



Only the French version is authentic. In the event of any discrepancy,
the French version will prevail over the translation.

**Opinion 25-A-01 of 9 January 2025
on rating systems designed to provide consumers
with information on the sustainability-related characteristics
of consumer products and services**

The *Autorité de la concurrence* (section IB),

Having regard to Decision 24-SOA-02 of 8 February 2024 registered under number 24/0012 A, by which the *Autorité de la concurrence* decided to start inquiries *ex officio* into rating systems designed to provide consumers with information on the sustainability-related characteristics of consumer products and services, with a view to issuing an opinion;

Having regard to the Treaty on the Functioning of the European Union;

Having regard to Book IV of the French Commercial Code (*Code de commerce*);

Having regard to the public consultation document published by the *Autorité de la concurrence* on 12 April 2024;

Having regard to the contributions received up to 15 May 2024;

Having regard to the questionnaires sent by the *Autorité de la concurrence*;

Having regard to the other documents in the case file;

Representatives of the French National Public Health Agency (*Santé publique France*), Planet-Score, Halte à l'Obsolescence Programmée (HOP), Nestlé, UFC-Que Choisir and Inoha having been heard on the basis of the provisions of Article L. 463-7, paragraph 2 of the French Commercial Code;

The case officers (*rapporteurs*), the Deputy General Rapporteur and the representative of the French Ministry of the Economy (*commissaire du Gouvernement*) having been heard at the hearing of the *Autorité de la concurrence* on 3 December 2024;

Adopts the following opinion:

Summary¹

On 8 February 2024, the *Autorité de la concurrence* (hereinafter “the *Autorité*”) decided to start inquiries *ex officio*, on the basis of Article L. 462-4 of the French Commercial Code (*Code de commerce*), into the competitive functioning of rating systems designed to provide consumers with information on the sustainability-related characteristics of consumer products and services, with a view to issuing an opinion.

For several years, consumers have been receiving a growing volume of information on the sustainability-related characteristics of consumer goods and services. This information is provided predominantly by rating systems that deliver simplified information – in the form of numbers, letters or colours – to help consumers understand the sustainability-related characteristics of the products and services they intend to buy. By providing a graded assessment of a product or service, the systems make a range of information available to consumers, who can then compare products or services in the same category.

Rating systems vary considerably in their design and scope, covering a wide range of sectors, products and services and assessing various sustainability-related considerations. Their ratings are delivered through multiple channels (mobile applications, product packaging, websites, etc.). Depending on whether the publisher is a public or private entity, the systems may be mandatory or voluntary.

As part of its inquiry, the *Autorité* conducted interviews with a wide range of stakeholders that are directly or indirectly involved in the development or operation of rating systems, including: rating system publishers, companies whose products or services are rated, and representatives of civil society, such as consumer associations and non-governmental organisations.

Overall, the stakeholders consulted recognised the benefits of rating systems, which – by providing simplified and educational information on sustainability-related characteristics – meet certain consumer and wider public expectations, while also encouraging companies to improve their offerings and helping to stimulate competition in the markets for the products or services rated.

In this opinion, and without prejudice to the European Commission Guidelines on Horizontal Cooperation Agreements, the *Autorité* provides guidance to help stakeholders understand rating systems in light of competition rules. The development and operation of rating systems may, in certain circumstances, present competition risks, where the systems affect the information provided to consumers and the incentives for companies to compete with each other.

Firstly, the *Autorité* identifies a number of design conditions that are likely to ensure the effective competitive functioning of rating systems.

¹ The summary is for information purposes only and provides an overview of the following numbered reasons for the opinion. Only the French version of the opinion is authentic. In the event of any discrepancy, the French version will prevail over the translation.

Insofar as rating systems provide information on a competitive parameter within a given market, publishers must ensure the soundness of the calculation method (rating criteria and the weighting assigned to each criterion) employed and the reliability (accuracy and precision) of the data used. Similarly, publishers have a responsibility to be transparent with users about the operation of their systems (governance, calculation method, data used, etc.), so that users can make an informed choice, both about using the rating system itself and about purchasing products or services based on the rating.

The opinion then draws publishers' attention to the selection and weighting of rating criteria. The more a rating system helps to differentiate between the products or services rated, the more effectively consumers will be able to compare products and the more the system will help to stimulate competition. Conversely, rating systems developed or built jointly by competitors, where those systems result in a large majority of their products receiving a similar rating for a given product category, which does not arise from objective characteristics or from an improvement in the product or service, but instead from concerted action between companies, could constitute a practice contrary to competition law.

Lastly, the *Autorité* draws publishers' attention to the preparatory work undertaken in developing a rating system, in particular when that work involves bringing together competitors. The *Autorité* recalls:

- the rules governing the exchange of information and the associated risks of collusion in such context; and
- the importance of ensuring the representativeness of the participants in any meetings, especially when the companies involved manufacture or distribute the products that will be rated by the system under development, or when the rating system has been issued by a public authority or is of a binding nature.

Secondly, the *Autorité* identifies several watchpoints for stakeholders regarding the implementation of rating systems.

The opinion examines the issue of access to inputs, such as databases, required to operate a rating system. The *Autorité* notes that, under competition law, the refusal of access to an input by an undertaking holding an individual dominant position, or by a group of undertakings holding a collective dominant position, may constitute abusive conduct in certain circumstances. Similar competition concerns may arise where several independent undertakings act collectively, for example within a professional organisation holding a database.

The opinion also addresses an issue raised by several stakeholders in their contributions, namely the legality, under competition law, of a rating system giving low ratings to products containing substances considered harmful by that system, even where those substances are authorised by health authorities. The opinion proposes an analytical framework for assessing such practices from the point of view of disparagement.

In addition, public rating systems are subject to lobbying by interest groups vis-à-vis public authorities concerning their creation or operation. While such lobbying is legitimate, it may give rise to competition concerns.

Furthermore, the selective disclosure of ratings by a rating system may give rise to competition concerns, insofar as such practice reduces the informative value of rating systems. The opinion notes that an agreement between companies to avoid competing with each other on sustainability-related performance by withholding mediocre or low ratings is likely to be contrary to competition law.

Moreover, imposing a rating system on a commercial partner may also give rise to competition concerns if the publisher holds a dominant position in the market concerned. For example, some retailers have developed their own rating systems, which they may impose directly or indirectly on their manufacturers. The opinion specifies the circumstances in which this practice could be qualified as the imposition of unfair trading conditions or discriminatory practices.

Lastly, the *Autorité* recalls the conditions that must be met for any practices that may be contrary to competition law to be justified or exempted, taking into account the objective of consumer protection or sustainability pursued.

Stakeholders may also request informal guidance in the area of sustainability, in accordance with the procedural notice of 27 May 2024.

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Introduction

1. For several years, consumers have been receiving a growing volume of information on the sustainability-related characteristics of consumer goods and services. This information is provided predominantly by rating systems that deliver simplified information – in the form of numbers, letters or colours – to help consumers understand the sustainability-related characteristics of the products and services they intend to buy. These systems provide information, for example, on the environmental impact of the product or service design or on their nutritional qualities.
2. While studies evaluating consumer goods have long existed, particularly in specialist press reviews, the development of digital applications and the deployment of public rating systems have made this information more accessible to consumers than ever before. At the same time, a growing number of consumers want more information about the sustainability-related characteristics of products before or at the time of purchase. Rating systems are therefore set to play an increasingly important role in the competitive landscape for a large number of consumer goods and services sectors.
3. As indicated in its 2023-2024 roadmap, preserving consumer purchasing power and promoting the ecological transition are among the priority actions of the *Autorité de la concurrence* (hereinafter “the *Autorité*”).
4. On 8 February 2024, the *Autorité* therefore decided to start inquiries *ex officio*², on the basis of Article L. 462-4 of the French Commercial Code (*Code de commerce*), into the competitive functioning of rating systems designed to provide consumers with information on the sustainability-related characteristics of consumer products and services, with a view to issuing an opinion.
5. As part of the inquiry, the *Autorité* consulted various types of stakeholders: rating system publishers, companies whose products or services are rated, and representatives of civil society, such as consumer associations and non-governmental organisations (hereinafter “NGOs”).
6. On 12 April 2024, the *Autorité* launched a public consultation to deepen its understanding of the sector. The consultation document invited stakeholders to comment on the competitive functioning of the sector and the practices implemented. Seven rating system publishers, 31 companies or professional bodies representing companies whose products or services are subject (or may be subject) to a rating, 12 consumer associations and NGOs, and several other stakeholders interested in rating systems³ expressed their positions and any competition concerns they may have. The range of contributions from different respondents, both in terms of their respective activities and economic weight, significantly enriched the work of the Investigation Services.
7. Hearings were also conducted, and supplementary questionnaires were sent to stakeholders.

² *Autorité* Decision 24-SOA-02 of 8 February 2024 on the start of *ex officio* inquiries, with a view to issuing an opinion, into rating systems designed to provide consumers with information on the sustainability-related characteristics of consumer products and services, with a view to issuing an opinion

³ Environmental consulting or certification companies.

8. The first part of this opinion describes the rating systems sector (I.), while the second part outlines the conditions for the deployment of rating systems that safeguard the competitive functioning of the sector and identifies key watchpoints for the stakeholders involved (II.).

I. Rating systems sector

A. SCOPE OF THE OPINION

1. RATING SYSTEMS

9. For the purposes of this opinion, a rating system refers to a tool that assesses and rates a consumer product or service in a simplified form, using numbers, letters, or colours, in order to provide consumers, at the time of purchase, with information on the sustainability-related characteristics of the product or service they are considering buying⁴.
10. In delivering a rating, rating systems provide a graded assessment of a product or service in order to make a range of information available to consumers, who can then compare products or services in the same category.
11. In order to generate the rating, the systems perform a calculation that generally involves the following intermediate steps. Using the available data, the systems take into account one or more criteria reflecting different aspects of sustainability and apply specific weightings to each of those criteria. The systems then establish point or percentage ranges, which are assigned a value expressed by a symbol in the form of a number, letter and/or colour⁵.
12. To illustrate how rating systems are built, the calculation methods of two systems in the food sector are presented below: the Nutri-Score rating and the rating delivered by the QuelProduit mobile application.

⁴ Ratings given directly by consumers themselves after purchasing and using a product or service are not included in the scope of this opinion.

⁵ Other indicators may also be used to inform consumers about products and services, such as labels, standards, certifications or protected designation of origin (PDO) marks. While these indicators share certain similarities with rating systems, they are not included in the scope of this opinion. However, some of the observations and recommendations set out herein may also be relevant to them.

13. Firstly, the Nutri-Score calculation method⁶ is based on assessing the nutrients in a 100-gram or 100-millilitre portion of a food product, weighing those whose excessive consumption should be limited (energy, saturated fatty acids, sugars and salt) against those whose consumption should be encouraged (fibre, protein, fruit, vegetables, legumes, nuts and rapeseed, walnut and olive oils). The results are displayed by the manufacturer directly on the product packaging. Following the calculation, the score obtained by a product determines the assignment of a letter (A to E) and a corresponding colour (ranging from dark green to dark orange)⁷.



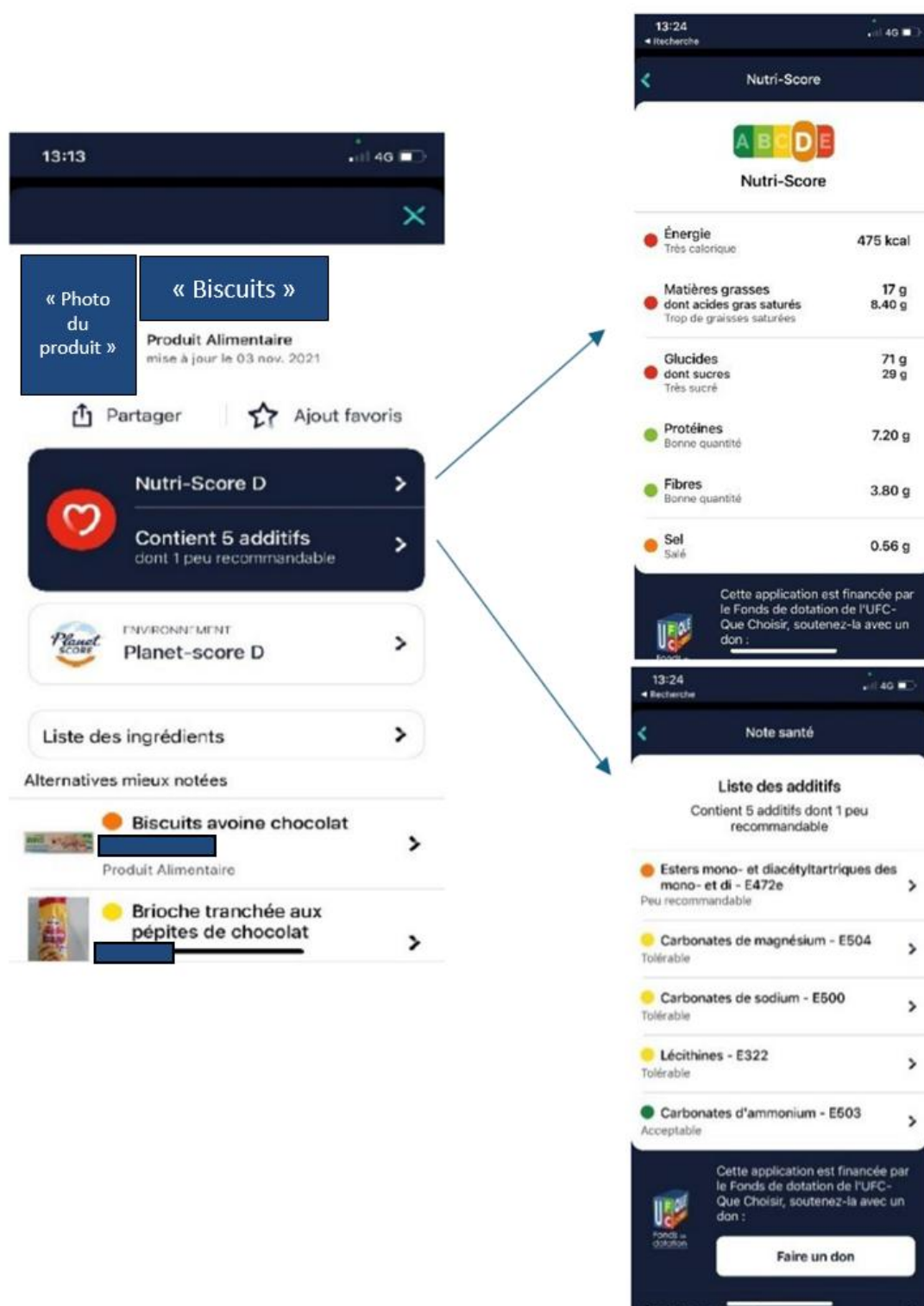
14. Secondly, in March 2021 the UFC-Que Choisir Endowment Fund developed and launched a mobile application called QuelProduit, which aims to provide users with information “*on the composition, safety and/or, where applicable, nutritional quality and environmental impact*” of household, cosmetic and processed food products. The application delivers two ratings: a “Health” rating and an “Environmental” rating.
15. The Health rating delivered by the application for processed food products combines the Nutri-Score rating with an assessment of any additives present: “*Based on the Nutri-Score rating, an initial rating is assigned, from which penalty points are deducted depending on the presence of additives in the food product*”⁸. The Health rating is displayed using a green, yellow, orange or red dot, corresponding to the final score obtained.

⁶ Nutri-Score was created by the French National Public Health Agency (*Santé publique France*) at the request of the French Ministry of Solidarity and Health “*based on work by the team of Pr Serge Hercberg as well as [...] expertise from the French Agency for Food, Environmental and Occupational Health and Safety (ANSES) and the High Council for Public Health (HCSP). Since its launch in France in 2017, several countries [have] decided to recommend the label: Belgium, Switzerland, Germany, Spain, the Netherlands and Luxembourg*”. Excerpt from the French National Public Health Agency (*Santé publique France*) [website](#), Nutri-Score.

⁷ Excerpt from the French National Public Health Agency (*Santé publique France*) [website](#), Nutri-Score.

⁸ UFC-Que Choisir response to the public consultation.

16. The results appear in the QuelProduit mobile application as follows⁹:



Source: UFC-Que Choisir response to the public consultation.

⁹ Anonymised screenshot.

2. THE CONCEPT OF SUSTAINABILITY

17. Sustainability is defined by the United Nations as “*development that meets the needs of the present without compromising the ability of future generations to meet their own needs*”¹⁰. It is based on three pillars: economically efficient, socially equitable and environmentally sustainable development¹¹.
18. In its Guidelines on Horizontal Cooperation Agreements of 21 July 2023¹², the European Commission (hereinafter “the Commission”) also specifies that “*the notion of sustainability objectives therefore includes, but is not limited to, addressing climate change (for instance, through the reduction of greenhouse gas emissions), reducing pollution, limiting the use of natural resources, upholding human rights, ensuring a living income, fostering resilient infrastructure and innovation, reducing food waste, facilitating a shift to healthy and nutritious food, ensuring animal welfare, etc.*”.
19. The above definition was adopted by the *Autorité* in its notice on informal guidance in the area of sustainability dated 27 May 2024¹³.

B. DIVERSITY OF RATING SYSTEMS

20. Rating systems are highly diverse, differing in particular with respect to their format of delivery (1.), the type of products or services rated (2.), whether the ratings are mandatory or voluntary (3.), where the systems are deployed (4.), and the sustainability-related characteristics assessed (5.).

1. VARIOUS DELIVERY FORMATS

21. Ratings are delivered through various formats. For example, mobile applications – such as INCI Beauty, Yuka, QuelProduit and myLabel – provide a rating for a product after the consumer scans the product barcode using a smartphone or tablet. Consumers generally access this information free of charge, although some applications, or certain versions thereof, may require payment.
22. Ratings may also be displayed directly on product packaging, as is the case with the Planet-Score and Nutri-Score rating systems, or on product price labels in stores.
23. In the context of online sales, ratings may appear alongside product information, such as the price. This is the case, for example, with Nutri-Score, Jouet Score and Home-Index.

¹⁰ United Nations (UN), Report of the World Commission on Environment and Development, Our Common Future (“Brundtland Report”), August 1987.

¹¹ UN Resolution 66/288 adopted by the General Assembly on 27 July 2012.

¹² European Commission, Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements (2023/C 259/01), 21 July 2023, paragraph 517.

¹³ Notice on informal guidance from the *Autorité* in the area of sustainability, 27 May 2024, paragraph 1.

2. A WIDE RANGE OF PRODUCTS AND SERVICES RATED AND SECTORS CONCERNED

24. The vast majority of sectors are now subject to a rating system.
25. Rating systems cover such sectors as food and cosmetics, textiles, household products, electrical and electronic goods, furniture, toys and hotel services, although this list is not exhaustive.
26. Rating systems can be applied to consumer goods and services across a broad spectrum of categories, ranging from entry-level products, such as own-brand biscuits, to premium offerings, such as luxury cosmetics and make-up.

3. THE MANDATORY OR VOLUNTARY NATURE OF RATING SYSTEMS

27. Whether ratings are mandatory or voluntary depends on whether the systems are operated by public or private entities.
28. Among rating systems issued by public authorities, most are mandatory, with the exception of Nutri-Score, which is displayed only on products from companies that have chosen to participate.
29. For example, electrical and electronic goods are subject to mandatory ratings and must, in France, display specific information regarding their sustainability-related characteristics.
30. In addition to the energy label that must be displayed on household appliances under French decree 2018-479 of 12 June 2018 on energy labelling, the repairability index has been mandatory¹⁴, since 1 January 2021, for five product categories (smartphones, laptops, televisions, lawnmowers and front-loading washing machines) and, since 4 November 2022, for four other product categories (top-loading washing machines, dishwashers, vacuum cleaners and high-pressure cleaners). The index, scored out of 10, informs consumers about product repairability. It will be replaced by the sustainability index on 8 January 2025¹⁵ for televisions and 8 April 2025 for household washing machines¹⁶, pursuant to French decree 2024-316 of 5 April 2024 on the sustainability index for electrical and electronic equipment¹⁷.
31. Furthermore, the French Climate and Resilience Law of 2021¹⁸ provides that environmental labelling will be made mandatory for certain categories of goods and services, to be specified by decree, in order to measure the environmental impact of their production.

¹⁴ Article 16 of French law 2020-105 of 10 February 2020 on waste reduction and the circular economy.

¹⁵ French decree of 5 April 2024 on the criteria, sub-criteria and rating system for calculating and displaying the sustainability index of televisions.

¹⁶ French decree of 5 April 2024 on the criteria, sub-criteria and rating system for calculating and displaying the sustainability index of household washing machines.

¹⁷ The sustainability index for electrical and electronic equipment is calculated based on two components: a repairability rating and a reliability rating for the equipment, taking into account resistance to stress and wear, maintenance, product servicing, commercial warranty and, where applicable, software and hardware upgrades. See Article R. 541-221 of the French Environment Code (*Code de l'environnement*).

¹⁸ Article 2 of French law 2021-1104 of 22 August 2021 on combating climate change and strengthening resilience to the effects thereof.

32. Lastly, private rating systems – although not mandatory under any legislative or regulatory text – may nevertheless be imposed directly or indirectly on certain products or services. For example, some systems designed by private publishers and based on publicly available data are applied to companies’ products, without those companies having agreed to participate. Furthermore, it follows from the inquiry that certain private rating systems may be mandatory as part of contractual arrangements. For example, some retailers may require their suppliers to have their products rated by a particular system, whether proprietary or third-party.

4. RATING SYSTEMS DEPLOYED AT DIFFERENT GEOGRAPHIC LEVELS

33. This opinion examines issues arising from rating systems developed or implemented in France. However, several companies expressed reservations in their responses to the public consultation regarding the deployment of similar rating systems at European and national levels or across multiple Member States, at the initiative of public authorities. Companies operating in several Member States suggested that European-wide rating systems should be preferred over national systems to reduce costs and logistical constraints. The establishment of a coordination mechanism between the competent authorities of the Member States concerned could facilitate deployment, as illustrated by the measures taken for the use of the Nutri-Score nutritional label on the front of packaging in several European countries (Belgium, France, Germany, Luxembourg, the Netherlands, Spain and Switzerland)¹⁹.
34. The proposal for a Directive of the European Parliament and of the Council on substantiation and communication of explicit environmental claims (Green Claims Directive)²⁰ aims to address this concern with regard to rating systems that assess the environmental impact of products²¹.

5. SUSTAINABILITY-RELATED CHARACTERISTICS ASSESSED

35. The sustainability-related characteristics taken into account in calculating ratings vary depending on the system.
36. While some rating systems focus on identifying potential health risks, for example INCI Beauty in the cosmetics sector or Nutri-Score in the food sector, others assess the environmental impact of products, such as Planet-Score.
37. Moreover, within systems assessing nutritional quality, the criteria taken into account and the weighting assigned to each criterion may differ from one system to another. For example, the Yuka mobile application assesses the health impact of consuming a product based on several factors: its nutritional quality, assessed using the Nutri-Score method (accounting for 60% of the final rating); the presence or absence of additives (30%); and any organic certification (10%). The Nova and Siga rating systems, meanwhile, provide information on the level of processing of food products.

¹⁹ Excerpt from the French Ministry of the Economy, Finance and Industry [website](#), Adopting the Nutri-Score label to reassure consumers (French only).

²⁰ Proposal for a Directive of the European Parliament and of the Council on substantiation and communication of explicit environmental claims (Green Claims Directive), COM (2023) 166 final, 17 June 2024.

²¹ Recital 41 of the preamble to the aforementioned proposed directive.

38. Rating systems may also incorporate other sustainability-related considerations, such as the assessment of animal-based food products according to animal welfare standards²² or initiatives stemming from French law 2021-1357 of 18 October 2021 (EGAlim 2 Law)²³, aimed at informing consumers about the remuneration of agricultural producers (also called the “Rémunérascore”)²⁴.

C. STAKEHOLDERS IN THE RATING SYSTEMS SECTOR

39. The development and operation of a rating system may involve different types of stakeholders, some of which may perform multiple roles.

1. HOLDERS OF DATA ABOUT PRODUCTS AND SERVICES RATED

40. It follows from the inquiry that rating system publishers generally use data specific to the products and services rated, where available. This includes, for example, data on product composition (ingredients and/or materials) and quantities, and may also be referred to as real or primary data, in accordance with the Commission’s recommendation on the use of environmental footprint methods²⁵. Primary or company-specific data is defined as “*directly measured or collected data from one or more facilities (site-specific data) that are representative for the activities of the company. [...] To determine the level of representativeness, a sampling procedure may be applied*”.
41. The main providers of this data are therefore the companies whose products and services are rated. Depending on the type of product, publishers obtain the data through different means.
42. With regard to processed food products and cosmetics, the list of ingredients used must appear on the product packaging²⁶. The ingredients list is therefore a primary source of publicly available data for rating system publishers²⁷, which may be supplemented by additional information provided directly by manufacturers²⁸.

²² Excerpt from the Animal Welfare Label [website](#).

²³ French law 2021-1357 of 18 October 2021 on the protection of farmers’ remuneration.

²⁴ Private initiatives have been launched concerning beef, such as the agreement signed in October 2022 between Lidl and the French National Beef Federation (*Fédération nationale bovine*) establishing a rating system from A+ to F applied in 150 Lidl supermarkets in the Grand Est region to Limousine beef, based on the level of fair remuneration for beef farmers. Excerpt from the Lidl [website](#), Press release, Lidl and the FNB formalise the Rémunérascore at the livestock summit, 27 September 2022 (French only).

²⁵ Commission Recommendation (EU) 2021/2279 of 15 December 2021 on the use of the Environmental Footprint methods to measure and communicate the life cycle environmental performance of products and organisations.

²⁶ Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004; and Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products.

²⁷ Rating systems may sometimes permit consumers to provide information about products (such as ingredient lists, nutritional tables, origin details or packaging characteristics) for which they wish to obtain a rating.

²⁸ Some rating systems permit product manufacturers to submit data about their products.

43. Some real data is collected from freely accessible databases, populated either by consumers or by the companies whose products or services are rated. For example, the Open Food Facts database, which operates on a collaborative basis, provides information on food products through user contributions. Other databases are created and populated by the companies themselves, such as the Num-Alim digital platform²⁹, which collects data on certain food products (production methods, Nutri-Score ratings, labels, environmental footprint, etc.).
44. In other sectors, however, data on certain product characteristics is not publicly available and can only be provided by the manufacturers. This is particularly the case for electronic goods, household appliances and furniture.
45. Moreover, rating systems that assess the environmental impact of products and services have a particular feature: in addition to real data where possible, they also use so-called secondary data, as defined in the Commission's recommendation on the use of environmental footprint methods³⁰. This is data on the environmental impact of the products and services concerned, drawn from various sources such as government and industry association statistics or scientific studies. Examples include the environmental impact of producing one kilogram or one litre of an agricultural or food product.
46. Secondary data is generally contained in databases. For example, the Agribalyse database³¹, developed by the French Environment and Energy Management Agency (*Agence française de l'environnement et de la maîtrise de l'énergie* – ADEME) in partnership with various stakeholders³², provides reference data on the environmental impact of certain agricultural and food products³³, calculated using the Life Cycle Assessment (LCA) method³⁴. In addition, the French Agency for Food, Environmental and Occupational Health and Safety (*Agence nationale de sécurité sanitaire de l'alimentation, de l'environnement et du travail* – ANSES) manages a database on the nutritional composition of foods: Ciquial.

²⁹ Num-Alim was created by the French National Association of Food Industries (*Association nationale des industries alimentaires* – ANIA), the French Food and Health Fund (*Fonds français pour l'Alimentation et la Santé* – FFAS), the Avril Foundation and GSI France.

³⁰ Commission Recommendation (EU) No 2021/2279, cited above. Secondary data is data “that is not directly collected, measured or estimated by the company, but rather sourced from a third-party LCI database or other sources. Secondary data includes industry average data (e.g. from published production data, government statistics and industry associations), literature studies, engineering studies and patents) and may also be based on financial data, and contain proxy and other generic data”.

³¹ According to the Agribalyse [website](#), “Agribalyse data are freely accessible in LCA software. However, the software packages have different terms and conditions. SimaPro requires a paying licence whereas openLCA is free software. Since the Agribalyse database is based on ecoinvent data for background processes (non-agricultural/food processes), as well as for certain imported agricultural products, the ‘full’ version of the database in the LCA software is free under certain conditions (see Conditions of use page). Structures that do not meet these conditions must have a valid ecoinvent licence”.

³² The French National Research Institute for Agriculture, Food and Environment (*Institut national de la recherche pour l'agriculture, l'alimentation et l'environnement* – INRAE), agricultural and agri-food technical institutes, independent experts and research consultancies.

³³ Today, more than 2,500 foods and 200 products are listed in the following categories: (i) cereal-based products, (ii) fats and oils, (iii) fruits, vegetables and nuts, (iv) meat, eggs and fish, (v) dairy products, (vi) miscellaneous, (vii) prepared meals, (viii) sweet desserts, (ix) baby food and (x) beverages. Excerpt from the Agribalyse website.

³⁴ According to ADEME, “LCA is a method for quantifying the impact of a product on the environment throughout its life cycle (e.g. agriculture, transport, packaging, etc.). In addition to being a method taking into account all stages of the product life cycle, this method takes into account several major environmental issues (climate change, water quality, air quality, impact on soils...) and not just the climate”. Excerpt from the Agribalyse [website](#).

Yaourt à la grecque, nature

Code Cical : **19860**

Produits laitiers frais et assimilés (Lait et produits laitiers)

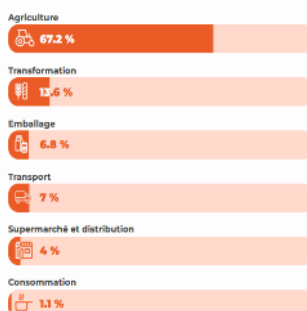
Changement climatique

2,11

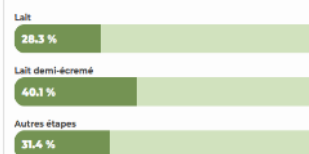
kg CO2 eq/kg de produit

DQR : **2,48**⁽⁷⁾

Impact (Score Unique PEF) par étapes du cycle de vie



Impact (Score Unique PEF) par ingrédients



Indicateur	Mesure	Unité
Score unique EF	2,2e-1	mPt/kg de produit
Changement climatique	2,11	kg CO2 eq/kg de produit
Appauvrissement de la couche d'ozone	1,02e-7	kg CVC11 eq/kg de produit
Rayonnements ionisants	6,88e-1	kBq U-235 eq/kg de produit
Formation photochimique d'ozone	4,29e-3	kg NMVOC eq/kg de produit
Particules	1,41e-7	disease inc./kg de produit
Acidification terrestre et eaux douces	1,99e-2	mol H+ eq/kg de produit
Eutrophisation terrestre	8,35e-2	mol N eq/kg de produit
Eutrophisation eaux douces	2,12e-4	kg P eq/kg de produit
Eutrophisation marine	1,32e-2	kg N eq/kg de produit
Utilisation du sol	1,22e+2	Pt/kg de produit
Écotoxicité pour écosystèmes aquatiques d'eau douce	1,27e+1	CTUe/kg de produit
Épuisement des ressources eau	4,88e-1	m3 depriv./kg de produit
Épuisement des ressources énergétiques	2,42e+1	MJ/kg de produit
Épuisement des ressources minéraux	5,7e-6	kg Sb eq/kg de produit
Effets toxicologiques sur la santé humaine : substances non-cancérogènes ⁽⁷⁾	3,11e-8	kg Sb eq/kg de produit
Effets toxicologiques sur la santé humaine : substances cancérogènes ⁽⁷⁾	8,04e-10	kg Sb eq/kg de produit

Source: Agribalyse database website.

47. For example, a publisher of a rating system assessing the environmental impact of food products stated in its response to the public consultation that, alongside secondary data from public databases such as Agribalyse, Cical and Open Food Facts, it also uses primary data to “refine product calculations and assessments and characterise the production systems of the various ingredients:

- mass composition of food products (recipes with ingredients breakdown);
- labels, specifications and any requirements related to each ingredient in the recipe;
- origin(s) of each ingredient in the recipe, based on actual prior-year supplies”.

2. RATING SYSTEM PUBLISHERS

48. It follows from the inquiry that rating system publishers do not constitute a homogeneous category of operators.
49. For some publishers, such as Planet-Score, the publication of rating systems is their main activity, and they are not active in the sectors rated (i.e. “pure players”). However, some of these publishers may also engage in additional activities related to rating systems, such as providing consultancy services to companies whose products are rated³⁵.
50. For other publishers, the publication of rating systems is complementary to their core activities. Some consumer associations have developed their own rating systems; for example, UFC-Que Choisir has created the QuelProduit mobile application.
51. Pure-play publishers generally emphasise their legal structure, financing methods and internal organisation to demonstrate their independence from the companies whose products and services are rated.
52. Some manufacturers³⁶ or retailers³⁷, either individually or jointly, have developed rating systems and therefore provide ratings for the products they manufacture or distribute within their sector.
53. Lastly, some rating systems have been developed by public authorities, such as Nutri-Score or the repairability and sustainability indices.

3. MANUFACTURERS AND PROVIDERS OF PRODUCTS AND SERVICES RATED

54. Companies’ products or services may be rated, with or without their prior consent. Even if they have not participated in the development of a rating system, companies may still contribute by providing data about their products. Depending on the system, companies may also be able to report any errors concerning their products or services.

³⁵ For example, in addition to their food product rating activities, some publishers offer awareness-raising and training workshops or provide eco-design consulting services to manufacturers. Other publishers market a paid version of their mobile application.

³⁶ For example: the EcoBeautyScore Consortium brings together several operators in the cosmetics sector and is working on the development of the Eco Beauty Score. This is also the case for the Green Impact Index Consortium, which brings together companies in the cosmetics sector and has developed the Green Impact Index.

³⁷ For example: Home Index and Score Carbone are rating systems developed and implemented by Leroy Merlin and ManoMano, respectively.

55. It follows from the inquiry that rating systems, particularly when mandatory, can represent a significant administrative burden and considerable costs for companies whose products or services are rated. This burden is amplified when there are multiple rating systems in a given sector. A trade association noted that, in the outdoor and indoor design and DIY sector, there are “*as many rating systems as there are retailers (both B2B and B2C)*”. As a result, the members of this association must produce and submit large amounts of information for rating calculation purposes and repeat this process for every new product or whenever the composition or production method changes. Hearings held during the inquiry also revealed that rating systems can generate a heavy and time-consuming administrative burden, as well as particularly high costs for companies, especially smaller ones.
56. Lastly, companies that voluntarily participate in a rating system also make efforts to ensure the results generated by the product rating are accurate and, where appropriate and possible, to correct any errors.
57. In addition, in response to rating systems – or in sectors where no system exists –, some companies have decided to develop or contribute to the creation of rating systems. For example, certain retailers in the food, toy and DIY sectors have decided to develop rating systems to inform customers about the products they offer in their stores, while manufacturers in the cosmetics sector have jointly developed a rating system to rate their own products.

4. OTHER OPERATORS

58. The rating systems sector also includes operators that provide consulting services to rating system publishers or, more broadly, to companies whose products and services are rated.
59. These include consulting firms specialising in environmental strategy or with expertise in LCA and eco-design, which support publishers in developing their rating systems. For example, ECO2Initiative assists associations, local authorities and companies in implementing their environmental and corporate social responsibility (CSR) policies, as well as in executing their projects.
60. Lastly, independent third-party organisations, such as the French standards agency AFNOR, may be engaged by companies and organisations to assess the robustness of their calculation tools³⁸.

³⁸ For example, AFNOR was consulted in the development of the Green Impact Index. Excerpt from the Pierre Fabre [website](#).

D. LEGISLATIVE AND REGULATORY CONTEXT

61. Apart from provisions that specifically provide for the development of a rating system in a given sector (such as those relating to the reparability and sustainability indices or environmental labels), there are currently no general provisions governing rating systems. However, several texts that more generally address the provision of environmental information to consumers may influence, or even apply to, rating systems.

1. AT EUROPEAN LEVEL

62. Firstly, several texts adopted at European level are likely to be of particular relevance to the rating systems sector, insofar as they provide a general framework for environmental information provided to consumers.
63. Regulation (EU) No 1169/2011 of 25 October 2011 (INCO Regulation)³⁹ sets out the general principles, requirements and responsibilities governing consumer information on foods and, in particular, the labelling of foods marketed in the European Union. It was amended by Regulation (EU) No 2015/2283 of 25 November 2015 on novel foods⁴⁰, which stipulates that the labelling requirements laid down in Regulation (EU) No 1169/2011 also apply to novel foods.
64. Directive 2005/29/EC on unfair business-to-consumer commercial practices⁴¹ provides a legal framework for this type of practice in relation to consumers. It was recently amended by Directive 2024/825 of 28 February 2024⁴², introducing the concept of misleading environmental claims.
65. Regulation (EU) 2017/1369 of 4 July 2017⁴³ establishes a framework for the energy labelling of several products (televisions, washing machines, refrigerators, etc.), as well as the provision of uniform information on the energy efficiency of products, their energy consumption and other resources during use.

³⁹ Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004.

⁴⁰ Regulation (EU) 2015/2283 of the European Parliament and of the Council of 25 November 2015 on novel foods, amending Regulation (EU) No 1169/2011 of the European Parliament and of the Council and repealing Regulation (EC) No 258/97 of the European Parliament and of the Council and Commission Regulation (EC) No 1852/2001, recital 33.

⁴¹ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council. It was amended in 2019 as regards the better enforcement and modernisation of consumer protection rules, taking into account new developments in the market, in particular online marketing.

⁴² Directive (EU) 2024/825 of the European Parliament and of the Council of 28 February 2024 amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and through better information.

⁴³ Regulation (EU) 2017/1369 of the European Parliament and of the Council of 4 July 2017 setting a framework for energy labelling and repealing Directive 2010/30/EU. The regulation is supplemented by several delegated regulations, providing specific clarifications for specific product groups.

66. Secondly, as part of the 2019 European Green Deal, the Commission announced several changes to the European legal framework, some concerning the information that companies have to provide on the sustainability impact of their activities⁴⁴ and others relating to consumer information on products and services. Several texts have since been adopted or are in the process of being adopted.
67. The Ecodesign for Sustainable Products Regulation (ESPR)⁴⁵ aims to strengthen and extend European performance and information requirements to new products. In particular, it establishes a mandatory system of “digital product passports”, providing consumers with access to key information throughout a product’s life cycle.
68. The aforementioned proposed Green Claims Directive is currently being adopted by the European Parliament. In order to protect consumers, the proposed directive aims to regulate explicit environmental claims and environmental labels that companies voluntarily use when marketing their greenness and which cover the environmental impacts, aspects or performance of a product or a service provider. The proposed directive thus establishes specific rules on the substantiation, communication and verification of explicit environmental claims and environmental labels.

2. AT FRENCH LEVEL

69. In addition to the legislative and regulatory provisions, referred to in paragraphs 30 *et seq.*, on the energy label and the reparability and sustainability indices, there are several texts on the environmental labelling of products and services⁴⁶.
70. Environmental labelling has been promoted in France since 2009 as part of the Grenelle Environment Forum⁴⁷ in order to raise consumer awareness of the environmental impact of products and services. The initiative led to the adoption of the “Grenelle” laws of 2009⁴⁸ and 2010⁴⁹.

⁴⁴ See EU sustainability disclosure standards, such as Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting (CSRD) and Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (CSDDD).

⁴⁵ Regulation (EU) 2024/1781 of the European Parliament and of the Council of 13 June 2024 establishing a framework for the setting of ecodesign requirements for sustainable products, amending Directive (EU) 2020/1828 and Regulation (EU) 2023/1542 and repealing Directive 2009/125/EC (ESPR).

⁴⁶ Excerpt from the French Ministry of Ecological Transition, Energy, Climate and Risk Prevention [website](#), Environmental labelling of products and services (excluding food). Environmental labelling of a product or service is defined as the provision of quantified information to consumers on its main environmental impacts, calculated over its entire life cycle, using any appropriate medium (on the product, on the shelf or on a website).

⁴⁷ Translator’s note: the Grenelle Environment Forum was an open multi-party debate held in France in the summer and autumn of 2007 to define key points of public policy on environmental and sustainable development.

⁴⁸ French law 2009-967 of 3 August 2009 on the implementation of the Grenelle Environment Forum. It defined the broad guidelines for fulfilling the commitments made during the Forum.

⁴⁹ French law 2010-788 of 12 July 2010 on the national commitment to the environment. It translates the objectives of the Grenelle 1 Law into more specific provisions to establish a framework for action.

71. The French Energy Transition Law⁵⁰ then established a principle of transparency with regard to environmental information, in order to provide consumers with clear and reliable information on the environmental impact of products and services. Article 90 of the Law states that *“in order to guarantee the quality of the environmental information made available to consumers, producers that voluntarily make environmental claims or statements about their products must also provide the main environmental characteristics of those products”*. A company wishing to communicate on a particular environmental aspect of a product must also describe its other main environmental characteristics.
72. The French law on waste reduction and the circular economy (AGEC Law)⁵¹ introduced a voluntary environmental or environmental and social labelling system. According to Article 15, I of the Law, the labelling system is *“intended to provide consumers with information on the environmental characteristics or environmental and social characteristics of a good, service or category of goods or services, based primarily on a life cycle analysis”*.
73. The aforementioned article was repealed and replaced by Article 2 of the French Climate and Resilience Law⁵², which provides that environmental labelling will be made mandatory, following the evaluation of pilot schemes, for certain categories of goods and services, to be specified by decree. This decree will also define, for each category of goods and services concerned, the methodology to be used and the display methods to be adopted, setting out conditions adapted to the nature of the goods or services and to company size. These provisions are set out in Articles L. 541-9-11⁵³ and L. 541-9-12⁵⁴ of the French Environmental Code (*Code de l’environnement*).

⁵⁰ French law 2015-992 of 17 August 2015 on energy transition for green growth.

⁵¹ French law 2020-105 of 10 February 2020 on waste reduction and the circular economy.

⁵² French law 2021-1104 of 22 August 2021, cited above.

⁵³ *“An information display intended to provide consumers with information on the environmental impacts or compliance with social criteria of a good, service or category of goods or services placed on the national market shall be made mandatory, under the conditions and subject to the reservations laid down in Article L. 541-9-12.*

This display shall take the form of a marking, label or any other appropriate method. It must be visible or readily accessible to the consumer, in particular at the time of purchase. The information provided must present, in a reliable and easily understandable manner, the environmental impact of the goods and services concerned throughout their life cycle. It must take into account the environmental impacts of the goods and services concerned, assessed in terms of their relevance to a given category, including, in particular, greenhouse gas emissions, damage to biodiversity and the consumption of water and other natural resources. It must also take into account the environmental externalities of the production systems for the goods and services concerned, assessed scientifically, in particular in the case of agricultural, forestry and food products. The display must also present, in a reliable and easily understandable manner, the specific greenhouse gas emissions associated with the goods and services throughout their life cycle”.

⁵⁴ *“A decree shall establish the list of categories of goods and services for which, upon completion and evaluation of the pilot schemes referred to in Article 2, II of Law 2021-1104 of 22 August 2021 on combating climate change and strengthening resilience to the effects thereof, the environmental display referred to in Article L. 541-9-11 shall be made mandatory.*

The decree shall also define, for each category of goods and services concerned, the methodology to be used and the display methods to be adopted, setting out conditions adapted to the nature of the goods or services and to company size, particularly for micro, small and medium-sized enterprises, taking into account the volumes handled by such companies”.

74. As part of the above-described framework, work was undertaken with a view to implementing the environmental labelling required by law for the textile and food sectors. This work was led by the French Ministry for Ecological Transition and Territorial Cohesion, with the support of ADEME and in collaboration with several working groups⁵⁵.
75. Following the completion of this work, two draft regulatory texts have been open for public consultation since 28 November 2024. The drafts set out the methods for calculating and communicating the environmental cost of textile products, as well as the framework applicable to labelling and the calculation method.

II. Competitive analysis

76. By providing simplified and educational information on sustainability-related characteristics, rating systems meet certain consumer expectations and help to stimulate competition in the markets for the products or services rated (A.). This opinion identifies design conditions that are likely to enable the effective competitive functioning of rating systems, as well as watchpoints for stakeholders regarding their implementation (B.). Lastly, it outlines the conditions that must be met for any practices that may be contrary to competition law to be justified or exempted, taking into account the objective of consumer protection or sustainability pursued (C.).

A. RATING SYSTEMS FOR CONSUMER INFORMATION, COMPETITION AND SUSTAINABILITY

77. The *Autorité* will examine the extent to which information on the sustainability of products or services provided by a rating system can meet consumer expectations (1.) and incentivise companies to engage in competitive conduct (2.).

⁵⁵ The following participated in the work: (i) an interministerial steering committee comprising, in particular, the French Ministry for Ecological Transition and Territorial Cohesion and ADEME; (ii) a technical secretariat comprising the French Ministry for Ecological Transition and Territorial Cohesion and ADEME, overseeing the methodological work; (iii) a scientific council comprising institutional experts such as INRAE and AgroParisTech; and (iv) a committee of partners comprising trade unions, business federations, companies and NGOs.

1. RATING SYSTEMS: MEETING CONSUMER EXPECTATIONS FOR INFORMATION AND AIDING DECISION-MAKING

a) Improving consumer information

78. The stakeholders consulted during the inquiry widely recognise the value for consumers of accessing information in a simplified form. Rating systems effectively help to reduce the information asymmetry between producers and consumers regarding products and services, which is generally their stated objective. For example, Nutri-Score indicates that it was developed to make nutritional information easier for consumers to understand and thus help them make informed choices⁵⁶. The rating system publishers heard during the hearings confirmed that their objective is to make a set of information about a food or cosmetic product easily accessible, as this information can sometimes be complex for consumers to interpret.
79. Moreover, the plurality of rating systems currently available provides consumers with a wide range of information and therefore greater choice.
80. While some respondents to the public consultation expressed concern that the proliferation of rating systems may cause confusion for consumers or reduce readability, in particular when multiple ratings appear on the same packaging, this trend is nevertheless generally viewed positively by industry stakeholders. It underscores the diversity of approaches and, accordingly, the sustainability-related characteristics assessed, and can be beneficial, provided that the various systems use complementary and easily understood criteria or allow for information to be presented in different formats, such as numerical values or ratings.
81. The responses to the public consultation show that the coexistence of public and private rating systems allows for the inclusion of impact indicators expected by civil society, which may not necessarily be included in the systems proposed by public authorities.
82. In the food sector, for example, one association, highlighting that Nutri-Score does not take into account the processed nature of products or the presence of additives in its calculation, supports the existence of alternative rating systems, such as those developed by UFC-Que Choisir or Siga, which include one or more of these parameters. The association noted that *“this diversity allows for a range of information demands to be met, at varying levels of requirement and transparency. Consumers thus have access to a diversity of perspectives on health and nutrition issues and can play an active role in their pursuit of informed choice, rather than being captive to a single system”*.
83. Similarly, in the cleaning products sector, UFC-Que Choisir has developed a rating system that reflects the level of risk or danger posed by the ingredients used. For these products, the hazard pictograms currently displayed on certain cleaning products (which are intended to indicate a hazardous substance or deposit) do not, according to the association, enable consumers to *“assess the degree of hazard and compare products on the same shelf”*.
84. Moreover, according to some respondents to the public consultation, private rating systems developed by operators not active in the sector rated are more agile and responsive than rating systems developed by public authorities, as those operators can update the systems’ frameworks in line with advances in scientific knowledge.

⁵⁶ Excerpt from the French National Public Health Agency (*Santé publique France*) [website](#), Nutri-Score.

85. For these reasons, as noted by a consumer association, plurality is seen in particular as “*a guarantee of innovation in the field of knowledge*”. The diversity of rating systems allows for a range of information needs to be met and, according to the association, reflects the freedom to inform consumers.
86. In addition, the plurality of rating systems can encourage the systems themselves to refine their calculation methods in order to improve the information provided to consumers. As one association explained, “*the proper functioning of consumer information requires plurality (coexistence between state-run and independent systems). This plurality provides a guarantee of healthy competition and innovation in the service of consumer interests and the development of more sustainable products by companies*”.

b) Information likely to influence consumer purchasing behaviour

87. Several economic studies and evidence collected during the inquiry indicate that rating systems can influence consumer purchasing behaviour, although the effects vary across sectors. Moreover, the information provided by rating systems is only one of several factors that shape consumers’ purchasing decisions.

Variable effects depending on the sector

88. With regard to the agri-food sector, the influence of rating systems on consumer purchasing behaviour has been analysed in various studies.
89. The economic studies reviewed as part of the inquiry, although not specifically focused on rating systems in France, highlight the significant positive effects of summary nutritional labelling on the purchase of healthier products⁵⁷.
90. Recent work by rating system publishers suggests that similar effects may also apply to the systems used by French consumers.

⁵⁷ See, for example, N. Barahona, C. Otero and S. Otero, “Equilibrium Effects of Food Labelling Policies”, *Econometrica* 91.3 (2023): 839-868, 11 February 2023.

91. For example, a study conducted by the French National Public Health Agency (*Santé publique France*) on Nutri-Score in May 2022⁵⁸ found that “among [adult] individuals familiar with the logo ($N=952$)⁵⁹”:
- 45% of respondents indicated that Nutri-Score could influence them to select a product with a higher score over one with a lower score on the same shelf (+9 points compared with 2020);
 - 44% indicated that it could influence them to limit their purchases of products with lower scores (+10 points);
 - 43% indicated that it could influence them to make lasting changes to certain eating habits (+8 points);
 - 42% indicated that it could influence them to switch brands for the same food product (stable);
 - 25% indicated that it could influence them to forgo purchasing a product without a label (+7 points)”.
92. In its response to the public consultation, Yuka indicated that it had conducted an impact study in 2019 based on self-reported data, in which nearly 230,000 users participated via an online questionnaire⁶⁰. As the study notes, the analysis was “based on self-reported data, and the results should be interpreted in light of the respondents’ profiles, which may introduce a self-selection bias since participants are regular Yuka users”. According to the study, “the research provided a concrete measure of Yuka’s impact on users’ purchasing habits, with respondents reporting that:
- 95% have stopped buying products containing controversial additives;
 - 92% put products back when rated red on the app;
 - 84% buy more raw products;
 - 78% buy more organic products;
 - 52% have stopped buying between 4 and 9 products”⁶¹.

⁵⁸ Pauline Ducrot and Anne-Juliette Serry, “Nutri-Score : Notoriété, perception et impact sur les comportements d’achat déclarés des adolescents en octobre 2021” (*Nutri-Score: Awareness, perception and impact on the reported purchasing behaviour of adolescents in October 2021*), May 2022 (French only).

⁵⁹ Means that 952 individuals make up the total sample size.

⁶⁰ The results were verified by a firm specialising in social impact assessment.

⁶¹ Yuka indicates that among the respondents:

– “74% have been using Yuka for more than two months (and are therefore able to observe a change in their habits);

- 47% use the app every time they go shopping;

- 65% use the app at least once a week”.

93. In addition, two economic studies⁶² have identified three factors that influence the effectiveness of labelling for consumers:
- the display of information via the label must be mandatory⁶³;
 - the label should offer an overall assessment of the product concerned (as with rating systems that provide an overall nutritional score, rather than a detailed table of nutritional composition); and
 - the label must be easy for consumers to understand.
94. Outside the agri-food sector, very few studies have assessed rating systems. It is therefore premature to measure their impact on consumer purchasing behaviour.
95. Nevertheless, with regard to the repairability index, the French Interministerial Directorate for Public Transformation (DITP)⁶⁴ conducted a study to assess the impact of the index, which came into force in 2021, on sales of certain product categories⁶⁵ by the retailers Fnac-Darty and Boulanger. The study observed a clear increase in sales of more repairable products since 2021, suggesting a shift in consumer purchasing behaviour towards these products. However, this trend cannot be confidently attributed solely to the introduction of the index⁶⁶.

⁶² C. A. Roberto et al., “The Influence of Front-of-Package Nutrition Labelling on Consumer Behaviour and Product Reformulation”, *Annual Review of Nutrition* 41, 529-550. Bernard Ruffieux et al., “Étude sur l’influence de divers systèmes d’étiquetage nutritionnel sur la composition du panier d’achat alimentaire” (*Study on the influence of various nutrition labelling systems on the composition of the food shopping basket*) (Contract study), 2011 (French only).

⁶³ Mandatory labelling on packaging or automatic app-based scoring for all products on the market, which manufacturers cannot choose not to display.

⁶⁴ See “Évaluation d’impact de l’indice de réparabilité” (*Impact assessment of the repairability index*), October 2023 (French only).

⁶⁵ Televisions, smartphones, laptops and front-loading washing machines.

⁶⁶ Regarding the repairability index, which came into force on 1 January 2021 for five categories of electrical and electronic equipment, its influence on purchasing behaviour cannot be ruled out but is not clearly observable. In November 2022, the French General Commission for Sustainable Development (CGDD) asked the French Interministerial Directorate for Public Transformation (DITP) to assist in conducting an impact assessment of the repairability index, in collaboration with the Behavioural Insights Team (BIT). See “Évaluation d’impact de l’indice de réparabilité” (*Impact assessment of the repairability index*), October 2023, p. 3 (French only):

“The quantitative analysis was conducted on a subset of sales data (online and in-store) from two major retailers, covering the period from January 2020 to December 2022, across four product categories [televisions, smartphones, laptops and front-loading washing machines] subject to the index. The analysis found that:

1. The introduction of the index had a positive, but not statistically significant, effect on sales of more repairable products compared to less repairable ones. In other words, although sales of more repairable products increased, this effect cannot be confidently attributed solely to the index.

2. The index had a positive and statistically significant effect on online sales of more repairable products, and a positive (but not significant) effect on in-store sales.

3. Both retailers sold increasingly repairable products, and in higher proportions than less repairable ones.

Taken together, these findings suggest a shift in consumer purchasing towards more repairable products, although the extent to which this change can be attributed to the index itself remains unclear”.

96. Furthermore, most non-food industry respondents to the public consultation indicated that, to date, assessing the impact of rating systems on consumer demand is difficult, due to both a lack of hindsight and measurement tools.

The information provided by rating systems: one factor among others

97. The potential effects of rating systems may be moderated by other determinants of consumer demand, primarily price⁶⁷ – to varying degrees, depending on the sustainability-related considerations assessed.
98. According to several manufacturers and associations that responded to the public consultation, rating systems constitute just one factor among a broader set of criteria guiding consumer choice. In their view, the sustainability dimension represented by rating systems is only one criterion among many and not a priority consideration. An association of professionals in the furniture and DIY sector noted that “*consumers are generally more sensitive to price than to sustainability-related characteristics*”.
99. Similarly, a study conducted for French toy retailer King Jouet by the research institute Junior City, as reported in an article published on 15 November 2023⁶⁸, found that although “*47% of buyers acknowledge paying attention to the eco-responsibility of games and toys, including those ‘made in France’*”, “*the financial cost remains the primary criterion for two-thirds of parents*”. The low priority given to the concept of eco-design is further confirmed by the company’s response to the public consultation, which notes that purchases are primarily driven by children’s requests, making eco-design a secondary consideration.
100. However, a rating system publisher consulted during of the inquiry, which assesses the environmental impact of food products, noted that, according to a 2021 survey of 1,000 consumers, 77% of respondents would choose apples with an A score “*despite a higher price*” compared with a product with a lower rating.

2. RATING SYSTEMS: AN INCENTIVE FOR COMPANIES AND A LEVER FOR COMPETITION

101. The evidence collected during the inquiry shows that the effects of rating systems on companies’ offerings vary depending on sector and company positioning (a.). Furthermore, the systems may serve purposes other than providing information to consumers (b.).

⁶⁷ “Perception, compréhension et utilisation du Nutri-Score dans l’objectif d’informer sur l’évolution de son algorithme” (*Perception, understanding and use of Nutri-Score with a view to informing the development of its algorithm*), November 2024 (French only): “*Users find Nutri-Score easy and quick to use. For most, it offers additional product information but rarely determines their choice, as other factors – price, habits or taste – carry greater weight*”.

⁶⁸ L. Girard and C. Prudhomme, “Le Nutri-score, une notation qui fait des émules dans de nombreux secteurs” (*Nutri-Score, a rating system that is catching on in many sectors*), Le Monde, 15 November 2023 (French only).

a) The varying effects of rating systems on companies' offerings

102. The economic studies reviewed as part of the inquiry and some of the responses to the public consultation suggest that, while rating systems can have a significant effect on manufacturers' offerings, the situation varies depending on the sector.

The effects of rating systems studied in the food and cosmetics sectors

103. Several studies demonstrate the effects of various rating systems on the food supply⁶⁹. For example, one study⁷⁰ examines the impact on food composition of the “Health Star Rating” (see figure below), a voluntary New Zealand label assessing the nutritional quality of food products. The results indicate that 83% of products displaying the label were “reformulated”⁷¹ within two years.

Figure – Example of the “Health Star Rating” label



104. The public consultation confirms these observations. A consumer association conducted a study on changes in the Nutri-Score ratings of food products between 2015 and 2022. In just seven years, the share of favourable Nutri-Score ratings (A, B or C) increased from 25% to 49% for cereal bars, from 40% to 62% for speciality breads and rusks, and from 8% to 38% for breakfast cereals.
105. In addition, a consumer association that developed its own rating system for cosmetic products found that, three years after its launch, the number of products containing one or more ingredients posing a risk to consumers had been reduced by two-thirds. While the association does not attribute the entire effect to its rating system, it notes that during this period, on the one hand, no major regulatory changes were observed and, on the other hand, a significant number of mobile applications dedicated to the composition of cosmetics were introduced at the same time. The association therefore draws a connection between the improvement in product composition and the increased accessibility of information to consumers, made possible by rating systems.

⁶⁹ R. K. Thomson et al., “Tick Front-of-Pack Label Has a Positive Nutritional Impact on Foods Sold in New Zealand”, *Public Health Nutrition* 19(16):2949-58, 2016. Cliona Ni Mhurchu, Helen Eyles and Yeun-Hyang Choi, “Effects of a Voluntary Front-of-Pack Nutrition Labelling System on Packaged Food Reformulation: The Health Star Rating System in New Zealand”, *Nutrients* 9.8 (2017): 918.

⁷⁰ Cliona Ni Mhurchu, Helen Eyles and Yeun-Hyang Choi, “Effects of a Voluntary Front-of-Pack Nutrition Labelling System on Packaged Food Reformulation: The Health Star Rating System in New Zealand”, *Nutrients* 9.8 (2017): 918.

⁷¹ The study defines product reformulation as a minimum change of 5% in at least one key nutrient (energy, saturated fat, sugar, salt content, protein or fibre).

106. Some publishers share this view on the influence of rating systems on both product modification and innovation. According to one publisher, thanks to its rating system, “*almost all companies [that have adopted the rating system] have modified their offerings, to varying degrees depending on the type of company*”. Furthermore, according to Yuka’s 2019 study, based in part on manufacturer testimonials, the application directly encouraged manufacturers to modify existing product recipes and develop new product lines that comply with rating system criteria. Concrete changes have been observed. For example, according to the same study, a brand of chocolate cereals reduced added sugars and saturated fats in some products in January 2018. In addition, in July 2019, a soup brand removed artificial flavours, modified starch and sugar, lowered salt content, and enriched certain ranges with vegetables.
107. Other manufacturers that responded to the public consultation confirm that they have implemented changes and, in some cases, treated rating system criteria as targets to achieve. Some report that certain rating system criteria have prompted them to rethink their approach, and one manufacturer in the food sector stated that it has used the rating system as a “*compass for eco-design*”, resulting in a “*a tangible impact on the characteristics and composition of [its] product, as well as on the agricultural practices of [its] partner producers*”. This manufacturer has set a target for 2024 that all of its products will receive A and B ratings, compared to 91% in 2022.

The more mixed effects of rating systems in other sectors

108. The responses to the public consultation suggest that rating systems have more nuanced effects in other sectors than agri-food or cosmetics.
109. According to the majority of non-food and non-cosmetic manufacturers that responded to the public consultation, environmental considerations pre-dated the creation of rating systems and were already being factored into their activities. They argue that efforts have long been underway and that rating systems have not therefore had any impact on the composition of their products or their production processes. According to an association of professionals in the furniture and DIY sector, “*many are thinking about eco-design issues, but not necessarily to get a better rating. What guides companies is more about social responsibility, not just the rating [...]*”. A similar point is made in the electrical and electronic products sector, where a group of manufacturers noted that its members “*did not wait for rating system publishers to issue their rating systems to make eco-design a key development focus at the heart of their CSR commitments for more than 20 years*”.

Factors shaping manufacturers’ responses

110. According to some studies of economic literature in the agri-food sector, the extent of manufacturers’ response to the introduction of labelling may be moderated by two factors⁷²:
- (i) their anticipation of how consumers will react once the rating system is adopted, and
 - (ii) the gap between the expected benefits and the necessary investments.

⁷² Nano Barahona et al., “On the Design of Food Labelling Policies”, 2023.

Anticipation of consumer response

111. Anticipating how demand will react following the adoption of a rating system depends, on the one hand, on consumers' prior beliefs (information effect) and, on the other hand, on the availability of substitutes (substitution effect).
112. Firstly, manufacturers are more likely to modify the composition of their products if they anticipate that displaying nutritional information via a rating system will influence consumers. As noted in an economic study⁷³, the magnitude of the effect will be greater if consumers' prior beliefs are inaccurate or if rating systems provide consumers with new information. For example, labelling is likely to have a lesser effect on the composition of so-called "*pleasure*" or "*non-essential*" products, such as confectionery, because consumers are aware of their nutritional characteristics and base their consumption choices on other criteria.
113. This lesser effect may also result from the low adoption of rating systems by manufacturers of such products. One company that responded to the public consultation, which manufactures "*indulgent products designed to offer comfort to consumers*", explained that it does not provide ratings because these products "*cannot always score well across all categories (nutritional balance, environmental)*". The company noted that "*assigning a nutritional rating is difficult without making consumers feel guilty*", while also acknowledging that it "*regularly receives questions about the nutritional values of [its] products and their Nutri-Score*".
114. However, this observation can be nuanced by the fact that some manufacturers have modified the recipes of certain of their so-called "*pleasure*" products (e.g. crisps⁷⁴, ice cream⁷⁵ and biscuits⁷⁶), in order to achieve favourable or very favourable ratings and thereby inform consumers of these characteristics and compete with products from manufacturers that have not made such efforts.
115. Secondly, manufacturers are more likely to modify the composition of their products if there are competing products offering better or comparable nutritional quality or health benefits. In such cases, the information provided by the rating system enables consumers to compare products, creating a credible threat of substitution toward the healthier alternative, regardless of price. Conversely, if a product holds market power with few competing alternatives, as is the case for products with a strong brand image, manufacturers have less incentive to modify the composition of their products in response to a rating system⁷⁷.

⁷³ Zenobia Talati et al., "Consumers' Responses to Front-of-Pack Labels that Vary by Interpretive Content," *Appetite* 101 (2016): 205-213. This study, conducted in Australia with focus groups segmented by age and gender, shows that rating systems have less impact on so-called "pleasure" or "non-essential" foods, such as confectionery. Consequently, applying a rating system to these products provides little additional information to consumers. Manufacturers can anticipate this limited consumer response and are therefore less likely to modify the composition of their products to improve nutritional quality and, ultimately, their rating.

⁷⁴ Excerpt from the Open Food Facts website, [Crisps category](#) (French only).

⁷⁵ Idem, [Ice cream category](#) (French only).

⁷⁶ Idem, [Cakes category](#) (French only).

⁷⁷ According to the study by Talati et al. (2016) cited above, although rating systems had little impact on demand for products considered "non-essential", some consumers still found them useful for making healthier choices within the same category, suggesting that the presence of comparable alternatives, regardless of their quality, is a key parameter taken into account by manufacturers.

Manufacturers' balancing of the gains from achieving a high rating against the investments required

116. It follows from the inquiry that manufacturers, in response to the introduction of a rating system for their products, may attempt to evaluate the investments necessary to improve their rating. They are more likely to modify the composition of their product if the target rating appears attainable. Manufacturers may therefore weigh the potential benefits of enhancing the intrinsic qualities of their product (i.e. the increase in demand resulting from such improvement) against the additional costs associated with those changes. The perceived costs may take various forms:
- Pricing: Prices may be affected if the manufacturer anticipates a reduction in its profit margin because the virtuous substitute is more expensive (for example, due to investment in research and development). Passing on the additional costs through higher prices may also lead to a decrease in demand and, consequently, in turnover. During the public consultation, a manufacturer in the food sector noted that improving its products was accompanied by “*an increase in production costs linked to the necessary investments*”, while another manufacturer in the same sector stated that “*a less processed, more local and more environmentally friendly product has a higher production cost*”.
 - Non-pricing: Manufacturers are more likely to enhance the intrinsic qualities of their products if the improvements do not substantially affect other characteristics (e.g. taste, texture, colour or shelf life).

b) Other uses of rating systems in stimulating competition

117. It follows from the inquiry that rating systems' results can serve different purposes than originally intended.
118. Firstly, rating system publishers – in particular pure players, but also retailers – offer consumers a substitute product from the same range with a higher rating when the rating of the chosen product is unsatisfactory⁷⁸.
119. In addition, it follows from the inquiry that companies use rating systems' results to grant commercial advantages, as illustrated by the following two examples:
- the results generated by rating systems may be used by certain retailers to condition the granting of commercial advantages to their suppliers (i.e. placing the highest-rated products in end-of-aisle displays or refusing cross-selling – i.e. the practice of offering additional products or services alongside a primary purchase – for products with below-average ratings);
 - some retailers offer commercial promotions to customers based on favourable ratings. For example, in 2023 and 2024, one retailer introduced the “Nutri-Score A Bonus”, which granted customers a 10% discount on own-brand products rated A, credited to their loyalty accounts.

⁷⁸ One of the publishers consulted specified that it only offers an alternative product when a product of equivalent price and quality is available.

120. Lastly, rating systems may serve other sustainability objectives and policies beyond simply providing consumers with information about a product or service. For example, the French association HOP (which campaigns against planned obsolescence) supports the implementation of “eco-modulations” (i.e. a bonus-malus system applied to eco-contributions based on environmental criteria) by linking the level of eco-contributions to the results provided by the repairability and sustainability indices. The association proposes that “*marketers [manufacturers] (and therefore ultimately consumers) will benefit from a discount of up to €20 on the eco-contributions of the best-rated products, while products receiving poor ratings on the index would incur a penalty of between €20 and €40*”.
121. In view of the above, rating systems provide information on a competitive parameter whose intensity may vary depending on the sustainability-related consideration assessed by the rating system, the sector concerned, and consumer sensitivity to other parameters.
122. Given the role that rating systems play in stimulating competition and the other purposes for which these systems may be used, it is important that merit-based competition is fully expressed in the rating systems sector and that systems are designed and implemented under conditions that enable the effective functioning of a competitive market.

B. THE COMPETITIVE FUNCTIONING OF RATING SYSTEMS

123. In principle, rating systems are intended to enable consumers to make informed purchasing decisions and may therefore strengthen the incentive for companies to compete. However, certain rating systems, owing to the circumstances of their development or use, may artificially distort consumer choice.
124. Where an agreement or practice has a negative impact on one or more parameters of competition, it must be assessed in light of Article 101(1) and Article 102 of the Treaty on the Functioning of the European Union (hereinafter “TFEU”). In this respect, French decisional practice has already sanctioned conduct by undertakings aimed at restricting information that would enable consumers to make informed choices at the time of purchase, thereby protecting themselves from competition on product characteristics⁷⁹.

⁷⁹ In *Autorité de la concurrence* Decision 23-D-15 of 29 December 2023 on practices implemented in the sector for the manufacture and sale of foodstuffs in contact with materials that may contain or may have contained Bisphenol A, the *Autorité* held in particular that, based on their knowledge, the undertakings had deprived consumers of the possibility of choosing, among canned food products, between those whose internal can coatings did or did not contain BPA. Another example is *Autorité de la concurrence* Decision 17-D-20 of 18 October 2017 on practices implemented in the resilient floor covering sector. In this case, the trade association and its members had ratified, in 2002, a charter requiring them to communicate on the environmental performance of their products solely on the basis of collective environmental and health declaration forms drawn up within the framework of the association, thereby prohibiting themselves from communicating on the basis of individual environmental data reflecting the specific performance of each undertaking. By doing so, the parties to the agreement renounced competing freely on the basis of the environmental merits of their respective products. Consequently, by preventing the parties from communicating individual values, the non-competition agreement concluded between them affected one of the essential parameters of competition.

125. Moreover, the European Commission Guidelines on Horizontal Cooperation Agreements provide that “*sustainability agreements are not a distinct category of horizontal cooperation agreement for the purposes of applying Article 101. Therefore, where a horizontal cooperation agreement corresponds to one of the types of horizontal agreements covered by the preceding Chapters of these Guidelines and that agreement also pursues a sustainability objective, it should be assessed on the basis of the guidance contained in the relevant preceding Chapter(s), together with the guidance provided in this Chapter*”⁸⁰. This may apply to certain rating systems that meet these criteria, which must therefore be assessed in accordance with the principles set out in these Guidelines and the provisions of Chapter 9 on sustainability agreements.
126. Without prejudice to the aforementioned Guidelines, this opinion provides guidance for the various stakeholders concerned, both public and private, to assist them in assessing rating systems in light of competition rules. Before outlining the design conditions that are likely to enable the competitive functioning of rating systems (3.) and the key areas for vigilance in their implementation (4.), an analytical framework will be presented, addressing the competitive parameters to be taken into account (1.) and the relevant markets (2.).

1. SUSTAINABILITY AS A COMPETITIVE PARAMETER

127. Article 101(1) TFEU and Article L. 420-1 of the French Commercial Code, concerning anticompetitive agreements, and Article 102 TFEU and Article L. 420-2 of the French Commercial Code, concerning abuse of a dominant position, prohibit conduct that has as its object or effect the restriction of competition on one or more competitive parameters in a given market, such as prices, markets or technical development. In Decision 23-D-15 of 29 December 2023 (the so-called “BPA” case), the *Autorité* reiterated that “*there is no pre-established list of competitive parameters on the basis of which an agreement can be characterised as having an anticompetitive object*”⁸¹. Accordingly, the question of which competitive parameter(s) should be taken into account in the competitive analysis must be assessed on a case-by-case basis⁸².

⁸⁰ European Commission Guidelines on Horizontal Cooperation Agreements, cited above.

⁸¹ *Autorité de la concurrence* Decision 23-D-15, cited above, paragraph 997.

⁸² The novel character of an anticompetitive practice, whose possible manifestations, given their variety and complexity, are not exhaustively listed either in EU law or in domestic law, does not preclude that practice from being sanctioned. See the judgment of the French Court of Cassation, Commercial Chamber, 1 June 2022, 19-20.999.

128. Competitive parameters are generally assessed by considering both the perspective of consumers and that of the companies supplying the product or service in the market concerned⁸³. As with price, quality and innovation, they typically correspond, on the demand side, to the characteristics of final products and services that consumers compare at the point of purchase and which may drive their choices⁸⁴. On the supply side, they may represent the factors that companies seek to develop and promote in order to differentiate themselves from their competitors.
129. Accordingly, several parameters may be relevant to varying degrees, both in consumers' purchasing decisions and in the design of a competitive product or service offering by companies. While price is one of the competitive parameters most frequently considered in the competitive analysis of practices, other parameters, for example relating to quality, output, innovation and product variety, are also examined by competition authorities⁸⁵. European Union case law has consistently held that "*parameters may assume unequal importance, as price competition does not constitute the only effective form of competition or that to which absolute priority must in all circumstances be given*"⁸⁶. The Commission recently clarified that "*relative importance of [...] parameters for customers may change over time*"⁸⁷.

⁸³ European Commission, Competition Policy Brief, Non-Price Competition: EU Merger Control Framework and Case Practice, April 2024. In this brief on its merger control decisional practice, the Commission defined parameters of competition as follows: "*Parameters of competition typically correspond to the characteristics of the (final) products and services valued by consumers, for instance price, quality, innovation, environmental impact, and the protection of personal data and privacy. But they are not limited to those: relevant parameters of competition also encompass (intermediary) processes which reflect the companies' longer-term business decisions (e.g., capacity, R&D efforts, capital expenditures) that will ultimately affect the products and services offered to consumers in the medium to long term*" (emphasis added). See, also, the Commission guidelines on the exclusion from Article 101 of the Treaty on the Functioning of the European Union for sustainability agreements of agricultural producers pursuant to Article 210a of Regulation (EU) No 1308/2013, paragraph 69: "*A key concept for understanding what constitutes a restriction of competition is the concept of "parameters of competition". Businesses compete by making an offer to customers that is more attractive than the offers of alternative suppliers in the given circumstances. Although price may be the most important factor for some buyers, other factors can also play a role. For example, one supplier may offer a better-quality product, better features, more variety, better service, more innovation. Certain factors may affect a supplier's ability to reduce its price or improve features, such as the supplier's ability to produce a given level of output at a lower cost than its competitors, more efficient production methods and technologies, supply sources, transportation, and logistics. Such price and non-price factors are collectively referred to as 'parameters of competition'.*"

⁸⁴ Commission Notice on the definition of the relevant market for the purposes of Union competition law, C(2023) 6789 final, 8 February 2024, paragraph 50.

⁸⁵ See the judgment of the Court of Justice, 11 September 2014, MasterCard Inc. and Others v European Commission, C-382/12 P, paragraph 93. Moreover, the European Commission Guidelines on Horizontal Cooperation Agreements, paragraph 30, state that: "*A horizontal cooperation agreement that does not in itself reveal a sufficient degree of harm to competition, can still have restrictive effects on competition. For a horizontal cooperation agreement to have restrictive effects on competition, it must have, or be likely to have, an appreciable adverse impact on at least one of the parameters of competition on the market, such as price, output, product quality, product variety or innovation*".

⁸⁶ Judgment of the Court of First Instance, 27 September 2006, GlaxoSmithKline Services Unlimited v Commission of the European Communities, T-168/01, paragraph 109.

⁸⁷ Commission Notice on the definition of the relevant market, cited above, paragraph 15.

130. For several years now, in response to growing consumer demand for more virtuous products, for example, in terms of environmental impact, human health or animal welfare, companies have been encouraged to incorporate sustainability-related considerations into their offerings by investing in innovations that improve the eco-design of their products and their production methods in general, and – ultimately – to compete by marketing products or services that are more sustainable. At the same time, consumers also wish to have access to information about the characteristics of the products or services they intend to purchase.
131. Recent European legislation has taken such developments into account. For example, the Commission Notice on the definition of the relevant market of 8 February 2024 recognises that customers may consider parameters other than price in their purchasing decisions. These parameters include, for example, innovation and the qualitative aspects of products and services, such as sustainability, resource efficiency, value and variety of uses, the possibility to integrate the product with other products, resilience of supply chains, reliability of supply, and transport costs⁸⁸.
132. The aforementioned proposed Green Claims Directive also states that “*claiming to be ‘green’ and sustainable has become a competitiveness factor, with green products registering greater growth than standard products*”.
133. Competition authorities have also been required to take this competitive parameter into account when assessing practices from a competition perspective, applying the customary assessment criteria, in particular those relating to quality, product variety for consumers and innovation.
134. At European level, in the Adblue decision of 8 July 2021⁸⁹, the Commission found that, for more than five years, several competing car manufacturers had coordinated during meetings to avoid or delay the introduction of a less polluting exhaust gas treatment technology for new diesel vehicles, despite the technology being available. In doing so, they avoided competition on an innovative production method that went beyond what was required by legislation. The Commission concluded that this conduct removed uncertainty regarding the companies’ future behaviour in the market and deprived consumers of the opportunity to purchase less polluting vehicles⁹⁰.

⁸⁸ *Ibid.*

⁸⁹ European Commission Decision, 8 July 2021, Car Emissions, AT.40178.

⁹⁰ In the press release on this case, Margrethe Vestager stated on 8 July 2021: “*In today’s world, polluting less is an important characteristic of any car. And this cartel aimed at restricting competition on this key competition parameter*”.

135. In France, in Decision 17-D-20 of 18 October 2017 on practices implemented in the resilient floor covering sector, the *Autorité* sanctioned several competing manufacturers that had agreed not to communicate on a specific aspect of floor covering quality, namely the quantity of volatile organic compounds (VOCs) emitted by their products. The *Autorité* found that *“the agreement was concluded at a time when the environmental performance of floor coverings was becoming one of the main criteria for selection by general contractors and distributors, and while the sensitivity of both intermediary and end customers to the environmental performance of floor covering products, particularly regarding VOC emission levels, was increasing”*. It added that *“the growing importance of these environmental criteria reflects the desire expressed by certain distributors, such as Leroy Merlin, to have detailed information on the environmental performance of different products”*. The *Autorité* therefore concluded that, by prohibiting the parties to the agreement from communicating on individual VOC values for floor coverings, the agreement had affected one of the *“essential parameters of competition”*.
136. Similarly, in Decision 23-D-15 of 29 December 2023, the *Autorité* found that the practices implemented by manufacturers, which consisted of coordinating not to communicate on the absence of Bisphenol A (BPA) in their food containers, restricted consumer information on product quality. In doing so, they limited consumer choice by depriving consumers of the opportunity to choose between food containers with or without BPA on their inner walls, *“even though the quality of food products is a particular source of concern for consumers in terms of looking after their health”*⁹¹.
137. Accordingly, sustainability-related considerations, such as the protection of human health and the environment, as highlighted in the cases above, may be among the criteria that consumers use when making purchasing decisions and constitute one of the levers available to companies to differentiate themselves. As such, they can be taken into account in the competitive analysis of practices, through the prism of parameters relating, in particular, to quality, innovation and product variety.
138. Rating systems, insofar as they provide information on the sustainability-related characteristics of products or services, may influence one or more competitive parameters relating to product quality or innovation.

2. RELEVANT MARKET ANALYTICAL FRAMEWORK

139. In competition law, the first step in the competitive analysis is to define the relevant market in which the practices in question occurred.
140. According to the aforementioned Commission Notice on market definition, *“the relevant product market comprises all those products that customers regard as interchangeable or substitutable to the product(s) of the undertaking(s) involved, based on the products’ characteristics, their prices and their intended use, taking into consideration the conditions of competition and the structure of supply and demand on the market”*⁹².

⁹¹ *Autorité de la concurrence* Decision 23-D-15, cited above, paragraph 1683.

⁹² Commission Notice on the definition of the relevant market, cited above, paragraph 12.

141. The Notice adds that the Commission’s use of market definition is closely related to the objectives pursued by the various Union competition law instruments. While market definition plays a key role in cases of abuse of a dominant position (i.e. the relevant market is defined when assessing the existence of a dominant position), it is also used, albeit to a lesser extent, in cases of anticompetitive agreements, since in practice the Commission tends to use market definition when assessing agreements that have as their *effect* the prevention, restriction or distortion of competition, but does not generally define the relevant market when assessing agreements that have as their *object* the prevention, restriction or distortion of competition, such as cartel agreements⁹³.
142. In the context of this opinion, the practices identified at this stage, which may be examined from the perspective of abuse of a dominant position or anticompetitive agreements (see sections 3 and 4 below), are varied in nature and may be implemented by various players in the sector: rating system publishers, holders of data feeding into rating systems, and manufacturers or retailers of the products or services rated.
143. The market definition will therefore depend largely on the type of practices, the operators implementing those practices, and the specific facts of each case.
144. As discussed in sections 3 and 4 below, most of the practices identified in this opinion are implemented in the market in which the companies that carried out the practices under examination manufacture or sell their products or services (whether their products or services are rated or they act as producers/retailers and publishers). Consequently, the question of a possible relevant market for rating systems would, *a priori*, arise primarily in relation to practices that would be implemented by, or affecting, pure-play rating systems.
145. To date, the *Autorité* has not had the opportunity to define a market for rating systems and does not intend to conduct a detailed market definition analysis in this opinion. Nevertheless, the following avenues for consideration could be explored in a potential enforcement context.
146. Firstly, it could be appropriate to consider whether differences exist between rating systems and other indicators used to inform consumers about products and services, such as labels, standards, certifications or protected designation of origin (PDO) marks. Like rating systems, these indicators aim to reduce information asymmetry between companies and consumers and may encourage manufacturers to improve their products or services with a view to obtaining the indicator. However, they differ from rating systems in the following ways:
- their development: rating systems are based on a calculation method that takes into account and weighs one or more criteria to generate a rating, unlike other indicators, which merely require that one or more criteria – established, for example, through a set of specifications – be met in order for the indicator to be displayed;

⁹³ *Ibid.*, paragraph 9(c): “in assessments under Article 101 TFEU, the Commission uses market definition in particular to determine whether an appreciable restriction of competition exists or to establish whether the condition in Article 101(3), point (b), TFEU for an exemption from the application of Article 101(1) TFEU is met. In practice, the Commission tends to use market definition when assessing agreements that have as their effect the prevention, restriction or distortion of competition. By contrast, the Commission usually does not define the relevant market when assessing agreements that have as their object the prevention, restriction or distortion of competition, such as cartel agreements, and is under no obligation to do so”.

- the accuracy of the information provided: rating systems offer particularly accurate information through a graduated scale (for example, from A to E or from 0 to 100), unlike certain other indicators that provide only a binary assessment (the product either holds the indicator or does not). Such graduation benefits consumers by enabling detailed comparisons across a wide range of goods and services, in particular in the cosmetics and food sectors;
 - the disclosure of results, including less favourable ratings: the use of rating systems may, for certain products or services, lead to unsatisfactory results for the companies that produce or market those products or services. This contrasts with other indicators, which do not, for example, indicate when a product has not obtained the label. From a competition perspective, this specific feature of rating systems is likely to redirect consumer purchasing behaviour towards higher-rated products and encourage manufacturers to obtain a better rating;
 - the product or service ranges concerned: rating systems also cover, and in some cases target, products across all ranges, whereas many other indicators are generally designed to guarantee a certain standard and typically only apply to high-end or quality products, or those meeting specific requirements (such as labels, designation marks or standards).
147. Next, when defining a relevant market encompassing include rating systems, it could also be appropriate to examine whether different rating systems are in competition with one another. This would depend on the extent to which customers can choose between the systems, such that they may be regarded as sufficiently interchangeable, taking into account the prevailing conditions of competition and the structure of both demand and supply.
148. Lastly, it could also be appropriate to consider whether a more granular segmentation should be assessed, based on the sector concerned (food, cosmetics, etc.), the sustainability-related considerations taken into account (health, environmental footprint, etc.) or the medium through which the information is conveyed (applications, packaging, etc.).

3. DESIGN CONDITIONS ENABLING THE COMPETITIVE FUNCTIONING OF RATING SYSTEMS

149. The development of a rating system may, in certain circumstances, give rise to competition risks, insofar as its development method influences the information provided to consumers and the incentives for companies to compete. Accordingly, compliance with certain conditions relating to robustness and transparency (a), the assessment criteria and their effective weighting (b), and the organisation of preparatory work and meetings for design purposes (c), can help to ensure their competitive functioning.

a) Requirements for the robustness and transparency of rating systems

150. Rating system publishers, insofar as they provide information on a competitive parameter in a given market, must ensure that their calculation method and data are sufficiently robust so as not to distort competition between the products and services rated, and must maintain transparency with consumers regarding how their rating system operates.

151. It follows from the public consultation that each rating system is developed using a calculation method that necessarily reflects the publisher's choices regarding the criteria applied, their weighting and the data used. The choices made in the development of the algorithm are crucial, as they determine the ratings assigned to the products or services offered to consumers⁹⁴.
152. While it is not the role of the *Autorité* to verify the scientific soundness of a rating system's calculation method or the data used, the effectiveness and credibility of the rating system depend on both. In certain circumstances, these choices may influence consumers' decisions on the sustainability-related attribute assessed in ways unrelated to the merits of the product or service. Similarly, they could have the effect of limiting the incentive for companies to compete on the sustainability-related aspect assessed.
153. In light of these considerations, publishers must ensure the robustness of their method (rating criteria and the weighting assigned to each criterion) and the reliability (precision and accuracy) of the data used. Similarly, they have a responsibility to be transparent with users about how their system works (governance, calculation method, data used, etc.) in order to enable informed decisions, both in terms of the use of the system itself and the purchase of any product or service based on the rating obtained.
154. Consequently, the *Autorité* recommends that rating system publishers, whether public or private, should:
- be transparent with companies whose products or services are rated and with consumers regarding the governance of the rating system (sources of funding and, where applicable, remuneration of the rating system, any links with third-party entities or any other factor likely to have an impact on the choice of calculation method used by the rating system) and the parties involved in designing the rating system (companies, scientific team, public authorities, etc.);
 - inform companies whose products or services are rated and consumers of the sustainability-related characteristics assessed, together with all the factors used to generate and update the rating (data, criteria, weighting). This information should be clear, legible, and quickly and easily accessible;
 - ensure the soundness of the method (rating criteria and the weighting assigned to each criterion) and the reliability (precision and accuracy) of the data used, by checking data sources and allowing for a correction mechanism (change in product composition or error) within a reasonable timeframe.

⁹⁴ For an analysis of the implications of algorithms in competition law, see “Algorithms and Competition”, November 2019, Joint study by the *Autorité de la concurrence* and the *Bundeskartellamt*.

b) Selection and weighting of criteria for differentiated ratings

155. Rating systems require the selection of criteria and the application of weightings to generate a rating that reflects a gradation. As one association noted in its response to the public consultation, *“evaluative systems often aggregate issues that are heterogeneous in nature, severity and units and, as a result, the choice of weightings between issues also remains a matter of scientific debate and a fertile ground for innovation in the field of quantification”*. Similarly, ADEME indicated during the inquiry that *“the weighting of indicators has a major impact on product scores. There is necessarily a normative or political dimension to this choice. (...) For example, there is a general framework in which it would not be reasonable to weight toxicity at 2% or 90%, but determining whether it should be 15% or 30% is a more delicate question”*.
156. Depending on the weighting chosen, a rating system will produce ratings that are more or less differentiating between the products and services rated, it being understood that a sufficiently differentiating rating will, *a priori*, enable consumers to make effective comparisons between products and allow companies to compete meaningfully. However, it follows from the inquiry and the hearings that certain rating systems, given their methodology, may result in ratings that do not fully perform this function. As noted in a report published in June 2022 on the ADEME website: *“For most equipment, we observe a concentration of ratings between 6 and 8, corresponding to a shift from a yellow to a light-green logo on the repairability index (...). Moreover, respondents would have expected ratings to be distributed more around 5-6 than 7, in order to strengthen the differentiating character of the repairability index. In particular, a large majority of lawnmowers appear with a light-green logo, so the information would only partially guide consumer choice”*⁹⁵.
157. It is entirely possible for a rating system to generate similar ratings for a given category of products or services. However, rating systems developed or built jointly by competitors, where those systems result in a large majority of their products receiving a similar rating for a given product category, which does not arise from objective characteristics or from an improvement in the product or service, but instead from concerted action between companies at the stage of developing the calculation method, may be indicative of collusive practices within the meaning of Article 101(1) TFEU and Article L. 420-1 of the French Commercial Code.

⁹⁵ A.-C. Bonjean, ADEME, In Extensio Innovation Croissance and ODOXA, “Retour d’expérience de la mise en œuvre de l’indice de réparabilité” (*Feedback on the implementation of the repairability index*), 2022 (French only).

158. The *Autorité* sanctioned a similar practice in the aforementioned resilient floor covering decision, which involved an agreement whereby manufacturers agreed not to communicate on their individual environmental performance, in order to avoid differentiating their products on this parameter. The collusion sought to eliminate all “*competitive marketing initiatives based on environmental characteristics*” and aimed to “*avoid any fruitless controversy over specific products and adopt a consistent marketing approach*”⁹⁶. The objective was to avoid “*dangerous ‘green’ marketing*” and “*disorganised competition on VOCs based on irrelevant criteria*”⁹⁷. The purpose of the agreement was therefore to prevent any competition based on the environmental performance of their respective products. The *Autorité* concluded that the non-competition agreement infringed the law on anticompetitive agreements by its anticompetitive object.

c) The organisation of preparatory work for a rating system

159. The development of a rating system generally involves holding preparatory meetings and/or establishing a series of working groups.
160. The *Autorité* draws the attention of stakeholders to two points in particular that require vigilance when conducting such work:
- when competitors are involved and exchange information that may be considered sensitive from a competition law perspective;
 - when stakeholders are not sufficiently or effectively represented.

On the risk of collusion or exchange of sensitive information between competing companies

161. It follows from the inquiry that competing manufacturers on a given market may develop their own rating system jointly or participate in the development of a rating system alongside other stakeholders. Professional federations may also be involved and play an active role in the development of rating systems.
162. During the development of a rating system, participants – including competing manufacturers or retailers – may discuss and debate the definition of the criteria to be taken into account, the weighting assigned to those criteria, and the modalities for implementing the system.
163. As a result, such discussions may at times concern sensitive strategic and commercial matters, in particular those relating to pricing, product quality and the supply, production or distribution processes for the products or services covered by the rating system under development.

⁹⁶ *Autorité de la concurrence* Decision 17-D-20, cited above, paragraph 438.

⁹⁷ *Ibid.*

164. However, information exchanges can be problematic under competition law when they reduce strategic uncertainty on the market and thus facilitate collusion. The disclosure of strategic information may enable companies to coordinate their behaviour and to “*reach a common understanding on their behaviour on the market, even without an explicit agreement on coordination*”⁹⁸, as well as to monitor any deviation from the resulting collusive equilibrium.
165. Consequently, discussions or any form of exchange between competitors – whether formal or informal, written or oral, and whether conducted during meetings or on the sidelines of the process of developing a rating system – should be strictly limited to what is necessary to achieve the stated objectives, namely the choice of criteria to be taken into account in creating the rating system, their weighting and the rules governing the implementation of the system. Moreover, such exchanges must not involve the sharing of sensitive information between manufacturers, including via their trade association⁹⁹, which could distort competition on the relevant parameters in the markets concerned, discourage innovation in products that better protect health and the environment or restrict, and potentially eliminate, competition.
166. More specifically, the *Autorité* assesses information exchanges based on two non-exhaustive sets of criteria. The first relates to the economic conditions prevailing in the market concerned (including, in particular, transparency, degree of concentration and the symmetry of undertakings’ positions). The second concerns the characteristics of the information exchanged (notably the nature of the information, whether it is public or non-public, aggregated or individualised, its age, the frequency of exchanges and the extent of market coverage)¹⁰⁰.
167. The *Autorité* therefore draws the attention of the companies concerned to the competition risks associated with exchanging information. While these risks are particularly pronounced in the context of developing a rating system involving working groups, they may also arise outside this context, notably when companies need to interact to implement the system once it has been adopted (for example, to develop the algorithm or to extend or limit its scope).

On the representativeness of the parties involved in designing a rating system

168. As indicated above, rating systems may be developed, either individually or jointly, in particular by:
- pure-play publishers;
 - economic operators active in the sector in which the products or services are rated (manufacturers or retailers);
 - public authorities;
 - civil society actors.

⁹⁸ European Commission Guidelines on Horizontal Cooperation Agreements, cited above, paragraph 378.

⁹⁹ *Autorité de la concurrence* thematic study, “Professional bodies”, cited above, paragraph 169.

¹⁰⁰ The Guidelines on Horizontal Cooperation Agreements, cited above, devote a section to examining information exchanges in order to determine whether such exchanges are likely to contravene Article 101 TFEU prohibiting anticompetitive agreements.

169. Given the challenges involved in selecting the criteria and determining their weighting in the development of a rating system, the representativeness of stakeholders is a key consideration.
170. This issue was raised several times in the responses to the public consultation, with perspectives differing depending on whether the respondents were civil society actors or companies. Some consumer associations reported a sometimes significant imbalance between economic operators and civil society in the development of rating systems by public authorities¹⁰¹. This imbalance was reflected in the over-representation of companies and their federations within the various working groups that were organised as part of the development process, as well as in the number of hearings held by public authorities to gather the parties' respective positions, which was reportedly higher for companies than for consumer associations. The French association HOP (which campaigns against planned obsolescence) similarly noted that, during the development of the reparability index, it sought to "*ensure the voice of citizens was heard alongside large, over-represented manufacturers, and thus prevent those manufacturers from unilaterally deciding the rules to be met to obtain the rating*"¹⁰².
171. Some companies, for their part, emphasised the importance of stakeholder representation in the development of rating systems and consider that all scientific sectors, companies, associations and public authority bodies should be able to participate.
172. Moreover, some respondents to the public consultation expressed regret at not having been invited to participate in discussions, even though a rating system was likely to affect their activities or their input could have strengthened the system in pursuit of its sustainability objectives. For example, regarding a rating system established by a retailer, a trade association noted that "*the limitation of this rating system is that it was developed without the involvement of manufacturers*". Similarly, with regard to the reparability index, "*HOP regrets the absence of independent and ethical designers to contribute to the work*"¹⁰³.
173. Overall, as noted in a response to the public consultation from an endowment fund active in the ecological transition sector, "*inappropriate, poorly calibrated tools, or tools developed under pressure from the economic operators they are intended to influence, can distort understanding of reality and ultimately become formidable instruments of greenwashing and disinformation*".
174. As noted above, a rating system – due to the choices made by participating undertakings during its design – can generate potentially misleading information for consumers, which may influence their choices or hinder effective comparisons between products.

¹⁰¹ Excerpt from the French consumer protection association CLCV [website](#), Article of 18 October 2023: "*The BEUC has noted a clear imbalance between economic operators and civil society. While the Directorate-General for Health and Food Safety met with food industry players 17 times in 2022, it heard from civil society representatives only twice (including one event in which the Commission participated and which was not an exchange in the strict sense)*".

¹⁰² R. Groussier, L. Vasseur and F. Vonderscher, "Élaborer un indice de durabilité fiable et ambitieux" (*Developing a reliable and ambitious sustainability index*), White Paper, HOP, July 2023 (French only). While acknowledging the rationale for manufacturers' participation, given their expertise concerning the products, HOP nonetheless observes that "*the influence of manufacturers is predominant within the working groups, owing to their number and the information asymmetry on products operating to their advantage*", as well as raising "*the question of the weight accorded to their positions on the proposed criteria, since it is their products that will be scored under the future index*".

¹⁰³ *Ibid.*

175. Another risk is that rating systems may enable the companies whose products are rated to avoid competing on merit, thereby undermining the intended purpose of rating systems.
176. The *Autorité* draws the attention of both private and public stakeholders to circumstances that require particular vigilance.

When stakeholders are active in the sector covered by the rating system under development

177. Firstly, when the development of a rating system involves economic operators active in the sector concerned, the question of the representativeness of participating stakeholders becomes particularly important in certain circumstances. These may include, for example, manufacturers whose products or services are to be rated, or retailers that market the products or services rated.
178. The competition risks described above are heightened in the following situations:
- when the number or market power of participating companies operating in the market for the products or services rated (e.g. manufacturers or retailers) is significant compared to that of other stakeholders (e.g. consumer associations);
 - when the role and weight given to those companies in the decision-making process is significant compared to that of other stakeholders;
 - when one or more professional bodies participate alongside the companies active in the market represented by those bodies, potentially resulting in over-representation of the professionals concerned¹⁰⁴.
179. In these circumstances, companies are more likely to exert significant influence over the development process, potentially creating conditions that neutralise the competitive parameter generated by the rating system, particularly in the event of collusion.
180. Conversely, these risks are minimised when rating systems are designed by pure-play publishers whose operation and financing are independent of the companies whose products or services are rated.

When the rating system is issued by a public authority

181. Certain rating systems may have a particular impact because:
- they are developed by public authorities and are therefore perceived by consumers as having greater legitimacy;
 - they are mandatory, by virtue of a legislative or regulatory text.

¹⁰⁴ The involvement of trade associations in the development of a rating system may be legitimate. However, as the *Autorité* has previously recalled, the existence of an “official” position adopted by a professional body in its dealings with public authorities must not prevent individual operators, or a grouping of some of them, from submitting alternative proposals to the authorities. The professional body must therefore refrain from exerting any form of pressure on those operators, which remain free to express a critical position to the public authorities. Excerpts from *Autorité de la concurrence* thematic study, “Professional bodies”, cited above, paragraph 238.

182. To prevent the occurrence of the competition risks described in paragraphs 168 *et seq.*, it is important that public publishers ensure fair access to the rating system development process by guaranteeing adequate representation of the various stakeholders concerned, in particular consumer associations, at the various levels of the production and distribution chain.

d) The presence or participation of public authorities

183. Public authorities may participate in the development of rating systems in various ways: they can initiate the systems under a law or regulatory provision, take part in preparatory meetings either as observers or active participants, and/or be consulted retrospectively.
184. The *Autorité* wishes to draw stakeholders' attention to the fact that the involvement of national or local public authorities in the conclusion of agreements on rating systems, or knowledge by those authorities of the existence of such agreements, does not in itself preclude the application of Article 101 TFEU to such agreements. Similarly, if the action taken by public authorities merely encourages or facilitates the adoption of anticompetitive agreements by undertakings, without depriving those undertakings of their autonomy, such agreements remain subject to Article 101¹⁰⁵. Accordingly, public authorities must remain vigilant, when developing rating systems and organising working groups, to avoid creating conditions that could encourage or facilitate conduct by undertakings that contravenes Article 101 TFEU.
185. Nevertheless, the parties to an anticompetitive agreement will not be liable under Article 101 if they have been compelled or required by public authorities to conclude the agreement or where the public authorities reinforce the effects of the agreement¹⁰⁶.
186. Moreover, the *Autorité* may reduce the amount of a fine on the grounds of mitigating circumstances, if the undertaking or association of undertakings can demonstrate that the infringement was authorised, requested or encouraged by public authorities¹⁰⁷. However, the mere presence of public officials at certain meetings does not, in itself, mitigate the seriousness of the practices¹⁰⁸. The same principle applies to statements made by public authorities during discussions with the undertakings concerned¹⁰⁹.
187. Lastly, the *Autorité* highlights that companies and professional bodies, as well as non-governmental organisations and consumer associations in particular, may request informal guidance from the *Autorité* on assessing the compliance with competition rules of certain initiatives pursuing a sustainability objective, under the procedural framework set out in the notice published in May 2024.

¹⁰⁵ European Commission Guidelines on Horizontal Cooperation Agreements, cited above, paragraph 597. Judgment of the Court of Justice, 9 September 2003, CIF, C-198/01, paragraph 56.

¹⁰⁶ European Commission Guidelines on Horizontal Cooperation Agreements, paragraph 598. Judgments of the Court of Justice, 12 December 2013, SOA Nazionale Costruttori, C-327/12, paragraph 38; and 5 December 2006, Cipolla and Others, C-94/04, paragraph 47.

¹⁰⁷ *Autorité de la concurrence* Notice on Fines, 30 July 2021.

¹⁰⁸ *Autorité de la concurrence* Decision 20-D-12 of 17 September 2020 on practices implemented in the Alsace wine sector, paragraph 397, upheld by the judgment of the Paris Court of Appeal, Chamber 5-7, 12 May 2022, no. 20/15606 (paragraphs 194, 207, 218 and 219 in particular).

¹⁰⁹ *Ibid.*

4. THE KEY AREAS FOR VIGILANCE IN THE IMPLEMENTATION OF RATING SYSTEMS

188. The *Autorité* wishes to draw stakeholders' attention to key areas requiring vigilance when implementing rating systems, in particular with regard to access to databases (a), disparagement practices (b), lobbying practices (c), selective disclosure of ratings (d), and the imposition of a rating system by a commercial partner (e).
189. Moreover, the *Autorité* emphasises that, within the context of this opinion, the abstract analysis of competition risks is purely educational and does not in any way prejudice any potential legal qualification that may be applied to the practices of the stakeholders concerned under the law on anticompetitive agreements or abuse of a dominant position.

a) On access to the databases necessary for the operation of rating systems

190. According to the rating system publishers consulted during the inquiry, the data required to rate the products or services concerned is widely available and mainly free of charge. However, it cannot be ruled out that certain databases, or their user software, may not be made available to rating system publishers, or may only be provided under certain restrictive conditions.
191. The issue of access to data, and more broadly to the inputs needed to operate in a market, raises competition law concerns. Practices that restrict operators' access to such inputs may weaken competition or even result in the exclusion of operators from the market.
192. In accordance with established decisional practice and settled case law, a refusal of access to an input by an undertaking holding an individual dominant position, or by a group of undertakings holding a collective dominant position, may be considered abusive if:
- access to the input is essential for a competitor to operate, and the refusal is likely to eliminate all competition and cannot be objectively justified¹¹⁰; or
 - the refusal of access is applied in a discriminatory manner, thereby significantly distorting competition¹¹¹. The *Autorité* has also held that such discrimination can distort competition even if the undertaking implementing the discriminatory conduct is not directly active in the affected market¹¹².

¹¹⁰ See, in particular, *Autorité de la concurrence* Decision 17-D-11 of 25 July 2017 on practices implemented in the television advertising sector, paragraph 126; *Conseil de la concurrence* Decision 05-D-72 of 20 December 2005 on practices implemented by various laboratories in the sector for the parallel export of medicines, paragraphs 253 and 254; and *Conseil de la concurrence* Decision 04-D-77 of 22 December 2004 on a complaint by Productiv against the laboratory GlaxoSmithKline, paragraphs 17 and 18. See, also, judgment of the Court of First Instance, 17 September 2007, Microsoft, T-201/04; judgment of the Court of Justice, 29 April 2004, IMS Health, C-418/01; and judgment of the Court of Justice, 26 November 1998, Bronner, C-7/97.

¹¹¹ See, in particular, *Autorité de la concurrence* Decision 14-D-06 of 8 July 2014 on practices implemented by Cegedim in the medical information database sector, paragraph 192.

¹¹² *Autorité de la concurrence* Decision 14-D-06, cited above, paragraphs 163 and 164: “Through unjustified differences in treatment, the dominant undertaking may, by virtue of its particular position in relation to undertakings at another stage of production, whether they are its partners, customers or suppliers, artificially favour or disadvantage certain of these undertaking over others. By thus skewing the opportunities of competing suppliers, the dominant undertaking deprives the market, and ultimately the consumer, of the benefits of competition based on the merits”.

193. Moreover, this type of practice could be implemented by several independent undertakings acting, for example, within a professional organisation that holds a database. If these undertakings were to collectively decide to restrict access for publishers, thereby preventing them from updating their systems or imposing significant constraints on them being able to do so, their conduct could limit, or even prevent, the activities of rating system publishers and would likely constitute an infringement of the law on anticompetitive agreements.

b) On the risks resulting from practices that disparage products and services rated

194. Several manufacturers that responded to the public consultation raised the question of whether a rating system assigning an unfavourable rating to a product because the product contains a substance considered by the system to be harmful (“*doubtful, not recommended, high risk, toxic*”) to health or the environment, according to criteria established by this system, even where the substance is authorised by the European and French health authorities, could constitute disparagement practices.
195. The *Autorité* has previously issued a decision on disparagement practices. It considered that “*disparagement may consist of publicly discrediting an identified person, product or service. It differs from criticism in that it originates from an economic operator seeking to gain a competitive advantage by penalising a competitor*”¹¹³.
196. This type of practice is primarily analysed by the *Autorité* from the perspective of abuse of a dominant position under Article 102 TFEU and Article L. 420-2 of the French Commercial Code¹¹⁴. More specifically, according to established decisional practice¹¹⁵, for disparagement to be qualified as such, there must be a demonstrable link between the undertaking’s dominant position and the disparagement practice.
197. In assessing the existence of this type of practice, the *Autorité* examines whether the commercial statements made by the undertaking in a dominant position are based on objective findings or unverified assertions. The Paris Court of Appeal has clarified that “*on the one hand, the disclosure of information likely to discredit a competitor constitutes disparagement, regardless of whether said information is accurate (Com., 24 September 2013, appeal no. 12-19.790), and, on the other hand, the disclosure of information likely to discredit a product constitutes disparagement, unless said information relates to a matter of general interest, is supported by a sufficient factual basis and is expressed with due restraint (Com., 9 January 2019, appeal no. 17-18.350)*”¹¹⁶.

¹¹³ *Autorité de la concurrence* Decisions 20-D-11 of 9 September 2020 on practices implemented in the age-related macular degeneration (AMD) treatment sector, paragraph 770; 13-D-11 of 14 May 2013 on practices implemented in the pharmaceutical sector, paragraph 365; 13-D-21 of 18 December 2013 on practices implemented in the French market for high-dose buprenorphine sold in pharmacies, paragraph 360; and 17-D-25 of 20 December 2017 on practices implemented in the fentanyl transdermal patch sector, paragraph 530.

¹¹⁴ Certain disparagement practices have been sanctioned as anticompetitive agreements: *Autorité de la concurrence* Decision 13-D-11 of 14 May 2013 on practices implemented in the pharmaceutical sector.

¹¹⁵ *Autorité de la concurrence* Decisions 20-D-11; 13-D-11; 13-D-21; and 17-D-25, cited above.

¹¹⁶ Judgment of the Paris Court of Appeal, Chamber 5-7, 11 July 2019, Janssen-Cilag SAS, no. 18/01945, paragraph 353; see, also, judgment of the French Court of Cassation, Commercial Chamber, 4 March 2020, appeal no. 18-15.651.

198. Next, the *Autorité* assesses whether the commercial statements are likely to affect the structure of the market, focusing on their expected or actual impact on the potential customers of the targeted competitor and any deterrent effect on consumers.
199. With regard to the assessment of disparagement, the Paris Court of Appeal recalled in its judgment of 16 February 2023¹¹⁷ that “*freedom of expression can only be subject to interference in cases where such interference constitutes measures necessary under Article 10(2) of the European Convention on Human Rights*” and that “*the European Court of Human Rights [ECHR] affords a high level of protection to freedom of expression when the contested speech seeks to contribute to a debate on issues related to the protection of health. In such cases, the ECHR considers that the speech forms part of a debate of general interest (Hertel v. Switzerland, 25 August 1998, application no. 25181/94, § 47) and therefore conducts a particularly careful assessment of the proportionality of the measures in question*”.
200. It further adds that “*where a debate is of general interest, the ECHR considers that it does not matter if an opinion is held by a minority and may appear unfounded, and that it would be particularly excessive to limit freedom of expression to the expression of only generally accepted ideas (Hertel v. Switzerland, § 50)*”. However, it clarifies that “*while nothing prohibits the dissemination of information that may offend, shock or cause concern in areas where certainty is unlikely, this is on condition that said information is presented in a nuanced manner (Vérités Santé Pratique SARL v. France, 1 December 2015, application no. 74766/01)*”¹¹⁸.
201. Any allegations of disparagement arising from certain products being given an unfavourable rating because they contain ingredients that are nevertheless authorised by the health authorities should therefore be assessed in light of all the conditions set out above.
202. Commercial case law on disparagement, understood as unfair competition, provides important insights into the practice itself¹¹⁹.
203. Furthermore, it should be noted that, to date, the *Autorité* has only issued decisions on cases of disparagement by a dominant undertaking competing with the undertaking whose products are subject to disparagement. However, in the scenario described above, a rating system publisher is generally not a competitor of the company whose products are rated. In such cases, it would therefore appear more difficult to envisage that disparagement could be proven under competition law, although this cannot be ruled out *in abstracto*, in particular where the disparagement constitutes an anticompetitive agreement between a publisher and a third party.

¹¹⁷ Judgment of the Paris Court of Appeal, Chamber 5-7, 16 February 2023, no. 20/14632, paragraphs 401 *et seq.* Judgment subject to appeal to the French Court of Cassation.

¹¹⁸ *Ibid.*

¹¹⁹ Judgment of the Paris Court of Appeal, Chamber 5-1, 7 June 2023, no. 21/11775; and judgment of the French Court of Cassation, Civil Chamber, 11 July 2018, appeal no. 17-21.457.

c) On the risks associated with lobbying practices

204. Rating systems are likely to affect the business of companies whose products or services are rated, whether through the impact of published ratings on their sales or through the potentially significant costs associated with implementing the systems. Faced with such constraints, companies may decide to lobby public authorities, i.e. *“take the initiative to make contact with persons responsible for drafting and adopting public decisions or for conducting national or local public action, with a view to influencing their decisions”*¹²⁰ concerning the creation or operation of a public rating system.
205. It follows from the inquiry that some companies whose products or services are rated engage in such lobbying activities, either individually or collectively.
206. According to information provided by the French High Authority for Transparency in Public Life (*Haute Autorité pour la transparence de la vie publique* – HATVP), which receives declarations of lobbying activities undertaken by private legal entities¹²¹, several dozen such actions have been reported to the HATVP.
207. For example, certain manufacturers have publicly expressed their opposition to certain rating systems, such as Nutri-Score, particularly in relation to the design of the calculation method and the challenges the systems pose for their products¹²². Moreover, in a white paper published in July 2023 entitled “Developing a reliable and ambitious sustainability index” (*Élaborer un indice de durabilité fiable et ambitieux*) published in July 2023, the French association HOP (which campaigns against planned obsolescence) noted: *“Given the economic implications of the index, HOP has observed increasingly assertive lobbying by manufacturers seeking to defend their interests in relation to the development of the reparability index, with certain manufacturers or retailers being especially proactive and helping to steer the group’s work”*.
208. While such lobbying is entirely legitimate, it may give rise to competition law concerns in certain circumstances, as reflected in French and European case law and decisional practice, under both the provisions relating to abuse of a dominant position and those relating to anticompetitive agreements¹²³.

¹²⁰ Definition adopted by the HATVP, available on the HATVP [website](#), Frequently asked questions about lobbying (French only).

¹²¹ These may be commercial companies, civil companies, public enterprises, associations, foundations, trade unions, professional bodies or any other structures with legal personality, such as research organisations or think tanks.

¹²² Some manufacturers have expressed a desire to see the Nutri-Score rating of Roquefort cheese reassessed, including Lactalis, which has stated that it is *“part of a collective, cross-party initiative”* and has launched *“a communication campaign to raise public awareness”* regarding the impact of the Nutri-Score rating system on the viability of the agricultural sector producing AOP milk. See L. Girard, “Avec le Roquefort, Lactalis veut contrer le Nutri-Score” (*Lactalis wants to counter Nutri-Score with Roquefort*), *Le Monde*, 11 October 2021 (French only).

¹²³ *Conseil de la concurrence* Decision 05-D-58 of 3 November 2005 on practices observed in the drinking water sector in the Ile-de-France region; *Conseil de la concurrence* Decision 07-D-10 of 28 March 2007 on a complaint against the Comté Gruyère Interprofessional Committee (*Comité interprofessionnel du gruyère de Comté*); and *Autorité de la concurrence* Decision 17-D-25 of 20 December 2017 on practices implemented in the fentanyl transdermal patch sector.

209. In cases of abuse of a dominant position, the *Autorité* has therefore focused not on reviewing the legality of the decision adopted, but on determining whether the undertaking in a dominant position improperly interfered in the decision-making process of the relevant authority or engaged in practices likely to induce the authority to adopt an undue decision¹²⁴. By way of illustration, the *Autorité* has noted that a laboratory may not improperly interfere in the decision-making process of a health authority by presenting arguments intended to induce the authority to adopt a decision contrary to the applicable legal framework. Conversely, the *Autorité* has clarified that said undertaking remains entirely free to present, in an objective and neutral manner, any public health concerns that it may have to the competent health authorities¹²⁵. Furthermore, European courts have held that a misleading statement by an undertaking to a public authority may constitute an abuse of a dominant position, insofar as the statement is intended to achieve anticompetitive objectives¹²⁶.
210. Moreover, the *Autorité* has clarified that it has jurisdiction, with regard to the provisions on anticompetitive agreements, over “*secret practices that may have taken place on the margins of the decision-making process*”¹²⁷ and to examine whether “*under the cover, or on the occasion, of discussions between professionals during the preparation of the text, and in particular during the stages in which they may have proposed amendments to the rules to public authorities [...], the member undertakings [...] pursued an anticompetitive plan, by means of an agreement that would be prohibited by both Article 81 EC and Article L. 420-1 of the French Commercial Code, aimed, for example, at excluding from the market a particular type of competing producer*”¹²⁸.
211. Furthermore, the adoption by several undertakings of a common position vis-à-vis a public authority, aimed at providing the authority with misleading information, could also fall within the scope of the law on anticompetitive agreements. Thus, “*if [a] professional body [comprising and representing several undertakings] communicates misleading information in an attempt to persuade a public authority to adopt its position by inducing such authority to make a decision based on erroneous or partial facts, it may be in breach of the law on anticompetitive agreements. The same could apply if a professional body knowingly fails to communicate information in its possession that could influence the public authority’s decision*”¹²⁹. A similar analysis could apply to practices implemented among several competing undertakings outside the framework of a professional body.
212. Lastly, in order to meet the robustness requirements set out in paragraphs 150 *et seq.*, a rating system issued by public authorities must not be based on considerations unrelated to the sustainability objective pursued, whether in terms of its calculation method or its operation.

¹²⁴ *Autorité de la concurrence* Decisions 05-D-58; 16-D-11; and 17-D-25, cited above.

¹²⁵ *Autorité de la concurrence* Decision 17-D-25, cited above.

¹²⁶ Judgments of the General Court, 1 July 2010, AstraZeneca, T-321/05 and of the Court of Justice, 6 December 2012, AstraZeneca, C-457/10 P.

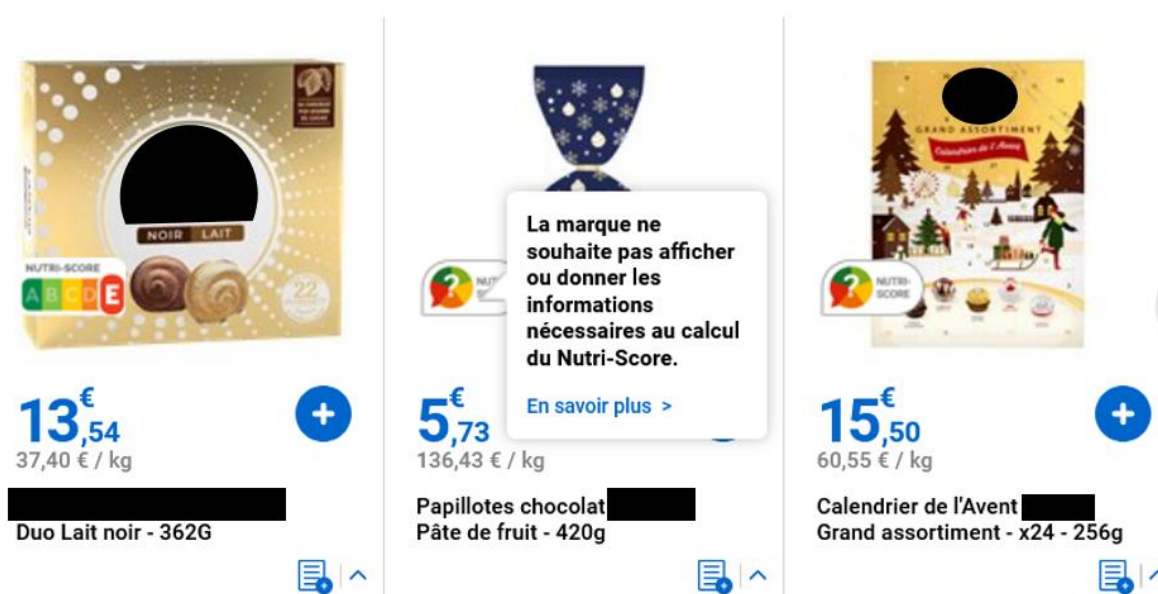
¹²⁷ *Autorité de la concurrence* Decision 13-D-10 of 6 May 2013 on a request for interim measures submitted by Messageries Lyonnaises de Presse (MLP), paragraph 144.

¹²⁸ *Conseil de la concurrence* Decision 07-D-10, cited above, paragraph 71.

¹²⁹ *Autorité de la concurrence* thematic study, “Professional bodies”, cited above.

d) On the risks resulting from selective disclosure of ratings

213. It follows from the inquiry that certain rating systems only disclose or allow disclosure of products or product ranges that obtain a favourable rating.
214. For example, under the rules governing the use of a rating system by participating companies, the display rules adopted apply to the entire brand. However, companies with several brands may select the brand(s) on which the rating will be displayed. Consequently, a company with several brands within a particular product category may choose to apply the score only to product lines that receive a favourable rating.
215. Moreover, some rating systems only display ratings on products in stores when they are positive. For example, one retailer explains that “*in line with a positive approach, only ratings of 3/5, 4/5 and 5/5 are displayed*”. Similarly, another retailer recently announced that it would not display C and D ratings for its suppliers’ products in stores, so as not to penalise them.
216. This type of practice risks diminishing the informative value of rating systems and, consequently, the ability of consumers to effectively compare products based on the ratings generated by the rating system. If the least favourable ratings are not displayed on products, it becomes more difficult, in practice, for consumers to switch to higher-quality alternatives.
217. According to the French Ministry of the Economy, one of the objectives of Nutri-Score is as follows: “*The Nutri-Score labelling system enables consumers to compare an increasing number of processed products. Conversely, equivalent products without the Nutri-Score logo cannot be easily assessed in terms of nutritional quality and, as a result, cannot be readily compared with others*”¹³⁰. In addition, some food retailers expressly indicate when a manufacturer has chosen not to disclose the rating of one of their products.



Source: Excerpt from a retailer's online shop.

¹³⁰ Excerpt from the French Ministry of the Economy, Finance and Industry [website](#), Adopting the Nutri-Score label to reassure consumers, 3 July 2023 (French only).

218. In competition law, while the practice of allowing companies to communicate only on the products they select, and in particular those that receive a favourable rating, can be understood as a means of encouraging companies to adopt a virtuous approach by gradually using a rating system, it must not result from coordination between companies. Coordinating to avoid engaging in healthy, undistorted competition on this parameter, by refraining from drawing attention to products with an unfavourable rating, could constitute an anticompetitive agreement.

e) On imposing a rating system on a commercial partner

219. It follows from the inquiry, and from statements made during the hearings, that certain retailers that publish rating systems may require their suppliers to use their system. If the publisher of the rating system holds a dominant position in the market concerned, this could, in certain circumstances, give rise to competition law concerns.
220. Firstly, this could be the case if the undertaking in a dominant position in the market concerned directly or indirectly imposes the use of a rating system that does not meet the conditions necessary for effective competition (e.g. if it is based on a method that is insufficiently robust, subject to frequent changes, insufficiently transparent and/or developed without the involvement of all stakeholders) and/or if the publisher of the rating system, when collecting information, requires its suppliers whose products are rated to provide a volume of information and justification that is, in practice, excessive and likely to generate significant costs.
221. In accordance with Article 102(2)(a) TFEU, French and European case law and decisional practice¹³¹ have already qualified as an abuse of a dominant position the fact that a dominant undertaking in a market imposes unfair trading conditions on its partners. Such a finding is subject to a demanding standard of proof, as established in case-law¹³².
222. Secondly, where a publisher that is also active in the distribution of rated products applies the operating rules of its rating system differently to its own brand products and to those of competing brands (self-preferencing), or obtains commercial information about its suppliers through the rating system, thereby gaining a market advantage, or applies different rules to suppliers in comparable situations¹³³, its conduct could be qualified as an abuse of a dominant position due to its discriminatory nature¹³⁴.

¹³¹ Judgment of the Court of Justice, 21 March 1974, *Belgische Radio en Televisie and société belge des auteurs, compositeurs et éditeurs v SV SABAM*, C-127/73; judgment of the Court of Justice, 5 October 1988, *Société alsacienne et lorraine de télécommunications et d'électronique (Alsatel) v SA Novasam*, C-247/86; and *Autorité de la concurrence* Decision 19-D-26 of 19 December 2019 on practices implemented in the search-related online advertising sector, upheld by the judgment of the Paris Court of Appeal, Chamber 5-7, 7 April 2022, no. 20/03811.

¹³² Judgment of the Court of First Instance, 6 October 1994, *Tetra Pak*, T-83/91.

¹³³ For example, if it requests more data, explanations and evidence in order to assign ratings.

¹³⁴ Article L. 420-2 of the French Commercial Code lists, among potentially abusive behaviours, the practice of “*discriminatory terms of sale*”. Article 102(c) TFEU provides that an abuse of a dominant position consists in “*applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage*”. Case law and decisional practice distinguish between situations in which a commercial partner of the dominant undertaking suffers a competitive disadvantage relative to other commercial partners of the dominant undertaking, and situations in which a commercial partner of the dominant undertaking suffers a competitive disadvantage relative to the dominant undertaking itself. With regard to such behaviour, the *Autorité* has stated that “*when a dominant undertaking imposes discriminatory*

C. TAKING INTO ACCOUNT THE OBJECTIVE OF CONSUMER INFORMATION AND/OR SUSTAINABILITY IN COMPETITIVE ANALYSIS

1. PRACTICES RESULTING FROM THE APPLICATION OF A LEGISLATIVE OR REGULATORY TEXT

223. Some rating systems, whether under development or already implemented, may be based on a legislative or regulatory text. Certain companies may argue that an alleged practice falls outside the scope of the prohibition on anticompetitive agreements or abuse of a dominant position, on the basis of Article L. 420-4, I, 1° of the French Commercial Code, insofar as the practice results from the law or a regulation adopted for its implementation¹³⁵.
224. In Opinion 21-A-16 of 22 November 2021 on three horizontal cooperation arrangements between insurers in the field of multi-risk climate insurance, the *Autorité* “*emphasise[d], in this regard, that the possibility of excluding a particular anticompetitive conduct from the scope of Article L. 420-1 of the French Commercial Code and Article 101(1) TFEU, on the grounds that said conduct was imposed on undertakings by national legislation, is applied restrictively by the courts*”. The *Autorité* has very rarely granted such exemption, requiring that the conduct in question be the direct and inevitable consequence of the law¹³⁶.

2. JUSTIFIED OR EXEMPTED PRACTICES

225. In their competitive analysis, competition authorities take into account the objective of the practices under review or, where applicable, the efficiency gains generated, whether in the context of anticompetitive agreements (a.) or abuse of a dominant position (b.).

rules, those rules harm only a limited number of its partners – those that are discriminated against – while those that are not discriminated against are not adversely affected by the discriminatory practice. By contrast, when a dominant undertaking defines unfair trading conditions, those conditions have broader effects, as they are likely to apply to all its customers” (*Autorité de la concurrence* Decision 19-D-26 of 19 December 2019 on practices implemented in the search-related online advertising sector, paragraph 356).

¹³⁵ It follows from Article L. 420-4, I, 1° of the French Commercial Code that practices implemented by undertakings and resulting from the application of a legislative or regulatory text adopted for its implementation are not subject to the provisions of Articles L. 420-1 and L. 420-2 of the French Commercial Code.

¹³⁶ See *Conseil de la concurrence* Decisions 03-D-03 of 16 January 2003 on practices implemented by the Marseille Bar Association in the insurance sector and 03-D-04 of 16 January 2003 on practices implemented by the Albertville Bar Association in the insurance sector.

a) With regard to anticompetitive agreements

On the justifications for an anticompetitive agreement based on the pursuit of legitimate objectives at the stage of analysing the anticompetitive nature of the practice

226. In order to determine whether an agreement falls within the scope of Article 101(1) TFEU and Article L. 420-1 of the French Commercial Code, it is necessary to assess, in general terms, whether the agreement exhibits a sufficient degree of harm. This assessment involves a concrete and cumulative examination of the content and objectives of the restriction of competition, as well as the economic and legal context of the provision¹³⁷.
227. Some stakeholders may argue that the measures in question, resulting from the design or implementation of a rating system, pursue a legitimate objective of consumer information or sustainability. However, it is settled case law that practices may, despite the legitimate objective they pursue, fall within the scope of the aforementioned provisions if they constitute the object, means or consequence of an anticompetitive agreement¹³⁸. In its judgment of 6 April 2006, General Motors, the Court of Justice clarified that “*an agreement may be regarded as having a restrictive object even if it does not have the restriction of competition as its sole aim but also pursues other legitimate objectives*”¹³⁹.
228. For example, in the aforementioned BPA decision issued by the *Autorité*, certain parties argued that the practices were justified by the applicable legal framework or by the aim of protecting the entire sector from a loss of consumer confidence¹⁴⁰. However, the *Autorité* rejected these arguments, drawing in particular on the aforementioned case law, according to which the pursuit of legitimate objectives does not preclude the qualification of an infringement of competition rules¹⁴¹.

¹³⁷ See, in particular, the judgment of the Court of Justice, 14 March 2013, cited above, paragraph 36, and Allianz Hungária Biztosító and Others, C-32/11, paragraphs 34 to 36.

¹³⁸ See *Autorité de la concurrence* Decision 23-D-15, cited above, paragraph 1046. See, by analogy, the judgments of the Court of Justice, 8 June 1971, Deutsche Grammophon Gesellschaft, C-78/70, paragraphs 6 and 10; 6 October 1982, Coditel and Others, C-262/81, paragraph 17; and 30 January 2020, Generics (UK) and Others, C-307/18, paragraph 79.

¹³⁹ Judgment of the Court of Justice, 6 April 2006, General Motors Nederland and Opel Nederland v Commission, C-551/03P, paragraph 64.

¹⁴⁰ *Autorité de la concurrence* Decision 23-D-15 cited above, paragraphs 1027 and 1028.

¹⁴¹ *Autorité de la concurrence* Decision 23-D-15, cited above, paragraph 1046.

On ancillary restraints

229. The Court of Justice has recognised that agreements constituting ancillary restrictions may fall outside the prohibition on agreements provided for in Article 101(1) TFEU¹⁴². If an undertaking invokes this theory in relation to the practices that it has implemented, the *Autorité* will verify whether the following three cumulative conditions are met: (i) the restriction must be connected to the main practice and must not constitute its principal object; (ii) it must be objectively necessary for the proper execution of the main object of the practice; and (iii) it must be proportionate to its objectives¹⁴³.
230. For example, in the aforementioned BPA decision, certain companies argued that the practice of not communicating on the absence of BPA in tin cans constituted an ancillary restriction to the main cooperation, which involved pooling research efforts to find reliable BPA substitutes¹⁴⁴. In this case, the *Autorité* did not uphold the companies' arguments, as none of the three above-mentioned conditions were met. In particular, it held that the non-communication was not ancillary to the research and development but was devised by the companies as a means of preserving their respective positions, and that the restriction was not proportionate to the main transaction, either in its material or temporal scope¹⁴⁵.

On the possibility of benefiting from an individual exemption on the grounds of efficiency gains

231. Where an agreement has as its object or effect the prevention, restriction or distortion of competition and is therefore potentially prohibited, the parties to the agreement may seek to benefit from the application of a block exemption, provided that the agreement fulfils the conditions set out in the applicable block exemption regulation¹⁴⁶.

¹⁴² Judgment of the Court of Justice, 11 July 1985, *Remia and Others v Commission*, C-42/84. See, also, judgment of the Court of First Instance, 18 September 2001, T-112/99, *Métropole Télévision and Others v Commission*, in particular paragraphs 104 *et seq.*

¹⁴³ European Commission Guidelines on the application of Article 81(3) of the Treaty (2004/C 101/08), 27 April 2004, paragraph 29.

¹⁴⁴ *Autorité de la concurrence* Decision 23-D-15, cited above, paragraph 1113.

¹⁴⁵ *Ibid*, paragraphs 1118 *et seq.*

¹⁴⁶ With regard to agreements between undertakings each operating, for the purposes of the agreement, at the same level of the production or distribution chain, the main block exemption regulations are as follows: Commission Regulation (EU) 2023/1066 of 1 June 2023 on the application of Article 101(3) TFEU to certain categories of research and development agreements and Commission Regulation (EU) 2023/1067 of 1 June 2023 on the application of Article 101(3) TFEU to certain categories of specialisation agreements. With regard to agreements between undertakings each operating, for the purposes of the agreement, at a different level of the production or distribution chain, and concerning the conditions under which the parties may purchase, sell or resell certain goods or services, the main block exemption regulation is Commission Regulation (EU) 2022/720 of 10 May 2022 on the application of Article 101(3) TFEU to categories of vertical agreements and concerted practices.

232. Failing that, the agreement in question may also benefit from an individual exemption, provided that the four conditions laid down in Article 101(3) TFEU and Article L. 420-4, 2° of the French Commercial Code are met. The undertakings must demonstrate the following four conditions¹⁴⁷:
- the agreement contributes to improving the production or distribution of goods or to promoting technical or economic progress;
 - users receive a fair share of the resulting benefit;
 - the restrictions resulting from the agreement are indispensable to achieving the objectives pursued by the agreement; and
 - the agreement does not afford the undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.
233. With regard to the first condition, the agreement must contribute to improving the production or distribution of goods or to promoting technical or economic progress. The agreement must contribute to objective efficiencies, understood in broad terms, including in particular increases in product variety and quality, improvements in production or distribution processes, and increases in innovation¹⁴⁸. The gains must also be objective, concrete and verifiable¹⁴⁹.
234. In its Guidelines on Horizontal Cooperation, the Commission gives examples of efficiency gains that can be generated specifically by agreements between competitors pursuing sustainability objectives (also known as sustainability agreements), including “*the use of less polluting production or distribution technologies, improved conditions of production and distribution, more resilient infrastructure, better quality products*”¹⁵⁰ or the fact of “*enabl[ing] consumers to make informed purchasing decisions by facilitating the comparison of products*”¹⁵¹.
235. Under the first condition, the parties to the agreement must therefore provide evidence to demonstrate, in particular, the agreement’s contribution to economic progress, the connection between the agreement and that progress, and the likelihood and significance of the anticipated progress¹⁵².
236. With regard to the second condition, the pursuit of an objective such as consumer information and sustainability – within the context of a concurrence of wills between rival companies, for example – could serve to demonstrate that consumers would receive a fair share of the benefits resulting from such concurrence of wills.

¹⁴⁷ See the judgment of the Court of First Instance, 27 September 2006, GlaxoSmithKline Services Unlimited v Commission of the European Communities, T-168/01, paragraphs 233 to 235.

¹⁴⁸ European Commission Guidelines on Horizontal Cooperation Agreements, cited above, paragraph 557.

¹⁴⁹ *Ibid.*, paragraph 559.

¹⁵⁰ *Ibid.*, paragraph 558.

¹⁵¹ *Ibid.*, paragraph 558.

¹⁵² *Autorité de la concurrence* Opinion 21-A-03 of 16 April 2021 on a request for an opinion from the French Film Mediator on film release schedules in cinemas, paragraph 103.

237. With regard to the third condition, the restrictive agreement must not impose restrictions on competition that are not indispensable to achieving the benefits generated by the agreement. The parties to the agreement must therefore demonstrate that there is no economically feasible and less restrictive means of achieving the efficiency gains sought, and that the restrictions on competition resulting from the agreement are reasonably necessary to achieve those gains¹⁵³.
238. This could be the case for a sustainability agreement if *“the parties can show that the consumers in the relevant market find it difficult, for example due to lack of sufficient knowledge or information about the product or the consequences of its use, to objectively assess whether the benefits that they will obtain from the sustainability agreement outweigh the harm that they will suffer from the agreement and that, as a result, they overestimate the magnitude of the immediate negative effects”*¹⁵⁴.
239. With regard to the fourth and final condition, the agreement must not afford the parties the possibility of eliminating competition in respect of a substantial part of the products in question. In essence, this condition ensures that there remains a degree of residual competition on the market(s) concerned, regardless of the extent of the benefits¹⁵⁵.

b) With regard to abuse of a dominant position

240. In the case of abuse of a dominant position, an undertaking in a dominant position could also provide justification related to consumer protection or sustainability to prevent the qualification of abuse set out in Article 102 TFEU and Article L. 420-2 of the French Commercial Code. It must demonstrate either that its conduct is objectively necessary or produces substantial efficiencies that outweigh any anticompetitive effects on consumers¹⁵⁶. In this context, competition authorities assess whether the conduct in question is indispensable and proportionate to the objective allegedly pursued by the dominant undertaking¹⁵⁷.

¹⁵³ *Autorité de la concurrence* Opinion 21-A-03 of 16 April 2021 on a request for an opinion from the French Film Mediator on film release schedules in cinemas, paragraph 107.

¹⁵⁴ European Commission Guidelines on Horizontal Cooperation Agreements, cited above, paragraph 563.

¹⁵⁵ European Commission Guidelines on Horizontal Cooperation Agreements, cited above, paragraph 592.

¹⁵⁶ Judgment of the Court of Justice, 27 March 2012, *Post Danmark*, C-209/10, paragraphs 40 and 41 and case law cited; judgment of the Court of Justice, 30 January 2020, *Generics (UK) and Others*, C-307/18, paragraph 165; judgment of the Court of Justice, 12 May 2022, *ServizioElettrico Nazionale and Others*, C-377/20, paragraph 84; and judgment of the Court of Justice, 21 December 2023, *European Superleague Company*, C-333/21, paragraphs 201 and 202. The examples provided in this section do not constitute an exhaustive list of objective justifications that may be invoked in cases falling under Article 102 TFEU.

¹⁵⁷ Guidance on the Commission’s enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings, 24 February 2009.

241. With regard to objective necessity, the undertaking in a dominant position must demonstrate that its conduct was objectively necessary to achieve a specific objective¹⁵⁸. Objective necessity may arise from legitimate commercial considerations¹⁵⁹, technical justifications¹⁶⁰, benefits to consumers¹⁶¹, or reasons relating to environmental protection¹⁶² or, more generally, the public interest¹⁶³. However, EU courts have clarified that “*it is clearly not the task of an undertaking in a dominant position to take steps on its own initiative to eliminate products which, rightly or wrongly, it regards as dangerous or at least as inferior in quality to its own products*”¹⁶⁴. Regardless of the justification put forward, the actual or potential foreclosure effects resulting from the conduct must be proportionate to the allegedly necessary objective¹⁶⁵.
242. With regard to efficiency gains, the undertaking invoking such gains must demonstrate that the foreclosure effects resulting from the conduct of a dominant undertaking are counterbalanced, or even outweighed, by advantages in terms of efficiency that also benefit consumers¹⁶⁶.

3. TAKING INTO ACCOUNT THE HARM TO CONSUMER INTERESTS AND SUSTAINABILITY IN CASE OF SANCTIONS

243. If an infringement were to be established, the *Autorité* would take into account a range of factors in determining the amount of any fine, including the seriousness of the facts. In its assessment, it may consider relevant competitive parameters such as price, but also innovation, quality and the environment.

¹⁵⁸ Judgment of the Court of Justice, 3 October 1985, CBEM v CLT and IPB, C-311/84, paragraphs 26 and 27.

¹⁵⁹ Judgment of the General Court, 10 November 2021, Google and Alphabet v Commission (Google Shopping), T-612/17, paragraph 552.

¹⁶⁰ *Ibid.*

¹⁶¹ Judgment of the French Court of Cassation, Commercial Chamber, 14 November 1995, appeal no. 94-17.397. See, also, *Autorité de la concurrence* Decision 15-D-13 of 9 September 2015 on a request for interim measures by Gibmedia and *Conseil de la concurrence* Decision 05-D-46 of 28 July 2005 on practices implemented by Jaeger Lecoultré.

¹⁶² *Conseil de la concurrence* Decision 05-D-60 of 8 November 2005 on practices implemented by the Cistercian Congregation of the Immaculate Conception, Planaria, the State and the municipality of Cannes.

¹⁶³ *Conseil de la concurrence* Decision 92-D-35 of 13 May 1992 on a complaint by the Société du Journal Téléphoné against the management of the French National Meteorological Service.

¹⁶⁴ Judgment of the Court of First Instance, 12 December 1991, Hilti AG v Commission, T-30/89, paragraph 118.

¹⁶⁵ Judgment of the Court of Justice, 12 May 2022, Servizio Elettrico Nazionale and Others, C-377/20, paragraph 103.

¹⁶⁶ Judgment of the Court of Justice, 15 March 2007, British Airways v Commission, C-95/04 P, paragraph 86; judgment of the Court of Justice, 6 October 2015, Post Danmark, C-23/14, paragraph 48; and judgment of the Court of Justice, 6 September 2017, Intel v Commission, C-413/14 P, paragraph 140.

244. In the aforementioned floor covering decision, the *Autorité* held that the practices in question, which had, in particular, “*potentially deterred companies from improving the technical performance of their products and investing in innovative processes aimed at improving their environmental performance, especially with regard to the emission of volatile organic compounds, which are considered likely to have an impact on human health*”¹⁶⁷, were, by their very nature, particularly serious.
245. Similarly, in the aforementioned BPA decision, the *Autorité* noted, in its assessment of the seriousness, that “*the quality of food products is a particular source of concern for consumers in terms of looking after their health [and that] the practices allowed the presence of BPA in the composition of coatings to be concealed to their detriment, in particular affecting the most vulnerable, who are most susceptible to the adverse health effects of certain compositions*”¹⁶⁸.

¹⁶⁷ *Autorité de la concurrence* Decision 17-D-20, cited above, paragraph 456.

¹⁶⁸ *Autorité de la concurrence* Decision 23-D-15, cited above, paragraphs 1683 and 1687.

Conclusion

246. Rating systems, by providing information on specific sustainability-related characteristics, play a key role in stimulating competition. It is therefore essential that such systems are founded on robust development methodologies and that all private and public stakeholders ensure that their design and implementation do not contravene competition law.

Deliberated on the oral report by Émilie Baronnat and Fanny Giroud, case officers (*rapporteurs*), and the contribution of Morgane Cure and Mathilde Poulain during the inquiry, representing the Chief Economist's Team, and Lauriane Lépine, Deputy General Rapporteur, by Benoît Cœuré, President, Irène Luc and Vivien Terrien, Vice-Presidents, and Savinien Grignon-Dumoulin and David Rousset, Board members.

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