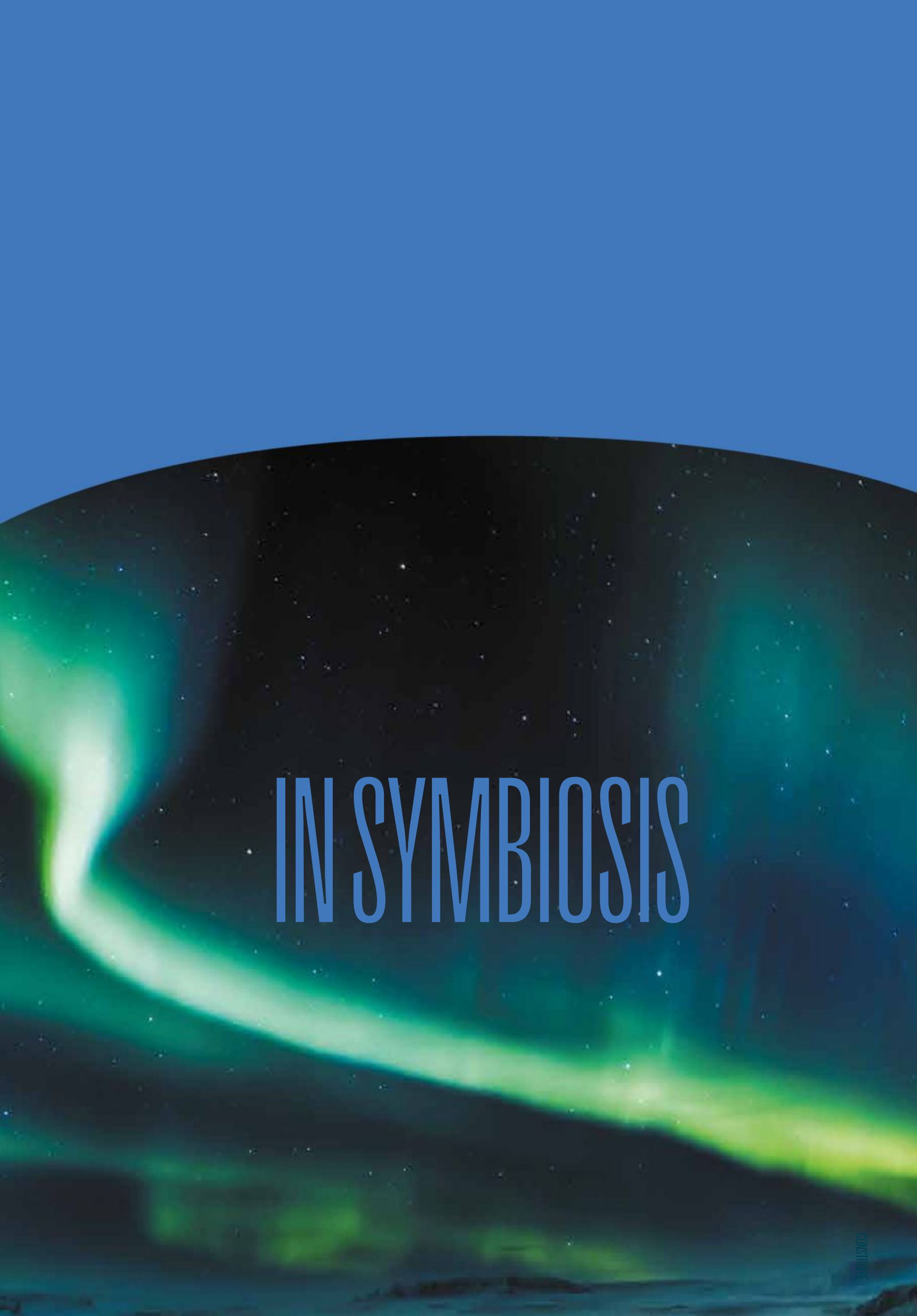
IN SYMBIOSIS

THE BOARD OF THE AUTORITÉ

INDEPENDENCE AND COLLEGIALITY

The Board of the Autorité is composed of 5 permanent members (the President and 4 Vice-Presidents) and 12 non-permanent members.
Half of the Board is renewed every two and a half years (with the exception of the President, who is appointed for a renewable period of five years).

The aim of the legislator was that the members of the board come from very different backgrounds: judges, university professors in law or economics, managers, presidents of professional or consumer organisations share their points of view during the deliberations. This diversity fosters debate and neutrality in the deliberations and is, as such, a guarantee of richness and legitimacy.

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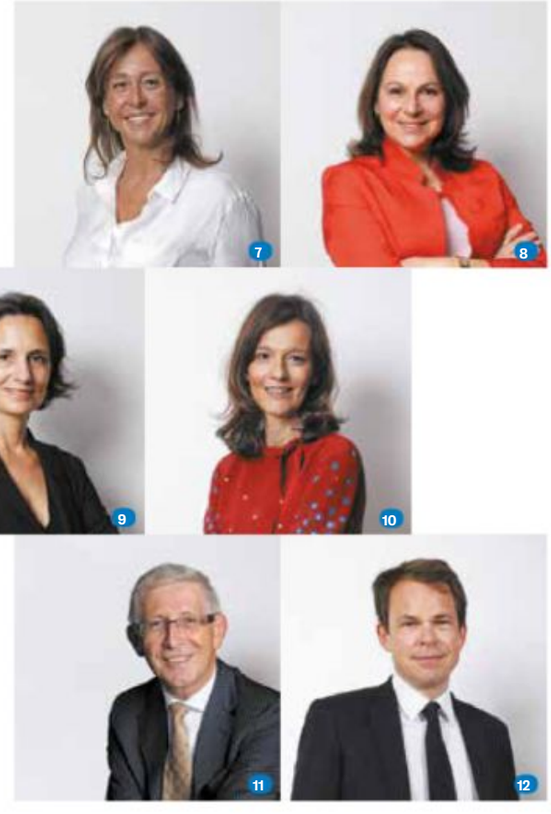

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13 **Jean-Louis Gallet**
Honorary judge at the French Supreme Court, former senior judge at the French Administrative Supreme Court in extraordinary service

14 **Frédéric Marty**
Research fellow at the Centre national de la recherche scientifique (CNRS)

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AS OF 20 JUNE 2022

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Warning

This report was written while certain decisions of the Autorité de la concurrence are still subject to appeal or may be subject to appeal before the competent courts.

At the time of printing, the decisions mentioned in this document which are the subject of an appeal before the Paris Court of Appeal are: 19-D-25, 21-D-05, 21-D-09, 21-D-17, 21-D-20, 21-D-25, 21-D-26, 21-D-28, 22-D-02, 22-D-04 and before the French supreme court: 21-DCC-79. Furthermore, the publication of the decisions and opinions does not claim to be exhaustive and is intended to inform the general public. Readers are therefore invited to consult the decisions, opinions and rulings in their full version on the website of the Autorité and the supervisory courts to accurately assess the context and scope of the information presented.

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