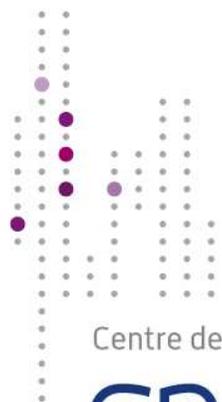


The French Institutional Reform

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Institutions and Competition Policy, CCP Annual Summer Conference, June 2013



Centre de Recherche en Économie et Statistique

CREST



Institutions in France 1986-2009

- **Two competition authorities:**
 - An independent administrative authority, the **Conseil de la Concurrence**.
 - Decisions taken by a board: 4 full-time members (the President and 3 Vice-Presidents) and 12 members.
 - Investigations done by the case officers (30 to 35) under the supervision of a *Rapporteur Général*.
 - **The Ministry of the Economy** (through DGCCRF)
 - Central administration services.
 - Antitrust, Mergers and State Aids units.
 - National Inspection Unit plus local offices.

Merger Control (Pre-Reform)

- **In the hands of the Ministry of the Economy.**
 - Merger unit at DGCCRF.
- **Opinion of the Conseil de la Concurrence requested only in phase II cases.**
 - But only an opinion (no specific merger unit at the Conseil).
 - Final decision taken and negotiations over possible remedies undertaken by the Minister/DGCCRF.

Antitrust (Pre-Reform)

- **Conseil de la Concurrence**
 - Complaints, cases referred by the Ministry, ex-officio.
 - Limited investigation powers
 - Inspections: asks DGCCRF to carry out inspections.
 - Could not appeal the Court of Appeal's judgements.
- **Ministry /DGCCRF**
 - Investigations at local and national level. Could then refer the case to the Conseil.
 - DNEC had the power to carry out inspections (with judicial permission).
 - Decided whether to appeal the judgements of the Court of Appeal (-> Cour de Cassation) or not.

Advocacy (Pre-reform)

- **The Conseil de la Concurrence could only give opinions on issues referred to it by the government.**
- **International cooperation**
 - Conseil de la Concurrence and DGCCRF / Ministry were both considered as national competition authorities.
 - Shared responsibilities for international cooperation.

The 2008 Reform

- **The process**
 - The last two presidents of the Conseil both suggested (in 2001 and 2006) to reform French competition laws and create a single authority.
 - “Attali Report” (January 2008) also proposed to reform the French competition law and to create a single authority with strengthened powers.
 - “Loi de modernisation de l’économie” (*Modernization of the Economy*, August 2008) and Ordinance on the Modernisation of the Competition Regime (November 2008).
 - Creation of a new competition authority (The Autorité de la Concurrence replaced the Conseil in March 2009) with increased powers and resources.

Merger Control (Post-Reform)

- **Autorité de la Concurrence now (almost) sole responsible for merger control.**
 - New merger unit created in March 2009 initially with former case handlers from the Conseil and staff from DGCCRF's merger unit.
 - 1 head of mergers, 2 deputy-heads, 12 case handlers.
 - Phase 1 decisions can be made by the President alone.
 - Phase 2 are collegial decisions following written statements (SO / parties' responses to SO) and a hearing.
 - **New "Phase 3":**
 - At the end of phase 1, the Minister has the opportunity to propose (but not to force) to open a phase 2 investigation.
 - Following a phase 2 decision, the Minister has the opportunity to review the case and **modify the decision on "general interest" grounds** (not on competition grounds).

Merger Control (Post-Reform)

- **Some other changes**
 - The Autorité has now the possibility to impose **structural remedies** if an **abuse of dominant position** has taken place and the dominant position was created by a previous merger.
 - Initially the Conseil only had the possibility to propose to the Minister to impose structural remedies.
 - **Lower turnover thresholds for mergers in the retail sector** (€ 15 millions instead of € 50 millions).
 - The two thresholds were later (2011) lowered in the overseas regions (to € 15 millions (general) and € 5 millions (retail)).
 - **The Autorité is now in charge of monitoring the actual implementation of accepted remedies.**
 - Already two cases. In one of them (Canal+/TPS) the initial clearance decision was withdrawn.

Effects on Merger Control

- **Process is now less politicized.**
 - More referrals?
 - *No Art. 9 referral between 2002 and 2009, four since March 2009.*
 - *Two Art.4(4) referrals between 2005 and 2009, six since then.*
- **Many additional notifications to the lower threshold for retail.**
 - Application of the simplified procedure in many cases involving retail stores in networks of independent (e.g., *Intermarché*).
 - **May not have been an extremely effective change.**
- **Clear willingness to monitor the effective implementation of remedies.**

Antitrust (Post-Reform)

- **National Inspection Unit** (30 investigators) **now integrated within the Autorité**
 - Partly as a specialised inspection unit, partly in antitrust units as case handlers. **Case handlers can now carry out inspections.**
- **Interactions between the Autorité and DGCCRF**
 - DGCCRF reports “clues” / information to the Autorité.
 - The Autorité decides whether to open an investigation (not yet a formal case) or to let DGCCRF investigate.
 - If DGCCRF investigates, it reports the results of the investigations to the Autorité.
 - The Autorité decides whether to take or not the case.
 - If case is of local dimension (“*micro-ACP*”), DGCCRF can then settle with the firms (limited fines up to € 75 000).
 - If the Autorité does not keep the case, the Minister can then formally refer it to the Autorité.

Effects on Antitrust Enforcement

- **More independence to carry out inspections.**
 - But still needs the help of local DGCCRF units for large inspections on several sites.
 - Lack of experience for most of the staff.
 - Investigators are not experienced case handlers.
 - Case handlers are not used to investigations “on the ground.”
- **Increased resources**
 - In total 60 new members of staff joined the Autorité (growing from 130 to about 190).
 - But increased workload (initial investigations, inspections, etc.).
- **But loss of interactions between the national investigators and local units.**
 - Less incentives for local DGCCRF units to deal with competition issues as cases.

Effects on Antitrust Enforcement

- **Fewer cases referred by the Ministry.**
 - Overall fewer cases opened in the recent years (on average 10/15 per year before the reform, 2 per year after 2009 [none in 2011 and 2012]).
 - But this also means much fewer cases of purely local dimension
 - Taxis, funeral services, etc.
 - But some initially local cases could also generate big cartel cases (building/road work).
- **Probably fewer inspections than before the reform.**
 - 5 in 2010, 3 in 2011, 1 in 2012 (but 2013 seems to be a “better” year!).

Advocacy (Post-Reform)

- **One single voice in the cooperation networks (notably ECN).**
 - Although this is only an indirect effect of the reform (e.g., 2 contributions to the public consultations on vertical guidelines and regulation in 2009!).
- **Possibility to open ex-officio “sector inquiries”.**
 - But only an advisory role.
 - Usually one or two big sector inquiries carried out each year by the Autorité.
 - Risk of political pressure (on the choice of inquiries) as the Autorité’s président now faces annual Parliamentary hearings to discuss activities, results and perspectives.

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