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**Assessing and Communicating the Benefits of Competition Interventions – Note by
France**

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This document reproduces a written contribution from France submitted for Item 6 of the 75th meeting of Working Party 2 on 12 June 2023.

More documents related to this discussion can be found at
<https://www.oecd.org/competition/assessing-and-communicating-the-benefits-of-competition-interventions.htm>

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1. The assessment, and communication by competition authorities of the benefits of competition is one of the most effective tools available to them alongside their repressive action in order to establish a competitive environment. In recent years, the French competition authorities have devoted considerable efforts to promote competition, with effective benefits. On the one hand, free competition stimulates productivity, broadens supply, and reduces consumer prices, which is especially crucial to preserve purchasing power. On the other hand, in a dynamic economic climate, competition leads to technological innovation, higher-quality products, a wider product range and greater production efficiency.

2. Competition advocacy refers to "activities undertaken by a competition authority to promote a competitive environment through non-repressive means, including through its relations with other governmental entities and through public awareness of the benefits of competition"¹. In this way, competition promotion "includes initiatives taken by the competent authorities in relation to other public entities with a view to influencing the regulatory framework and its implementation so as to foster competition, and activities carried out by the competent authorities to raise awareness among economic agents, public authorities and the general public"².

3. To promote a culture of competition, the French competition authorities are implementing evaluation and communication strategies to assess the effectiveness of their sanctions in terms of dissuasion to raise awareness and mobilize the general public, to increase firms' compliance with competition law and to influence policy debates.

4. Competition authorities therefore find relevance in intervening upstream, by assessing and communicating the benefits of competition, as a complement to their repressive action.

5. According to Simon Evenett (2006)³, promoting competition has a number of advantages: it complements the application of the law, prevents public intervention upstream so as to protect weak economic agents who would suffer most from inappropriate regulations, and reduces the harm that could result from the influence of special interest groups.

6. While the French competition authorities have been a source of impetus in the methods used to assess the impact of their interventions (1), they continue developing and broadening their communication on both the benefits of an intervention in competition matters and the benefits of competition more broadly (2).

¹ ICN Advocacy Working Group, « ICN Advocacy Toolkit Part I : Advocacy Process and Tools », 2011.

² Conférence des Nations Unies sur le commerce et le développement, « La contribution des stratégies de communication à l'efficacité des autorités de la concurrence », *op cit.*

³ Evenett S., « Competition Advocacy: Time for a Rethink », *Northwestern Journal of International Law & Business*, 2006.

1. The complementary role of the French competition authorities in the quest for a more accurate assessment of their interventions' impact

7. In accordance with the law, the intervention of competition authorities in markets has economic consequences.

8. Since 2018, the French Competition Authority has been carrying out an overall qualitative and quantitative assessment of the impact of a sample of its opinions and decisions. On its side, the DGCCRF is currently implementing a method for assessing the economic impact of the actions resulting from all of its missions (competition, consumer affairs and fraud control).

1.1. Qualitative and quantitative assessment of the impact of Competition Authority's work on anti-competitive practices

9. In its annual report, the Competition Authority evaluates the direct effects of its litigation activity and the publication of sector-specific opinions. As part of the quantitative analysis of the impact of its action, the Competition Authority takes into account not only the value of the sanctions imposed on companies, but also the gains for the economy resulting from an ending of anti-competitive behaviors by sanctioned companies or from commitments made in the context of merger operations.

10. To better understand the impact of its activity on the economy, the Authority draws part of the methods developed by the OECD⁴. It uses assumptions to estimate the additional costs borne by the company in the absence of its intervention. If these avoided costs are not directly mentioned in the decision, they are assumed to be 10 % for a horizontal cartel, 5 % for an abuse of a dominant position and 3 % in the case of commitments made during a merger or an abandoned merger.

11. In addition, the Competition Authority has added further assumptions to refine its calculations. First, an additional cost of 2.5 % is used to assess vertical agreements. Second, the additional costs are presumed to be lower when the decision indicates that the damage to the economy has been limited or when the case has been closed by a commitment procedure: in this case, they are presumed to be 1% in the case of abuse, vertical agreements and commitments, and 2 % in the case of sanctions for horizontal agreements. The various assumptions regarding these additional avoided costs are then applied to the value of the sales affected over a period of three years, using a discount rate of 4.5%. The Competition Authority's method is based on the one used by the CMA⁵ in its impact studies. Lastly, the Authority emphasizes that these direct impacts are accompanied by indirect effects that are more difficult to quantify, such as the deterrent effects resulting from its decisions or the impact of its interventions on competition and its consequences on business productivity.

12. As part of its qualitative analysis of the impact of its action, the Competition Authority, each year, identifies in its annual report a selection of decisions and opinions, and analyses the follow-up given to its intervention and its impact on the concerned markets.

⁴ OECD, « Guide for assessing the impact of competition authorities' activities », 2014.

⁵ CMA, « The deterrence effect of competition authorities' work », 2017.

1.2. The development of a method to assess the impact of DGCCRF's activities in the area of anti-competitive practices

13. Work is currently ongoing at the DGCCRF to enable investigators to apply a common framework for analyzing the economic impact of the different infringements. The aim of this work is threefold. First, highlighting the economic impact of each fraud is an element that will enable the administration or the judge to impose an appropriate penalty, in the light of the different economic consequences of the former. Second, by considering the economic impact of the inspected fraud, it is possible to target investigations and the DGCCRF's investigation program to be prioritized, making the Directorate more effective. In this respect, raising investigators' awareness of the economic impact of fraud strengthens the importance of economic analysis in DGCCRF's actions. Third, at an overall level, consideration of the economic impact of the investigated frauds by the DGCCRF highlights its fundamental role in ensuring the proper functioning of the economy. Eventually, this role could be evaluated, highlighting its contribution to the smooth operation of markets through its investigations and control activities.

14. The economic impact of fraud is a broader concept than that of economic loss, the latter being legally understood as loss of earnings directly linked to the practice and eligible for compensation. The economic impact encompasses all the various direct and indirect effects that need to be taken into account in order to proportionate dissuasive sanctions (which do not, therefore, correspond to the simple compensation of a loss) and to prioritize the DGCCRF's actions. The analysis is therefore both quantitative and qualitative and considers both direct and indirect impacts, including the additional price paid by consumers and the effect of crowding out competitors, as well as the deterioration of the sector's image (reputational impact) and the loss of confidence in the State.

2. The importance attached by French competition authorities to develop their communication of the benefits of competition

15. The French competition authorities promote competition in a variety of ways.

2.1. The diversity of communication strategies of the French competition authorities

16. The strategy of the French competition authorities is based on global communication. In this respect, the French authorities publish their decisions and opinions on their websites, as shown by the publication of the DGCCRF's settlement/injunction decisions in a section entitled "Anti-competitive practices: settlements and injunctions" on its website⁶, as well as the publication of the Competition Authority decisions and opinions in a dedicated section.

17. In addition to the publication of annual activity reports by both the DGCCRF⁷ and the Competition Authority⁸, French authorities' strategy may be based on more targeted and specific communication, through the publication of press releases relating to decision-

⁶ <https://www.economie.gouv.fr/dgccrf/concurrence/Pratiques-anticoncurrentielles>. Y figurent également des fiches pratiques, par exemple sur l'abus de position dominante.

⁷ DGCCRF, « Bilan d'activité 2021 Programme national d'enquête 2022 », 2022 ; DGCCRF, Repères, « 2020 Programme national d'enquête », 2021.

⁸ Autorité de la concurrence, Rapport annuel 2021, « Source d'oxygène pour l'économie », juillet 2022 ; Autorité de la concurrence, « Feuille de route 2023-2024 », mars 2023.

making practices⁹ or the life of the institution¹⁰, or newsletters¹¹, which are published monthly and addressed to a wide range of stakeholders.

18. The two competition authorities are implementing communication strategies based on an educational approach: with the organization of workshops over the last ten years. For example, some were made on the results of compensation proceedings for anti-competitive practices¹², with the production of guidelines (by the DGCCRF on the application of competition law in the agricultural sector¹³, by the Authority on its action in the field of anti-competitive practices and merger control¹⁴), and teaching guides (for SMEs by the Competition Authority¹⁵), to help people better understand competition rules. In this respect, the Competition Authority has created a section entitled "Competition and you", with sub-sections on "The virtues of competition"¹⁶, "My little competition primer" and the compliance measures taken by companies.

19. In terms of communication channels, promoting the work of the competition authorities on social networks (LinkedIn and Instagram in particular) is also a useful complement to the information shared on the authorities' websites.

2.2. The variety of players targeted by the communication strategies of the French Competition Authorities

20. French competition authorities' communication strategies target economic actors, public authorities, and the general public.

21. Communication campaigns can specifically target economic operators, drawing attention to issues such as abuses of dominant position, cartels¹⁷, sanctions and leniency programs available to whistleblowers. Such campaigns can highlight the risks faced by offenders, help to improve compliance with the law and encourage participation in leniency programs¹⁸. To this end, the authorities organize meetings or are approached by companies and professional organizations (in the banking or food sectors recently for the DGCCRF, for example).

22. The competition authorities are increasing their awareness of the need to comply with competition rules in the area of public procurement. In this respect, the DGCCRF ensures fair competition in access to public contracts. It mobilizes its network in the *départements* and regions to organize meetings to raise awareness of anti-competitive

⁹ DGCCRF, Communiqué de presse, « Des possibilités de publicité renforcées pour les mesures d'injonction de la DGCCRF », décembre 2022.

¹⁰ <https://www.autoritedelaconcurrence.fr/fr/actualites>

¹¹ DGCCRF, Lettre d'information, « Concurrence & consommation », n°43, janvier 2023.

¹² DGCCRF, Atelier, « Un bilan de l'action en indemnisation en matière de PAC », décembre 2022.

¹³ DGCCRF, Lignes directrices, « Droit de la concurrence et secteur agricole », juillet 2020.

¹⁴ <https://www.autoritedelaconcurrence.fr/fr/textes-de-reference>

¹⁵ Autorité de la concurrence, Guide pédagogique, « Mieux comprendre les règles de concurrence. Guide à destination des PME », janvier 2020.

¹⁶ Autorité de la concurrence, La concurrence et vous, « Les vertus de la concurrence », mai 2022.

¹⁷ DGCCRF, Fiche pratique, « Entente entre professionnels », juin 2022.

¹⁸ Conférence des Nations Unies sur le commerce et le développement, « La contribution des stratégies de communication à l'efficacité des autorités de la concurrence », *op cit.*

practices among local authority public purchasers. The DGCCRF also makes public purchasers aware of the possibility of seeking compensation for damages suffered as a result of anti-competitive practices. To this end, it has published an information sheet on the sanctioning and compensation of cartels in public procurement¹⁹.

23. The public authorities, particularly the government, can also take advantage of the information provided by the competition authorities to encourage the introduction of a regulatory framework conducive to competition. For example, parliamentary committees or the government may request the opinion of the Competition Authority on any competition issue. This consultation is even compulsory in certain circumstances, with the DGCCRF acting as a link between the Authority and the Minister responsible for drafting regulations with an impact on competition.

24. *In fine*, the competent authorities may address anyone of the general public through their communications. Setting out and explaining in everyday language the virtues of a competitive environment can help the general public to better understand the objectives and effects of competition policy²⁰. By promoting competition, the authorities can highlight the negative impact of anti-competitive practices on the standard of living of households or taxpayers.

2.3. Conclusion

25. Awareness-raising activities carried out by the French competition authorities help to draw the attention of businesses and the general public to prohibited and unfair practices, by informing them of the procedures available for reporting breaches of competition law. If the economic impact of a competition authority's actions is highlighted by its communication strategy, the general public will have a better understanding of the role of competition.

¹⁹ DGCCRF, Lettre d'information, « Commande publique : sanction et réparation des ententes », mars 2021.

²⁰ Conférence des Nations Unies sur le commerce et le développement, « La contribution des stratégies de communication à l'efficacité des autorités de la concurrence », *op cit.*