ANNUAL
REPORT
2022

TAKING CARE OF THE FUTURE

Autorité
de la concurrence

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© IMAI Toshimitsu, Vagues d'hiver, 1982 – Acrylic on canvas

BENOÎT CŒURÉ
PRESIDENT OF THE
AUTORITÉ DE LA CONCURRENCE

THE PAST YEAR HAS ONCE AGAIN DEMONSTRATED THE PROACTIVE ROLE PLAYED BY THE AUTORITÉ DE LA CONCURRENCE IN MAINTAINING AN OPEN AND FAIR COMPETITIVE MARKET.

COMPETITION PROTECTS EVERYONE'S INTERESTS

2022 has been very busy for the Autorité de la concurrence, with a large number of decisions, some of them very high-profile. Could you give us your opinion of the work accomplished in recent months?

Indeed, the past year has been very busy and has once again demonstrated the proactive role of the Autorité de la concurrence in maintaining an open and fair competitive market. The total amount of the fines imposed in 2022 reached 467.9 million euros. In terms of the number of decisions, the majority of our activity remained merger control, with 257 mergers and acquisitions reviewed. As you alluded to earlier, and it will not have escaped anyone's attention, the proposed acquisition of M6 by TF1 was one of the major transactions to attract media attention. I am returning to this case because, as usual, the Autorité meticulously assessed the project, respecting the adversarial dialogue with the parties (including during the Board hearing in September), to form a robust, pragmatic opinion. We concluded that this transaction entailed strong competitive risks in the advertising market, the channel distribution market and the rights acquisition market. The rise of online advertising is a reality that the Autorité has been following closely since its 2019 opinion, but in this case, the competitive pressure of digital technology would not over-come the risks identified for advertisers, either at the time of the analysis or from a forward-looking perspective. Unfortunately, the proposed commitments did not resolve the competition concerns, and in view of this deadlock the parties decided to withdraw their proposed transaction. We therefore assumed our responsibilities in this matter by protecting companies that are crucially dependent on television advertising and, through them, their employees and customers. Another high-profile case was that of the related rights of the press, which enabled the Autorité to assert the need for a transparent, effective and fair negotiating framework between Google and press agencies and publishers for the remuneration of related rights – and, in so doing, to help protect the freedom of expression and pluralism essential to the functioning of our democracy.

How does the Autorité plan to conduct its business in a context marked by the superposition of several crises (inflationary, energy, environmental)?

Let's face it, competition policy is not the main instrument in the fight against inflation. This issue is primarily a matter of monetary policy and, in its redistributive aspects, budgetary and tax policy. But the current crisis is special because, as the European Central Bank has established, rising corporate profits play a major role in the present inflationary dynamic, even more so than wages. Combating excessive market power is always beneficial for the proper functioning of a market economy, but it takes on particular importance in this context. This is particularly true in sectors that are at the heart of the current inflationary dynamic, such as energy and food. In the energy sector, in parallel with the ongoing discussions on reforming the European market, the Autorité has endeavoured to demonstrate the importance of the fair operation of this market through its litigation decisions concerning EDF and Gaz de Bordeaux, as well as its opinion on regulated access to historical nuclear electricity. In the food sector, the Autorité has not been referred to directly, but has maintained an active watch on regulatory and industrial developments in the mass retail distribution sector, in liaison with the players concerned.

TOTAL AMOUNT OF FINES HANDED DOWN IN 2022

€467.9 M

IN RECENT YEARS THE AUTORITÉ HAS BEEN, AND INTENDS TO CONTINUE TO BE, PARTICULARLY PROACTIVE IN AND COMMITTED TO DIGITAL ISSUES.

Is the high cost of living in the French overseas territories still a key concern for the Autorité?

I would like to strongly reaffirm that our action in the French overseas territories is, and remains, one of our priorities. The particularly high cost of living and the phenomenon of high concentration require us to remain strongly involved and continue our commitment. Our activity in 2022 bears witness to this, as of the 26 litigious decisions taken by the Autorité, six concerned the French overseas territories. We also took a number of decisions concerning mergers, which shows that our intervention is not weakening.

In terms of outlooks, we are taking a close look at the transport sector, which is known to be a major contributor to price rises. Two dossiers are currently being investigated, one in the passenger air transport sector and the other concerning port services.

We also continue to work closely with the DGCCRF (the French Directorate General for Competition Policy, Consumer Affairs and Fraud Control), whose local presence and network are absolutely vital for detecting clues in the field, as well as with other government departments. The Autorité also continues to work with the "sister" competition authorities of New Caledonia and French Polynesia to support their development and capacity building.

Digital technology plays an important role in the work of the institution. Can you tell us about it?

Rapid digitisation permeates every sector of the economy, leading to profound transformations and raising new competitive issues. It is therefore essential that we deploy substantial resources in these fast-moving topics. Against this backdrop, in recent years the Autorité has been, and intends to continue to be, particularly proactive in and committed to digital issues.

First of all, in terms of litigation, the Autorité's action in 2022 was particularly noteworthy, especially on the issue of related rights and in the online advertising sector. The Autorité's priority is to fight the problematic practices of large platforms such as Meta or Google, when these are detrimental to the customers, competitors and consumers of the ecosystems concerned. In 2023, the interim measures we took regarding Meta in the advertising verification sector (Adloox case) extend this trend in anticipation of the obligations of the European Digital Market Act (DMA) coming into force in 2024.

Other key cases are currently being investigated, including one involving Apple and the introduction in the new version of its iOS of an ATT prompt that is highly contested by the different players in the online advertising sector.

Lastly, on an advisory level, in 2022 the Digital Economy Unit mobilised a significant portion of its resources to assess the functioning of the cloud sector as part of a major sector-specific inquiry.

With regard to this sector-specific inquiry, could you remind us of the reasons that led the Autorité to take an interest in cloud computing, and what are the conclusions of this opinion?

I wanted to launch this sector-specific inquiry as soon as I arrived as I consider this sector to be strategic and characterised by a fast-changing ecosystem. We are really witnessing the emergence of a new essential service, and I think it is crucial for the Autorité to carry out in-depth work to understand its ins and outs. One figure speaks for itself: 560 billion euros – the estimated turnover that the sector is expected to generate in Europe by 2030.

In the purest tradition of what it has already had the opportunity to do on numerous occasions, the Autorité has become involved in an issue at an early stage, so that it can document, analyse, research and formulate recommendations to the players and to government. In this way, our teams acquire in-depth knowledge of the issues involved, even before they are referred to for litigation, so that they are ready to respond when the time comes. The investigation of our opinion enabled us to respond quickly to the request of French Deputy Minister Jean-Noël Barrot when he announced a draft law to secure and regulate the digital space. In concrete terms, we recommended that the government ensure consistency between the national and European frameworks (in particular the provisions of the future European Data Act), make a clearer distinction between the different types of cloud credits and take better account of the different "layers" of cloud computing services when defining interoperability requirements.

IN THIS NEW WORLD OF REGULATION, WE NEED TO ENSURE THAT THERE IS PERFECT COORDINATION BETWEEN THE ACTIONS OF NATIONAL COMPETITION AUTHORITIES AND THOSE OF THE EUROPEAN COMMISSION.

The entry into force of the European Digital Markets Act ("DMA") is a milestone in European digital regulation. How is the Autorité preparing for its application, and how will it be involved in its implementation?

The entry into force of the DMA on 2 May marked a turning point in Europe's regulation of digital platforms. As you know, the Autorité has been particularly involved in the discussions and negotiations on this text, alongside the French authorities. It will continue to be fully involved in the implementation phase now that the text is entering into force.

First of all, it is important to bear in mind that the DMA and competition law are complementary tools, intended to reinforce each other. The Autorité will therefore continue to use the competition policy toolbox to regulate operators and practices not currently covered by the DMA. Our recent decision on the Adloox case showed once again how powerful and flexible this toolbox is. Forthcoming decisions by the competition authorities will help guide future changes to the DMA.

In this new world of regulation, we need to ensure that there is perfect coordination between the actions of national competition authorities and those of the European Commission. For each case involving a designated gatekeeper, it will therefore be necessary to decide together on the most effective and appropriate instrument and our respective roles. To this end, we have been working closely for several months with our counterparts in the European Competition Network, to best ensure that this new regulatory approach complements competition law and to determine the most appropriate allocation and coordination mechanisms. These questions can also feed into our internal reflections on current cases. This means that we are already in a position to discuss with the Commission the possible future application of the DMA to practices currently being examined by the Autorité.

Lastly, the DMA opens up new avenues of action for the Autorité. The draft law to secure and regulate the digital space, presented on 10 May 2023, plans to give the Autorité new prerogatives so that it can be fully involved in regulating the practices of gatekeepers alongside the European Commission. This will enable us to carry out investigations

into any breaches of the obligations laid down in the DMA – and then pass on our findings to the Commission, which can choose whether or not to initiate legal proceedings and adopt a decision under the DMA. We may also be required to support DMA investigations carried out by the Commission. Lastly, the Autorité will be able to collect reports from third parties concerning possible breaches of the DMA and, if necessary, analyse and forward this information to the Commission.

A reform of whistleblower protection has also just come into force. What are the implications for the Autorité?

Let me begin by saying a few words about whistleblowers, who represent an important democratic watchdog in our constitutional States, particularly when it comes to major issues such as the fight against corruption, environmental damage and for civil liberties. To create a clear and protective pathway, the Law of 21 March 2022 and the Decree of 3 October 2022 list the authorities competent to receive and process alerts, including the Autorité de la concurrence for anticompetitive practices. The Autorité is fully committed to developing the tools needed to participate in this process. It has already launched a project that will soon result in a dedicated online form for whistleblowers. I would also like to pay tribute to the vital work of the Défenseur des droits ("Defender of Rights"), who will be responsible for guiding whistle-blowers and redirecting alerts when an authority is not competent.

How does the Autorité view the relationship between competition law and criminal law?

The Autorité has always supported the idea of a useful complementarity between criminal law and competition law. Insofar as it enables to grasp anticompetitive infringements committed by individuals, criminal law effectively complements administrative enforcement and plays a full part in the effective suppression of such misconduct. As sentences are fairly stigmatising for natural persons, this also contributes to better prevention.

THE AUTORITÉ IS FULLY COMMITTED TO DEVELOPING THE TOOLS NEEDED TO PARTICIPATE IN THE WHISTLEBLOWING PROCESS.

For a long time, the Investigation Services have, when necessary, reported to the Public Prosecutor's Office on the basis of Article 40 of the French Code of Criminal Procedure (Code de procédure pénale), which obliges civil servants to report to the Public Prosecutor any information relating to crimes or offences of which they become aware in the course of their duties.

The Autorité continues to develop practical cooperation and procedural and technical dialogue with the *Parquet national financier* (National Financial Prosecutor).
We meet on a regular basis and continue to work together to find appropriate ways of using our respective powers.

Compliance is also becoming a hot topic. Do you think that a competition rules compliance programme has become a must-have for companies today?

Yes, I do believe that! The Autorité has long been convinced of the need for compliance and continues to promote it through advocacy, providing companies with tools that can help them commit to a virtuous path of effective prevention. This conviction is even stronger today, in a society that is even more sensitive to the need to respect values. Compliance has become even more important, and we are witnessing its increasing development in companies for strategic and image reasons. But we should not be naive. While the ethical approach to competition ultimately promotes free and undistorted competition in the economy, it first and foremost allows companies to optimise the management of financial and reputational risks.

To support compliance efforts, ten years after the publication of its framework document on the subject, the Autorité has decided to adopt a new version that provides all players with benchmarks on the objectives, definition and implementation of this type of programme. It encourages all companies, from SMEs to large companies to develop such a programme, either independently or by integrating it into a general compliance policy (in the areas of anti-money laundering and corruption, protection of personal data, social, societal and environmental responsibility, etc.) and to devote the resources necessary to ensure its success.

The Autorité has a wide range of procedures at its disposal for carrying out its missions. Do you consider that one of them is used more than the others?

I would say that the Autorité uses all its instruments to respond in an appropriate and targeted way to each case and to the various issues involved. If I had to focus on one, it would be interim measures, which meet the ever-increasing demand for rapid action in the business world. We are one of the countries that uses this tool the most. Pending a decision on the merits of the case, it enables us to avoid serious and immediate harm to the interests of an economic sector or company. A recent example is the Adloox case I mentioned earlier

The Autorité is continuing its mission to regulate the legal professions. How do you view the reform begun in 2015? Is there still room for improvement?

Today, everyone agrees that the reform has been a success, with many new professionals joining the various professions concerned. The effects have been remarkable. For example, the number of private practitioners has risen by more than 30% in six years in areas with shortages, and the new workforce is significantly younger and more female.

In view of this positive finding, which meets the initial objectives of the reform, we have proposed a smaller number of new offices for lawyers at the French Supreme Courts *(avocats au Conseil d'État et à la Cour de cassation)* than was the case for the first map revisions.

The Autorité is also currently reassessing the situation for notaries and commissioners of justice (the result of the merger of bailiffs and judicial auctioneers), taking into account changes in the economic context. In due course, the Autorité will also issue its opinion on the new codes of ethics for these professions.

Lastly, 2022 was also an opportunity for the Autorité to intervene in litigation to ensure that the opening up of the profession of court bailiff to competition was not hindered by the behaviour of professionals already in place. It therefore handed down penalties for cartel practices to two joint service offices and several of their members, all court bailiffs in Paris and Seine Saint Denis. The purpose of the cartel was to block new entrants from becoming members of the joint professional structure.

DEFENDING THE SINGLE MARKET AND ENSURING THE EU LEADS THE WAY IN THE DIGITAL AND CLIMATE TRANSITION

MARGRETHE VESTAGER

EXECUTIVE VICE-PRESIDENT OF THE EUROPEAN COMMISSION AND COMMISSIONER FOR DIGITAL AGENDA AND COMPETITION

INTERVIEW

2022 was marked by a surge in inflation, due in particular to the crisis in energy supplies, against the backdrop of the war in Ukraine. How did the Commission react to this crisis and what responses can it offer to this situation?

Russia's military aggression against Ukraine has had serious repercussions on the European economy, particularly on energy prices – these have eased recently but prices still remain well above pre-crisis levels.

The Commission reacted and implemented a two-pronged approach from the very start of the crisis: enabling Member States to compensate both individuals and companies for (part of) the increase in energy costs, and supporting them in speeding up the energy transition in order to move away from the current dependence on fossil fuels, particularly Russian gas, and achieve our climate objectives. As for these objectives, the crisis has been a wake-up call, showing us that we need to do more and do it faster. The new Temporary Crisis and Transition Framework, and the revision of our General Block Exemption Regulation, both announced on 9 March 2023, reflect this new urgency. This effort is also in line with EU policies aimed at accelerating the transition to carbon neutrality, notably the RePowerEU plan and the industrial plan of the European Green Deal.

A number of reforms to European competition law are currently underway: Regulation 1/2003 is currently being revised, and a package of future guidelines on abusive exclusionary practices by dominant undertakings was announced. What are the main objectives of these various projects?

These different revisions correspond to different objectives. Firstly, Regulation 1/2003 is now 20 years old, and the time has come to take stock. This assessment is largely positive, particularly as regards the fundamental contribution of the regulation, namely the decentralised application of European competition law. This success was made possible by the proactive action of national competition authorities, which have been working alongside the Commission to implement the law. I have to say, moreover, that the Autorité de la concurrence has always been at the forefront of this effort, consistently ranking among the top national authorities in terms of the number of cases opened on the basis of European rules. I would therefore like to pay tribute to the work of the Autorité, whose active involvement has made a major contribution to the success of the European Competition Network. In this respect, it is encouraging to note that President Cœuré is continuing and even intensifying the Autorité 's European involvement.

The evaluation of Regulation 1/2003 and its implementing regulation, Regulation 773/2004, does not therefore aim to revisit this fundamental aspect of decentralised application. The main objective is rather to know whether our investigation procedures are fit for the digital age. The regulation was drawn up at a time when the documents sought were mainly "on paper". Today, the digitisation of the economy is having a major impact on our investigation procedures. This raises the question of whether the tools provided by Regulation 1/2003 are still as effective as they once were. For example, with the development of teleworking, are inspections of business premises and requests for information still the best ways to obtain information? Similarly, are the interim measures provided for in the regulation suitable for rapid intervention regarding players in the digital sector?

I WOULD THEREFORE LIKE TO PAY TRIBUTE TO THE WORK OF THE AUTORITÉ, WHOSE ACTIVE INVOLVEMENT HAS MADE A MAJOR CONTRIBUTION TO THE SUCCESS OF THE EUROPEAN COMPETITION NETWORK.

It should be noted that at this stage there has been no conclusion within DG Competition as to whether these two instruments should be revised. The assessment procedure is still underway, and the aim is to publish a working document containing the results of this assessment by mid-2024. The next step is to hold a conference on the 20th anniversary of Regulation 1/2003 in Brussels on 20 June 2023.

With regard to exclusionary abuse, last March the Commission took an important initiative by announcing that it would begin work on drawing up guidelines. The new guidelines will draw on case law and the Commission's experience to date to provide a fully updated analytical framework on how to approach conduct that may constitute abuse.

In recent years, the European Court of Justice and the General Court have handed down a number of rulings on Article 102, and in particular on concepts of importance to abusive exclusionary conduct, such as the assessment of tying and rebates, and the tools that can be used to assess abuse (such as the "as efficient competitor" test) and the notion of "competition on the merits".

On 27 March, the Commission published several guidance documents on the application of Article 102. It first launched a "call for contributions", inviting all interested parties to submit their observations. It will also launch a public consultation (Member States and NCAs will also be consulted) on draft guidelines.

Secondly, the Commission has adopted a communication amending the 2008 guidance document on Article 102, updating it to bring it into line with current Commission practice. The communication makes specific changes to five important concepts and notions in the guidance document. As the preparation of the guidelines is a longer-term project, it was considered important to provide greater clarity and transparency on the Commission's priorities and practices now, in the light of evolving case law to date.

How do you see the relationship between industrial policy, trade policy and competition law, a theme that is regularly in the news?

One of the aims of EU competition policy is to ensure that European companies, which face increased global competition, have access to innovative, competitive products and services at competitive prices. This is the key to increasing the competitiveness of the European economy as a whole.

Competition rules apply to all companies operating in the European Union, regardless of sector or nationality. Competition policy is based on the principle that continuous exposure to competitive pressure is the best way to help European companies develop and innovate to gain market share. Competition policy therefore complements industrial policy.

However, it cannot be subsidiary to it. The treaty certainly does not lend itself to such an interpretation. While the EU needs a diverse industrial fabric, the Commission is obviously not opposed in principle to industrial consolidation operations. Its role is simply to ensure that the competition principles governing EU law are not undermined. If this kind of operation raises risks for competition, it is for companies to propose serious measures to remedy the situation. There are many examples of solutions of this type. A case in point is the Holcim/Lafarge merger, in which targeted asset divestitures enabled the Commission to approve the emergence of a world leader in the cement sector, without compromising European competition principles.

Thus, defending the single market, and more specifically our industrial sectors, as well as ensuring that the EU paves the way for the digital and climate transition, implies upholding our competition rules. Greater attention must also be paid to innovation, which will be a key element in this context. Important Projects of Common European Interest ("IPCEI") can meet these challenges. For example, the Commission has approved IPCEI in the fields of batteries and hydrogen. These projects, worth 3.2 billion euros and 5.9 billion euros respectively, represent a regulated derogation from European competitive principles for innovation purposes. They represent an important contribution to the EU's industrial strategy.

In addition to the practical implementation of competition law, the Commission is also pursuing a more global strategy, involving a more structural review of its competition policy orientations.

IN THE CURRENT GLOBAL CONTEXT, THE COMMISSION HAS UPDATED ITS ROADMAP TO ENHANCE ITS OPEN STRATEGIC AUTONOMY, NOTABLY THROUGH ITS TRADE POLICY. IN THIS RESPECT, ENSURING OPEN AND COMPETITIVE MARKETS IS ONE OF THE PRIORITIES OF TRADE AGREEMENTS INVOLVING THE EU.

This is the case, for example, with the new text of the horizontal guidelines, which includes a new chapter on sustainability agreements. I am also thinking of the guidelines on climate, environmental protection and energy for assessing State aid, which broaden the categories of investment and technology that Member States can choose to support to fulfil the ambitions of the Green Deal, such as clean mobility infrastructure, renewable hydrogen, electricity storage and the decarbonisation of production processes.

Furthermore, in the current global context, the Commission has updated its roadmap to increase its open strategic autonomy, notably through its trade policy. In this respect, ensuring open and competitive markets is one of the priorities of trade agreements involving the EU. Such competition requirements will be beneficial for improving the resilience of Europe's industrial sector while strengthening the Union's trajectory to reduce greenhouse gas emissions. If third countries attempt to distort competition, the Commission will be able to respond with innovative instruments such as the Foreign Subsidies Regulation.
In short, competition policy does not substitute to the EU's industrial or commercial policies, but complements them, providing them with a stable, lasting and robust foundation from which to evolve favorably, in line with the principles and challenges defined by the Commission.

The issue of the environmental transition is becoming increasingly important in the implementation of all public policies, and the application of competition law is also fully involved. Following the introduction of a brand-new chapter in the "horizontal" guidelines devoted entirely to sustainability agreements, how do you see this issue developing?

The Commission has played a pioneering role in the debate on the greening of competition policy. Over the past three years, the Commission has carried out an in-depth consultation on how all competition law instruments can contribute to achieving the objectives of the Green Deal.

THE COMMISSION HAS PLAYED A PIONEERING ROLE IN THE DEBATE ON THE GREENING OF COMPETITION POLICY.

In response to requests for guidance and legal certainty, the Commission has proposed a new chapter on sustainability agreements as part of its review of horizontal block exemption regulations and guidelines.

The Commission has just updated these guidelines. Its approach is based on well-established cartel principles: the overall effect of an agreement between competitors on the relevant market must be at least neutral. The principle that consumers should receive full compensation for the competition restriction incurred has been criticised by some stakeholders in the course of the debate on sustainability. They consider that the wider benefits to society (e.g. reduced pollution, CO_2 emissions) should be taken into account in the assessment and as the case may be, balanced against the restriction of competition arising from the agreement. We understand this, but we can also see the major risks this entails for the application of competition rules. This would mean that the "relevant market" would no longer be the appropriate framework for assessing competition rules. Competition authorities are not equipped, nor do they have a political mandate, to balance the various public interest objectives that go beyond the functioning of competitive markets.

However, I am confident and believe that the majority of agreements, which have a genuine sustainability objective, will not fall within the scope of antitrust rules, either because they do not affect a parameter of competition such as the price, quantity and quality of products, or because they can benefit from an exemption in view of the benefits they bring to consumers. To this end, the new chapter includes a list of examples of sustainability agreements that do not restrict competition and also offers a clear and useful analytical framework to better assess whether these benefits can be taken into account.

Now that the new guidelines have been approved by the Commission, we intend to gain practical experience of assessing these agreements on a case-by-case basis. This new chapter is only the starting point of this approach, and we should be able to develop our orientations on sustainability cooperations with regard to competition law fairly quickly.

We are ready to enter into dialogue with companies seeking guidance when contemplating this type of agreements. This is why we encourage companies facing novel and unresolved questions to seek informal guidance from the Commission under the Informal guidance notice revised in October 2022.

OUR COMMITMENT AT THE HEART OF THE ECONOMY

THE AUTORITÉ AT A GLANCE

A GAIN FOR THE ECONOMY THROUGH THE WORK OF THE AUTORITÉ BETWEEN 2011 AND 2022 ACCORDING TO THE CALCULATION METHOD FORMULATED

(OECD method for assessing the impact of competition authorities' activities).

20.1

BILLION EUROS

17 MEMBERS OF THE BOARD
DECISION AND OPINION

199 AGENTS
EXPERTISE

€23.16 M
BUDGET

€467.9 M
FINES FOR 2022

EUROPEAN NETWORK

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

A COMMITTED, INDEPENDENT INSTITUTION

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

SANCTIONING ANTICOMPETITIVE PRACTICES

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

4 MISSIONS

ADVISING POLICYMAKERS

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

CONTROLLING MERGERS

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

REGULATING LEGAL PROFESSIONS

The Autorité takes part in regulating six regulated legal professions: notaries, commercial court registrars, court-appointed administrators, court-appointed liquidators, judicial auctioneers, and lawyers at the Councils (at the French Administrative Supreme Court (Conseil d'État) and the French Supreme Court (Cour de Cassation)).
It provides opinions to the Government regarding the evolution of tariffs as well as the establishment of new professionals. It therefore actively participates in implementing a reform that is thoroughly modernising these professions.

KEY FIGURES 2022

OVERVIEW OF ACTIVITIES

292

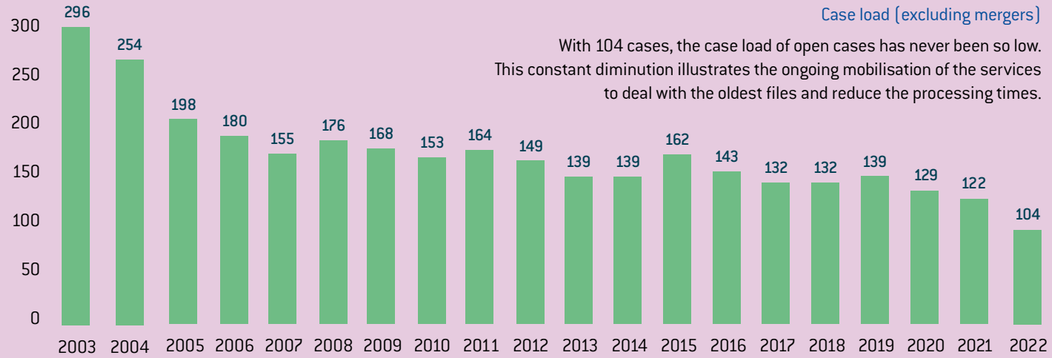
DECISIONS AND OPINIONS

- 257 Merger control decisions
- 26 Litigation decisions (Anticompetitive practices)
- 9 Opinions

ONGOING CASES

Case load (excluding mergers)

With 104 cases, the case load of open cases has never been so low. This constant diminution illustrates the ongoing mobilisation of the services to deal with the oldest files and reduce the processing times.



MERGERS

257 TAKEOVERS AND MERGERS EXAMINED

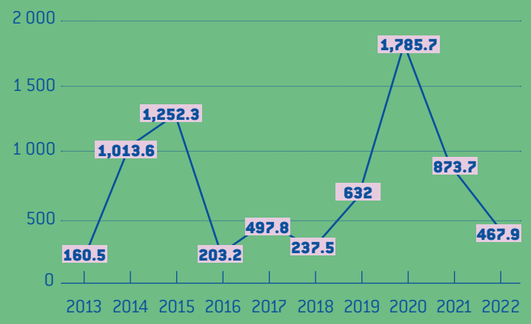
- 252 Clearance without commitments
- 5 Clearance subject to commitments
- 0 Clearance subject to injunctions
- 0 Inapplicability decisions
- 0 Decision to block

FINES

AVERAGE ANNUAL AMOUNT BEFORE APPEAL (2013-2022)

€712.4 M

EVOLUTION OF FINANCIAL PENALTIES (IN MILLIONS OF EUROS)*



* Before appeal

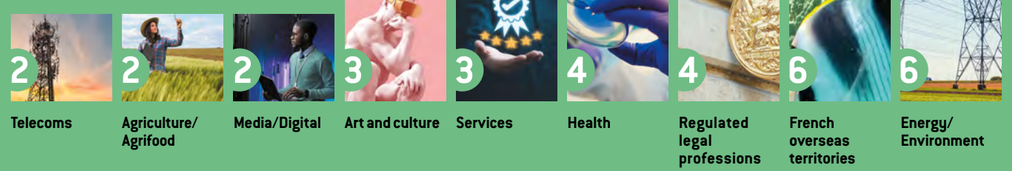
13 LITIGATION DECISIONS

TYPE OF PRACTICES SANCTIONED

- 6 Abuse of a dominant position
- 5 Anticompetitive agreements
- 1 Liquidation of periodic penalty payments
- 1 Failure to notify and gunjumping

ECONOMIC SECTORS

Economic sectors in which the Autorité intervened the most in 2022, in the context of its litigation and consultative roles.
(excluding merger control decisions)



Telecoms · Agriculture/ Agrifood · Media/Digital · Art and culture · Services · Health · Regulated legal professions · French overseas territories · Energy/ Environment

APPEAL COURT PROCEEDINGS

Status as of 27 April 2023

	2016	2017	2018	2019	2020	2021	2022
Number of appeals filed	9	5	9	12	13	11	8
Number of decisions upheld:	9	5	7	11	9	5	3
• appeal dismissed, inadmissible or withdrawn	4	4	5	7	6	4	3
• partial revision/decision on the merits of the case	5[1]	1[2]	2[3]	5[4]	3[5]	1[6]	0
Total appeals examined	9	5	9	11	11	5	3
Pending cases	0	0	0	0	2	6	5
% decisions upheld/total appeals examined*	100	100	77	100	81	100	NS

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

1. Decisions 16-D-09, 16-D-11, 16-D-14, 16-D-20 and 16-D-28
2. Decision 17-D-25
3. Decisions 18-D-21 and 18-D-23
4. Decisions 19-MC-01, 19-D-09, 19-D-19, 19-D-24 and 19-D-26
5. Decisions 20-D-04, 20-D-12 and 20-D-16
6. Decision 21-D-05

FRENCH GUIANA MARTINIQUE GUADELOUPE SAINT MARTIN REUNION ISLAND MAYOTTE

A PROACTIVE APPROACH IN FRENCH OVERSEAS TERRITORIES

OUR RESULTS FROM 2009 TO 2023

45 LITIGATION DECISIONS

16 OPINIONS INCLUDING LARGE-SCALE PANORAMIC STUDIES

68 MERGER DECISIONS

€217M TOTAL AMOUNT OF FINES

In 2022, a quarter of all litigation decisions and a large number of merger decisions concerned the French overseas territories.

SEE OUR INFOGRAPHIC REGARDING IMPORT EXCLUSIVITY DECISIONS IN FRENCH OVERSEAS TERRITORIES

SUSTAINED ACTIVITY

In the **food retail sector in Martinique,** in December 2022 the Autorité made the acquisition of full control by the Parfait Group of the Géant Casino La Batelière hypermarket and the shopping centre in which it is located subject to commitments. It identified risks of harm to competition on the retail distribution markets in hypermarkets, since the completion of the merger would have given the Parfait group a market share of more than 60% in this geographical area, and would have led to a duopoly between two operators, creating a risk of price increases and a reduction in the diversity of supply for consumers.
Decision 22-DCC-254 of 22 December 2022

In the **chemical pathology laboratory sector in Guadeloupe and Saint Martin,** in April 2022 the Autorité cleared the takeover of Bio Pôle Antilles by the Inovie Group subject to conditions. The transaction was likely to lead to higher prices or lower quality in the market for routine chemical pathology tests in these territories. To maintain competitive intensity, the Inovie Group committed to refraining from acquiring any stake in Synergibio for a period of ten years.
Decision 22-DCC-35 of 27 April 2022

The Autorité also intervened in the **fish sector in Reunion Island** by fining the Association réunionnaise interprofessionnelle de la pêche et de l'aquaculture for implementing a cartel concerning prices and the control of production and markets.
Decision 22-D-21 of 16 November 2022

In the **roadworthiness tests for heavy-duty vehicles sector in Guadeloupe,** the Autorité fined CTPL-AG for abusing its dominant position by charging excessive prices and favouring its sister company, which is active in the related market for roadworthiness test preparation.
Decision 22-D-26 of 22 December 2022

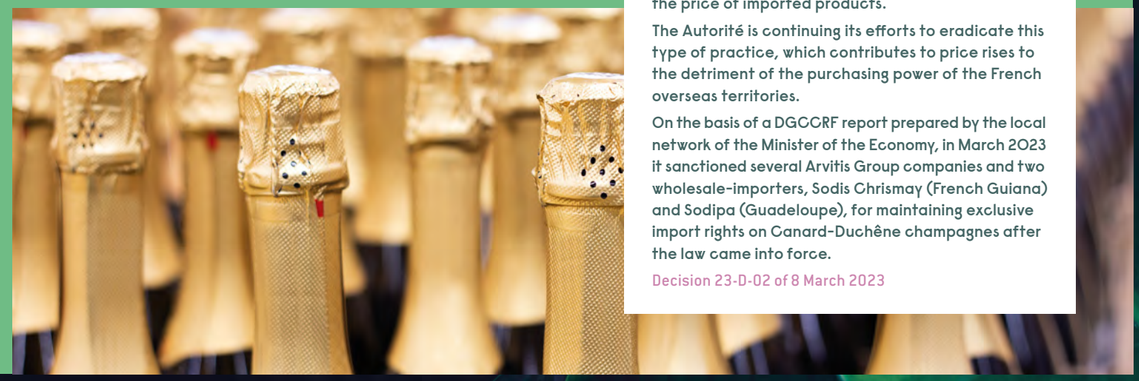
Lastly, the Autorité was required to intervene in the **air freight transport of pets in Polynesia**. Following a report submitted by the DGCCRF and an investigation carried out with the assistance of the Polynesian Competition Authority, the Autorité fined the company Goldenway International Pets for coupling the quarantine service, for which it had a *de facto* monopoly, with two other transport and charter organisation services.
Decision 22-D-05 of 15 February 2022

THE FIGHT AGAINST EXCLUSIVE IMPORTS

As of 22 March 2013, the law of 20 November 2012 on economic regulation in the French overseas territories, known as the "Lurel" Law, prohibited exclusive unjustified import agreements in the French overseas territories. The aim of this law is to combat the high cost of living and one of its provisions is a prohibition in principle on exclusive import agreements, which prevent retailers from enabling competition between wholesalers for their supplies and ultimately increasing the price of imported products.

The Autorité is continuing its efforts to eradicate this type of practice, which contributes to price rises to the detriment of the purchasing power of the French overseas territories.

On the basis of a DGCCRF report prepared by the local network of the Minister of the Economy, in March 2023 it sanctioned several Arvitis Group companies and two wholesale-importers, Sodis Chrismay (French Guiana) and Sodipa (Guadeloupe), for maintaining exclusive import rights on Canard-Duchêne champagnes after the law came into force.
Decision 23-D-02 of 8 March 2023



THERE IS A RANGE OF ADVANTAGES OF COMPETITION IN ECONOMIC TERMS, BUT THESE CAN SOMETIMES BE FOUND IN UNEXPECTED PLACES...

VIRTUES

LOWER PRICES AND MORE PURCHASING POWER

Purchasing power is a major concern for French citizens, especially during times of crisis. On a competitive market, companies compete for market shares, which translates into more attractive prices for consumers.

Companies also benefit as the customers of other companies. This benefits the economy as a whole, which becomes more efficient.

QUALITY AND DIVERSITY

Pressure from competitors drives companies to improve and differentiate themselves. This is reflected in the quality of the products and services they market. Manufacturing quality, pre- and post-sales service performance, delivery times, etc.

The result is more choice for consumers, but also for companies, as consumers of intermediate goods.

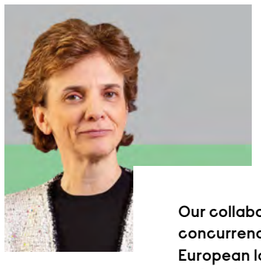
INNOVATION AT THE SERVICE OF GROWTH AND EMPLOYMENT

On a competitive market, companies are driven to innovate so that they can stand out. Competition is a constant stimulus for companies to develop different and sometimes more efficient business models.

It gives opportunity to those who are forward-looking and risk-taking, and opens up new spaces for fresh ideas, new formats and innovative production processes. Competition is an essential adjunct to industrial policy, to ensure that it does not benefit only existing players.

INTER-ACTIVE

There is close and significant cooperation between sector-specific regulators, whose areas of competence intersect with current competition regulation issues.



CNIL

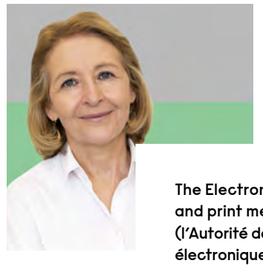
Our collaboration with the Autorité de la concurrence is essential at a time when European lawmakers are developing a global approach to data regulation. It is against this backdrop that I have entrusted Bruno Lasserre, former President of the Autorité, President of the authority for access to administrative documents (CADA) and, as such, a member of the French data protection authority (Commission nationale de l'informatique et des libertés, CNIL) Board, with a mission to examine the relationship between personal data protection and competition law.

Marie-Laure DENIS
President of the Data protection authority

ART

The Autorité de la concurrence and the Transport sector regulator (Autorité de Régulation des Transports, ART) are working together to ensure better quality transport at the best possible price for both private and business users. These close ties are invaluable, particularly at a time of major changes for the transport sector that include the ecological transition, investment in the rail sector and the upcoming expiry of motorway concession contracts. A perfect illustration of this is the ART's referral for opinion in the land passenger transport sector in December 2022, which focuses in particular on the challenges facing the rail and intercity coach transport sectors.

Philippe RICHERT
Acting President of the Transport sector regulator

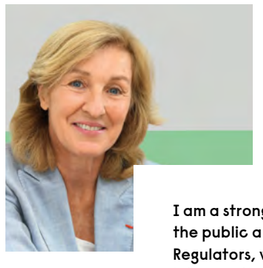


ARCEP

The Electronic communications, postal and print media distribution regulator (l'Autorité de régulation des communications électroniques, des postes et de la distribution de la presse, ARCEP) and the Autorité de la concurrence already have a long history of working together!
There are already many regular exchanges between our two authorities, with *ex-ante* regulation for ARCEP and *ex-post* regulation for the Autorité de la concurrence, with the shared aim of ensuring effective and fair competition in the telecoms and postal markets. These exchanges are also formalised in cross-market opinions on regulated markets.
In this era of digital regulation, these close institutional relationships and this cooperation between regulators will be particularly valuable.

Laure de LA RAUDIÈRE
President of the Electronic communications, postal and print media distribution regulator

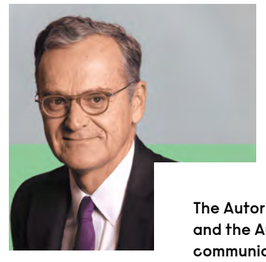
ECO-SYSTEM



ANJ

I am a strong advocate of cross-regulation, as it offers the public a coordinated approach to the public sphere. Regulators, whose legitimacy can sometimes be called into question or their powers challenged, need to work together to offer coherent solutions together to issues of common interest.
The National Gambling Authority (Autorité nationale des jeux, ANJ) collaborates with the Autorité de la concurrence on the balance within the gambling industry.

Isabelle FALQUE-PIERROTIN
President of the National Gambling Authority



ARCOM

The Autorité de la concurrence and the Audiovisual and digital communication sector regulator (Autorité de régulation de la communication audiovisuelle et numérique, ARCOM) regularly cooperate closely on issues of pluralism and openness in the audiovisual landscape.
This sector, which is undergoing profound change and consolidation, requires the combined expertise of the economic and sector regulators, in the public interest.
2021 and 2022, in particular, were marked by the announcement of major merger plans in the media sector, which our two institutions were led to examine closely.
Our cooperation is therefore more relevant and essential than ever.

Roch-Olivier MAISTRE
President of the Audiovisual and digital communication sector regulator

CRE

The Energy sector regulator (Commission de régulation de l'énergie, CRE) is pleased to work closely and regularly with the Autorité de la concurrence.
In accordance with the French Energy Code (Code de l'énergie), we refer to the Autorité de la concurrence when we become aware of facts or practices that may fall within its jurisdiction, and the reverse is true.
Examples include the Autorité de la concurrence's decision concerning EDF, which was referred to the CRE in advance, or the decision concerning Gaz de Bordeaux, regarding which we alerted the Autorité de la concurrence. This complementarity is the manifestation of the shared ambition of regulating the market to protect consumers. There is no shortage of issues, and I am confident that our two institutions will continue to work together.

Emmanuelle WARGON
President of the Energy sector regulator

PROTECTING CONSUMER INTERESTS

In the current inflationary crisis facing the French economy, competition is an effective lever for boosting consumer purchasing power. The mobilisation of competition policy, in particular through the fight against anticompetitive practices, as well as merger control, can help to protect consumers by preserving the competitive spirit and promoting better prices.

The French public has fully understood that competition is a daily reality, and makes use of it whenever it can, comparing products, prices and services and having no qualms about changing brands to enjoy more attractive offers.

The Autorité uses all its tools, to act upstream on structures and downstream on behaviours, in order to preserve competition and ensure that price formation can take place within the framework of a fair and undistorted market.

At the heart of our action, consumer protection

RISKS FOR COMPETITION IN TIMES OF HIGH INFLATION

Inflationary periods can affect price clarity and lead to a deterioration in competition. Faced with a sharp rise in the cost of raw materials and a generalised increase in prices, certain players may be tempted to take advantage of the situation (windfall effect). This opportunistic anticompetitive behaviour amplifies price rises and encourages the "spiral effects" characteristic of inflationary periods.
For example, a monopoly or oligopoly may be more inclined to use its market power to increase or maintain its rents. Or companies may decide to form a cartel to pass on price rises to their customers in a concerted manner.

This particular context calls for heightened vigilance which is reflected in closer European cooperation between national competition authorities and increased monitoring of the behaviour of economic stakeholders on national territory (dialogue with the stakeholders, economic studies, sector-specific inquiries, dawn raids, processing and cross-checking of clues from different sources).

In this respect, the Autorité would like to draw attention to the existence of a box to report an anticompetitive practice on its website, and to the forthcoming opening of a dedicated space for whistleblowers (*see QR code*). The French Directorate General for Competition Policy, Consumer Affairs and Fraud Control (Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes, DGCCRF) is also heavily involved, providing a single point of contact for reporting pricing anomalies (DGCCRF press release, 6 July 2022).

See the form for reporting a practice

MOBILISING COMPETITION POLICY TO COMBAT INFLATION

Combatting anticompetitive practices

While the main mission of competition policy is not to fight inflation, its use at different levels can help to combat inflation and protect consumers through its influence on price levels.

By dismantling cartels, sanctioning agreements between distributors and suppliers and punishing abuses of a dominant position, the Autorité helps to restore purchasing power to consumers.

10%

OF THE GLOBAL TURNOVER OF THE GROUP TO WHICH THE COMPANY BELONGS.

THIS IS THE UPPER LIMIT ON FINES PROVIDED FOR UNDER NATIONAL AND EUROPEAN UNION LAW TO FIGHT ANTICOMPETITIVE PRACTICES.

The fight against anticompetitive practices is therefore of fundamental importance. In this respect, national and European Union law provide for severe penalties, with fines capped at 10% of the worldwide turnover of the group to which the company belongs. Over the past ten years, the Autorité has handed down almost 7.1 billion euros in fines (cumulative figure for 2013-2022), intervening in all sectors of the economy, including telephony, healthcare and transport. Consumer goods are the subject of particular vigilance on the part of the Autorité, with the dismantling of numerous large-scale cartels (hygiene and cleaning products, compotes, dairy products, ham and cold meats, industrial sandwiches, washing powder, flour, etc.).

See the Autorité's receipt

Merger control

While competition policy makes it possible to sanction anticompetitive behaviour *ex post*, it can also act *ex ante* on market structure, by controlling takeovers and mergers above a certain size. A merger between two companies can harm competition by strengthening their market power. In some cases, changes in the market configuration can imply significant risks for consumers, leading to higher prices, lower quality services, less innovation and therefore less choice, etc.

This upstream control of market structures is essential, as increasing market concentration can fuel inflationary dynamics, adding to cost shocks from the supply chain, energy prices or labour market tensions. The European Central Bank itself has highlighted the risk of excessive profits fuelling an inflationary spiral[1].
When transactions are likely to excessively reduce competition, the Autorité systematically makes its authorisation conditional on the implementation of commitments designed to remedy the situation. It does not hesitate to prohibit the operation when conditions require it.

CARTEL DISMANTLED = LOWER PRICES

An empirical study of a large sample of cartels showed that the price rises resulting from these practices averaged nearly 14% in Europe[2].

In addition to its inflationary effect on prices, a cartel also limits product choice and quality.

In France, the dismantling of cartels in the historical monument restoration and road signage sectors had an immediate impact on the local and regional public authorities concerned, with prices falling by 20-25% as soon as the cartels came to an end.

1/ Óscar Arce, Elke Hahn and Gerrit Koester, *"How tit-for-tat inflation can make everyone poorer"*, European Central Bank blog, 30 March 2023.
2/ M. Boyer, R. Kotchoni, *"How much do cartels overcharge?"*, *Review of Industrial Organization*, 47-2, 2015, pp. 119-153.

Advising policymakers

The Autorité also plays a full role in informing the government and parliament during the development and implementation of public policies, and in promoting the principles of competition for the benefit of consumers. As part of its advisory remit, it issues opinions on draft legislation envisaged by policymakers, but can also conduct sector-specific inquiries on its own initiative. Some of these may lead it to identify untapped growth potential or malfunctions and to propose reforms, sometimes with a direct impact on French purchasing power (liberalisation of the coach market, recommendations concerning the hearing aid market, etc.).

Measures to bring down the price of car parts

For example, in 2012, the Autorité recommended the gradual and controlled lifting of the manufacturers' monopoly on visible spare parts to bring down the price of these parts while ensuring the more efficient operation of the sector (Opinion 12-A-21 of 8 October 2012).
Its recommendations gained ground, eventually convincing the government to initiate reform. Since 1 January 2023[3], garages and body shops have no longer been obliged to buy headlights, body parts, mirrors, windows and windscreens from the manufacturers. This opening up to competition should lower motorists' bills in more ways than one, since according to Mathieu Séguran, general delegate of the French Motor Distribution Federation (Fédération de la distribution automobile), "*spare parts that are not made by manufacturers can be between 15% and 30% cheaper on average*"[4]. Another positive effect for consumers is that lower costs for spare parts could have an impact on the financial situation of insurance companies, thus lowering insurance premiums.

Containing soaring electricity prices

The Autorité 's advisory missions may also lead it to support the policymakers in developing responses to crisis situations. In February 2022, the French government referred to the Autorité, asking it to take an urgent look at the planned framework for dealing with rising electricity prices (draft decree and orders aimed at temporarily modifying the regulated access mechanism for historical nuclear electricity in order to contain the rise in regulated tariffs (TRV). The Autorité considered that the framework met a short-term objective justified by the unprecedented crisis in electricity prices, and recommended that control measures be stepped up to ensure that this exceptional framework would actually benefit consumers, and that consideration be given to the future implementation of more targeted measures to protect, just as effectively if not more effectively, those customers most severely exposed to the crisis, including the most vulnerable groups, such as the elderly, low-income households and electricity-intensive businesses. (Opinion 22-A-03 of 25 February 2022).

Promoting mobility

The Autorité has long been involved in the subject of everyday mobility, which is very important to the French population. In particular, it was behind the procompetitive coach liberalisation reform in 2015. At no cost to the taxpayer, this reform has led to the broadening of the offer by providing a new, practical and economical mode of transport for customers, particularly the young and the elderly, who previously did not always have the resources or opportunity to use other existing modes of transport.

Aware of the stakes in this area, the Autorité recently decided to launch two major sector-specific inquiries concerning land transport on the one hand, and charging stations for electric vehicles on the other:

- **At the end of 2022,** it started proceedings *ex officio* to review its previous work and adapt or propose new recommendations better suited to current situations and future developments in the sector, particularly in terms of intermodality and sustainable development, thus contributing to the work underway on the link between competition law and environmental concerns (Press release, 19 December 2022).

- **In February 2023,** it announced the launch of another sector-specific inquiry, this time on electromobility, to carry out an overall analysis of the operation of competition in the electric vehicle charging infrastructure sector. Its opinion will take effect in a sector in the process of being structured, with business models that are not yet stabilised, and in which a large number of players are involved (charging operators, mobility operators and interoperability platforms) (Press release, 17 February 2023).

ONLINE SALES, A SALES CHANNEL THAT ENCOURAGES COMPETITION

In everyday life, comparing, consulting and trying to find the best quality/price ratio have quite simply become common ways for consumers to gain purchasing power.

The emergence of players operating on the basis of a new business model (pure players), the emergence of new tools (marketplaces, price comparison) and, more recently, the health crisis have led to an explosion in ecommerce sales. This alternative channel to physical store sales offers consumers a wide choice of products, often at lower prices thanks to lower distribution costs.

The Autorité has long been committed to preventing unfair obstacles to online sales, and regularly fines practices aimed at restricting such commerce. Its action in this area concerns all kinds of products, such as spectacle frames (Chanel, Logo, Luxottica and LVMH) video surveillance devices (Mobotix/2021), tea (Dammann Frères/2020), bicycles (Bikeurope/2019), outdoor power equipment (Stihl/2018), and hifi and home cinema equipment (Bang&Olufsen/2012).

3 / Law 2021-1104 of 22 August 2021, Article 32.
4 / *Le Parisien*, 1 January 2023.

POINT OF VIEW

ALAIN BAZOT
President of the Consumer Association
UFC - Que Choisir

The UFC - Que Choisir (Federal Union of Consumers) plays a leading role in the defence of consumers' interests. The Autorité, which frequently takes action regarding products and important services for consumers, also contributes to this defence.

In your opinion, what are the topics that would necessitate a joint mobilisation?

UFC-Que Choisir, seeking to ensure free and fair competition for the benefit of consumers, had the opportunity to request the Autorité de la concurrence to issue opinions on the functionning of competition in certain sectors and to make recommendations: loan insurance, propane, spare parts for car bodywork, self-medication, etc. The Autorité's recommendations have led to certain significant legislative reforms (termination at any time for loan insurance, partial liberalisation for auto parts, etc.). However for certain sectors (automedication, propane), the competitive landscape did not drastically improved and a new positioning from the Autorité would be welcome. Likewise, the biases in application of the Omnibus Directive on comparison prices have competitive issues that would be worthy of an intervention by the Autorité.

We are witnessing a rise in the number of actions for damages following decisions by the Autorité from companies or public persons who are victims of anticompetitive practices. Which is the status of group actions by consumers? And what is UFC-Que Choisir role in this? What do you think of the Vichnievsky bill which aims to simplify access to this procedure with a single legal regime and shortened time frames?

UFC-Que Choisir has never ceased to point out that the disappointing track record of group actions in France was notably linked to excessive limitation of compensable damages, the individual economic loss being, in particular, difficult to quantify within the framework of anticompetitive practices, and to call for an extension to all the damages suffered, as provided for in the bill discussed in Parliament. It's a step forward, but the question of the time limit for the procedure remains, with the issue of preservation of evidence. Regarding anticompetitive practices in the sector of everyday consumer products, the proof being often the receipt, it is a real subject which is not, as it stands, settled by the bill.

ARBITRATING RELATIONSHIPS BETWEEN COMPANIES

The restrictive, and sometimes repressive, dimension of competition law for companies is probably the one that springs spontaneously to mind for most people.

In addition to sanctions and enforcement measures, however, competition policy has a broader aim, which is to protect companies from abusive behaviour by dominant players and prevent the adverse consequences that mergers of their customers, suppliers or competitors may have for them.

The Autorité is helping to sustain economic growth and dynamism by ensuring that everyone has a chance to develop and innovate.

Every day, the Autorité works to punish abusive behaviour by economic stakeholders, as well as to preserve the competitive dynamics of the markets.

Preserving competition for companies strengthens our economy

COMBATING ABUSES THAT ARE PARTICULARLY DAMAGING TO COMPANIES

If consumers suffer harm as a result of anticompetitive practices, companies too can be affected, and must be protected against the consequences of any anticompetitive behaviour. Certain cartels, for example, can affect intermediate markets and lead to higher input costs (intermediate products or raw materials). In this respect, a study published by the IMF concluded that the dismantling of cartels in France would lead to a 2% increase in productivity[1].

Abuses of a dominant position also illustrate the need to protect customers and partners from powerful players.
We must not forget that being in a dominant position, when it reflects the merits of the goods and services offered on the market, is first and foremost a business success that should be welcomed. However, this special status imposes particular responsibilities, not least of which is the prohibition on abusing this position of superiority. The settled case law of the Court of Justice defines dominance as *"a position of economic strength enjoyed by an undertaking which enables it to hinder the maintenance of effective competition on the relevant market by allowing it to behave to an appreciable extent independently of its competitors and customers and ultimately of consumers"*[2].

THE DISMANTLING OF CARTELS IN FRANCE WOULD LEAD TO **AN INCREASE IN THE PRODUCTIVITY OF** 2%

2022 was a record year in terms of the number of decisions sanctioning abuses of dominant positions, with six decisions. Among the types of behaviour sanctioned in 2022 was the abusive use of resources that could not be reproduced by competitors.

- In February 2022, EDF was fined 300 million euros for using files and resources from its former status as a historic monopoly to develop the marketing of gas and energy services (Decision 22-D-06 of 22 February 2022, for more details see p.59).

- In November 2022, Audiens Santé Prévoyance was also fined 800,000 euros for using the data available to it in its capacity as a manager of collective provident and complementary health insurance contracts for entertainment workers to facilitate the marketing of the offer of payroll management services for entertainment workers from its subsidiary Movinmotion. (Decision 22-D-20 of 15 November 2022)

- Gaz de Bordeaux relied on human and technical resources inherited from its historic monopoly and linked to RSTs, which were not replicable by its competitors and which constituted a competitive advantage, to implement a strategy aimed, in the context of the opening up of retail gas supply markets to competition, to preserving its position on these markets by directing almost all of its new customers to its market offerings. It was thus sanctioned in October 2022, 1 million euros (Decision 22-D-17 of 11 October 2022).

These cases illustrate the temptation for certain operators who enjoy a monopoly or quasi-monopoly due to regulatory or legislative provisions to use the resources at their disposal to expand into related markets, if necessary by promoting the activities of their own subsidiaries.

In October 2022, Essilor was fined 81 million euros for implementing a discriminatory commercial policy aimed at hindering the development of online sales of corrective lenses in France. The sanctioned behaviours involved restrictions on online sales operators in terms of deliveries, communication and guarantees. While electronic commerce sites are highly competitive in terms of price and respond to the policymakers' desire to encourage a form of marketing that is conducive to lower prices, Essilor's practices affected their ability to compete, thereby slowing the growth of the market. (Decision 22-D-16 of 6 October 2022).

MERGER CONTROL

Remedies are sometimes necessary to protect the companies, partners or customers of the new entity

Merger control has a crucial impact on business life.

The purpose of such control is to ensure that the planned merger will not cause excessive harm to competition that is likely to have detrimental consequences not only for end consumers (drying up of competition, with the risk of price rises in particular), but also for companies operating upstream or downstream of the new entity, or active in related markets. When the risks are proven, the completion of the planned transaction may be subject to conditions, i.e. remedies, which most often take the form of commitments by the parties.

APPLICATION OF THE FAILING FIRM EXCEPTION: PROTECTIVE PRAGMATISM

Despite the competitive risks it had identified, the Autorité authorised the takeover of Conforama by the But Group, applying for the first time the "failing firm" exception (for more details on this case, see p.53).

This special ability has not been widely used in Europe. The Autorité had never applied this option since it received the power to control mergers in 2009, given the very strict nature of the assessment criteria. What is it about? In exceptional cases, a merger which harms competition may, nevertheless, be cleared when the acquired company is failing, there is no better credible potential acquirer from the point of view of the competitive analysis and the harm to competition would be no less serious if the company had disappeared.

In this case, the Autorité conducted its examination with pragmatism, as the takeover prevented the disappearance of part of the offer in an already weakened market. Moreover, although this is not part of the competitive analysis criteria, this decision ultimately not only prevented the loss of productive assets on the market but also protected and saved jobs.

Decision-making practice in other countries tends to show that competition authorities make greater use of this mechanism in times of crisis.

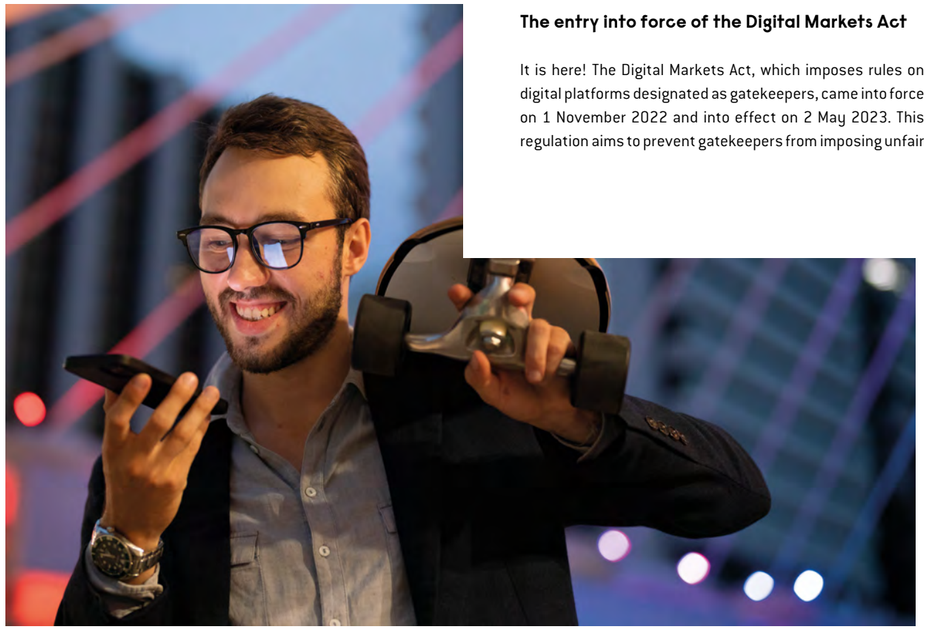
1/ F. Moreau, L. Panon, *"Macroeconomic effects of market structure distortions – Evidence from French cartels"*, *IMF Working Paper, May 2022.*
2/ Judgment of the Court of Justice, 14 February 1978, United Brands and United Brands Continentaal BV/Commission, 27/76, EU:C:1978:22, pt. 65; judgment of the Cour d'appel de Paris (Paris Court of Appeal) of 21 December 2017, TDF, 16/15499, pt. 59.

This was the approach adopted in 2022, for example, during the review of the acquisition by Française des Jeux of Aleda, a company specialising in global cash register solutions for convenience stores, particularly tobacconists and newsagents. Behavioural remedies were deemed necessary to avoid the risk of the new entity implementing several strategies which would have led to the foreclosure of Aleda's competitors (strategies involving the subordination of approval, coupled offers, technological bundling and damage to interoperability). (Decision 22-DCC-219 of 14 November 2022).

In some cases, the search for appropriate remedies to outweigh the negative effects of the merger is unsuccessful, and the scale of the commitments required would render the planned transaction devoid of substance. As a result, in the TF1/M6 case, the market power of the two players combined led to a strong risk of higher prices for advertising space, to the detriment of advertisers, as well as a risk of higher remuneration likely to be demanded by the new entity from Internet service providers, and the commitments proposed by the parties did not appear sufficient to remedy the problems identified. Bouygues finally decided to withdraw its clearance request on 16 September 2022. (see press release of 16 September 2022 and, for more details, p.79).

New tools for enhanced surveillance

To keep pace with market realities and changes in the business world, the control system is adding new, complementary instruments for *ex ante* intervention. The new application of Article 22 of European Merger Regulation 139/2004 and the entry into force of the measures of the European Digital Markets Act (DMA) broaden the scope of intervention and, in particular, protect new entrants and SMEs.



Application of Article 22

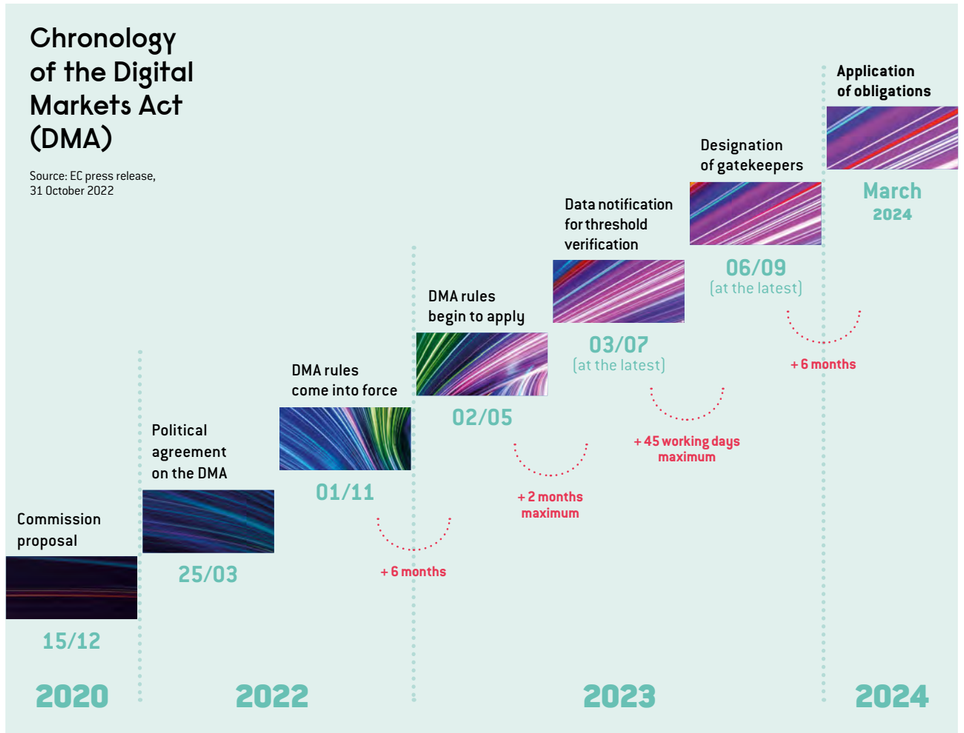
The scope of merger control will change significantly, thanks to a renewed and broader approach to the application of Article 22. The use of this article, which enables national authorities to ask the European Commission to examine certain transactions "below the thresholds", provides in fact, without affecting current legislation, the necessary flexibility to target problematic mergers which would otherwise have escaped scrutiny.
This new approach to Article 22 gives full scope to this mechanism and is a response to the requests expressed by several stakeholders, including the French Autorité to mobilise the merger control tool at the European level in order to more effectively combat predatory or consolidating acquisitions. These acquisitions consist of absorbing a company that is likely to become a significant competitor, or integrating young start-ups in order to strengthen a position in the dominated market or related markets. In particular, the use of this tool will improve the control of acquisitions of high-value companies in fields such as digital innovation, healthcare and biotech.

A first case in point arose in 2022, when the Autorité de la concurrence submitted a request to the European Commission concerning the takeover of Grail, an innovative company developing a blood based cancer screening test based on genomic sequencing technology, by Illumina, a powerful American healthcare company. (Press Release, 13 July 2022).

The Autorité welcomed the ruling[3] handed down on 13 July 2022 by the General Court of the European Union, which upheld the Commission's decision to accept the referral request made by the Autorité de la concurrence and joined by several Member States of the European Union and the European Economic Area (Belgium, Greece, Iceland, Netherlands, Norway). The proceedings are pending before the European Court of Justice.

The entry into force of the Digital Markets Act

It is here! The Digital Markets Act, which imposes rules on digital platforms designated as gatekeepers, came into force on 1 November 2022 and into effect on 2 May 2023. This regulation aims to prevent gatekeepers from imposing unfair



European Commission press release, 31 October 2022, Questions and answers on digital markets legislation.

conditions on companies and endusers and guarantee the opening up of digital markets. The new legislation will thus limit barriers to entry to the markets concerned so that new entrants can gain access. It creates a more favourable framework for innovation, growth and competitiveness by facilitating the expansion of smaller platforms, small and medium sized enterprises and startups. (Questions & Answers, Europa 31 October 2022).

Large platforms will be subject to a precise list of obligations and prohibitions, and these rules will help to create a more favourable framework for the growth of smaller companies wanting to compete with gatekeepers on the merits of their products and services. The following are prohibited in particular:

- discriminatory self-preferential practices, in which a gatekeeper favours its own services or those of its subsidiaries, to the detriment of competing companies using its platform;

- requiring application developers to use some of the gatekeeper's services (such as payment systems or identity providers) in order to appear in the gatekeeper's application shops.

While the Commission alone is empowered to enforce the rules, it will work closely with the authorities of EU Member States. Penalties can reach up to 10% of a company's global turnover, and up to 20% in the event of repeated infringements. In the event of infringements considered to be systematic, the Commission may also impose the behavioural or structural remedies necessary to guarantee the effectiveness of the obligations, including a ban on new acquisitions.

The DMA and competition law will be two complementary and mutually reinforcing tools. Competition law will apply to operators and practices not covered by the DMA and will guide future developments of this text. Symmetrically, the implementation of the DMA will improve the Autorité's ability to control mergers by allowing the competition authorities to be aware of all the acquisition transactions of large platforms, which will have to inform the European Commission, regardless of thresholds.

Lastly, the Digital Markets Act provides for the Commission to open market investigations aimed at ensuring that the obligations laid down in the Act are kept up to date with the constant evolution of the markets.
With its entry into force, the regulation begins a crucial implementation phase: potential gatekeepers will need to have notified the Commission of their essential platform services by 3 July 2023, if they meet the thresholds set by the Regulation. If they are designated as gatekeepers, they will have six months, until 6 March 2024, to comply with the requirements of the Digital Markets Act. The Commission is now working on a regulation containing provisions on the procedural aspects of notification.

3/ Aff. T-227/21.

DEFENDING TAXPAYER INTERESTS

Certain anticompetitive practices regularly damage the interests of the State, public services, local and regional public authorities and those of citizens and taxpayers. The manipulation of public procurement contracts, or practices that have repercussions for the accounts of the French health insurance system, are considered particularly serious as they impact public resources. The Autorité's vigorous action, combined with the increasing number of actions for damages that are now flourishing downstream of its decisions, form a dissuasive combination that is growing in strength.

Some anticompetitive practices can have a significant impact on taxpayers without them always being aware of it.

Sanctioning behaviours that harm public finances protects the interests of taxpayers

DISTORTING THE RULES OF PUBLIC PROCUREMENT: A BEHAVIOUR THAT DIRECTLY HARMS THE TAXPAYER

Overturning the normal operation of call for tender procedures by preventing price competition significantly disrupts the sector concerned and seriously undermines public economic order by generating additional costs for local and regional public authorities.

€1.5M

THE AUTORITÉ FINED FOUR COMPANIES **FOR DISTORTING TENDER PROCEDURES IN HAUTE-SAVOIE OVER EIGHT YEARS.**

In line with its long-standing role in this field, the Autorité is combating this type of behaviour throughout France, and considers that deceiving a local and regional public authority which is fulfilling its mission in the public interest, is an even more serious matter. In 2022, it sanctioned two cartels of this type, one in the waste collection and management sector in Haute-Savoie and the other in the medical transport sector for Val d'Ariège and Pays d'Olmes hospitals. In both cases, the sanctioned practices contributed to the failure of an effective competitive bidding approach for the provision of public services, with a direct impact on local and regional public authority finances (and ultimately on taxpayers).

Waste collection and management in Haute-Savoie: 13 public contracts distorted

Following dawn raids and a report prepared by the local network of the Minister of the Economy sent by the Auvergne-Rhône-Alpes interregional competition investigation brigade, the Autorité handed out fines worth 1.5 million euros to four companies for distorting the call for tender procedures launched by various local and regional public authorities in Haute-Savoie over eight years for the collec tion and management of their waste. These practices, which involved 13 public procurement contracts worth a total of approximately 6 million euros, misled the contracting authority by submitting fictitiously competing bids. They therefore created an artificial partitioning of the market between the companies and neutralised the tendering process requested by the local authorities concerned, by encouraging price increases. The additional costs they generated weighed heavily on the budgets of these local and regional public authorities (Decision 22-D-08 of 3 March 2022, for further details see p.61).

Patient transport in Val d'Ariège and Pays d'Olmes: the drying up of competition led to proven extra costs for hospitals

Following an investigation conducted by the Interregional Competition Investigation Unit in Nouvelle Aquitaine into the sector of medical transport contracts for Val d'Ariège and Pays d'Olmes hospitals, several companies that had participated in a cartel accepted a settlement proposed by the DGCCRF. Only one refused a transaction. The DGCCRF then referred the case to the Autorité, which sanctioned the company. In this case, the companies had formed a consortium to reach an agreement on the prices offered to hospitals. The creation of this consortium made it impossible for hospitals to request alternative proposals and increase competition, even though this is the very purpose of public procurement. This cartel completely foreclosed competition and, for some contracts, raised the prices paid by hospitals compared to the previous period (Decision 22-D-04 of 2 February 2022).

CERTAIN ABUSES OF A DOMINANT POSITION CAN ALSO HAVE A SERIOUS IMPACT ON PUBLIC ACCOUNTS

In certain cases, the fight against abuses of a dominant position can also put an end to behaviour that has repercussions on public money.

In this respect, the healthcare sector is the subject of particular vigilance on the part of the Autorité, which has intervened on several occasions to sanction behaviour aimed at hindering the development of generic medicines, in a context of chronic deficits in the social accounts.

In the Autorité's view, practices in the healthcare sector, where competition is already reduced by regulations designed to ensure the best possible service for the population while preserving the budgetary equilibrium of the health insurance system, are generally particularly serious. A reduced penetration of generic drugs greatly reduces competition and affects healthcare accounts, since it mechanically slows down price cuts (it is only when generic drugs arrive on the market that the price of the originator product is discounted by the health authorities).

In 2013, for example, the Autorité intervened to sanction a blocking strategy involving Subutex®, a medicinal product prescribed to treat opiate dependency (particularly heroin) in drug-addicted patients. At the time of the analysis, the market represented a significant item of expenditure for health insurance schemes. The lower penetration of generic drugs had had a substantial impact on public accounts, amounting to several million euros a year (Decision 13-D-21 of 18 December 2013).
In the same year, the Autorité sanctioned Sanofi for its strategy of disparaging Plavix® generic drugs, with the aim of limiting their market entry. This pharmaceutical industry blockbuster, used to prevent recurrences of serious cardiovascular disease, was, at the time of the practices, the number one reimbursement item for the French health insurance system (Decision 13-D-11 of 14 May 2013, for the follow-up to this case see below).

TODAY, ANTICOMPETITIVE PRACTICES ARE EVEN RISKIER FOR COMPANIES, WHO ARE FACED WITH A CONSIDERABLE ADDITIONAL FINANCIAL RISK WITH THE RISE IN ACTIONS FOR DAMAGES.

The Autorité also intervened to sanction a virtually absolute exclusionary conduct effect on Durogesic® competitors. By making it impossible to market competing generic speciality drugs, this led to a loss of earnings for generic drug laboratories and an additional price to be paid by patients (Decision 17-D-25 of 20 December 2017).

MORE AND MORE ACTIONS FOR DAMAGES

The fines imposed by the Autorité are administrative in nature; they are imposed to sanction behaviour that has created a disturbance to "economic public order", and are recovered by the Public treasury. However, the damage caused to the economy is not the same as the harm suffered by the victims of these practices. These victims can now bring an action for damages after the Autorité has imposed a penalty.

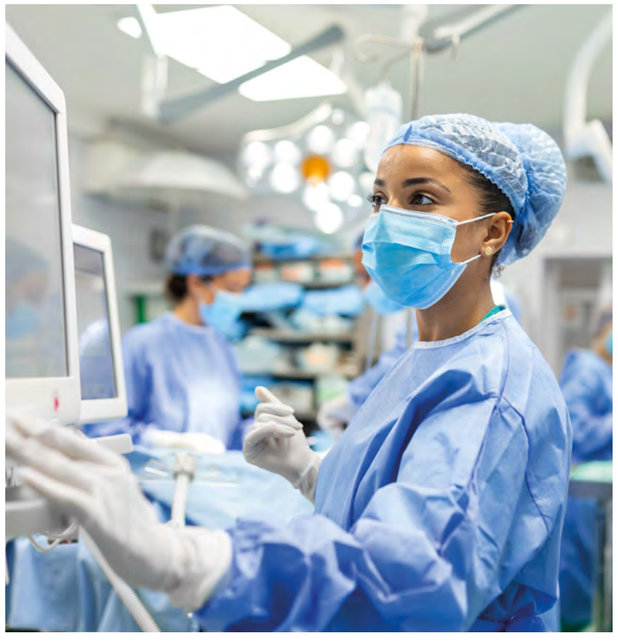
The Ordinance of 9 March 2017 relating to actions for damages as a result of anticompetitive practices and its implementing decree favour actions for damages by victims of anticompetitive practices, notably by facilitating their access to evidence since they can directly rely on the decisions of the Autorité (or a review court) to establish the existence of the practice[1]. There has been a sharp increase in actions for damages before the national courts since these texts entered into force.

Road signage agreement: many local and regional public authorities compensated

Among the victims of anticompetitive practices, many local and regional public authorities no longer hesitate to take this route and assert their right to compensation. Following the Autorité de la concurrence's decision to sanction the "road signage cartel" (Decision 10-D-39 of 22 December 2010), several *départements* (Loire-Atlantique, Eure, Orne and Manche) decided to obtain compensation for the damage suffered. For the record, for almost ten years, the sanctioned cartel had distorted virtually all public procurement contracts for road signage nationwide, to the detriment of the local and regional public authorities in charge of road and motorway management. They were awarded damages for the harm caused by this cartel, 41.1 million euros, 1 million euros and more than 2.2 million euros respectively for each of the last two *départements*[2]. At the time, the President of the Conseil Départemental de l'Eure, Pascal Lehongre, stated that "*These agreements between signage companies distorted competition and were clearly concluded to the detriment of local and regional public authorities and therefore taxpayers. It was logical to seek and obtain compensation for this loss*[3]".

The school bus transport cartel in Bas-Rhin: the Autorité's involvement in the assessment of damages

In addition, new forms of cooperation between the courts and the Autorité de la concurrence are gradually being introduced, particularly in the damage assessment phase. The provisions of the French Code of Administrative Justice (Code de justice administrative) relating to compensation litigation now stipulate that the Chairperson of the panel of judges may request the opinion of the Autorité de la concurrence on the assessment of the loss for which compensation is sought. The Autorité then has two months to submit its observations to the judge. Following the school bus transport case in Bas-Rhin, the Court of Strasbourg referred to the Autorité for an opinion. In 2021, following its observations, the judges ordered several of the companies involved in the cartel to pay the European Collectivity of Alsace €2 million euros[4]. The Autorité welcomes this constructive cooperation with the courts, which enables it to contribute to the process of helping victims obtain fair compensation for their losses.



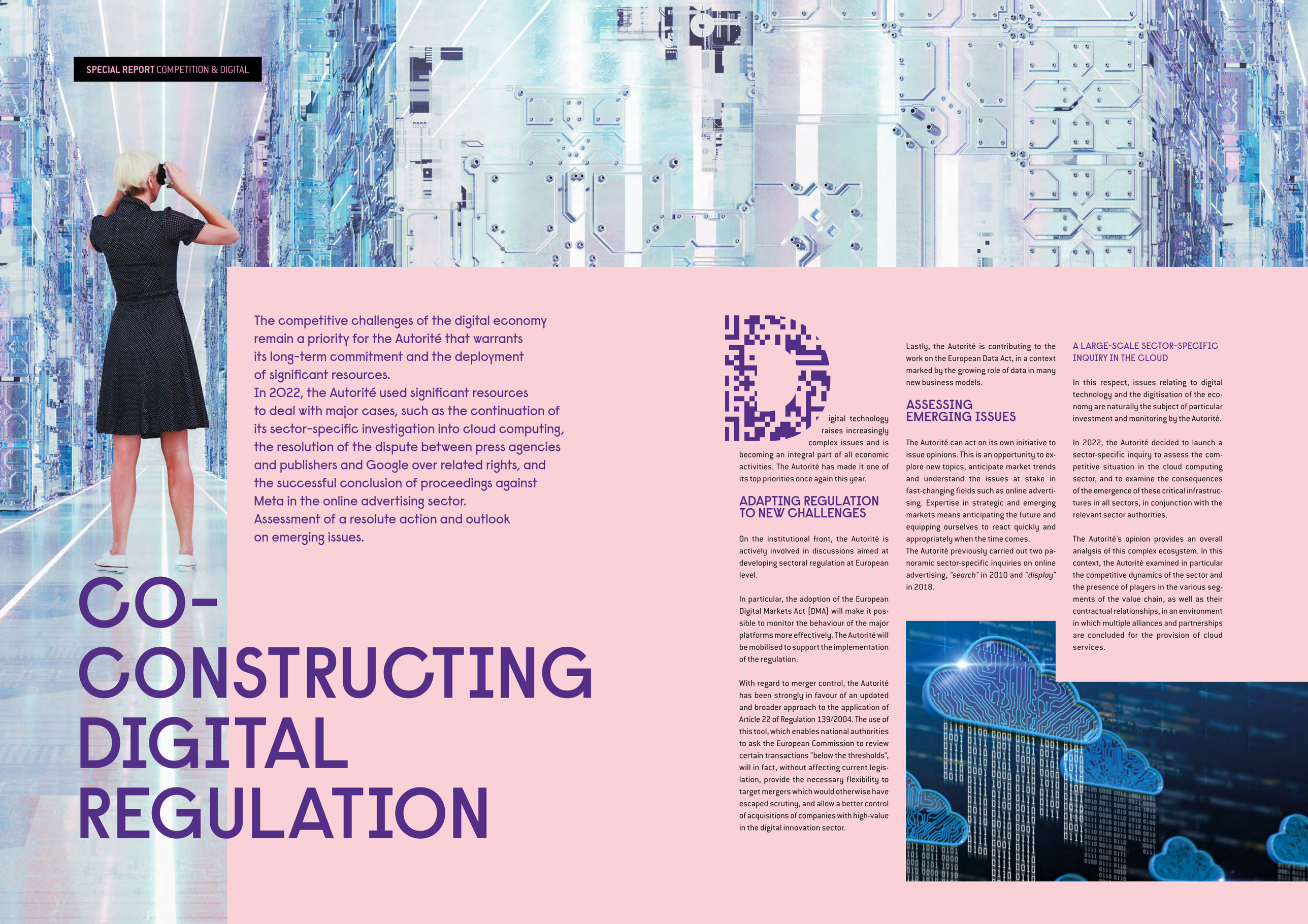
The Plavix® affair: the French healthcare administration seeks compensation

In the healthcare sector, the French healthcare administration (Caisse Nationale d'Assurance Maladie, CNAM) brought an action for damages against practices that generated higher costs for the health insurance system. Following the Autorité's decision to sanction Sanofi for hindering the market entry of the generic drugs of Plavix®, the CNAM brought an action for damages before the Paris Commercial Court (Tribunal de commerce de Paris), seeking compensation for the loss suffered as a result of the reduced penetration of generic drugs (estimated at 116 million euros by the plaintiff). Although the Court of First Instance dismissed CNAM's action on the grounds that it was time-barred, the Paris Court of Appeal overturned this judgment in February 2022 and ordered an expert appraisal of the damage suffered by CNAM[5].

The linoleum cartel: a large-scale action to come

A number of public purchasers have launched another major action for damages in the wake of the Autorité's decision to sanction a linoleum cartel. For the record, in 2017 the Autorité dismantled the cartel of the three main resilient flooring manufacturers in France, namely Gerflor, Forbo and Tarkett. By 2022, more than 300 health and medical-social establishments (hospitals, care facilities for elderly people) filed an action for damages, claiming nearly 500 million euros. Crépy-en-Valois hospital, for example, estimated its total loss at 1.17 million euros. According to Dominique Browne, its Technical Services Manager, "*This represents almost six years of investment for us. Six years of ongoing investment in repairs, vehicles, hospital equipment, beds, etc. This is extremely significant.*[6]"

1 / Decisions taken by the Autorité de la concurrence to sanction anticompetitive practices that have not been the subject of an appeal or a decision by the appeal court constitute irrefutable presumptions.
2 / TA Caen, 6 April 2017; CAA Nantes, 16 March 2018; CAA Nantes, 27 April 2018; CAA Nantes, 5 March 2020; TA Rouen, February 2017.
3 / Normandinamik, CCI economic network, 18 July 2018.
4 / TA Strasbourg, 7 April 2021.
5 / CA Paris, 9 February 2022.
6 / L'œil du 20h, JT France 2, 24 November 2022.



The competitive challenges of the digital economy remain a priority for the Autorité that warrants its long-term commitment and the deployment of significant resources.
In 2022, the Autorité used significant resources to deal with major cases, such as the continuation of its sector-specific investigation into cloud computing, the resolution of the dispute between press agencies and publishers and Google over related rights, and the successful conclusion of proceedings against Meta in the online advertising sector.
Assessment of a resolute action and outlook on emerging issues.

CO-CONSTRUCTING DIGITAL REGULATION

Digital technology raises increasingly complex issues and is becoming an integral part of all economic activities. The Autorité has made it one of its top priorities once again this year.

ADAPTING REGULATION TO NEW CHALLENGES

On the institutional front, the Autorité is actively involved in discussions aimed at developing sectoral regulation at European level.

In particular, the adoption of the European Digital Markets Act (DMA) will make it possible to monitor the behaviour of the major platforms more effectively. The Autorité will be mobilised to support the implementation of the regulation.

With regard to merger control, the Autorité has been strongly in favour of an updated and broader approach to the application of Article 22 of Regulation 139/2004. The use of this tool, which enables national authorities to ask the European Commission to review certain transactions "below the thresholds", will in fact, without affecting current legislation, provide the necessary flexibility to target mergers which would otherwise have escaped scrutiny, and allow a better control of acquisitions of companies with high-value in the digital innovation sector.

Lastly, the Autorité is contributing to the work on the European Data Act, in a context marked by the growing role of data in many new business models.

ASSESSING EMERGING ISSUES

The Autorité can act on its own initiative to issue opinions. This is an opportunity to explore new topics, anticipate market trends and understand the issues at stake in fast-changing fields such as online advertising. Expertise in strategic and emerging markets means anticipating the future and equipping ourselves to react quickly and appropriately when the time comes.
The Autorité previously carried out two panoramic sector-specific inquiries on online advertising, *"search"* in 2010 and *"display"* in 2018.

A LARGE-SCALE SECTOR-SPECIFIC INQUIRY IN THE CLOUD

In this respect, issues relating to digital technology and the digitisation of the economy are naturally the subject of particular investment and monitoring by the Autorité.

In 2022, the Autorité decided to launch a sector-specific inquiry to assess the competitive situation in the cloud computing sector, and to examine the consequences of the emergence of these critical infrastructures in all sectors, in conjunction with the relevant sector authorities.

The Autorité's opinion provides an overall analysis of this complex ecosystem. In this context, the Autorité examined in particular the competitive dynamics of the sector and the presence of players in the various segments of the value chain, as well as their contractual relationships, in an environment in which multiple alliances and partnerships are concluded for the provision of cloud services.

The focus was also put on defining the relevant markets in the sector, assessing the position and competitive advantages of the various players involved and examining the commercial practices that may be implemented. The opinion assesses whether certain players are likely to hold particular positions and competitive advantages, particularly with regard to their investment capacity, access to certain infrastructures, their ability to differentiate themselves or to offer a wide range of services. Several major players could accumulate several advantages and also take advantage of their well established position in digital markets to support their expansion (risks related to the advantages gained from the ecosystem by certain players).

Moreover, the Autorité analysed certain practices implemented or likely to be implemented in the cloud sector, to assess whether any of them could restrict the development of competition on the merits:

- technical practices likely to hinder customer migration and the use of multiple cloud service providers;
- trade, contractual or pricing practices likely to increase the barriers to entry or expansion in certain markets or to extend the market power of a player;
- consequences of the vertical integration of certain players and potential conglomerate effects;
- risks associated with horizontal practices and merger practices that may exist in the sector.

In the course of its investigation, the Autorité conducted numerous informal interviews with key economic stakeholders, notably in France, and held discussions with institutional players (French National Cybersecurity Agency (ANSSI), French data protection authority (CNIL), French Directorate-General for Competition, Consumer Affairs and Fraud Control (DGCCRF), The Directorate General for Enterprise (DGE), The General Directorate for Internal Security (DGSI), Center for expertise for digital platform regulation (PeRen), European Banking Authority (ABE)) as well as with several competition authorities. It then sent out a number of questionnaires and interviewed three hyperscalers[1].

The Autorité may, where appropriate, make proposals to improve the competitive functioning of the sector. (Press release of 27 January and 13 July 2022).

A DEDICATED SERVICE TO IDENTIFY THE ISSUES OF TOMORROW

Created in 2020 and positioned within the Investigation Services, the Digital Economy Unit is composed of data scientists whose role is primarily to monitor technological developments and identify future challenges.

Among the rising topics, the emerging technology of AI chatbots such as ChatGPT will certainly be a subject for antitrust regulators in the near future.

In this respect, Margrethe Vestager declared that it was *"already time to ask what healthy competition in the metaverse should look like, or how a tool like ChatGPT could upset the balance"*[2]. Such virtual services and universes are likely to revolutionise the nature of competition in many markets and will require vigilance on the part of the authorities, who are already preparing to respond to these new challenges. Conversational AI may disrupt search engines and could reshuffle the cards when it comes to analysing abuse of dominance. These platforms require large amounts of data as well as computing capacity that are only accessible to dominant players. There is also a connection with the cloud as generative AI requires significant storage capacity.

THE FRENCH AND EUROPEAN CLOUD MARKETS ARE BOOMING

The cloud refers to all shared services, accessible via the Internet, on demand, paid per use and, by extension, some of the underlying infrastructures (notably data centres). Examples of cloud services are online document storage, online emailing and video streaming services.

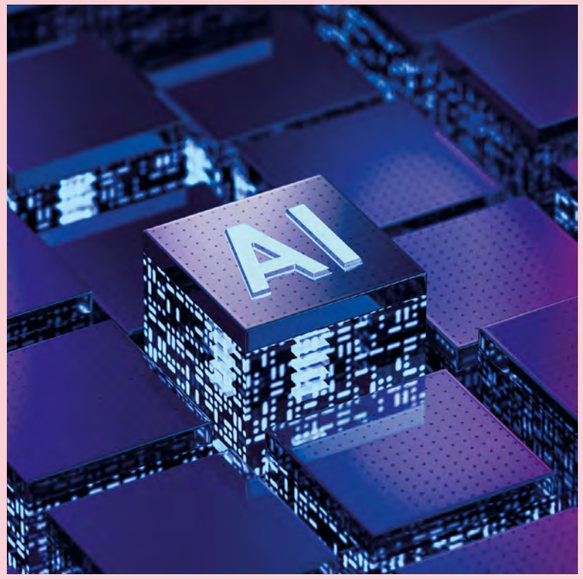
The French and European cloud market is booming, with average annual growth expected to exceed 25% over the next few years, resulting in strong value-creation challenges for the economy. This growth is accompanied by significant support from public authorities in the research and development of innovative technologies, in order to support the digitisation of the economy as well as European and French industry. The national plan to support the French cloud industry is a good illustration of this.

OF NOTE

The Autorité makes available the first tool for viewing its publications. Developed by the Autorité's Digital Economy Unit, in partnership with the University of Stanford's Computational Antitrust project, this tool, intended for competition law stakeholders (case officers, researchers, lawyers, etc.), is in the form of a network graph in which the Autorité's publications are represented and linked by the citations they contain. It therefore makes it possible to identify the interconnections between the various publications at a glance and gives the user an overview of the Autorité's case law to date.

TAKING ACTION ON THE GROUND

Against a backdrop of accelerating technological innovation, the issue of time has become absolutely central to an effective competition law approach to developments in the digital sector and the new emerging practices. The Autorité's decision-making practice must reflect this speed while striking the right balance between the need to intervene and the need to not stifle innovation. In recent years, the Autorité has used a number of the procedural tools at its disposal to intervene in a timely manner and find appropriate responses to rapid technological and market development.



INTERIM MEASURES: AN ESSENTIAL TOOL FOR RAPID INTERVENTION

First and foremost, the Autorité can use its emergency powers such as interim measures, which enable it to act effectively and in a timely manner to prevent serious and irremediable harm to competition or to the victim company. For example, it ordered interim measures against Google in 2020 in the related rights case, in 2019 in the Google Ads case, and against Engie in 2016 in the case concerning its market offers to companies. This makes the Autorité one of the most active authorities in Europe when it comes to using this instrument. The Autorité used this instrument again in May 2023 against Meta, in the Internet advertising verification sector (Decision 23-MC-01 of 4 May 2023).

The scope has been further expanded since 2021[3], as the Autorité now has the possibility to impose interim measures *ex officio*, and not only following a request made by a company, incidentally to an application on the merits. This is an additional opportunity to act without delay, on its own initiative, when it becomes aware of conduct that could harm

1/ Very large companies that have built global hosting capabilities and developed dedicated applications used by millions of users.
2/ Margrethe Vestager, Siecledigital.fr, 3 March 2023.
3/ Ordinance No 2021-649 of 26 May 2021 on the transposition of Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, known as the ECN+ Directive.

THIS IS THE FIRST TIME THAT AN AUTHORITY HAS ACCEPTED COMMITMENTS FROM META IN ANTITRUST PROCEEDINGS.

competition, particularly in sectors where the positions of the stakeholders are changing very rapidly, such as the digital sector.

THE COMMITMENTS

Negotiated commitments – an alternative to traditional litigation, typically a much longer procedure – are also a particularly effective way of rapidly and permanently restoring the proper functioning of the market. The advantage of this procedure is that it places economic stakeholders at the heart of the process, enabling them to coconstruct appropriate remedies for the competition concerns identified by the Autorité.

The Autorité applied this procedure for example in the iPhones case in 2010 and in the Booking case in 2014. In 2022, the Autorité used this procedure for Google and Meta, whose commitments are now being closely monitored by a trustee.

META'S COMMITMENTS IN THE ONLINE ADVERTISING SECTOR

Following a referral by Criteo in September 2019, the Autorité's investigation services raised concerns about a number of practices that could affect competition conditions, on the one hand between the various advertising intermediation service providers, and on the other hand between Criteo and Meta. In the context of a negotiated procedure, the companies of the Meta group (Meta Platforms Inc., Meta Platforms Ireland Ltd., and Facebook France) proposed commitments in June 2021, which were then subjected to a market test and reviewed by the Board.

Following a negotiation process that aimed to improve the initial proposals, the Autorité finally accepted and made binding the proposed commitments for a period of five years and thus closed the procedure. These commitments are designed, in particular, to facilitate access to Meta's partnership programme for companies in the advertising services sector, to oblige Meta to provide advertising service providers with a new programming interface and to train its sales teams in compliance. This is the first time that a competition authority has accepted commitments from Meta in antitrust proceedings (Decision 22-D-12 of 16 June 2022).

POINT OF VIEW

JEAN-MARIE CAVADA

President of the Société des Droits Voisins de la Presse, which is responsible for negotiating, collecting and distributing related rights for press publishers and agencies.

What was your experience of the legal battle regarding the application of related rights in France? And what are the next steps in the process?

As far as I am concerned, the legal battle was first and foremost a long three-year journey in the European Parliament, as Vice-President of the Legal Affairs Committee (JURI) of the Strasbourg Legislative Assembly in 2019. The balance of power then took a long time to consolidate and was very difficult to enforce once the plenary vote had been taken, after the trialogues negotiations, as the insidious weight of lobbying continued to operate in Brussels and Paris. But the French transposition of this directive (Copyright, Related Rights) was carried out rapidly. Just three months after Brussels, France was the first European country to pass this text, which is now setting an example for the rest of the world.

However, if the legislative stage is one thing, it is quite another to apply the law. For this second sequence, I would like to say that the influence of the Autorité de la concurrence has been and remains indispensable. Initially, the inertia of an American giant that was supposed to respect our laws led a publishers' association to take legal action before the Autorité. The Autorité raised its voice. With nothing moving, a second procedure led to a heavy penalty: a 500 million euro fine for the recalcitrant company, together with a list of requirements. It was at this point that our "Press Related Rights" collective management organisation was set up, whose members were able to receive the impartial support, of the Autorité through the work of its teams and its President. Sanctions were followed by the monitoring of the proper functioning of the market, through "commitments", whose compliance is now monitored by the Autorité through a trustee.

Negotiations are now underway. Whatever the impatience (understandable if we accept that, in a democracy, a law is to be applied and not discussed), I would like to thank the Autorité de la concurrence for taking this matter in hand with strength and finesse. Indeed, if I look at our European neighbours, press publishers in many countries are on their own. Some countries have not yet transposed the directive into national law, while others have done so but with little effort to enforce its content. Others have even seen the legislative legitimacy of their transposition challenged before the European Court of Justice in Luxembourg. Fair pricing will obviously have to become the rule between press "suppliers" and platform "buyers" of content. And to achieve this, unity, and the patience that consolidates strength and exacting standards, can build a healthy, and fairly balanced market.

GOOGLE'S COMMITMENTS CONCERNING RELATED RIGHTS

In June 2022, at the end of a dispute lasting several months between Google and press publishers over remuneration for their content, the Autorité accepted commitments from Google. This latest phase supplements two previous landmark decisions, since in April 2020 the Autorité had already issued interim measures, and then sanctioned Google, in July 2021, with a fine of 500 million euros for non-compliance with these measures.

The combination of these various means of action (interim measures, sanctions, commitments) has created an environment that offers greater stability and guarantees of fairness for publishers and press agencies. For the first time in Europe, Google's commitments provide a dynamic framework for negotiating and sharing the information needed for a transparent assessment of the remuneration of direct and indirect related rights.

The commitments set out a complete process from the start of negotiations to their conclusion, all under the supervision of a trustee, whose opinions will be binding on Google and who will be able to call on experts in intellectual property, finance, the press and advertising. They also include a mechanism for finding a solution in the event of a blockage through the intervention of an arbitration tribunal, whose costs will be borne by Google.

The commitments will apply for a period of five years and be renewable once for a further five-year period, by reasoned decision of the Autorité. (Decision 22-D-13 of 21 June 2022, for more details see p. 73).

FOR THE FIRST TIME IN EUROPE, GOOGLE'S COMMITMENTS PROVIDE A DYNAMIC FRAMEWORK FOR NEGOTIATING AND SHARING THE INFORMATION NEEDED FOR A TRANSPARENT ASSESSMENT OF THE REMUNERATION OF DIRECT AND INDIRECT RELATED RIGHTS.


A 360° IMPACT

First application of the failing firm exception

The Autorité was called upon to review a merger between the No. 2 and No. 3 players in the French furniture market. Being pragmatic considering Conforama's critical situation, and despite the risks it had identified, the Autorité cleared the takeover without commitments in April 2022, applying the failing firm exception for the first time. This specific possibility refers to the unconditional clearance of the takeover by a competitor of a company that would disappear in the short term if the transaction were not carried out, even if the transaction is detrimental to competition.

A MAJOR TRANSACTION IN THE HOME FURNISHINGS SECTOR

Mobilux is the parent company of the But Group, which is active in the retail distribution of furniture, household electrical, homeware and general merchandise products in mainland France and the French overseas departments and regions, through a network of 322 stores under the But banner operated directly or under franchise.

Conforama was also active in the retail distribution of furniture, household appliances, home decoration and general merchandise products in mainland France and the French overseas departments and regions. It had a network of 170 sales outlets, operated directly or under franchise.

The acquisition of Conforama by the But Group was originally subject to merger control by the European Commission, which decided to refer it to the Autorité de la concurrence for review.

In view of Conforama's serious financial difficulties, which required swift action, the Autorité granted the But Group a waiver allowing it to carry out the transaction without waiting for the outcome of the examination of its clearance request. After an in-depth review that lasted more than one and a half years, the Autorité considered that the transaction would give rise to three main categories of risks to competition, which Mobilux was not able to demonstrate could be offset by efficiency gains.

THE COMPETITIVE RISKS IDENTIFIED

The risk of placing a large number of suppliers of bedding products in a state of economic dependence

The Autorité found that, following the transaction, the new entity would account for almost 50% of the bedding product distribution market in France, and that more than half of the parties' joint bedding suppliers would generate a substantial proportion of their turnover with the new entity. In a national market, the alternatives to the new entity were very limited. Furthermore, the other buyers had very small volumes compared to the parties.

The risk of creating a single franchisor in the French overseas territories, leading to a deterioration in the franchisees' contractual conditions

But and Conforama were the two main groups offering franchises in the furniture sector in the French overseas departments and regions. As a result, the transaction resulted in the disappearance of an alternative for franchisees, which would find themselves mainly facing a single franchisor after the transaction. The Autorité therefore considered that there was a risk of deterioration in the contractual conditions of franchisees/local distributors in the French overseas departments and regions, with, for example, the risk of an increase in the fee payable under the franchise agreement.

A dominant position in 56 zones

During the review of this transaction, the Autorité significantly changed its decision making practice regarding the distribution of furniture products. The Autorité thus considered that it was no longer relevant to retain a global furniture market but that this market should be segmented into six major product families (furniture, upholstered furniture, bedding, kitchens, bathroom furniture and dressing rooms). The Autorité also considered that it was appropriate to segment by price range. Lastly, it considered that sales of home furnishing products in physical shops and online belonged to the same market, in line with previous decisions, such as the 2016 Fnac/Darty merger decision.

While the transaction did not raise competition concerns in the area of kitchen furniture, the Autorité ultimately concluded that it would lead to competition risks in four catchment areas for upholstered furniture, 35 areas for furniture and 40 areas for bedding furniture or 56 areas if the overlaps are removed. The new entity's dominant position in these different areas was likely to lead to higher prices and lower quality for consumers.

THE UNPRECEDENTED APPLICATION OF THE FAILING FIRM EXCEPTION

But invoked the defaulting company exception during the investigation. This exceptional procedure consists of unconditionally clearing the takeover by a competitor of a company that would disappear in the short term if the transaction were not carried out, even if the transaction is detrimental to competition because the effect on competition would be the same in the absence of the merger.

The Autorité had never applied this particular option since it received the power to control mergers in 2009, given the very strict nature of the assessment criteria (with three criteria having to be met simultaneously/see box below).
In view of the large-scale financial difficulties encountered by the purchased company and the absence of an alternative offer to that of Mobilux that would be less harmful to competition, the Autorité considered that the first two criteria were met.

To verify that the third criterion was also met, the Autorité first ascertained that the target's assets would inevitably disappear. To this effect, it conducted a broad consultation among all the market players. This consultation confirmed the absence of any expression of interest from operators in the markets identified as problematic (i.e. furniture, upholstery and bedding). It also compared the effects of a disappearance with those of a takeover, and concluded that the effects of a disappearance would be no less damaging, and that it would be more beneficial for consumers if Conforama were taken over by But, to maintain the diversity of the offer.

As a result, despite the identified competition risks, the Autorité cleared the transaction without commitment, applying the failing firm exception for the first time in its history.

- Decision 22-DCC-78 of 28 April 2022
- Press release of 28 April 2022

Watch the video presentation of the case by **Étienne Chantrel,** Head of the Mergers Unit (in French)

CUMULATIVE CRITERIA FOR THE APPLICATION OF THE FAILING FIRM EXCEPTION AS PER THE COUNCIL OF STATE (CONSEIL D'ÉTAT) CASE LAW TO DATE
(Decision 249267 of 6 February 2004)

- CRITERION 1: The diffculties of the target company would lead to its rapid disappearance in the absence of a takeover
- CRITERION 2: There was no other take-over offer than that by the notifying party that is less damaging to competition, covering the whole or a substantial part of the company
- CRITERION 3: The elimination of the company in difficulty would be no less harmful to consumers than the planned takeover

FRUIT IN SYRUP

Green light for the acquisition of Saint Mamet by the Intermarché Group.

Decision 22-DCC-134 of 21 July 2022

MASS RETAIL FOOD DISTRIBUTION

The Parfait Group committed to divesting the Géant Casino La Batelière hypermarket in Martinique in response to competition problems identified.

Decision 22-DCC-254 of 22 December 2022

FURNITURE

Despite the competitive risks identified, the Autorité cleared the takeover of Conforama by the But Group without commitment, in application of the failing firm exception.

Decision 22-DCC-78 of 28 April 2022

FOOTWEAR

Clearance of the takeover of 210 Minelli shops by Stéphane Collaert, who controls the San Marina chain.

Decision 22-DCC-11 of 31 January 2022

SPIRITS

The Autorité fined Cofepp for acquiring control of Marie Brizard Wine and Spirits without prior notification of the transaction and without waiting for its decision.

Decision 22-D-10 of 12 April 2022

DECORATIVE AND BAZAAR PRODUCTS

Green light for the Zouari family's takeover of the Stokomani Group, which operates several shops under the Casino, Franprix and Monop' brands.

Decision 22-DCC-31 of 21 March 2022

MASS RETAIL DISTRIBUTION

ORGANIC FOOD DISTRIBUTION

Clearance of the acquisition of 15 organic shops of the Salej Group by Naturalia, a subsidiary of the Casino Group.

Decision 22-DCC-19 of 15 February 2022

PANORAMA

EDF fined for abuse of a dominant position

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

A GRADUAL OPENING OF THE ELECTRICITY SECTOR TO COMPETITION

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

ABUSE OF A DOMINANT POSITION

The elements of the case showed that EDF used the non-reproducible means at its disposal in the context of its public service mission of supplying electricity at the regulated

tariff (TRV) – respectively the files of the TRV customers and its commercial infrastructure dedicated to its activity at the TRV tariff – to propose to its TRV customers market gas and electricity offers, as well as additional services.

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

IN SHORT

By using the human and technical resources linked to the TRVs, EDF benefited from a competitive advantage that was non-reproducible for its competitors. The practices helped EDF consolidate its position throughout the energy sector, and obstruct the development of alternative suppliers.

300

MILLION EUROS IN FINES.

A NEGOTIATED PROCEDURE WITH THE AUTORITÉ

In the context of the investigation conducted by the Autorité, EDF asked for the benefit of the settlement procedure. This procedure allows a company that does not contest the charges brought against it to obtain a financial penalty within a range negotiated with the General Rapporteur, setting a maximum and minimum amount.

EDF also proposed several commitments: firstly, to make its files of customers on the TRV Blue tariff available to alternative electricity suppliers who so requested, and secondly, to separate the process of signing up TRV Blue customers and prospects by telephone, from signing up customers and prospects in market offers.

In view of all these elements, the Board of the Autorité set the fine imposed on EDF and its subsidiaries at 300 million euros and made the proposed commitments binding for a renewable period of three years.

- **Decision 22-D-06 of 22 February 2022**
- **Press release of 22 February 2022**

A cartel dismantled in the Haute-Savoie region

Following dawn raids and a report prepared by the local network of the Minister of the Economy sent by the Auvergne-Rhône-Alpes inter-regional competition investigation brigade, the Autorité fined four companies for distorting the call for tender procedures launched by various local and regional public authorities in Haute-Savoie between 2010 and 2018 for the collection and management of their waste.

MARKET SHARING AGREEMENTS AND COVER BIDS

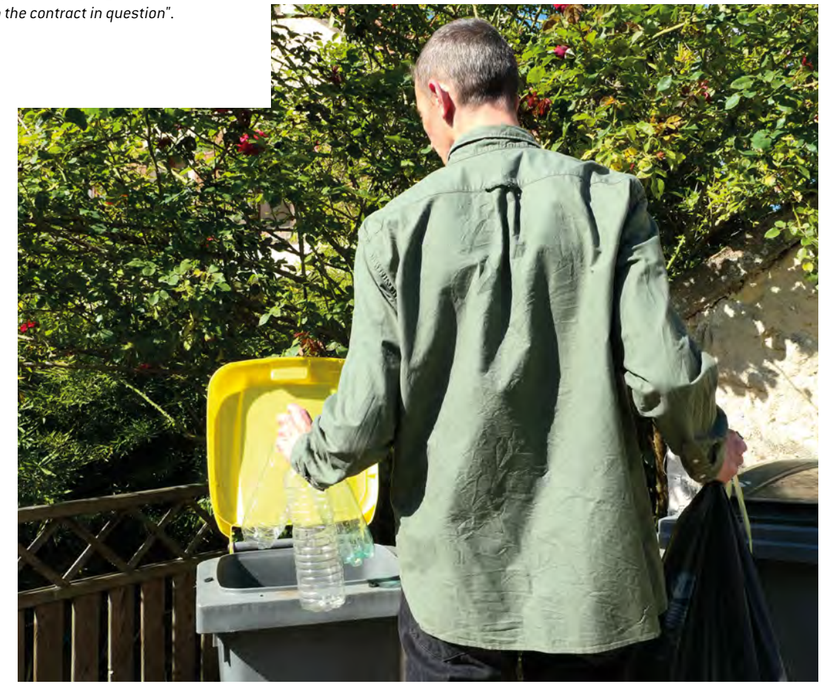
Several invitations to tender were affected by the anticompetitive agreements:

- those relating to the collection and management of non-hazardous waste (household and similar waste, waste from economic activities and local and regional public authorities), to which Ortec Environnement, Excoffier Recyclage and Trigénium responded;

- a tender for the collection and management of hazardous waste (rubble and special household waste) in which TREDI and Excoffier Frères companies participated.

In response to calls for tender issued by local and regional public authorities for the collection and management of non-hazardous waste, Ortec Environnement, Excoffier Recyclage and Trigénium companies set up an overall plan to share out the contracts by means of cover bids. The practices involved 13 public procurement contracts, worth a total of approximately 16 million euros, with two particularly large contracts, the Thonon-les-Bains contract (worth almost 3 million euros) and the Pays d'Evian contract - lot no. 5 (worth just over 1 million euros).

Practically speaking, the companies exchanged confidential information before submitting their bids, agreeing on the *"prices to be stated"*. Then, to benefit one or the other, they submitted cover bids including all or part of the prices transmitted. These cover bids involved *"submitting a deliberately higher bid as a competitor, so that the designated company would be certain to obtain the contract in question"*.



ORGANISING COVER BIDS

EXAMPLE OF A SEIZED EMAIL

De : M.A…
Envoyé : mercredi 3 juillet 2013 15:10
À : M.Y…
Objet : CDL

pour marché CDL

1) emballages, prix mini à mettre

collecte emballages	320,00
Tri	250,00
Évacuation des refus	145,00
Reprise des papiers, prix fixe de reprise	60,00 (maxi)

2) papier

prix mini que l'on doit mettre ?

Decision 22-D-08 of 3 March 2022, classification mark 1915

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

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

The competitive integrity of the market presupposes that each party makes its own strategic and commercial policy choices completely independently, without any inside information concerning one or more competitors.

Through their exchanges prior to the submission of their offers, the companies impeded the free setting of prices and misled public procurement agents about the reality of competition. By acting in this way, they led to an artificial distribution of the market and neutralised the process of competition requested by the local authorities concerned, by encouraging price increases. They thus have seriously undermined economic public policy and generated additional costs that affected the budgets of the local and regional public authorities.

1.5
MILLION EUROS IN FINES

THE BENEFIT OF A SETTLEMENT

The companies in question did not contest the facts and requested the benefit of a settlement procedure.
The settlement procedure allows a company that does not contest the charges brought against it to obtain a financial penalty within a range proposed by the General Rapporteur, setting a maximum and minimum amount and giving rise to the agreement of the parties.

In view of the above, the Autorité imposed penalties totalling 1.5 million euros.

Decision 22-D-08 of 3 March 2022
Press release of 3 March 2022

CIRCULAR ECONOMY

Mitigated opinion on the reorganisation of the household plastic packaging sector and on the balancing mechanism provided for in the new draft order.

Opinion 22-A-05 of 16 June 2022

WASTE COLLECTION AND MANAGEMENT

Fining of several companies for public procurement cartel in Haute-Savoie. These practices have therefore seriously undermined economic public policy and generated additional costs that affected the budgets of the local and regional public authorities.

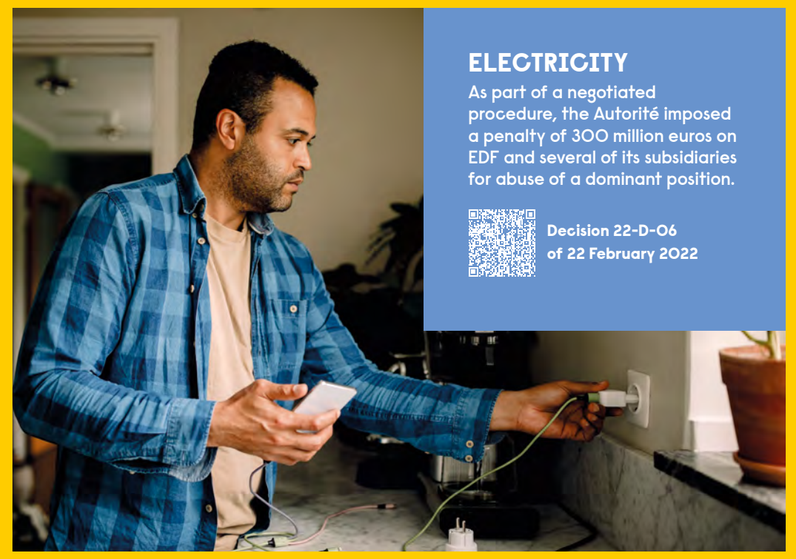
Decision 22-D-08 of 3 March 2022

PANORAMA

NUCLEAR REMEDIATION AND DISMANTLING

The Autorité's General Rapporteur notified six companies of ten cartel objections.

Press Release of 11 July 2022



ELECTRICITY

As part of a negotiated procedure, the Autorité imposed a penalty of 300 million euros on EDF and several of its subsidiaries for abuse of a dominant position.

Decision 22-D-06 of 22 February 2022

ENERGY ENVIRONMENT

GAS SUPPLY

Fines worth one million euros to Gaz de Bordeaux and its parent companies for abusing the resources at its disposal as a public service to develop its competitive activity.

Decision 22-D-17 of 11 October 2022

ELECTRICITY

In an exceptional context of rising electricity prices, the Autorité, referred to by the government, issued an opinion and recommendations on a draft decree and two draft orders aimed at temporarily modifying the regulated access mechanism for historical nuclear electricity.

Opinion 22-A-03 of 25 February 2022

Essilor fined for hindering online sale

After an initial decision in 2021 to impose penalties in the sunglasses and spectacle frames sector, the Autorité issued a new decision in 2022, this time concerning optical lenses. Essilor International SAS and its parent company were sanctioned for 11 years of practices aimed at hindering the development of the electronic commerce of corrective lenses in France.

ESSILOR, A LEADING MANUFACTURER AND DISTRIBUTOR OF OPTICAL LENSES

Essilor International SA is the leading manufacturer and wholesale distributor of optical lenses in France. The company is dominant in the French market and also the world leader in the manufacture of corrective lenses. It produces several types of lenses categorised as "simple" (i.e. lenses that do not require adjustments) or "complex" (i.e. lenses that need a measurement protocol that requires at least measurements of the pupil height and distance).

In October 2018, Essilor International SAS became Essilor Luxottica, a new holding company that owns 100% of the Essilor International SAS companies – into which all

the subsidiaries formerly owned by Essilor International SAS were transferred, as well as Luxottica Group SpA (specialising in the manufacture and production of eyewear).

THE EVOLUTION OF THE CORRECTIVE LENS DISTRIBUTION MARKET IN FRANCE

The sector has undergone significant changes since the early 2000s, notably linked to the relaxation of regulations to encourage the development of online sales and bring down prices, which are higher than in neighbouring countries.

In France, the distribution of corrective lenses and optical glasses takes place through several channels:

- physical shops;
- "pure players", i.e. websites with no physical sales outlets;
- "cross-channel" retailers, i.e. operators with both physical sales outlets and websites. Some retailers in this category require the consumer to visit a physical shop prior to purchase, while others allow the entire purchase to take place online.

In France, online sales of optical products, particularly eyewear, really took off in the late 2000s and early 2010s, with the launch or arrival of websites such as Happyview, Direct Optic, Opticien24, Mister Spex and Sensee. According to some sources, online sales of sunglasses and eyewear accounted for 4% of the French market in value terms in 2020[1].

Faced with the rise of online sales, a channel in which it was not active in France, Essilor implemented discriminatory practices from 29 April 2009 to 23 December 2020 to hinder the development of this alternative distribution channel.

A COMMERCIAL POLICY THAT DISCRIMINATED AGAINST ELECTRONIC ONLINE SALES WEBSITES

The Autorité first found that Essilor was dominant in the French market for the wholesale distribution of corrective lenses, given its large and stable market share, the density and reliability of its distribution network, its presence at all levels of the industry's value chain and the absence of countervailing buyer power.

It also considered that Essilor had abused its dominant position by implementing a discriminatory commercial policy aimed at hindering the development of electronic online sales in France, primarily those websites offering a mixed or fully online offer.

81

MILLION EUROS IN FINES

Restrictions on deliveries, communication and use of branded trademarks and logos

To prevent websites from offering Essilor or Varilux branded lenses to consumers, the strategy developed by the Group as early as 2009 involved not only refusing to deliver branded lenses to them but also prohibiting them from using Essilor's trademarks and logos and from communicating on the origin of the lenses. Essilor prohibited the Sensee, Direct Optic, Evioo, ExperOptic, ConfortVisuel, Acheter-lunettes.com, Happyview, Opticien 24 and VisioFactory websites from mentioning or communicating on its name and/or trademarks, logos or any other distinctive sign. For example, the founder of one of these websites, which bought its products exclusively from Essilor, explained during the investigation, *"Essilor refuses to let me communicate on its brand. I received a formal notice on this subject in June 2012 […] I have had oral conversations with people from Essilor and also from the Essilor Board, who continue to refuse to allow me to communicate on the Essilor brand."* **(Decision 22-D-16, classification mark 9619).**

Warranty limitation

Essilor also implemented warranty limitations on websites selling online. It indicated in its general terms of sale that its assumption of responsibility for the adaptation guarantee was conditional on the retailer's compliance with a measurement protocol designed exclusively for inshop sales. The Autorité noted that in the event of non-compliance with this protocol, the replacement of lenses was the sole responsibility of the retailer, which in practice could do no more than penalise online sales.

RESTRICTIONS THAT MEET A STRONG PROTECTIONIST EXPECTATION ON THE PART OF PHYSICAL OPTICIANS

During the investigation, Essilor did not provide any evidence that these restrictions were justified by the alleged differences, particularly in terms of the reliability of measurements, between opticians operating in physical shops and those operating online.

On the other hand, the Autorité noted that these restrictions met the very strong protectionist expectations of physical opticians with respect to the Essilor Group. Unlike online websites, these opticians could, in fact, be authorised to use the Essilor logo if they complied with clear and objective rules. The Autorité also noted that, while opposing the online sale of corrective lenses in France, Essilor was marketing this type of lenses abroad at the same time, both on its own websites and on third-parties' websites.

PRACTICES THAT LIMITED CONSUMER CHOICE AND KEPT PRICES HIGH

These practices, which occurred in a public health sector characterised by high prices, had a particularly high degree of seriousness. While websites offer a high degree of competitiveness in terms of prices and meet the public authorities' willingness to encourage a marketing method that leads to lower prices, Essilor's discriminatory trade practices may have helped to keep the price of eyewear at high and rising levels during the infringement period.

They also reduced the choice of products available to consumers and prevented consumers from comparing products due to a lack of information on the origin of the lenses, even though access to Essilor's products and communication on this point was crucial for the credibility of the emerging online sales channel, given the unrivalled reputation of these products.

PRACTICES THAT LASTED MORE THAN

11 YEARS

THE FINES IMPOSED

In light of all these elements, and also taking into consideration the particularly lengthy period of the infringement – 11 years and 7 months – and the fact that Essilor International SAS is part of a global group that is the leader in its field, the Autorité fined the company 81 million euros (of which 15,400,000 euros are to be paid jointly and severally with EssilorLuxottica SA, its parent company).

- **Decision 22-D-16 of 6 October 2022**
- **Presse release of 8 November 2022**

1. H. Charrondière, "Acuitis se renforce dans la vente en ligne", 6 February 2020, *Les Echos* études, accessible via the following URL https://www.lesechos-etudes.fr/blog/actualites-21/acuitis-se-renforce-dans-la-vente-en-ligne-9594.

HEALTH

PET HEALTH CONTROL

Abuse of a dominant position by Goldenway International Pets in the market for pet quarantine services to French Polynesia (tying practices).

Decision 22-D-05 of 15 February 2022

PANORAMA

PHARMACEUTICAL DISTRIBUTION MARKET

Following a referral from the European Commission, the Autorité examined and then conditionally cleared the takeover of OCP Répartition, a subsidiary of the McKesson Europe Group, by the Phoenix Group.

Decision 22-DCC-186 of 30 September 2022

CORRECTIVE LENSES

Essilor International SAS and its parent company EssilorLuxottica SA face fines for hindering the development of online sales in optical lenses in France.

Decision 22-D-16 of 6 October 2022

CHEMICAL PATHOLOGY LABORATORIES

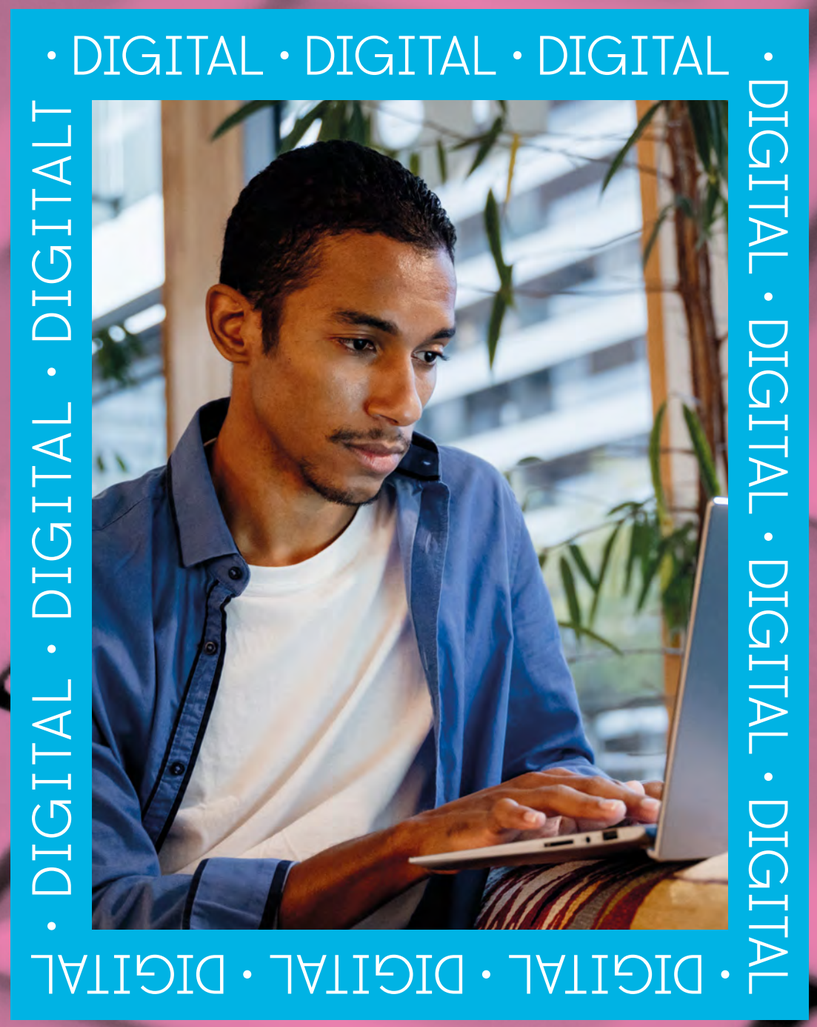
Green light to the acquisition of Bio Pôle Antilles by the Inovie Group.

Decision 22-DCC-35 of 27 April 2022

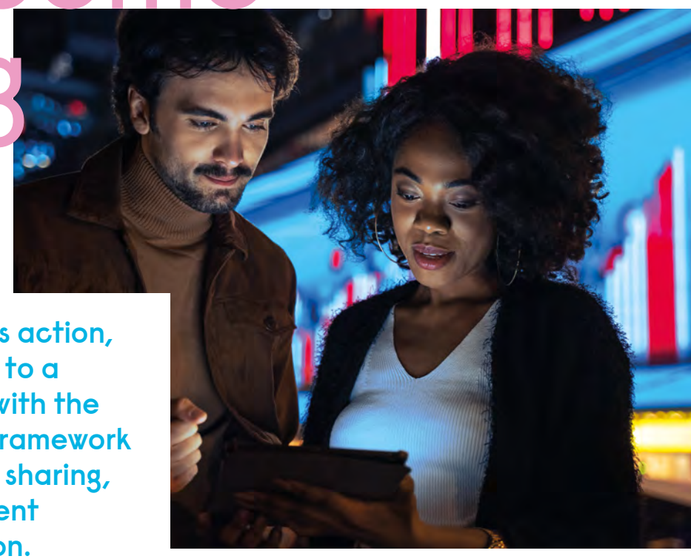
HOSPITAL MEDICAL TRANSPORT

An ambulance company faces fines for bid rigging in the Val d'Ariège and Pays d'Olmes.

Decision 22-D-04 of 2 February 2022



The outcome of a long process



Thanks to the Autorité's vigorous action, the issue of related rights came to a successful conclusion in 2022, with the establishment of a permanent framework for negotiation and information sharing, which is required for a transparent assessment of their remuneration. Recognising the urgency of the situation, in April 2020 the Autorité imposed on Google the requirement to negotiate in good faith with publishers and news agencies the remuneration for reusing their protected content (interim measures). One year later, the Autorité fined the search engine 500 million euros for non-compliance with its interim measures and ordered it to comply with them under daily penalty payments. In June 2022, the Autorité closed the procedure on the merits by accepting Google's commitments and making them binding.

RELATED RIGHTS IN THREE POINTS

THE LEGAL FRAMEWORK

The **Law of 24 July 2019** transposes into French law **the Directive on copyright and related rights of 17 April 2019.** It gives press publishers the right to authorise or prohibit the reproduction of their publications by digital platforms.

THE CONTENT IN QUESTION

It includes:
- **article extracts**
- **photographs**
- **infographics**
- **videos**

that are posted by digital platforms within their services (e.g. Google Search, Google News and Discover).

THE OBJECTIVES

To lay down the conditions for **balanced negotiations** between digital platforms, press publishers and news agencies in order to **redefine the sharing of value** and protect the investments made.

REMINDER OF THE PRACTICES BROUGHT BEFORE IT AND THE PREVIOUS PROCEDURAL STEPS

Considering serious and immediate damage to the press sector, in April 2020 the Autorité imposed interim measures aimed at forcing Google to implement a good faith negotiation, in order to formulate a financial proposal for the use of the protected contents of press agencies and publishers **(Decision 20-MC-01 of 9 April 2020).**

Despite these injunctions in a non-compliance decision **(Decision 21-D-17 of 12 July 2021)** the Autorité found in July 2021 that Google had failed to negotiate in good faith with press agencies and publishers on the current use of protected press content on its services. In particular, it found:

- that during almost the entire three-month negotiation period provided for in its interim measures decision, Google had systematically directed the negotiations towards the conclusion of a global licence agreement, whose subject matter was mainly a new service, called Showcase, based on the inclusion of fulltext press articles that were previously not accessible on Google's portals. As a result of this behaviour, press agencies and publishers were deprived of their ability to negotiate specific remuneration for the current uses of their protected content during almost the entire negotiation period, even though they had clearly expressed this wish to Google on multiple occasions;
- that Google had significantly reduced the scope of application of the Law on related rights by excluding the principle of remuneration for press content from titles that do not have "Political and General Information" (or PGI) certification, and by refusing to allow news agencies to earn remuneration for their content reused by press publishers;
- and, lastly, that Google had adopted an excessively restrictive conception of the notion of revenues derived from the display of press content under Article L. 218-4 of the French intellectual property code, by only considering, as part of this basis, the advertising revenues of the Google Search pages on which protected content is displayed. In fact, Google excluded the indirect revenue that derived from the increased attractiveness of Google services due to the display of protected content, which increases the amount of data it collects and therefore improves its ability to deliver targeted advertising, and increases the likelihood that the user will access paid sponsored links on its online search website.

THE COMPETITION-RELATED CONCERNS

In the course of the investigation into the merits of the case, the Investigation Services formalised competition concerns relating to Google's behaviour, which were built around three issues:

• Unfair settlement conditions

Google may have imposed unfair settlement conditions on press agencies and publishers, constituting an abuse of a dominant position within the meaning of European Union competition law, by refusing to negotiate and pay for the display of protected press content on Google's existing services under related rights regulation.

• Discriminatory treatment

By imposing zero remuneration for all press agencies and publishers when the Law on Related Rights entered into force, independently of an examination of their respective situations, Google is likely to have treated identically economic stake-holders placed in different situations without any objective justification, and, therefore, to have implemented a discriminatory practice constituting an abuse of a dominant position.

THE NEW FRAMEWORK FOR NEGOTIATIONS

EXTENDED SCOPE OF APPLICATION

- Extension to all publishers, IPG-certified or not
- Extension to news agencies whose content is integrated into third-party publications
- Commitments valid for publishers and agencies that have already undertook negociations or entered into an agreement

GOOD FAITH NEGOTIATION

Discussion based on transparent, objective and non-discriminatory criteria.
Separate negotiations:
- on Showcase or any other new Google service
- on the existing uses of protected content

PROVIDING THE INFORMATION necessary for the transparent evaluation of the remuneration

- Systematic communication of a minimum base (updated annually)
- Additional information under the supervision of an independent trustee

NEUTRALITY OF NEGOTIATIONS

Preservation of the conditions of
- indexation
- ranking
- display

during negotiations

No interference with other business relationships.

SUPERVISION AND RELATED FRAMEWORK

- The trustee will supervise negotiations and ensure that the commitments are implemented
- It may use the services of a technical, financial or intellectual property expert
- It will play an active role in settling any disagreements that may arise between the parties during their negotiations, issuing opinions that are binding on Google

ARBITRATION IN THE EVENT OF DIFFICULTIES

If negotiations fail, publishers may request that the matter be referred to an arbitration tribunal (at Google's expense).

• Circumvention of the law

Google may have abused its dominant position by circumventing the Law on Related Rights, in particular by using the possibility for news agencies and publishers to grant free licences to systematically impose a principle of non-remuneration for the display of protected content on its services, without any possibility of negotiation, and by refusing to communicate the information necessary for determining the remuneration.

GOOGLE'S COMMITMENTS

In response to the preliminary assessment, Google presented a series of commitments which were the subject of a market test and were discussed during a hearing before the Autorité. Following this hearing, Google released four successive versions of commitments, ultimately resulting in a substantially improved final proposal on 9 May 2022. These commitments, entered into for a renewable five-year period, guarantee the implementation of a comprehensive system of negotiations from their start up to their conclusion.

Their implementation is under the control of an independent trustee approved by the Autorité, who will oversee the negotiations between Google and the press agencies and publishers and will be involved in the annual review and update of the minimum information that Google must provide to press agencies and publishers. Lastly, the trustee will play an active role in settling any disagreements that may arise between the parties during their negotiations, and the trustee's opinions and proposals will be binding on Google. On 7 October 2022, the Autorité approved Accuracy as its trustee.

- **Decision 22-D-13 of 21 June 2022**
- **Press release of 21 June 2022**

THE MILESTONES IN THE CASE

A LOOK BACK AT

JULY 2019
Transposition of the Directive into national law with the adoption of Law n°2019-775 of 24 July 2019 to create a related right for news agencies and press publishers

NOVEMBER 2019
The Autorité receives several complaints from SEPM, APIG and AFP against Google

APRIL 2020
The Autorité issues injunctions in the framework of the Interim measures against Google
20-MC-01

JULY 2021
The Autorité fines Google 500 million euros for non-compliance with its interim measures
21-D-17

NOVEMBER 2021
In the course of the investigation into the merits of the case, Google is informed of preliminary competition concerns

DECEMBER 2021
Google proposes a first version of commitments, subject to a market test

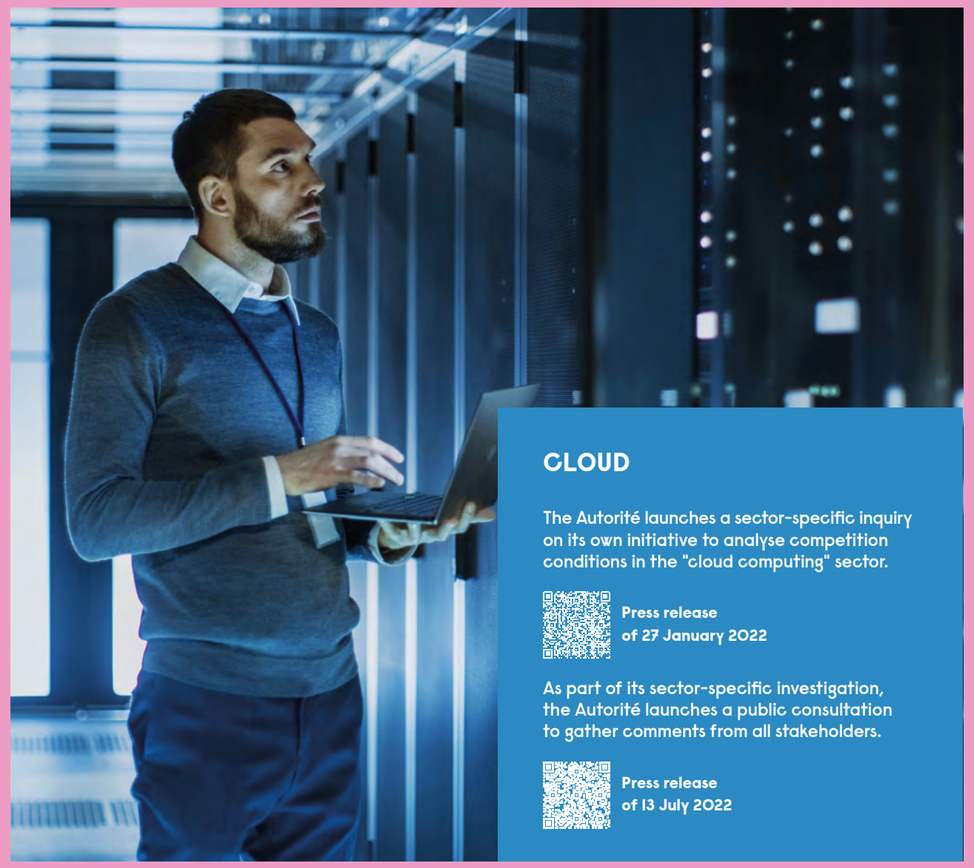
APRIL / MAY 2022
Hearing and discussion with the Board to improve these commitments (four successive versions)

JUNE 2022
Acceptance of substantially improved final commitment offer
22-D-13

THE COMPLAINT BY THE PUBLISHERS AND PRESS AGENCIES

INTERIM MEASURES AND NON-COMPLIANCE

INVESTIGATION INTO THE MERITS OF THE CASE



CLOUD

The Autorité launches a sector-specific inquiry on its own initiative to analyse competition conditions in the "cloud computing" sector.

Press release of 27 January 2022

As part of its sector-specific investigation, the Autorité launches a public consultation to gather comments from all stakeholders.

Press release of 13 July 2022

RELATED RIGHTS

The Autorité accepted and made binding Google's commitments aiming to create a framework for negotiation and sharing the information necessary for a transparent assessment of the remuneration of related rights.

Decision 22-D-13 of 21 June 2022

DIGITAL

ONLINE ADVERTISING

The Autorité made the commitments proposed by Meta regarding advertising intermediation services binding and thus closed the procedure initiated. This is the first time that a competition authority has accepted commitments from Meta in the context of antitrust proceedings (Complaint by Criteo).

Decision 22-D-12 of 16 June 2022

PANORAMA

G7 COMPETITION AUTHORITIES

The Autorité contributes to the update of the "Compendium of approaches to improving competition in digital markets".

EC press release, 12 October 2022

In-depth review of an out of the ordinary case

The proposed merger of France's No. 1 and No. 2 broadcasters required an in-depth review by the Autorité. This in-depth analysis revealed major competition concerns in the TV advertising market that were likely to lead to higher prices for advertising space sold by the parties, to the detriment of advertisers and consumers.
In addition, the new entity would have had greater bargaining power *vis-à-vis* its distributors, such as Internet service providers, leading to a risk of higher remuneration.
The Bouygues Group, which controls TF1, decided to withdraw its notification before the Autorité had issued its decision. A decision that put an end to the procedure.

THE PLANNED MERGER OF TWO GIANTS

TF1

The Bouygues Group controls TF1. TF1's activities include the production of free-to-air digital channels (TF1, TMC, TFX, LCI and TF1 Séries Films) and pay-TV channels (TV Breizh, Ushuaïa TV, Histoire and Série Club, co-controlled with the Métropole Télévision Group), as well as their associated services and functionalities (e.g. channel replay). TF1 also publishes a video-on-demand service dedicated to children's animation: Tfou max.

TF1 also has other related activities: audiovisual and film production and the acquisition of audio-visual rights, through its subsidiaries TF1 Films Production, TF1 Production and Newen Studios, as well as the marketing of advertising space, through its advertising network TF1 Publicité. TF1 also publishes websites and print magazines.

Bouygues also controls the Bouygues Telecom Group, which is active in telecommunications and Internet access.

M6

The Métropole Télévision Group (M6 Group), currently controlled by the Bertelsmann Group, also produces free-to-air digital channels (M6, W9, Gulli and 6ter) and pay-TV channels (Paris Première, Téva, M6 Music, Canal J, TiJi, MCM, MCM Top, RFM TV and Série Club, co-controlled with TF1). The M6 Group operates the Gulli Max video-on-demand service for young people.

The M6 Group is also active in audiovisual production (C. Productions, Studio 89, GM6) and film production (M6 Films, M6 Studio), as well as in the marketing of advertising space (M6 Publicité).

Lastly, the M6 Group controls the RTL France radio group, which holds several radio broadcasting licences in mainland France for the three national radio stations RTL France, RTL 2 and Fun Radio, and is developing various activities linked to the operation of these radio services.

THE FRAMEWORK OF THE TRANSACTION

The deal would have in particular brought together seven free-to-air channels within the same group: TF1, M6, TMC, W9, Gulli, LCI and TF1 Séries Films (the TFX and 6ter channels were to be sold to the Altice Group to comply with the anti-merger provisions of Law n°86-1067 on freedom of communication, while the parties intended to relinquish the licence for the Paris Première channel to comply with the same provisions).

After a pre-notification phase, the Bouygues Group notified the Autorité of its planned acquisition on 17 February 2022. On 18 March 2022, the Autorité decided to open an in-depth review.

Following a detailed and wide-ranging analysis of the parties, their suppliers, competitors and customers in the various markets concerned by the transaction, the Autorité confirmed the finding it has made in recent years as part of its advisory activity and in its decision-making practice in merger cases, that the audiovisual sector is facing profound changes, marked in particular by a shift in consumer usage and the rise of subscription video-on demand (SVOD) services.

IN-DEPTH REVIEW AS PART OF PHASE 2

The transaction was likely to have an impact on several markets, in some of which the new entity would have held significant market shares:

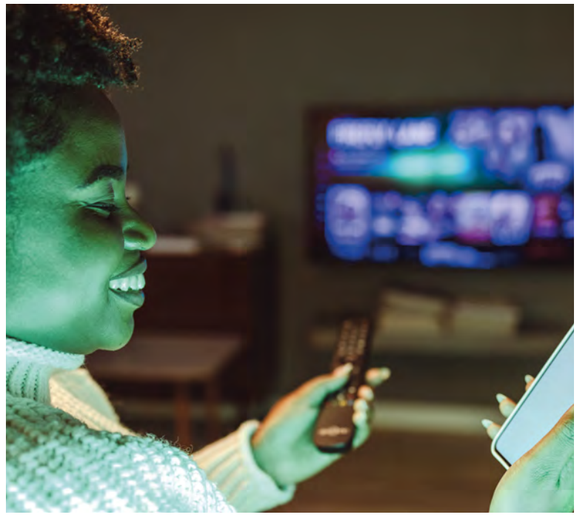
- the acquisition of broadcasting rights for audiovisual content;
- the publishing and marketing of television channels;
- the distribution of television services;
- advertising.

As part of its in-depth review, the Autorité analysed the impact of the development of new usages for audiovisual services, and the competitive pressure exerted by digital operators, as put forward by the parties to the transaction.

The Autorité also continued to consult operators in these different markets, to assess the effects of the transaction and the remedies that could be presented by the parties in response to any possible harm to competition.

SHORT IN ANALYSIS ON AN UNPRECEDENTED SCALE

- **Thousands of pages of replies to questionnaires** sent to the parties and their suppliers, competitors and customers in the various markets concerned by the transaction
- **Around 20 hearings**
- **Several economic studies,** notably by the Bouygues Group and the Autorité de la concurrence
- **Exchanges with sector-specific authorities** (Arcom, Arcep and CNIL)
- **Informal discussions with other public authorities:** CNC and the French Ministry of Culture, as well as with other European competition authorities dealing with similar cases



THE CENTRAL QUESTION OF THE RELEVANT MARKET

At the end of the in-depth review, the Autorité noted that television remains a very powerful medium with the French population as a whole, but also with people aged 25 to 49, who are the main commercial target for advertisers.

Most importantly, it considered that the development of VOD services could not call this power into question in the foreseeable future insofar as these services are intended to remain paid models, unlike the services produced by the parties, and that they are based above all on a promise of individualised consumption, which is not conducive to simultaneous advertising to all users.

In this context, the transaction could have given rise to major competitive risks, particularly in the TV advertising and TV service distribution markets.

THE COMPETITION CONCERNS IDENTIFIED

During the course of the investigation, the Bouygues Group proposed commitments relating to the TV and radio advertising markets, the market for the acquisition of broadcasting rights to French-language films and the distribution markets.

Audiovisual usages have continued to undergo profound changes since the Autorité issued its opinion in 2019, affecting the TV advertising sector. However, the changes in usage found following the in-depth review of this transaction did not allow the view that television advertising and online advertising were sufficiently substitutable from the point of view of advertisers. Consequently, there was no justification for integrating them into a single market.

The imminent arrival of hybrid pay-per-view offers incorporating advertising by certain subscription video-on demand platforms did not call into question the way the market operates, insofar as advertising on VOD services is likely to remain largely a matter of targeted advertising.
In this context, the combined market power of the TF1 and M6 Groups, currently the two closest competitors in the TV advertising market, would have created a strong risk of higher prices for advertising space sold by the parties, to the detriment of advertisers and consumers.

In addition, due to the unavoidable nature of the TF1 and M6 Groups together, the new entity would have had greater bargaining power *vis-à-vis* its distributors, such as Internet service providers, leading to a risk of higher remuneration.
The proposed commitments included the separation of the ad networks of the TF1 and M6 channels. However, the incentives for these networks to compete would have been limited by the control that Bouygues would have exercised over them. The risk of price increases could therefore not be ruled out.

On 5 and 6 September 2022, the Board of the Autorité met in a plenary session to hear the parties, as well as various major players in the markets concerned. The discussions covered both the competition issues identified by the Investigation Services and the commitments proposed by the notifying party.

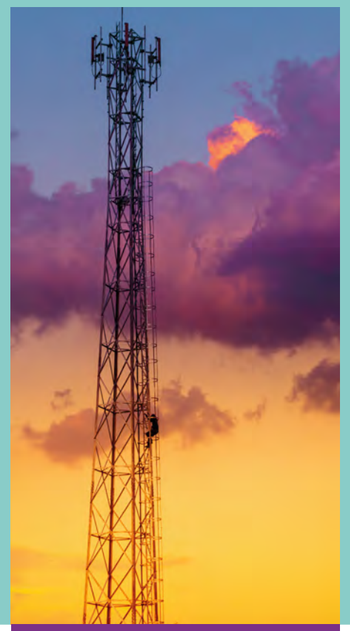
Following this hearing, Bouygues decided to abandon its acquisition plan and thus to withdraw its request for clearance.

Press release of 16 September 2022

REMINDER OF THE SCHEDULE

17 MAY	8 JULY	17 FEBRUARY	18 MARCH	16 SEPTEMBER
Bouygues and RTL entered into exclusive negotiations	Signature of agreements formalising the transaction	Formal notification of the transaction after several months of pre-notification	Opening of an in-depth review	Bouygues withdrew its acquisition plan

2021 — 2022



HOSTING OF ANTENNAS ON PYLON SITES

Rejection of TDF's request to revise its commitments (commitments maintained in their entirety).

Decision 22-D-24 of 6 December 2022

TELEVISION

In-depth review of the proposed acquisition of the Métropole Télévision Group (M6) by the Bouygues Group (TF1). Bouygues decided to withdraw its notification before the Autorité had issued its decision.

Press release of 16 September 2022

PAPER MAGAZINE PUBLISHING AND WEBSITE OPERATION

Green light to Reworld Media's acquisition of Unify, TF1's digital section.

Decision 22-DCC-190 of 7 October 2022

PARTIAL REALLOCATION OF TV RIGHTS FOR LEAGUE I FOOTBALL TO AMAZON

Rejection of the Canal+ Group and beIN Sports complaints for lack of sufficient evidence.

Decision 22-D-22 of 30 November 2022

PANORAMA

MEDIA & TELECOMMUNICATIONS

FIXED AND MOBILE TELECOMMUNICATIONS

Clearance of the acquisition of Coriolis by Altice France.

Decision 22-DCC-67 of 25 April 2022

HIGHLY MOTIVATED TEAMS

The Board of the Autorité

INDEPENDENCE AND COLLEGIALITY

The Board of the Autorité is composed of five permanent members (the President and four Vice-Presidents) and 12 non-permanent members. Half of the Board is renewed every two and a half years (with the exception of the President, who is appointed for a renewable period of five years). The aim of the legislator was that the board included members having very different backgrounds: judges, university professors in law or economics, managers, presidents of professional or consumer organisations all share their points of view during the deliberations. This diversity fosters debate and neutrality in the deliberations and is, as such, a guarantee of richness and legitimacy.

PERMANENT MEMBERS

Photo above, from left to right:

Henri Piffaut
Vice-President, Administrator at the European Commission

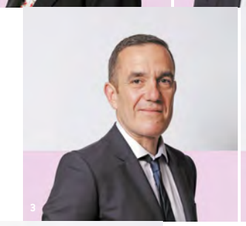
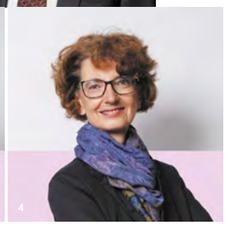
Fabienne Siredey-Garnier
Vice-President, Judge

Benoît Cœuré
President, Inspector General of the French National Institute for Statistics and Economic Studies (INSEE), former member of the Executive Board of the European Central Bank

Irène Luc
Vice-President, Judge

Thibaud Vergé
Vice-President, Professor of Economics, ENSAE Paris/CREST




NON-PERMANENT MEMBERS FROM THE PUBLIC SECTOR*

1 **Béatrice Bourgeois-Machureau**
Deputy President of the social section of the French Administrative Supreme Court (Conseil d'État)

2 **Savinien Grignon-Dumoulin**
Advocate General at the French Supreme Court (Cour de Cassation)

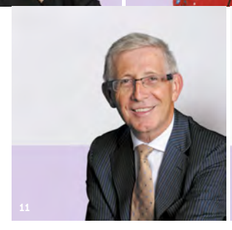
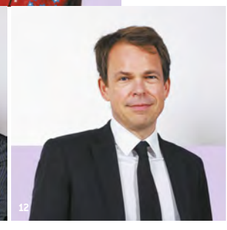
3 **Jérôme Pouyet**
Associate Professor at the ESSEC Business School (École supérieure des sciences économiques et commerciales)

4 **Catherine Prieto**
Professor of Competition Law at the Université Paris I

5 **Fabien Raynaud**
Deputy-President and General Rapporteur of the Report and Studies Section of the French Administrative Supreme Court (Conseil d'État)





NON-PERMANENT MEMBERS FROM THE PRIVATE SECTOR

7 **Laurence Borrel-Prat**
Lawyer registered with the Paris Bar

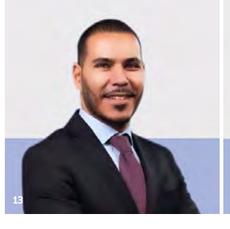
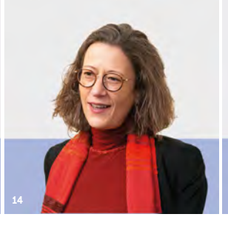
8 **Valérie Bros**
Secretary General of the Plastic Omnium company

9 **Julie Burguburu**
Secretary General, member of the executive committee of TF1

10 **Cécile Cabanis**
Deputy Managing Director, Tikehau Capital

11 **Jean-Yves Mano**
President of the CLCV association

12 **Alexandre Menais**
Group General Counsel, L'Oréal SA


ADDITIONAL MEMBERS DELIBERATING ON MATTERS RELATING TO REGULATED PROFESSIONS:

13 **Walid Chaiehloudj**
Co-responsible for the Yves Serra Centre for Economic and Development Law and Associate Professor of Private Law and Criminal Sciences at the Université de Perpignan

14 **Camille Chaserant**
University lecturer "hors classe" at Université Paris 1 and Deputy Director of the Sorbonne Economics Centre

15 **Frédéric Marty**
Research fellow at the French National Centre for Scientific Research (CNRS)

* At the time of the publication, the appointment of the sixth member was still underway.

Organisation of the Autorité de la concurrence

AS AT 12 JUNE 2023

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Camille Chaserant,
Frédéric Marty

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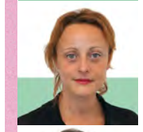

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Notice

This report was drafted at a time when certain decisions of the Autorité de la concurrence were still under appeal or were likely to be appealed before the competent courts.
At the time of the report was going to press, the following decisions commented on in this publication were being appealed to the Cour d'appel de Paris (Paris Court of Appeal): 22-D-04, 22-D-16, 22-D-17 and 22-D-24.
In addition, the presentation of decisions and opinions does not claim to be exhaustive
and is intended to inform the general public. Readers are therefore invited to consult the full text of the decisions, opinions and rulings on the websites of the Autorité and of the reviewing courts, to enable them to fully assess the context and scope of the information presented.

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