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THE FRENCH COMPETITION AUTHORITY PUBLISHES ITS ROADMAP FOR 2020



Competition, Retail and Consumer Law Commercial and International Contracts | 14/01/20 |

In 2019, the French Competition Authority (hereinafter the "Authority") focused in particular on digital issues, the distribution sector and competition in French overseas territories. In its press release of January 9, 2020 [1], in which it announced its "priorities for the year 2020", it indicated that these subjects would remain at the forefront for the year 2020 and others would also be on its agenda.

Digital

Digital will remain at the core of the reflections and actions that the Authority wants to carry out in 2020.

It aims to better assess the "economic changes brought about by the digital revolution (particularly in the distribution sector)", to take into account economic developments such as the impact of the digital revolution in the financial sector (dematerialised financial services, fintechs, blockchains, etc.) and "*to be able to prevent and punish new forms of agreements or abuse of dominant position*". In particular, the sectors of collection and exploitation of personal data, the use of algorithms and online advertising will be particularly targeted. In this respect, the Authority confirmed that it would examine, in March 2020, the request for interim measures submitted by several players in the press sector on the modalities of related rights implementation.

In order to play this ambitious role, the Authority will set up a Digital Economy Unit, which will report directly to the "Rapporteur General". The aim of this unit will be to develop an expertise on all digital issues and to provide the best possible understanding of these issues in the context of companies' mergers or anti-competitive practices. New tools will be developed for this purpose, particularly with regard to investigation methods. Cooperation with academics, specialised research institutions, regulatory authorities, government units and other competition authorities at European and International level will also be set up. The set-up of this new unit is concomitant with the establishment of the digital expertise division that will be set up by the Government.

The Authority intends to participate in the work dedicated to the implementation of a new legal framework relating to the competitive issues associated with platforms.

At the international level, the Authority will continue its efforts with the G7 competition authorities to identify common approaches to the competitive assessment of digital issues, which it believes is crucial. A conference on this subject will be organised in Paris in the second half of 2020.

Public procurement

The new economy does not necessarily exclude the old economy from the Authority's agenda. It states that it wants to "*pay particular attention to tackling anti-competitive practices in public procurement*" which are "*particularly exposed to the risk of cartels, that cause considerable harm to public purchasers and affect the proper use of public money*".

It adds that it will be "*particularly vigilant on worksites relating to major infrastructure requiring the award of large public contracts*".

Distribution

The distribution sector continues to be a point of attention for the Authority, particularly regarding new mergers in the retail distribution sector (particularly food) which have been notified to the Authority under merger control and which are currently being analysed.

In addition, it will also publish a study in 2020 on new commercial strategies in the distribution sector, such as 'phygital' and 'omnicanal' strategies.

Professional associations, orders and unions

The Authority points out that trade unions, associations and professional organisations are regularly associated with infringements of competition law, and may even be the instigators of such infringements[2].

It will publish in 2020 a thematic study on the application of competition law to trade unions and professional organisations, which will aim to promote compliance by identifying practices that may constitute infringements of competition law.



Furthermore, the transposition of Directive 2019/1, known as ECN+, which aims to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market [3], will substantially tighten the regime applicable to associations of undertakings. From now on, penalties may amount to an aggregate of 10% of the worldwide turnover of each undertaking which is a member of the trade union or association, compared with a maximum of €3 million under the previous scheme.

Sustainable development

The Authority wants to make sustainable development an essential point of its action. It will be part of the working group on the challenges raised by global warming made up of the AMF, the CSA, ARCEP, CNIL, Hadopi, ART, CRE and Arjel[4].

This collaboration will enable the various regulatory authorities to use their intervention levers in the face of climate change issues, to strengthen incentives for companies and to ensure that the public is properly informed.

At the same time, the Authority undertakes to detect and punish practices that restrict competition, which would be detrimental to the protection of the environment and the interests of consumers. The Authority has already sanctioned such practices in the past with the decision on the PVC and linoleum flooring cartels[5].

It will also seek to extend discussions on sustainable development at International and European level, particularly in the context of the international competition network.

Revision of the merger guidelines

At the beginning of 2020, the Authority will adopt new guidelines on merger control in order, inter alia, to adapt to developments related to the digitalisation of the economy. In particular, the acquisition of certain market players whose transactions are below the notification thresholds, where an effect on competition is proven (so-called "killer acquisitions"), will be more and better taken into account.

In an educational approach, the Authority will make available a Competition Guide and a study on behavioural commitments in the field of competition. The purpose of these two documents will be to explain the basic principles of competition law and to make companies aware of the Authority's action and methods.

Other topics on the Authority's agenda for 2020

The Authority will lead a reflection on compliance policies, which will be joined by managers and employees. This project aims to raise the awareness of a panel of experts about the competition risks faced by companies.

The Authority will continue its work with the OECD and the International Competition Network (ICN), which will take a further step forward with the implementation in 2020 of the new tool on procedural fairness in competition proceedings.

In line with its opinion in 2019, the Authority will remain particularly vigilant on competition issues in French overseas territories and is expected to issue several decisions on this subject in 2020. An opinion on competition issues in the Corsican economy will also be issued in 2020.

12 months will not be too much time for such a program.

[1] <https://www.autoritedelaconurrence.fr/fr/communiqués-de-presse/autorite-de-la-concurrence-annonce-ses-priorites-pour-lannee-2020>

[2] Decision n°15-D-19 of 15 December 2015 regarding Delivery service (transporting parcels) industry; Decision n°17-D-20 of 19 October 2017 regarding Cartel in the Floor Coverings Sector; Decision n°19-D-12 of 24 June 2019, the Authority fines GIE Notimo and the chambre interdépartementale des notaires de Franche-Comté for anticompetitive practices; Decision n°19-D-19, the Authority fines the Ordre des Architectes for anticompetitive agreement.

[3] <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L0001&from=FR>

[4] French Competition Authority, Press release of 19 December 2019.

[5] Decision n°17-D-20 of 19 October 2017 regarding Cartel in the Floor Coverings Sector
