

ARTICLE

THE COMPETITION AUTHORITY WISHES TO MODIFY FRENCH CONTROL OVER CONCENTRATIONS

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After the public consultation launched in October 2017, on June 7, 2018, the Competition Authority (the "Authority") announced several measures for the modernization and simplification of French control over concentrations.

The press release begins with good news for companies: there will not be any new control threshold based, for example, on the value of the transaction.

We remember the commotion caused at the competition authorities by acquisitions of digital or high-tech companies that were not subject to the control for concentrations due to the lack of or low turnover realized by the target although the transaction amount was particularly high (for example, Facebook's acquisition of WhatsApp for \$19 billion). In reaction, Austria and Germany introduced thresholds based on the transaction value. The European Commission stated that it was thinking about it.

For the Authority, the introduction of such thresholds, "*is not justified for the French economy*", because the number of transactions potentially involved and which would create competition concerns are "*ultimately limited*" and that a threshold as a transaction value would not necessarily allow the Authority to understand them all. This being the case, the Authority considers that the introduction of a control after the fact, at its initiative [1], is something that should be explored. Therefore, it is going to submit for consultation a, "*summary document setting forth the outline of such a control.*"

The Authority also rejects an adjustment of the currently applicable threshold amounts and elimination of the thresholds that are specific to the retail business, which are "*still justified, given the local competition issues that may arise.*"

In addition, the Authority makes many procedural proposals.

Firstly, to reduce companies' administrative costs, it proposes to eliminate financial information required in the notification file. Moreover, only one copy of the file will now have to be provided, as opposed to four currently.

Also, the Authority wants to extend the scope of the simplified procedure. The following transactions would be affected:

- the cumulative market share of the affected companies is less than 25% if there is horizontal overlapping of businesses (the companies have businesses in the same markets);
- the cumulative market share of the affected companies is less than 50% and the market share increment is less than 2 points if there is horizontal overlapping of businesses;
- the market share of the affected companies in a market in which they do business is less than 30% if there is a vertical relationship (the companies have businesses in different but related markets);
- in case of acquisition of the exclusive control over a company when the buyer already has the shared control of this company;
- the creation of a full-function joint venture that does business exclusively outside of France;
- the taking of joint control of an off-plan real estate asset.

Furthermore, the Authority wishes to implement an ultra-simplified and computerized notification: transactions currently eligible for the simplified procedure will be able to be notified on the Authority's website via an online form that will allow the affected companies and their lawyers to have a guide to file their notification file.

Most of these measures should be implemented before the end of 2018.

Lastly, the Authority makes a commitment to work on the revision of the guidelines for controlling concentrations, including to take into account the changes in the Authority's decision-making practices that have occurred in recent years and the aforementioned procedural modifications. These guidelines should be published in the spring of 2019.

[1] Such a control exists, for example, in Sweden, the United Kingdom and the United States.

