

11 September 2017: Retailing of brown and grey goods/ Take-over of Darty by Fnac

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The *Autorité de la concurrence* opened *ex-officio* proceedings to review the conditions under which the Fnac group is honouring its commitment to divest itself of 6 stores in Paris and the surrounding region

In a decision of 27 July 2016, the *Autorité de la concurrence* cleared the acquisition of Darty by the Fnac group, provided it divested itself of 6 stores in Paris and the Paris region¹. Today the *Autorité* announces that it has opened a procedure to examine the conditions under which these divestitures are being performed.

The commitment made by the Fnac group

During the review of this take-over, the *Autorité* considered that in Paris and the southern-western Paris region, there were no longer enough alternatives to ensure effective competition over prices and service quality.

In order to remedy the competition problems identified, the Fnac group undertook to divest itself of the following retail outlets before 31 July 2017:

Divested store	Store Address
Darty	25 boulevard de Belleville 75011 Paris
Darty	Centre commercial Italie 2 30 avenue d'Italie 75013 Paris

Fnac	Centre commercial Beaugrenelle 5 rue Linois 75015 Paris
Darty	125 avenue de Saint Ouen 75017 Paris
Darty	39-41 avenue de Wagram 75017 Paris
Darty	Centre commercial Vélizy II avenue de l'Europe 78140 Vélizy-Villacoublay

To date, the *Autorité de la concurrence* has approved Boulanger for the purchase of the Darty outlets located in the Italie 2 and Vélizy II shopping centres. These acquisitions were cleared under a merger control decision of 11 April 2017². It has also approved Cobrason for purchase of the outlet located at 39-41 avenue de Wagram.

The Darty outlets located at 25 boulevard de Belleville and 125 avenue de Saint Ouen and the Fnac store located in the Beaugrenelle shopping centre have not been divested of within the period set out under the commitments, which ended on 31 July 2017.

On the proposal of the General Rapporteur, the Board of the *Autorité* decided to start proceedings to verify the conditions under which the Fnac group is honouring its commitments. The Board's decision to open proceedings will not affect its final assessment in the matter, in accordance with applicable French merger control rules.

¹ See the *Autorité Press Release of 18 July 2016*.

² <http://www.autoritedelaconcurrence.fr/user/avisdec.php?numero=17-DCC-44>

In the event that the *Autorité* discovers a breach of commitments made under a merger or take-over, the French Commercial Code (*Code de commerce*) gives the *Autorité* the power to:

- revoke the decision giving clearance for the operation, thus requiring the company to notify again the operation within one month of the revoked decision, or return to the situation prior to the take-over (e.g. see the revoked clearance for the purchase of the TPS group by the Canal Plus Group/**press release of 21 September 2011**);
- order the company to perform the commitments subject to a periodic penalty payment;
- impose injunctions replacing the commitments that were not carried;
- order financial penalties of up to 5% of the turnover generated by the company in France

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