The International Comparative Legal Guide to:

Merger Control 2010

A practical insight to cross-border merger control issues

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Chapter 19

France

1 Relevant Authorities and Legislation

1.1 Who is/are the relevant merger authority(ies)?

The French merger legislation has been recently amended by the Law of Modernization of Economy dated August 4, 2008 (LME). Accordingly, since March 2, 2009, the new French Competition Authority (the “Authority”) is in charge of applying the French merger control rules (for the Authority’s website, see: www.autoritedelaconcurrence.fr). The Authority, which replaced the Competition Council, is now entrusted with both antitrust powers (the role of the former Competition Council) and merger control powers (the former role of the Minister for Economy assisted by its General Directorate for Competition Policy, Consumer Affairs and Fraud Control or DGCCRF within the Ministry for Economy).

Please note that although the merger control powers of the Minister for Economy have been transferred to the Authority, the Minister for Economy nonetheless retains residual powers in the field of merger review (see question 5.1).

1.2 What is the merger legislation?

The relevant legislation is set out in Articles L. 430-1 to L. 430-10 and Articles R. 430.2 to R. 430-10 of the French Commercial Code (FCC), as amended by the LME.

The Authority has recently published, for comments, its draft Merger Control Guidelines, which set out the approach of the Authority when reviewing a concentration. These draft guidelines closely mirror the DGCCRF’s former Guidelines and refer to the EU merger legislation i.e. the EC Merger Regulation (the “ECMR”) and the Commission Jurisdictional Consolidated Notice.

1.3 Is there any other relevant legislation for foreign mergers?

There is a specific provisions for mergers in the audiovisual and press sectors aimed at protecting the plurality of media.

With respect to the audiovisual sector, unless otherwise agreed by France in international agreements (including the EU treaties), a foreign entity cannot acquire more than 20% of the capital share or of the voting rights of a company holding an authorisation to provide radio or television services in French. In addition, the law also limits the simultaneous holding of interests in different radio or television companies (law n°86-1067 of 30 September 1986).

With respect to the press sector, an individual or a legal entity cannot control more than 30% of daily publications of a similar nature in France. In addition, unless otherwise agreed by France in international agreements (including the EU treaties), foreigners cannot acquire more than 20% of the capital share or the voting rights of a company issuing publications in French (law n°86-897 of 1 August 1986).

2 Transactions Caught by Merger Control Legislation

2.1 Which types of transaction are caught - in particular, how is the concept of “control” defined?

Only transactions which constitute a concentration are caught by the French merger control legislation. The French definition of a concentration is identical to the definition given by the ECMR. Pursuant to Article L. 430-1 I FCC, a concentration takes place where:

- two or more previously independent undertakings merge; or
- one or more persons who already control at least one undertaking or when one or more undertakings acquire control of all or part of one or more other undertakings,
directly or indirectly, whether by the acquisition of a holding in the capital or by purchasing assets, a contract or any other means.

The concept of “control” is also identical to that in the ECMR. Control results from the legal and de facto means which confer the possibility of exercising, alone (exclusive control) or jointly (joint control), a decisive influence on an undertaking, in particular through:

- ownership or the right to use all or part of the assets of an undertaking; or
- rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.

A decisive influence may be inferred from several indications such as veto rights on strategic decisions (appointment of managers, budget, commercial strategy), the dispersal of the other shareholders, the existence of shareholders’ agreements, the possibility of increasing a shareholding subsequently by way of a specific agreement or securities convertible into shares, etc.

An option to purchase or convert shares cannot in itself reveal control, except where the option will be exercised in the near future according to legally binding agreements.

2.2 Can the acquisition of a minority shareholding amount to a “merger”?

Yes. The acquisition of a minority shareholding amounts to a concentration where it gives (exclusive or joint) control over the target company. The existence of such control is generally inferred from a set of indications (see question 2.1).

2.3 Are joint ventures subject to merger control?

Yes. The creation of a joint venture constitutes a concentration subject to merger control, provided that (i) it is jointly controlled by the parent companies, and (ii) it will perform on a lasting basis all the functions of an autonomous economic entity (Art. L. 430-1, II FCC). The notion of full-functionality is similar to that set out under the ECMR, i.e. a full-function joint venture is defined as having the human and financial means and assets necessary to operate on a market, on a lasting basis, performing the functions normally carried out by undertakings operating on the same market. Conversely, the creation of a joint venture, which carries out a specific activity for its parent companies without having access to the market, does not qualify as a full-function joint venture and is not subject to merger control.

The standard sets of thresholds (see question 2.4) apply to those joint ventures that amount to a concentration.

2.4 What are the jurisdictional thresholds for application of merger control?

If a transaction constitutes a concentration and does not fall within the scope of the ECMR, a merger filing is required where the following conditions are met:

- combined aggregate worldwide turnover of the undertakings concerned in excess of EUR 150 million (approx. USD 220.6 million); and
- individual turnover of at least two of the undertakings concerned in excess of EUR 50 million (approx. USD 73.5 million).

The LME has introduced two alternative sets of lower thresholds for specific transactions, namely involving the retail sector, or French overseas territories.

Where at least two of the undertakings concerned run one or several retail stores (“magasins de commerce de détail”), a merger filing is required where the following conditions are met:

- combined aggregate worldwide turnover in excess of EUR 75 million (approx. USD 110.3 million); and
- turnover in the retail sector in France of each of at least two of the undertakings concerned in excess of EUR 15 million (approx. USD 22.06 million).

Where at least one of the undertakings concerned achieves part or all of its activity in one or several French overseas territories (DOM and “collectivités territoriales”), a merger filing is required where the following conditions are met:

- combined aggregate worldwide turnover in excess of EUR 75 million (approx. USD 110.3 million); and
- turnover in at least one overseas territory of each of at least two of the undertakings concerned in excess of EUR 15 million (approx. USD 22.06 million).

The definition of the undertakings concerned and the methods for calculating the turnover thresholds are identical to those provided for in the ECMR.

2.5 Does merger control apply in the absence of a substantive overlap?

Yes. Merger control applies to all concentrations that meet the French merger control thresholds, irrespective of the existence of overlapping activities.

2.6 In what circumstances is it likely that transactions between parties outside France (“foreign to foreign” transactions) would be caught by your merger control legislation?

Whenever the merger control thresholds are met, “foreign-to-foreign” concentrations are caught by the French merger control legislation. There is no local “effect test” and assets are not required; it is sufficient for the parties to have a turnover in France.

2.7 Please describe any mechanisms whereby the operation of the jurisdictional thresholds may be overridden by other provisions.

The jurisdictional thresholds may be overridden by the referral mechanism between the European Commission and the Member States as provided for in the ECMR. The undertakings which are parties to the concentration or the Authority may either (i) request that the assessment of an operation which does not have a Community dimension be referred to the European Commission (see Article 4.5 ECMR and Article 22 ECMR), or (ii) ask the European Commission to refer an operation with a Community dimension for application of the French merger control legislation (see Article 9 ECMR).

Please, note that in its draft Merger Control Guidelines, the Authority mentions the possibility of a referral to the European Commission pursuant to Article 22 ECMR, even for concentrations which do not meet the French merger control thresholds and thus for which no filing with the Authority would be required.

2.8 Where a merger takes place in stages, what principles are applied in order to identify whether the various stages constitute a single transaction or a series of transactions?

Similarly to Article 5.2 ECMR, two or more concentrations taking
place within a two-year period between the same persons or undertakings are treated as one and the same concentration taking place on the date of the latest concentration for the purpose of assessing the turnovers of the undertakings concerned. Please note that where, in addition to these undertakings, other undertakings are involved for part of these concentrations, the above principle does not apply.

### 3 Notification and its Impact on the Transaction Timetable

**3.1 Where the jurisdictional thresholds are met, is notification compulsory and is there a deadline for notification?**

Yes. Notification is compulsory whenever the jurisdictional thresholds are met. There is no deadline for notification, but the operation cannot be implemented until it has been cleared by the Competition Authority (see question 3.7).

**3.2 Please describe any exceptions where, even though the jurisdictional thresholds are met, clearance is not required.**

There is no such exception. Whenever an operation constitutes a concentration and the jurisdictional thresholds are met, notification and clearance are required.

**3.3 Where a merger technically requires notification and clearance, what are the risks of not filing? Are there any formal sanctions?**

If a concentration has been implemented without being notified, the Authority enjoins the parties, subject to a penalty, to notify the operation; otherwise the parties must restore the situation as prevailing before the concentration. In addition, the Authority may impose fines as follows (Article L. 430-8, I FCC):

- for legal persons: up to 5% of the net turnover achieved in France during the last financial year closed by those who should have notified, and where applicable, the turnover achieved by the acquired party in France during the same period; and
- for individuals: up to EUR 1.5 million.

The level of fines imposed is assessed according to the circumstances of the case, and in particular with regard to the reasons for the failure to notify, the firm’s behaviour towards the Authority, and the effect on competition.

Fines for failure to notify have been imposed in two cases in the past (by the Minister for Economy before the entry into force of the LME). A fine of EUR 57,700 was imposed in the Pan Fish case (December 2007). The low level of the fine was mainly due to the good faith of the party, as well as the fact that it was the first time an undertaking was sanctioned for failure to notify in France. A fine of EUR 250,000 was subsequently imposed in the SNCF/Novatrans case (January 2008). Again, the moderate level of the fine imposed is explained by the absence of any deliberate intention to avoid notification.

There are no criminal sanctions for not filing.

**3.4 Is it possible to carve out local completion of a merger to avoid delaying global completion?**

The possibility of a local carve-out is not provided for in the legislation. The parties contemplating a carve-out in France may still contact the Authority for its opinion on a specific transaction.

**3.5 At what stage in the transaction timetable can the notification be filed?**

Notification may take place as soon as the parties’ project is “sufficiently advanced”, notably where they have concluded an agreement in principle, signed a letter of intent or, in the case of a public bid, as soon as they have publicly announced their intention to make such a bid. The assessment of the “sufficiently advanced” nature of a project is made on a case-by-case basis. In principle, the Authority accepts to review a project where the parties demonstrate their good faith intention to conclude a binding agreement.

**3.6 What is the timeframe for scrutiny of the merger by the merger authority? What are the main stages in the regulatory process? Can the timeframe be suspended by the authority?**

In Phase I, the Authority has 25 working days starting from the date of receipt of the complete notification to review the concentration.

If, during Phase I, the parties submit remedies to the Authority, this initial period may be extended by 15 working days. Where necessary, the parties may also ask the Authority to suspend the merger review for up to 15 working days.

In Phase II, the Authority has 65 working days to make a decision. If, during Phase II, the parties submit remedies to the Authority less than 20 working days before the end of Phase II, the initial Phase II period may be extended by 20 working days after the date remedies have been submitted.

Where necessary, the parties may ask the Authority to suspend the merger review for up to 20 working days. The Authority may also suspend the merger review where the parties or third parties have not communicated information in part or in whole by the required deadline. The merger review continues as soon as the Authority receives the outstanding information.

Please note that the LME has introduced the possibility for the Minister for Economy to intervene at the end of Phase I by asking the Authority to open a Phase II review, and at the end of Phase II by overriding the Authority’s decision on grounds other than competition (see question 5.1).

**3.7 Is there any prohibition on completing the transaction before clearance is received or any compulsory waiting period has ended? What are the risks in completing before clearance is received?**

Yes. In principle a concentration cannot be implemented before clearance is granted. In case of failure to comply with this standstill obligation, a fine may be imposed by the Authority (Article L. 430-8, II FCC), as follows:

- for legal persons: up to 5% of the net turnover achieved in France during the last financial year closed, and, where applicable, the turnover achieved by the acquired party in France during the same period; and
- for individuals: up to EUR 1.5 million.

For instance, in the Bigard/Arcadie Centre Est case (January 2008), a fine of EUR 60,000 was imposed on the notifying party for having implemented the concentration before clearance. There is no “demerger” sanction, but the Authority may, after completing its assessment, decide to prohibit the concentration. In this case, the
parties would have to restore the situation as prevailing before the transaction.

There are two exceptions to this standstill obligation:

- in the event of a duly justified special need, the notifying parties may ask the Authority for an individual derogation allowing them to implement all or part of the concentration without waiting for clearance (Article L. 430-4 FCC). Such individual derogation is however exceptional and targets specific situations, such as the risk of bankruptcy; and

- in case of a concentration by purchase or exchange of stocks/securities on a regulated market, such stocks/securities may be transferred without waiting for a clearance decision. However, this automatic derogation only covers the transfer of the stocks/securities, and does not allow the exercise of the rights attached to them (Article R. 430-5 FCC). The exercise of such rights is only possible where the above-mentioned individual specific derogation has been granted to the parties by the Authority at their request.

### 3.8 Where notification is required, is there a prescribed format?

Yes. A notification form is available at the following link: http://www.autorite delaconcurrence.fr/doc/formulaire_notification_concentration.pdf

The Authority must be provided with four copies of the notification form, including one digital version.

The notification form includes a description of the transaction, the presentation of the undertakings concerned, a description of each market concerned (definition, market share of the parties and their competitors), a detailed analysis of each affected market.

Please note that the review process will not start until the notification form is considered complete by the Authority.

The parties may contact the Authority at the pre-notification stage in order to agree on the precise content of the notification form. More generally, pre-notification contacts are recommended where there are doubts as to whether a transaction qualifies as a reportable concentration, or in order to ease the process in case of complex transactions.

### 3.9 Is there a short form or accelerated procedure for any types of mergers?

There is no formal short form or accelerated procedure as such. However, where an operation does not raise any competition concern, no description of the affected markets is required in the notification. In addition, for cases which do not raise any competition issues, the Authority has informed of its intention to make its best efforts to issue a decision before the end of the 25-day Phase I review period. Finally, in its draft Merger Guidelines (Annex C), the Authority mentions that it is possible for investment funds to ask for the benefit of a clearance within a 3-week delay, where a prima facie analysis of the transaction allows it to consider that there is no impact on competition whatsoever.

### 3.10 Who is responsible for making the notification and are there any filing fees?

Individuals or legal entities acquiring control are responsible for the notification. In case of merger or creation of a joint venture, all the undertakings concerned must jointly notify the transaction (Article L. 430-3, II FCC). Where new shareholders acquire joint control, all the parties holding a joint control, including those that held control prior to the operation, must notify jointly. Please note that a referral from the European Commission amounts to a notification. There are no filing fees in France.

### 4 Substantive Assessment of the Merger and Outcome of the Process

#### 4.1 What is the substantive test against which a merger will be assessed?

Under the terms of Article L. 430-6 FCC, the Authority examines whether a concentration “is likely to adversely affect competition, particularly by creating or reinforcing a dominant position or by creating or reinforcing a purchasing power which places suppliers in a situation of economic dependence”.

In practice, the Authority takes a systematic approach starting with the definition of relevant markets. It then assesses the probability of the transaction impacting competition considering the degree of concentration of the relevant markets. It then identifies whether there is a risk of non-coordinated effects (either horizontal, vertical or conglomerate) or coordinated effects (creation or reinforcing of a collective dominant position). Where necessary, the Authority also analyses the risk of eliminating a potential competitor or the risk of creating or reinforcing buying power placing suppliers in a position of economic dependence. For transactions involving the creation of a joint venture, the Authority also investigates the risk of coordination between parent companies.

The Authority takes into account proven efficiency gains resulting from the transaction, which would be capable of offsetting the potentially negative effects of the transaction on competition. Subject to strict conditions, the Authority may also accept the failing firm defence when the target company is, in any case, about to disappear.

#### 4.2 What is the scope for the involvement of third parties (or complainants) in the regulatory scrutiny process?

Upon receipt of a notification and no later than 5 business days afterwards, the Authority announces the filing on its website (http://www.autorite delaconcurrence.fr/user/dccencours.php), indicating a deadline for the supply of information or comments on the transaction by interested third parties. This deadline is not binding, and the Authority will if possible take into account all the information received from third parties.

During the investigation of the case, the Authority may also send questionnaires (“market tests”) to the main customers, suppliers and competitors of the undertakings concerned. Market tests are generally conducted for transactions that are likely to raise competition concerns, or where the relevant market has never been analysed by merger control authorities or has been analysed a long time ago. Questionnaires may be sent at the pre-notification stage with the express agreement of the notifying parties.

The Authority may also decide to interview interested third parties in the course of the formal hearing held in a Phase II.

Finally, interested third parties may lodge an appeal against the Authority’s final decision (see question 5.8).

#### 4.3 What information gathering powers does the regulator enjoy in relation to the scrutiny of a merger?

The Authority has the power to request any professional document.
and all information it considers necessary for the review of the transaction from the parties to the transaction and from third parties. Where a company does not appear at a hearing or does not respond to the Authority’s questions before the deadline, the Authority may order the company to comply with its request subject to a periodic daily penalty up to 5% of its average daily turnover during the last financial year (Article L. 464-2, II and V FCC).

Where a company blocks the review process, notably by providing wrong or incomplete data, the Authority may impose a fine of up to 1% of the highest worldwide net turnover achieved during one of the latest financial years (Article L. 464-2, V FCC).

Besides, anyone who objects, in any way whatsoever, to the fulfillment of the duties of the Authority’s agents may face a six-month prison sentence and a EUR 7,500 fine (Article L. 450-8 FCC).

### 4.4 During the regulatory process, what provision is there for the protection of commercially sensitive information?

The notifying party indicates the elements of the filing it considers to be business secrets. Similarly, third parties may indicate which elements (documents or information) of their answers or spontaneous comments sent to the Authority they wish to see treated as confidential. If confidential elements have to be communicated to the notifying party or a third party, the Authority will prepare a non-confidential version of those elements.

With respect to the publication of the decision, the parties have 15 calendar days after receiving the Authority’s decision (or the Minister for Economy’s decision if he/she intervened in the review process) to clearly indicate the information they consider as business secrets and justify for each piece of information why it should be treated as confidential. In addition, the Authority (as well as the Minister for Economy) will not disclose third parties’ business secrets in the public version of its decisions.

### 5 The End of the Process: Remedies, Appeals and Enforcement

#### 5.1 How does the regulatory process end?

At the end of Phase I, the Authority may (i) consider that the notified operation does not qualify as a concentration, (ii) authorise the operation subject if need be to the remedies proposed by the parties, or (iii) open a Phase II where the concentration raises serious doubts as to its compatibility with competition. Where the Authority does not issue a decision within the legal timeframe, the concentration is deemed to have been authorised.

Please note that within a period of 5 working days starting from the date he/she receives the Authority’s decision (in case of tacit decision, the Authority informs the Minister for Economy), the Minister for Economy may ask the Authority to open a Phase II procedure (Article L. 430-7-1, I FCC). Please note that in its draft Merger Control Guidelines, the Authority considers that it is not bound by the demand of the Minister for Economy and that it will take a decision as to the opening of a Phase II procedure within 5 working days from receipt of the Minister’s request.

At the end of Phase II, the Authority may either (i) authorise the concentration, subject to the compliance with the remedies submitted where applicable or order the parties to take any measure likely to ensure sufficient competition or oblige them to comply with requirements likely to ensure a sufficient contribution to the economic and social progress to compensate for the adverse effects on competition, or (ii) prohibit the concentration. Where the Authority does not deliver any decision at the end of the review period, the concentration is deemed authorised.

Please, note that within a period of 25 working days from the date he/she receives the Authority’s decision (in case of tacit decision, the Authority informs the Minister for Economy), the Minister for Economy may override the Authority’s decision and review the concentration on grounds of “general interests other than competition”, such as, notably, industrial development, international competitiveness, creation or protection of employment (Article L. 430-7-1, II FCC). In theory, the Minister for Economy could authorise or block a concentration on this ground.

At the time of writing, the Minister for Economy has not used the above-mentioned powers after a Phase I and/or a Phase II decision.

Whatever the decision taken in Phase I or in Phase II, the Authority and the Minister for Economy, if he/she intervenes in the review process, make public the outcome of the case within 5 working days following the decision.

The Authority’s decisions are then published on its website (http://www.autoritedelaconcurrence.fr/user/tableaudec.php), and those of the Minister for Economy are published in the electronic version of the BOCCRF (Official Bulletin, Competition Policy, Consumer Affairs and Fraud Control http://www.dgccrf.bercy.gouv.fr/boccrf/index.htm).

#### 5.2 Where competition problems are identified, is it possible to negotiate “remedies” which are acceptable to the parties?

Yes. The parties have the possibility of submitting commitments under Articles L. 430-5 II and L. 430-7, II FCC.

Remedies must be proportionate to the risks deriving from the transaction and limited to what is strictly necessary to maintain or re-establish sufficient competition. Remedies can be structural (divestment of a business, disposal of tangible or intangible assets, etc.) and/or, if need be, behavioural (guarantee of access to a network or to patents or licenses, restrictions on the circulation of information, etc.).

The parties file their remedies with the Authority by way of a commitment letter. The Authority assesses whether the proposed remedies are suitable for each competition problem identified. In this respect, the Authority may test the remedies by sending a non-confidential version of the commitment letter to interested third parties for comments.

#### 5.3 At what stage in the process can the negotiation of remedies be commenced?

The parties may file remedies with the Authority at any time: during the pre-notification phase, in the notification, in the course of the Phase I or Phase II investigation (subject to an extension of the review period; see question 3.6).

Where remedies appear necessary but have not been proposed by the parties, the Authority invites the parties to submit remedies.

#### 5.4 If a divestment remedy is required, does the merger authority have a standard approach to the terms and conditions to be applied to the divestment?

Where a divestment remedy is required (in Phase I or Phase II), the Authority expects the disposal to involve a viable and competitive entity. In this respect, the parties must indicate all the assets and personnel they will transfer so that the entity can be autonomous on
the market. In addition, the parties undertake to preserve the viability of the activity until the divestment, and they must describe the transitory measures taken to preserve such viability.

The acquirer must be independent from the parties and have the capacity to develop the activity in the future. The Authority will also ensure that the acquisition does not threaten competition (if the acquisition of the divested business/assets meets French merger control thresholds, a notification of such acquisition will be necessary).

The disposal of the assets must take place within a short period, usually from three to nine months.

The parties generally appoint an administrator who is responsible for monitoring the disposal procedure, or even for selling the assets.

5.5 Can the parties complete the merger before the remedies have been complied with?

Yes. In most cases the parties may complete the concentration once it has been cleared, subject to compliance with the remedies proposed. However, where the viability and the effectiveness of a remedy in the form of a disposal depend entirely on the identity of the acquirer, the Authority will require that the concentration be suspended until prior approval of the acquirer (up-front buyer).

5.6 How are any negotiated remedies enforced?

An administrator may monitor the parties’ compliance with the remedies. The Authority may also rely on third parties (through information requests or complaints) to check that the parties fulfil their remedies.

Where the Authority considers that the parties have not fulfilled their remedies as provided for in the Authority’s (or Minister for Economy’s) decision, the Authority may under Article L. 430-8, IV FCC:

- withdraw the decision authorising the concentration. Unless the situation is returned to that prevailing prior to the concentration, the parties must re-notify the concentration within one month;
- enjoin the parties which have not complied with their remedies to fulfill the said remedies, within a delay, subject to a periodic daily penalty up to 5% of the average daily turnover during the last financial year; and/or
- impose a fine (i) for legal persons: up to 5% of the net turnover during the last financial year; and/or (ii) for individuals: up to EUR 1.5 million.

Prior to the LME, companies have been sanctioned for failure to fulfil their remedies. For instance, in the Carrefour/Sonnenblut case, a EUR 100,000 fine and a periodic daily penalty of EUR 2,000 were imposed.

5.7 Will a clearance decision cover ancillary restrictions?

There are no specific provisions concerning ancillary restrictions in France and the draft Merger Control Guidelines of the Authority do not deal with this issue.

In the past, the Minister for Economy (in charge of merger control until the entry into force of the LME) took the same approach as the EU Commission, considering that restrictions necessary and directly related to a notified transaction were covered by the clearance decision. It can be expected that the Authority will do the same, even though there is no such example to date.

5.8 Can a decision on merger clearance be appealed?

The Conseil d’Etat (Supreme French Administrative Court) is competent in first instance and on final appeal to hear appeals brought against merger decisions of the Authority or the Minister. For the parties to the transaction, the appeal period is two months from the date the decision was notified to them. For interested third parties, this period expires two months after the publication of the decision.

The review of the decision by the Conseil d’Etat will embrace procedural issues as well as the merits of the case, with a dynamic approach of the circumstances in law and in fact, including market definitions, calculation of market shares, efficiencies, remedies, etc. At the same time as an action on the merits is introduced, the petitioner can ask the Conseil d’Etat to suspend the contested decision by way of summary judgment, subject to strict conditions (urgency; serious doubt as to the legality of the decision; the decision has not been fully implemented at the date of the request).

To date, no appeal has been filed against a decision of the Authority.

5.9 Is there a time limit for enforcement of merger control legislation?

The Authority’s decision authorising a concentration is valid without any limitation in time, but provided that the de jure and de facto circumstances do not change. Besides, if a contemplated concentration has been authorised on the basis of a project which has been significantly modified before the implementation of the concentration, the decision authorising the concentration is no longer valid.

In case of abuse of a dominant position or of a state of economic dependency derived from the implementation of a concentration, Article L. 430-9 FCC allows the Authority to order the undertakings concerned to modify or cancel any agreements which have allowed the abuse in question.

To date, this procedure has been implemented only once with the decision n° 02-D-44 of 11 July 2002 of the Competition Council, under the system which prevailed prior to the LME. In this decision, the Competition Council (Competition Authority with the LME) requested that the Minister for Economy, in charge of merger control at that time, order three major French companies to terminate a series of joint ventures in the French drinking water and sewage sectors.

6 Miscellaneous

6.1 To what extent does the merger authority in France liaise with those in other jurisdictions?

The Authority is a member of various international fora including the European Competition Network (ECN), the European Competition Authorities (ECA), the International Competition Network (ICN), the United Nations Conference on Trade and Development (UNCTAD), and the Competition Committee of the OECD.

When it is informed that a notified transaction has been or is about to be notified to other authorities within the ECA (i.e. competition authorities in the EEA), the Authority informs the other authorities concerned of the notification, using the ECA notice template (http://www.autoritedelaconcurrence.fr/doc/echanges_infos_conce n_eca.pdf). The various authorities concerned are then required to keep each other informed of the developments in the case at hand in their respective jurisdictions.
6.2 Please identify the date as at which your answers are up to date.

November 12, 2009.

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Eric Morgan de Rivery
Jones Day
120 rue du Faubourg Saint Honoré
75008 Paris
France
Tel: +33 1 5659 3939
Fax: +33 1 5659 3938
Email: emorganderivery@jonesday.com
URL: www.jonesday.com

Eric Morgan de Rivery specialises in EC and French competition law, advising on all aspects of EC legislation and state aids. Experienced in cartel cases, mergers, abuses of dominant positions, and other proceedings before the EC. He has advised companies on deregulation in the postal sector, telecommunications, air transport, and energy markets. Regularly acts in cases before the EC and in judicial review and appellate cases before the Court of First Instance and the Court of Justice of the EC. Represents clients before the French courts, the French Competition Council, and the French Regulatory Authorities. He divides his time between Brussels and Paris. Ranked by Chambers Europe as a leading individual in Competition/European law (Band 2); Highly recommended by PLC Which lawyer? as one of the top competition lawyers in France for Competition/antitrust, EU Competition, and EU State Aid.

Olivier Cavézian
Jones Day
120 rue du Faubourg Saint Honoré
75008 Paris
France
Tel: +33 1 5659 3939
Fax: +33 1 5659 3938
Email: ocavezian@jonesday.com
URL: www.jonesday.com

Olivier Cavézian advises on French and European mergers and represents French and international clients in cartel litigation and abuse of a dominant position cases in various sectors, including chemicals, energy, telecommunications, press, transportation, and pharmaceuticals. He has also conducted several leniency proceedings in cartel cases before both French and European competition authorities.

Olivier has studied at the Paris Institut d’Etudes Politiques (Diploma International Section, European Community 1996) and the University Paris II-Panthéon Assas (Master’s in Civil and Corporate Law 1995). He is often invited to speak on French and EU competition issues in Paris and Brussels and regularly comments on French and EU competition hot topics in the press. Olivier also teaches Community Law in the international MBA program at the Sorbonne Graduate Business School (IAE) at Paris I-Panthéon Sorbonne.

Olivier is a member of the Paris Bar.