FRANCE

(1997)

Summary

1. Changes or proposed changes to competition policy and legislation

1. No changes were made to competition legislation or regulations in 1997. However, the new provisions of Part IV of the Ordinance of 1 December 1986 on practices restricting competition between professionals, adopted by the law of 1 July 1996, came into effect at the beginning of 1997 and were monitored particularly closely by the Directorate General for Competition, Consumer Affairs and Fraud Prevention.

2. Enforcement of competition legislation and policy

2.1. Anti-competitive practices (cartels and abuses of dominant position)

2.1.1. Activity of the Directorate General for Competition, Consumer Affairs and Fraud Prevention (DGCCRF)

2. In 1997, the Directorate General sought in particular to enforce legislation more effectively and increase efficiency among its staff. Following legislative changes to the Ordinance in 1996, there was a perceived need to review the means of investigation and action available to DGCCRF competition staff. The review focused on three main areas:

- sectors where investigations should be conducted as a priority,
- selection of enquiries culminating in referral to the Competition Council and diversification of the subsequent conduct of contested cases, either by the Competition Council or by the civil or commercial courts;
- monitoring of sectors recently opened up to competition.

1) Two particular areas where priority investigations were launched were highly concentrated sectors and public procurement contracts.

With regard to public procurement, the DGCCRF played an active part in terms of both prevention and sanctions. One prevention initiative consisted in convincing public authorities that it is in their interest to foster greater competition, especially by advertising calls for tender more widely. Monitoring, and hence action to penalise infringements relating to public procurement contracts, were backed up by initiatives designed to improve the detection of anti-competitive practices, especially on committees responsible for reviewing bids and awarding

tenders. 12 cases were referred to the Competition Council in 1997 after signs of such practices had been identified.

2) Wherever possible, the DGCCRF sought to pursue courses of action under the terms of the Ordinance of 1 December 1986 (Articles 9 and 36) or the Civil Code. In this way, the Competition Council was left free to concentrate on practices affecting the overall operation of markets of a certain size. Where appropriate, the DGCCRF also encouraged the imposition of criminal penalties under the terms of Article 17 of the Ordinance.

3) Sectors recently opened up to competition, in particular telecommunications and funeral services, were the subject of particular scrutiny.

2.1.2. Activity of the Competition Council

3. 81 contested cases were referred to the Competition Council in 1997, of which 12 also included applications for interim measures, and 27 applications for an opinion were received, giving a total of 120 cases. The sharp drop in the total number of referrals was due to a fall in the number of government referrals (9 fewer than in 1996) and corporate referrals (7 fewer). Since 1994, the majority of contested cases have been referred by companies. In 1997, 11 referrals from companies were based on Article 10-1 of the Ordinance relating to excessively low prices.

4. Referrals to the Competition Council continued to cover a wide range of sectors, including for example telecommunications, pay television, electricity, school transport, hotel bookings, collection cards for children, etc.

5. Of the 27 applications for an opinion received in 1997, 12 concerned general competition matters and 4 originated with the courts. The Minister for Economic Affairs submitted 15 applications, 6 of which concerned business concentrations. The Telecommunications Regulatory Authority submitted two applications on the basis of Article L.36-10 of the Post and Telecommunications Code.

The table below shows the trend in the number of referrals and applications for an opinion since 1989.

Referrals or applications	1989	1990	1991	1992	1993	1994	1995	1996	1997
Referrals	97	103	117	109	103	113	128	115	93
Applications	8	22	12	12	24	27	19	27	27
Total	105	125	129	121	127	140	147	142	120

6. In 1997, the Council held 101 sessions and delivered 115 decisions and 26 opinions. Of the 115 decisions in contested cases, 3 concerned excessively low pricing and 7 concerned applications for interim measures. Penalties or corrective measures were imposed in 39 cases:

- in 23 cases, the Council imposed fines;
- in 3 cases, it issued injunctions;

– in 13 cases, it both imposed fines and issued injunctions;

– in 9 cases, it ordered publication of its decision.

7. 82 companies were fined a total of FF 161.9 million. 39 trade associations were fined a total of FF 2.5 million.

8. The proportion of appealed decisions remained stable (32 per cent), as did the percentage of decisions upheld by the Paris Court of Appeals on the merits (81 per cent).

9. The following table shows significant information relating to the penalties imposed by the Council over the last six years:

	1992	1993	1994	1995	1996	1997
Number of fines	30	22	27	38	41	36
Number of companies or groups of companies fined	213	69	119	163	99	82
Amount of fines	138 063 000 FF	109 746 500 FF	68 895 000 FF	478 105 500 FF	105 044 849 FF	161 900 500 FF
Number of trade associations fined	22	7	28	23	14	39
Amount of fines	4 549 000 FF	750 000 FF	7 845 000 FF	3 077 000 FF	1 272 000 FF	2 522 500 FF
Total amount of fines	142 612 000 FF	110 496 500 FF	76 740 000 FF	481 182 500 FF	106 316 849 FF	164 423 000 FF

2.1.3. Activity of the Court of Appeals

10. In 1997, the Court of Appeals delivered 23 judgements upholding the main decisions of the Competition Council following referral from a minister.

11. The Court of Appeals judgements mainly concerned the following sectors:

– public procurement (mainly construction and public works and the supply of equipment or construction materials);

– utilities;

– pharmaceuticals;

– service providers: lawyers, doctors, architects, taxi operators.

12. Abuses of dominant position penalised by the Court of Appeals concerned a long-established operator (France Telecom), an operator with essential installations (Héli-Inter), a company with intellectual property rights to a product without equivalent on the market that had engaged in tied selling (Lilly France) and a company with significant market power (Pont-à-Mousson).

13. Most judgements against cartels concerned the construction sector (very large public procurement contracts) and organised professions (schedules of lawyers' fees). Concerning vertical restrictions, the Court confirmed its case law with regard to the non-validity of certain selective distribution or franchising clauses (Rolex, Zanier, S.A. Autodesk). It also found against a company (La

Roche Posay) which refused to allow distribution networks other than pharmacies to market its skin care products.

2.2. Mergers and Acquisitions

2.2.1. Action by the DGCCRF

14. The salient features of 1997 were the on-going process of concentration in the mass retail sector and confirmation of the tendency for companies to refer to the competition authorities before embarking on a merger or acquisition.

15. Among the mergers and acquisitions reviewed by the DGCCRF, several conditional authorisations were given on an opinion from the Competition Council (Auchan/Docks de France, Barry/Callebaut) or following undertakings given to the Minister for Economic Affairs, Finance and Industry (Canal Plus/Nethold).

16. Decisions were given in five of the six concentrations referred to the Competition Council in 1997: Carrefour/Cora (mass retail), Tefipar/Seperef (plastics), Henkel/Loctite (adhesives), Dekra-Veritas/MAAF (automobile roadworthiness testing) and Schweitzer-Mauduit/Ingefico (cigarette paper). The sixth application, relating to Promodes/Casino, was withdrawn following the failure of the take-over bid.

17. On three occasions the DGCCRF made use of the possibility of asking the European Commission to refer back to national competition authorities some or all of a case falling within the competence of European Union authorities. The Commission accepted the request for partial referral in each of the three cases, which concerned Promodes/Casino, Compagnie Nationale de Navigation/ELF/CIM (crude oil storage) and Lafarge/Redland (ready-mixed concrete and aggregates).

18. Regarding international co-operation, on 29 September 1997 France, Germany and the United Kingdom introduced a common standard form for national concentrations.

2.2.2. Action by the Competition Council

19. In 1997, the Council issued seven opinions concerning concentrations on referrals from the Minister for Economic Affairs. Six of the opinions were published in the Official Bulletin of Competition, Consumer Affairs and Fraud Prevention together with the minister’s decision.

20. The following table shows the number of opinions concerning concentrations issued by the Council on a government referral over the last six years.

1992	1993	1994	1995	1996	1997
3	9	15	5	5	7

3. Changes to competition law and policy proposed by the government

21. The main changes proposed by the government with the involvement of the competition authorities concerned the opening up to competition of various sectors, notably electricity, public auctions and the postal service. The reform of the public procurement code is also continuing.

4. The role of the competition authorities in framing and implementing other policies, such as measures to reform regulations, commercial policies or industrial policies

4.1. Role of the DGCCRF

22. As well as carefully monitoring conditions for the introduction of competition in sectors where regulatory reforms have been introduced (see Section 3 above), and within the framework of interministerial co-ordination, the competition authorities have contributed to current discussions concerning the legislative and regulatory framework for the organisation and promotion of sporting activities.

4.2. Role of the Competition Council

23. The Competition Council was asked on several occasions to issue an opinion relating to regulatory reform or the conditions for applying competition law to regulatory activities. The Council issued 19 such opinions in 1997. 11 opinions concerned competition matters, the applications being submitted by the Minister for Economic Affairs in 6 cases and by trade associations in 5 cases. 4 opinions relating to proposed decrees were issued on an application from the government. 2 opinions were issued on an application from the courts, and 2 on an application from the Telecommunications Regulatory Authority (ART). Several opinions issued by the Council in 1996 were published in 1997.

The table below shows the number of opinions issued by Council over the last six years:

Subject of the opinion	1992	1993	1994	1995	1996	1997
Proposed decree regulating prices (Art. 1)	-	1	1	-	1	-
Draft legislation introducing rules restricting competition (Art. 6)	-	-	5	4	2	4
Competition matters (Art. 5)	5	4	5	9	6	11
Proposed exemption decree	-	-	-	-	1	-
Practices identified in the context of court procedures (Art. 26)	2	6	6	1	3	2
Other (ART)	-	-	-	-	-	2
Total	7	11	17	14	13	19

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Report

I. Changes or proposed changes to competition policy and legislation

1. New legislation on competition and other related issues

24. No changes were made to competition legislation or regulations in 1997.

2. Other related measures (recommendations and directives)

25. Part IV of the Ordinance of 1 December 1986 defining and penalising practices that restrict competition was amended by the law of 1 July 1996. The chief aims of the amendment were to improve transparency by simplifying and clarifying invoicing rules and to improve trade relations between producers and distributors. In addition to the discriminatory practices already penalised, the scope of Article 36 was extended to include practices relating to demands for excessive charges for stocking a particular manufacturer's products, securing or attempting to secure an unfair advantage by threatening to break off established business relations, and suddenly breaking off business relations. The DGCCRF closely monitored enforcement of these new provisions.

3. Changes to competition policy and legislation proposed by the government

3.1. Opening up to competition of government monopolies and public enterprises

26. The process of opening up government monopolies to competition is continuing and the DGCCRF is playing an active role in ensuring that the process, an essential feature of European construction, takes account of both the public service aspects and the economic and social characteristics of each sector concerned.

27. In 1997, preparations for introducing greater competition concerned three main areas: electricity, public auctions and postal services.

Electricity

28. In 1997, the French government began preparatory work on legislation that would allow for transposition into French law of the EU directive adopted in Brussels on 19 December 1996. The Minister for Economic Affairs, Finance and Industry asked the Competition Council for an opinion on the subject. In its opinion, issued in April 1998, the Council stated that the objective was to encourage independent producers to enter the market and to favour the development of new production by means of a system of authorisations, while respecting the broad requirements of government investment scheduling and security of energy supply. While keeping the publicly owned energy production, transport and distribution entity as a single unit insofar as is necessary, the Council said that efforts should be made to ensure that all electricity producers have access to the transport network under transparent, objective, non-discriminatory conditions and at a reasonable cost. Efforts should also be made to ensure that EU rules governing the access of certain users to the status of eligible consumers should be applied as openly as possible, while

respecting the full scope of public service missions and the principle of non-discrimination within the various economic sectors. A bill is due to be discussed in the next session of parliament; the transposition process must be completed by 19 February 1999.

Public auctions

29. The regulations governing the sale of movables at public auction, based mainly on a monopoly granted to officially appointed valuers and auctioneers, were no longer compatible with the principles of EU law. The French government therefore decided to reform the French system of voluntary sales of movables at public auction so as to comply with the requirement to liberalise the public auctions market. The reform, which will be debated by parliament in October 1998, involves opening up the market to professionals in the European Union and abolishing the monopoly for non-judicial sales.

30. Consequently, commercial companies will be able to organise public auctions, though public auctioneers will continue to conduct judicial sales. An Auctions Council will ensure compliance with the rules.

Postal services

31. The European directive on the development of postal services in the European Union, adopted in December 1997, provides for the stage-by-stage liberalisation of the postal sector. The first stage will be transposition of the directive by the beginning of 1999. The introduction of competition will entail a reduction of the monopoly component of total Post Office revenues from two thirds to one third in five years.

3.2. Reform of the public procurement code.

32. The DGCCRF is playing an active role in the reform of the public procurement code.

33. Reform is needed partly because of the scale of public procurement (it represents approximately 10% of GDP), partly because of the complexity of the existing code. The main aim of the current reform is therefore to simplify the corpus of existing legislation, the complexity of which penalises both public buyers and firms, especially small and medium-sized enterprises. Consideration is also being given to how to achieve the best balance between the necessary transparency of procedures, which guarantees fair competition, and simplification, which is the precondition for giving SMEs greater access to public procurement contracts (*see also below*).

II. Enforcement of competition legislation and policy

2. 1. Action against anti-competitive practices, including cartels and abuses of dominant position

2.1.1. Activity of the competition authorities

2.1.1.1 Activity of the DGCCRF

34. DGCCRF investigators found evidence of anti-competitive practices in 287 cases in 1997. 196 investigations were launched (including 32 at the request of the Competition Council) and 186 reports were drawn up.

35. The Minister for Economic Affairs referred 23 cases to the Competition Council in 1997, 12 of which related to public procurement contracts (rural electrification, school transport, roadworks). The Minister referred 22 cases to the Competition Council between 1 January and 30 July 1998.

36. In 1997, the DGCCRF sought in particular to enforce legislation more effectively and increase efficiency among its staff. Action focused on three main areas:

- sectors where investigations should be conducted as a priority;
- selection of enquiries culminating in referral to the Competition Council and diversification of the conduct of subsequent contested cases, either by the Competition Council or by the civil or commercial courts;
- monitoring the implementation of deregulation legislation opening up public monopolies to competition.

1) Two particular areas where priority investigations were launched were highly concentrated sectors and public procurement contracts.

Public procurement

37. Public procurement contracts were monitored particularly closely, and the DGCCRF played an active part in terms of both prevention and sanction.

38. Preventive measures included providing public buyers with information and advice, especially for small-scale contracts awarded by small authorities or when the bidders suspected of anti-competitive practices are craftsmen or independent small businesses.

39. Assistance to authorities for preventive purposes consisted in helping buyers to obtain the best quality at the best price. Another aim was to convince authorities that it is in their interest to foster competition, especially by advertising calls for tender more widely. It also provided an opportunity to emphasise the need to insist on quality and safety at all stages of the tender procedure: when determining needs, so as to invite the most suitable bids; and when awarding contracts, so as to make it easier to compare bids.

40. Corrective measures were strengthened by initiatives designed to improve the identification of anti-competitive practices on committees responsible for reviewing bids and awarding contracts (20,000

in 1997), whose members include staff from departmental agencies. A substantial proportion of referrals to the Competition Council (12 in 1997) were based on evidence of anti-competitive practices identified in this way. DGCCRF staff also sent 4,000 notices to prefecture officials, in particular when preventive advice failed to achieve the expected results.

41. This monitoring work may also reveal criminal offences (favouritism and unlawful acquisition of an interest in particular) that are referred to the public prosecutor's office under the terms of Article 40 of the Code of Criminal Procedure.

2) Wherever possible, the DGCCRF sought to pursue courses of action under the terms of the Ordinance of 1 December 1986, leaving the Competition Council free to concentrate on practices affecting the overall operation of markets of a certain size.

i) Action before the civil and commercial courts

- In line with this policy, certain cases concerning vertical restrictions or abuse of a dominant position were referred to the civil or commercial courts under the terms of Articles 9 and 36 of the Ordinance. The victims of anti-competitive practices were also encouraged to make wider use of the provisions in the Civil Code relating to expedited procedure and the reparation of damage caused by anti-competitive practices.

- Thus, in addition to procedures before the Competition Council and the Paris Court of Appeals (see below), court action was take against La Roche Posay, a manufacturer of skin care products which had attempted to exclude distributors other than pharmacists from the market. Several distributors of parapharmaceutical products, considering that La Roche Posay's practices had been harmful to them, sought reparation before the competent courts on the grounds of Article 36 of the Ordinance.

ii) Action before the criminal courts

- The DGCCRF has helped to enforce Article 17 of the Ordinance, which provides for criminal penalties against persons fraudulently taking part in a cartel. Two judgements delivered in criminal cases in 1997 may be mentioned. The first concerned the managers of a removal company which had previously been the subject of an adverse decision of the Competition Council (Decision n° 94D19), upheld on appeal by the Court of Appeals (judgement of 16 December 1994) and the Court of Cassation (decision of 4 February 1997). The second concerned public procurement contracts. On a report drawn up by the Directorate for Competition, Consumer Affairs and Fraud Prevention of the Isère department, the Grenoble Criminal Court convicted the senior official of a local authority and the managers of several companies of "*fraudulent, personal and decisive involvement in the creation, organisation and implementation of an unlawful cartel between roadbuilding firms*". An appeal against this judgement is currently pending before the Lyon Court of Appeals.

- The number of criminal convictions on the grounds of Article 432-14 of the Criminal Code relating to favouritism[1] also increased, in particular as a result of evidence identified by DGCCRF staff. 33 judgements were delivered, of which 13 are final, 12 have been appealed on the merits and 8 on the form.

3) Monitoring the implementation of deregulation legislation opening up public monopolies to competition.

i) Telecommunications

– The DGCCRF worked in co-operation with the recently created Telecommunications Regulatory Authority (ART), which has delivered its first decisions in the area of competence for which it was created, namely organisation of the sector in the context of its opening up to competition. The ART has evaluated the charges arising from universal service obligations, invited applications for and awarded licences and telephone prefixes and set prices and technical conditions for the interconnection of networks open to the public. It has settled disputes relating to access to essential infrastructure and the conditions of interconnection. It has also issued several opinions on France Telecom's price schedules; the decision whether or not to approve France Telecom's prices lies with the Secretary of State for Telecommunications and the Minster for Economic Affairs, Finance and Industry. The Minister has made several referrals to the Competition Council concerning France Telecom's pricing policy.

ii) Funeral services

– The decision to open up funeral services to competition, taken in 1993, was implemented partially in 1996 and fully in 1998. The DGCCRF has monitored this sector particularly closely and identified numerous instances of anti-competitive practices. The Competition Council reviewed seven cases in 1997 (see also below, Decisions of Administrative Courts).

2.1.1.2. Activity of the Competition Council

42. 44 of the decisions delivered by the Council in 1997 partly or entirely concerned cartels whose aim was or whose effect could have been to prevent, restrict or distort competition on a market. 14 of the decisions concerned abuse of a dominant position. The Council also delivered three decisions concerning practices which the referring party considered to be in breach of the provisions of Article 10-1 of the Ordinance prohibiting excessively low prices.

2.1.1.2.1 Cartels

43. In 1997, as in previous years, agreements on prices or profit margins involving companies theoretically in competition with each other continued to be the practices most frequently encountered and penalised. Such practices were ascertained in 20 of the 50 cases in which a complaint had been made.

i) Agreements on prices or profit margins

44. In seven cases concerning sectors as varied as legal services, monumental stonemasonry, construction and rum production the Council penalised trade associations which had drawn up and circulated schedules of prices or charges.

45. In decisions that were upheld on the merits by the Paris Court of Appeals, the Council penalised the bar associations of Clermont-Ferrand and Quimper for drawing up fee schedules and circulating them to their members. The national council of architects was also penalised for circulating a method for setting fees for different types of assignment.

46. Five of these cases came to light in the context of public or private tender procedures in which the bidders had consulted with each other before submitting their tenders. Their aim was jointly to decide the bidder who, submitting the lowest bid, should be awarded the contract, and to organise the submission of covering tenders by the other bidders in order to prevent the free play of competition.

ii) Barriers to market entry

47. In thirteen cases the Council penalised agreements designed to limit the market access of new competitors or to evict a competitor from the market.

48. Three noteworthy cases came to light:

France Telecom -Transpac

49. The issue in this case concerned the financial conditions proposed by France Telecom/Transpac in response to a call for tender from AXA for data transmissions, representing approx. 250 million Kb, between its 3,600 insurance agents and the group's central site at Marly-le-Roi. In 1991, AXA decided to review its telecommunications network, hitherto based on direct access to Transpac, in order to reduce utilisation costs and improve quality. The call for tenders, launched at the beginning of 1993, concerned the installation of a VSAT satellite network in France and some other European countries, though the satellite solution was not the only one considered. Only two candidates were short-listed: BT France, for a VSAT solution, and France Telecom/Transpac for a Transpac land line using X 25 packet switching technology on channel D. Numeris is a monopoly service operated by France Telecom using circuit switching technology. It consists of two channels, B and D; channel D may serve solely as a means of access to another network. The system of access to Transpac via channel D thus combines both types of communication technology (packet and circuit switching) and their advantages. In 1993, Transpac was the only operator to have asked for access to Numeris channel D. AXA, which formerly used leased lines to access the Transpac network directly, had calculated that access via Numeris channel D could enable the company to cut its costs by 30%. Under these circumstances, the satellite and land-based solutions could be placed in competition. The Numeris channel D/Transpac solution was ultimately chosen.

50. The bid submitted by Transpac and France Telecom on 15 April 1993 was completed in July and September. Although the initial bid stated that the commissioning charge for basic access to Numeris was FF 675 (excl. VAT), it also included a provision that France Telecom would make no commissioning charge during the deployment period. The contract concluded on 30 November 1993 also provided for a free two-month subscription. For the other services, specific price conditions were granted for Transpac traffic, Numeris channel D traffic, the rental and maintenance of a channel D X 25 adapter, access monitoring, customised maintenance and commissioning costs. Otherwise, the regular public price applied. As regards Transpac traffic, the financial proposal of 9 September 1993 added that "subject to a commitment from you before 30 September 1993" the price for Transpac traffic from 1 January 1993 to 30 September 1993 would be FF 0.05 (excl. VAT), including all reductions, instead of FF 0.0569 (excl. VAT). The proposed reductions represented a total amount of FF 8 700 000, of which FF 1 449 000 related to the contract in force at the time.

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51. The Council considered that France Telecom, a public entity operating the Numeris public network as a statutory monopoly, could have favoured its Transpac subsidiary over the competition by offering advantageous conditions for making channel D available in the offer of Transpac services via channel D, at a time when a new technology was emerging on the market. According to the case law of the Court of Justice of the European Communities, "a system of competition free from distortion such as the one provided for by the Treaty can be guaranteed only if equality of opportunity between the different economic operators is ensured". On this basis, the Council considered that the purpose or effect of the decision taken by France Telecom and Transpac jointly to offer free initial access and a free two-month subscription to Numeris was or could have been to influence potential users in favour of the Transpac/Numeris channel D technology to the detriment of the VSAT solution. France Telecom advanced two main arguments in its defence: first, that the offer to AXA merely anticipated the pricing policies decided by France Telecom's general manager on 30 December 1993 and subsequently approved by ministerial order, according to which bulk customers would not be asked to pay commissioning charges; secondly, that the offer was the result of a unilateral decision on its part. Rejecting these arguments, the Council found that the price proposals made to AXA had been presented as specific advantages and that the pricing policy mentioned by France Telecom had not been approved until much later, in February 1994. The Council also pointed out that France Telecom and Transpac, which is entirely independent of France Telecom in commercial terms, had issued a document entitled "Synthesis of the proposal" which constituted an acknowledgement of the fact that their specialist staff had jointly drawn up the offer. The offer was thus the result of a proposal linking both companies, even if AXA had subsequently concluded a separate contract with each one.

52. The reduction offered by Transpac on the price of traffic, granted retroactively, was also deemed likely to distort competition and to represent an abuse of a dominant position.

Ready-mixed concrete in the Provence-Alpes-Côte d'Azur region

53. The Council considered a situation where producers which had pursued a policy of systematically sharing out markets found themselves facing a new entrant. In doing so, it referred to previous decisions concerning predatory pricing, hitherto practised by firms in a dominant position. The Council held that an anti-competitive agreement existed if all the producers charged prices lower than their variable average production costs and if it was proved that the purpose or effect of such a strategy was or could have been to deny or limit access to the market by the new entrant. In addition, producers who sold concrete at prices lower than their total average costs but higher than their variable average costs could also be engaging in a prohibited practice. For companies in such a market situation, the sole interest in charging prices lower than their total costs, and even more so than their variable average costs, is to eliminate a competitor or competitors so as to be able to raise prices later and benefit from the rent thus obtained. The Council added that in assessing the intention to evict a competitor, account should be taken of how long the practices lasted, how consistently they were applied and the scale of loss-making sales.

54. After defining on what basis to compare variable costs with the sale price of ready-mixed concrete, the Council examined the pricing policies practised in the Toulon area at the time when the concrete plant installed by SNBT at Ollioules came on stream. According to the manufacturers, in November and December 1993 the price for standard B25 type concrete, which had been around FF 362 per cubic metre, abruptly fell to FF 300 or even less in some cases (FF 250 - 290). Using figures supplied by the firms concerned, the Council found that in the area in question Béton de France had charged unit prices lower than its variable average costs when selling ready-mixed concrete in late 1993, early 1994 and the last quarter of 1995. The Council also found that on numerous occasions Béton de France had charged unit prices higher than its variable average production costs but without taking into account the

full amount of fixed costs. SMB, a subsidiary of Unibéton, had charged unit prices lower than its variable unit costs during the last quarter of 1994 and average monthly sale prices lower than its variable average monthly costs in two nearby plants. The Council found that Super Béton had charged prices just over its variable average unit costs, Super Béton having acknowledged that it charged sale prices FF 1 higher than its variable average costs and lower than its total costs after SNBT had installed its plant at Ollioules. The Council found that Béton Chantiers du Var had charged average sale prices lower than its average monthly total costs during the second half of 1994 and unit sale prices lower that its total unit costs on two projects immediately after SNBT had installed its plant at Ollioules.

55. After hearing evidence from several independent producers of ready-mixed concrete, the Council concluded that the producers had intended to evict the new entrant. The manager of Béton Provence said that he had received a warning from Béton de France that if Béton Provence set up in the area, Béton de France would ensure that it did not survive. The manager of GM Béton also said that he had been subject to intimidation and predatory pricing. An independent producer on the Toulon market had noted that when SNBT arrived in Ollioules, Béton Chantiers du Var, Béton de France, Super Béton and SMB had abruptly and simultaneously dropped their prices, canvassing his customers and offering prices between FF 250 and FF 280. These managers also mentioned that their trucks had been followed and that construction sites to which they had made deliveries had been watched. Their remarks corroborated similar experiences by SNBT when it opened its Ollioules plant. The Council also noted that the length of time during which the companies concerned charged prices lower than their costs and the scale of their losses over that period were evidence of an intention to evict SNBT from the market.

56. Although the companies concerned asserted that parallel behaviour did not constitute a cartel, the Council dismissed the argument and found that the combination of parallel behaviour and the continued existence of an agreement to share out a market, established between Béton de France, Unibéton, Super Béton and Béton Chantiers du Var, constituted sufficient evidence of concerted action intended to limit SNBT's access to the market and hamper free competition. The Council imposed fines.

Adidas - National Football League (LNF)

57. The case involved practices engaged in by Adidas and the LNF concerning football equipment. The Council, which had already ordered interim measures, penalised an agreement likely to prevent various sporting goods manufacturers from entering or maintaining a presence on the market. In the second half of 1995, Adidas and the National Football League (LNF) entered into an agreement in principle under which Adidas would be entitled to style itself the "official and exclusive supplier to the LNF" and reproduce the insignia and image of first and second division clubs. In exchange, Adidas would provide the players with all their equipment and pay FF 60 million. Article 315 of the LNF's by-laws had been amended in April 1995 to make Adidas responsible for providing the players' equipment in place of each individual club in the first and second divisions. The Council found that the LNF, by entering into an exclusive agreement with a sporting goods firm to provide equipment to these clubs, was not per se engaging in a prohibited practice under the terms of Part III of the Ordinance. Likewise, the Council considered that the LNF's behaviour in allowing a sporting goods firm to benefit from the insignia and image of the clubs in exchange for the supply of equipment and payment of FF 60 million was not anti-competitive. However, the Council continued its review of the case, considering that the provisions of Part III of the Ordinance could apply to such an agreement if the purpose or effect of some of its provisions or of the conditions under which it had been negotiated was or could be to distort or restrict competition on a market.

58. In the case in question, the Council noted that the agreement had been negotiated without any form of competitive tendering. This did not allow other sporting goods firms, especially those which supplied particular first or second division clubs, to submit bids to the LNF. In addition, since under the final version of the agreement Adidas would have exclusive rights for five years, no other sporting goods firm would be able to negotiate a sponsorship agreement with LNF during that period (the period also appeared excessively long compared with those that generally feature in agreements linking clubs to their suppliers and sponsors). On examining Adidas's situation in the sector, the Council noted that it was already the exclusive equipment supplier and sponsor of the League Cup and French Cup, organised by the French Football Federation. The matches played in these competitions represent respectively 10 and 20 per cent of all matches shown on television. As French league matches represent approximately 30 per cent of televised matches, through the agreement Adidas became the exclusive supplier to teams playing in 60 per cent of all matches shown on television. In comparison with its competitors, this gave Adidas an unparalleled position in sports sponsorship, a strategically important area for the promotion of sporting goods.

59. In reaching its decision, the Council considered three main factors: first, the comprehensive scope of the negotiations between LNF and Adidas, which covered all first and second division clubs and in reality enabled Adidas to sponsor over thirty clubs; second, Adidas's dominant position on the football boot market; third, the scope of the sponsorship contracts already held by Adidas relating to teams taking part in televised matches. On these grounds, it decided that the exclusive agreement between Adidas and the LNF was anti-competitive since, having been negotiated without competitive tendering, it deprived other sporting goods firms for an abnormally long period of the possibility of sponsoring clubs in the first and second divisions of the French football league.

iii) Boycotts

60. The Council also penalised various boycotts, including a boycott by the Central Council of Pharmacists of companies making home deliveries of medicines; a boycott by the Aveyron pharmacists' trade association of a mutual association which wished to enable its members to benefit from a dispensation to advance pharmaceutical expenses; a boycott by various automobile dealers in the Reims region of an automobile agent; a boycott by groupings of taxi drivers of taxi operators wishing to develop their own customer base; and a trade association that urged its members not to take part in a trade fair.

iv) Vertical agreements

61. In several cases reviewed in 1997, the Council ruled on relations between a supplier and its distributors, especially in the framework of selective or exclusive distribution agreements or franchising.

62. On several occasions, the Council ruled on pricing practices in such networks. It allowed that retailers who had opted for a sales policy based on a common name could jointly determine a sales approach consistent with the image they wished to give to the name. However, a collective strategy of this nature should not limit the freedom of members of the network to determine their own prices if they were in a position to compete with each other. On these grounds, the Council imposed penalties on the French guild of spectacle makers, which operates the Krys Primoptic and Vision Plus networks, for circulating advertising material containing sole retail prices. It also penalised a concerted reduction in washing time in the Hypromat high-pressure car wash franchise network, considering the practice to be equivalent to an across-the-board rise in prices. In several of these cases, the Council penalised provisions of agreements that granted absolute territorial protection to a local distributor, which were contrary to EU law if they

restricted trade by compartmentalising markets. In several cases involving franchise networks, the Council also ruled that preserving the identity or image of the network did not constitute sufficient grounds for imposing exclusive sources of supply on distributors.

2.1.1.2.2. Abuse of dominant position

63. The fourteen cases referred to the Council involving abuse of a dominant position concerned the entry into or continued presence on the market of an emerging competitor. In some of the cases, companies were penalised for both abusing their dominant position on a market and engaging in anti-competitive practices. In cases mentioned earlier, penalties for such practices were imposed on France Telecom and Transpac in the data transmission sector and on Adidas in the football equipment sector.

64. Five decisions concerned funeral services, a sector that had been gradually opened up to competition. In two of them, penalties were imposed on public operators in Marseille and Brest for abuse of their dominant position on the market.

65. In another case, a refusal to stock certain suppliers' products was penalised on the same grounds. In one case, the Council imposed penalties for abuse of a dominant position on a company which had refused to sell one of the items it manufactured to a competitor, dismissing arguments relating to the existence of a patent and thus highlighting the conditions under which competition law and intellectual property law may be linked. .

2.1.1.2.3. Excessively low prices

66. In 1997, the Council considered the merits of two cases involving calls for tender, one for household waste treatment, the other for construction of a wood drying plant. It found that the practices at issue did not fall within the scope of Article 10-1 of the Ordinance if they did not concern pricing practices relating to goods or services intended for consumers within the usual meaning of the word

2.1.2. Court judgements.

2.1.2.1. Judgements of the Paris Court of Appeals

67. 23 of the 95 decisions delivered by the Competition Council in 1997 were appealed to the Paris Court of Appeals. The Court upheld the Council's decision in 16 of these cases. Eight Court of Appeal judgements were appealed to the Court of Cassation. Four stays of execution were also ordered.

68. The judgements of the Court of Appeals mainly concerned the following sectors:

- public procurement (mainly construction and public works and the supply of equipment or materials for all public procurement contracts);
- utilities;
- pharmaceuticals;
- service providers: lawyers, doctors, architects, taxi operators.

69. In 1997, the Paris Court of Appeals upheld the Competition Council's main decisions in cases referred by a minister.

70. Thus, the Paris Court of Appeals upheld the sanctions imposed on ODA, a France Telecom subsidiary, for abuse of its market position and, on application from the minister, ruled that France Telecom's behaviour constituted abuse of a dominant position. The Court of Appeals noted that France Telecom had sought to preserve its monopoly "*by anti-competitive actions, even though parliament had expressly opened the directory publishing market to private sector competition*". The Court also held that "*the purpose and effect of the anti-competitive practices was to thwart the establishment of CSM (the competing company)*", resulting in CSM's insolvency and liquidation, for which France Telecom was partly responsible. On these grounds, the Court of Appeals imposed a FF 20 million fine on France Telecom.

71. Likewise, the Court also ruled that conditional discounts granted by Lilly France in order to limit access by new competitors to the market for a pharmaceutical product whose patent had entered the public domain constituted abuse of a dominant position: the discounts for the patented product were conditional on buying certain quantities of the product whose patent had entered the public domain.

72. After commissioning a detailed expert assessment, the Court also upheld the Council's decision concerning Pont-à-Mousson's abuse of a dominant position on the market for ductile cast iron pipes.

73. In the case between Héli-Inter Assistance and Jet Systems, the Court examined and approved the minister's views on the question of essential facilities, defined as elements that are indispensable for carrying on an activity and cannot be substituted. Héli-Inter had an operating monopoly on the equipment of Narbonne heliport (the essential infrastructure) while being at the same time a potential competitor of Jet Systems, whose activity required utilisation of the equipment. The Court found that Héli-Systems, by setting a disproportionate access price, had abused its dominant position or its competitor's situation of economic dependence. It therefore upheld the Competition Council's decision, including the FF 70,000 fine imposed on Héli-Inter.

74. Concerning cartels, the Court also upheld the Council's decision penalising 31 companies involved in the construction of TGV Nord links, the Normandy bridge and various other bridges. The agreements between them, on an unprecedented scale and for periods lasting several years, enabled construction companies nation-wide to share out the public works market. The Court of Appeals imposed fines totalling FF 278 million.

75. The Court also penalised La Roche Posay for refusing without objective justification to allow distributors other than pharmacists to market its skin care products. The Court held that excluding any other form of marketing constituted a discriminatory restriction disproportionate to the distribution needs of the products in question: "*Although it is not impossible that the introduction of an exclusive distribution system might contribute to economic progress, it has not been established that the alleged improvement to production would have required implementation of this discriminatory practice (...) Feedback to the manufacturer and the provision of advice could have been organised satisfactorily outside pharmacies*". Thus, the Court prohibited a substantial barrier to access to the market for skin care products that was not outweighed by other factors of competition.

76. In appeals against three decisions (S.A. Zannier, S.A. Autodesk and S.A. Rolex), the Paris Court of Appeals upheld the Competition Council's rulings concerning the conditions of validity of certain clauses whose effects were to compartmentalise nationalise markets, exclude resellers and set prices without respecting the commercial freedom of members of the distribution network.

77. Lastly, endorsing action taken by the DGCCRF for many years against schedules of prices or fees, the Court entered judgement against certain bar associations that had drawn up and circulated fee schedules. The Court found that these fee schedules, although presented as being for information only, in fact served as a reference inasmuch as they originated with the body responsible for regulatory and disciplinary matters in the profession. Moreover, there was no evidence that the proposed prices were based on a serious and objective study of the cost price of the services concerned.

2. 1. 2 .2. Judgements of the Court of Cassation

78. In 1997, the Court of Cassation delivered 12 judgements on appeals against judgements of the Paris Court of Appeals on appeals against Council decisions. It dismissed 11 of these appeals and overturned part of an Appeal Court judgement on grounds of competence. The Court of Appeals had ruled that it was not competent to suspend the application and assess the validity of an article of the National Football League's by-laws requiring players to wear Adidas equipment provided by the LNF. The Court of Cassation ruled that "*amendment of this LNF regulation, whose sole purpose was the exclusive supply of Adidas clothing, cannot be considered a use of public prerogatives*" and did not fall within the jurisdiction of the administrative courts.

2. 1. 2. 3. Judgements of civil and commercial courts

79. The jurisdiction of civil and commercial courts extends to the practices restricting competition referred to at Article 36 of the Ordinance of 1 December 1986. This article was substantially amended by the law of 1 July 1996 (see above, Section 1, sub-section 2). As these provisions have only recently come into effect, the civil and commercial courts have not yet brought rulings on the basis of the new law. However, three judgements worthy of attention were delivered in 1997 on the basis of the former version of Article 36.

- Cora - Est Distribution (Colmar District Court. Judgement of 5 February 1997): the Court voided sales between Cora and Est Distribution, one of its suppliers of fruit and vegetables, on the grounds that Est Distribution had granted Cora extremely advantageous price conditions in a way that was both unjustified and discriminatory.

- Carrefour - Ego Fruits (Lyon Commercial Court. Judgement of 4 March 1997): the Court found that the terms obtained by Carrefour under commercial co-operation agreements with Ego Fruits, one of its suppliers, were discriminatory within the meaning of Article 36-1 of the Ordinance and that the sums claimed by Carrefour were unjustified.

- Auchan - Soviba (Versailles Commercial Court. Judgement of 7 March 1997). The Court voided the promotional provisioning agreement between Auchan and Soviba, one of its suppliers of minced meat, on the grounds that the agreement was discriminatory and distorted competition under the terms of Articles 7 (cartels) and 8 (abuse of dominant position) of the Ordinance.

2. 1. 2. 4 Judgements of administrative courts

80. Since the Conseil d'Etat judgement of 8 November 1996 in *Fédération Française des Sociétés d'Assurance*, it has been accepted that competition rules should apply to the acts of public authorities. In

its judgement the Conseil d'Etat, referring to Articles 86 and 90 of the Treaty of Rome, criticised certain provisions of a regulation which granted a mutual organisation a monopoly on the management of a supplementary pension scheme, offering exorbitant privileges in comparison with the rules governing supplementary pension schemes managed by commercial companies.

81. The question of the application of competition law to administrative contracts remained open.

82. The Conseil d'Etat settled the matter in 1997 in three judgements of 3 November 1997, in *Millon et Marais*, *Yvonne Funéraire* and *Société Intermarbres*, relating to the contracting out of funeral services.

83. In these three judgements the Conseil d'Etat held that since the anti-competitive behaviour in question originated in the provisions of an administrative instrument, the compatibility of administrative acts with the principles of competition law, including those laid down by national competition law in the Ordinance of 1 December 1986, needed to be verified. The administrative courts were responsible for carrying out such checks since they are the judges of the legality of administrative acts.

84. The Conseil d'Etat did not ultimately find that the firm benefiting from the contract had abused a dominant position, which could have resulted from the exclusive right to provide funeral services (then a public service in France) granted under the terms of the contract between the local authority and the firm. However, its judgement was remarkable in several respects:

- first, the judgement confirms that Article 53 of the Ordinance, which states that "the rules of the Ordinance apply to all production, distribution and service activities, including those carried on by public entities, in particular in the context of delegation of public services", makes no distinction between the different jurisdictions that can apply those rules;

- second, it paves the way for wider supervision in future of all the administrative activity of public entities that affects competition, meaning not only the decisions and contracts whereby a public entity allows an economic operator to operate a public service, but also public procurement procedures whereby a co-contractor helps to perform a public service mission and administrative authorisations for occupation of public property, which generally include obligations relating to a public service mission;

- third, the fact that the judgement was delivered against the background of the opening up to competition of industrial and commercial public services indicates a determination to monitor compliance with competition rules more effectively, not only in the behaviour of entities managing public services but also in the organisation of public services where competition on the market may be affected.

2. 2. Mergers and acquisitions

2.2 1. Treated by the DGCCRF

2.2.1.1. Number, size and type of mergers notified or controlled.

Merger control in France
Statistical summary

	1994	1995	1996	1997
Transactions	691	536	472	478
Notifications received	20	20	27	28
Competition Council referrals	10	6	6	6

Sectors of activity in which concentrations took place in 1997
Statistical summary

Sector of activity	Number of transactions
Agri-foodstuffs	53
Construction and construction materials	12
Retail	63
Communication	39
Mining and quarrying	2
Manufacturing	223
Services	66
Public services	2
Transport	18
Total	478

85. Firms continued to pursue a strategy of focusing on their core businesses in 1997. As a result, the assessment of mergers and acquisitions became increasingly complex from a competition standpoint. The movement towards greater concentration in the mass retail sector also continued in 1997.

2. 2. 1. 2. Major transactions

86. Conditional authorisations were delivered in several cases, after an opinion from the Competition Council (Auchan/Docks de France, Barry/Callebaut) or after undertakings given to the Minister for Economic Affairs, Finance and Industry (Canal Plus/Nethold). In 1997, the Minister authorised Canal Plus to take over the European activities of Nethold BV, a company which operated a pay television service in several northern and central European countries, Benelux and Italy and also had other television-related activities. Authorisation to acquire Nethold was given after Canal Plus undertook

not to block the rights to uncoded transmission of cinematographic and audiovisual works which it did not wish to use.

87. In another case, Lesieur/Astra Calve, the two firms exchanged some of their edible oils and fats activities. Following the exchange, branded seed oils were grouped together under the Lesieur name and vegetable fats under the Astra Calve name. The Minister authorised the transaction on the basis that most of the oils and fats sold on the market are distributor branded products.

88. Among the transactions referred to the Competition Council, the Minister, on an opinion from the Council, authorised the merger of Mauduit and Ingefico, makers of cigarette paper. The Council considered that three factors in particular considerably reduced the risk of a restriction on competition: the low cost of the paper in relation to the finished product, the existence of spare capacity belonging to producers capable of meeting the specific technical requirements of cigarette paper production, and the weakness of the parties' negotiating power vis-à-vis their suppliers.

89. Firms increasingly consulted administrative agencies before notification in order to determine whether it was necessary to engage a notification procedure and provide comprehensive information. The DGCCRF reviewed some 80 transactions or planned transactions in this way, most of which did not require formal notification because they had little effect on competition.

90. On three occasions the DGCCRF made use of the possibility of asking the European Commission to refer back to national competition authorities some or all of a case falling within the competence of European Union authorities. The Commission accepted the request for partial referral in each of the three cases, which concerned Promodes/Casino, Compagnie Nationale de Navigation/ELF/CIM (crude oil storage) and Lafarge/Redland (ready-mixed concrete and aggregates). The CNN/ELF/CIM transaction had initially been notified to DG IV. The DGCCRF asked for it to be referred back under the terms of Article 9 of Regulation 4064/89 on the grounds that the markets concerned were local markets, since the oil product storage sites served limited geographical zones. The Commission allowed the application (as in the other cases mentioned above) and referred the case back. After the Holder/Cedest case in 1994, it was the fourth time that France had successfully asked for a transaction notified on the basis of the EU concentration regulation to be referred back.

91. Regarding international co-operation, a standard form for national concentrations was introduced on 29 September 1997. The form, common to France, Germany and the UK, is designed to make it easier for firms engaging in concentrations subject to control in at least two of the three countries to accomplish the necessary formalities.

92. The form fits into existing legal arrangements without requiring any changes. The decision to introduce the form, taken with a view to expediting procedures, was necessary because of differences in the regulatory stance of the three countries concerned: notification is mandatory in Germany but optional in France and the UK. As far as France is concerned, the DGCCRF has undertaken to inform firms within one month whether a transaction brought to its attention by means of the form seems to require notification within the meaning of Part V of the Ordinance. Notification using the standard form thus precedes the procedures provided for by existing legislation. By formalising the existing practice of premerger notification, already widely used by firms and their counsel, the aim of the measure is in fact to apply the practice to a specific case.

93. The form includes annexes detailing each country's control procedures. The DGCCRF took advantage of this opportunity to review the situation following the most recent decisions relating to the control of concentrations. The form has been generally well-received and is beginning to come into use.

94. Also with regard to international co-operation, attention may be drawn to the excellent co-ordination between German, British, American and French authorities in the Federal-Mogul/T&N case (automobile bearings). The authorities ultimately approved the merger after the parties had undertaken to carry out substantial sales of assets in each country.

95. In addition to the work described above, the DGCCRF, like its opposite numbers in the other Member States, takes an active part in processing cases with an EU dimension. In the context of close and constant relations with the competition authorities at the European Commission, the DGCCRF played an important role in several cases, such as the Boeing/McDonnell Douglas merger. Experts from the Member States were asked on three occasions, within the forum of the Advisory Committee, to review the Commission's draft decision, drawn up in the light of the parties' proposed undertakings. On each occasion, the French delegation stated its position on the concentration. In another case, the Guinness/Grand Met merger (alcoholic beverages), the French authorities firmly supported the Commission's view of the *portfolio effect*, as a result of which the parties gave substantial undertakings.

2. 2. 2. Mergers and acquisitions treated by the Competition Council

96. The Council issued seven opinions on **business concentrations** in 1997, six of which were published:

- Callebaut's take-over of Barry (chocolate)[2];
- Eridiana Béghin-Say's acquisition of Compagnie Française de Sucrerie (sugar);
- Téfipar's acquisition of Seperef (polyethylene and PVC tubes);
- Carrefour's acquisition of an equity interest in Grands Magasins B (GMB);
- Henkel KGaA's acquisition of Loctite Corporation;
- plan by MAAF Assurances and Dekra to bring their vehicle roadworthiness testing centre management activities under a single umbrella.

97. In two of the cases reviewed, the Council considered that the transaction did not make a sufficient contribution to economic progress to outweigh the risks of a restriction on competition.

98. In the Callebaut/Barry case, the Council considered that there were risks of a restriction on competition in the chocolate coating market for the following reasons: the Barry group had considerably strengthened its presence, especially in Europe, where it now faced only two significant competitors; at the same time, there was insufficient spare capacity in the industry to meet the needs of a major customer; moreover, the integration of its activities in the various phases of the chocolate production process created a new barrier to entry, compounded by the fact that a potential new entrant would be likely to have difficulty gaining access to first-stage cocoa processing markets. The Minister authorised the transaction on condition that Callebaut made structural changes.

99. In the sugar sector, the Council considered that the transaction involved a risk of restriction on competition. The merger was necessary, however, in order to increase the competitiveness of the French sugar industry since, like similar concentrations in several other EU Member States, it would pave the way for restructuring.

III. The role of the competition authorities in framing and implementing other policies, such as measures to reform regulations, commercial policies or industrial policies

3. 1. Role of the DGCCRF

100. As well as carefully monitoring conditions for the introduction of competition in sectors where regulatory reforms have been introduced (telecommunications, electricity, funeral services, public auctions, see Section I above), and within the framework of interministerial co-ordination, the competition authorities have contributed to current discussions of changes to regulations.

3.1.1.

101. The DGCCRF has been consulted on the legislative and regulatory framework for the organisation and promotion of physical and sporting activities.

102. The DGCCRF has mainly made observations concerning the regulatory power of federations to which public prerogatives have been delegated and the commercial activities of federations with such delegated powers.

103. With regard to the regulatory activity of federations with delegated powers, the DGCCRF emphasised the importance of separating the exercise of rule-making powers justified on general interest grounds (organisation of competitions, disciplinary rules, rules relating to the practice of a sport, etc.) from activities of a commercial nature, so as to prevent regulations from being used to favour federations' activities on competitive markets for commercial purposes.

104. With regard to the commercial activities of federations with delegated powers, the DGCCRF pointed out that the right of sports federations to enter into collective commercial agreements on behalf of all their affiliated sports groupings needed to be placed within a clearly defined framework. Such a right seemed justified only when such contracts were necessary for the performance of a public service mission or when they related to the exploitation of rights held indivisibly by federations and their affiliated sports groupings. With regard to television broadcast rights in particular, it was pointed out that sports federations' monopoly on such rights were the subject of dispute in several foreign countries. It was possible that EU regulations on the matter would be drawn up. In all events, the scope of such rights needed to be defined, in particular by limiting the duration of exclusive concessions, and the granting of exclusive rights for major sporting events to coded pay TV channels should be ruled out.

3.2. Role of the Competition Council

105. The Competition Council played a particularly important role in 1997, delivering opinions on general competition issues or draft legislation at the request of the government, trade associations, parliamentary committees and the Telecommunications Regulatory Authority (ART), the latter on the basis of Article L.36-10 of the Post and Telecommunications Code.

106. Thus, the Minister for Economic Affairs consulted the Council on various matters relating to concentration in the distribution sector. In its opinion, the Council defined markets in the distribution sector and set out various criteria to be used in order to assess the degree of concentration on those markets. The Council completed its review with a comparison of the situation in other countries. The

Council also proposed a method for assessing the effects on competition of the purchasing power of an operator on a market, based in particular on an analysis of relations of economic dependence. It emphasised that the method should be adapted case by case because of the particular nature and wide variety of markets. With regard to distribution, at the request of the Minister for Economic Affairs the Council also issued an opinion containing methodological proposals on the conditions for applying the provisions of Article 10-1 of the Ordinance to the record business.

107. Several opinions issued in 1997 concerned the telecommunications sector. At the request of the French association of private telecommunications operators (AFOPT), the Council considered the competition issues raised by the coexistence within France Telecom, in a single legal structure, of both a monopoly and telecommunications activities carried on in a competitive market, especially in the mobile phone and radio-paging segments.

108. The Council issued an opinion on France Telecom's "Modulances" price schedules, recommending that possibilities for linking internal traffic and outside calls and provisions relating to a loyalty bonus should be removed. The ART also consulted the Council on France Telecom's terms of reference.

109. The Council issued two opinions concerning public operators that had diversified or extended their activities in sectors open to competition. The first concerned the navy's hydrographic and oceanographic department (SHOM), which publishes various nautical works, some of them in competition with works produced by private publishers. In the second, the Council considered the operating conditions of Urbiel, a subsidiary of the RATP specialising in the maintenance of elevators and escalators, which had offered its services on markets open to competition. The Council found that its guidelines concerning diversification of the activity of public operators had been complied with and that under these circumstances the new offer of services favoured greater competition.

110. The Council was asked to examine draft legislation, drawn up as part of the reform of the railways, relating to charges for using the national rail network, which is one of the assets of Réseau Ferré de France, the owner of the railway infrastructure. It was also consulted again on the planned reform of the public procurement code and emphasised the risk of introducing an automatic detection system for "abnormally low" bids.

111. At the request of various bodies representing accountants, the Council issued an opinion on the possibility for accountants to intervene in legal matters, especially within firms, when there is a "scope of the law" which lawyers intend to ensure is respected.

112. At the request of the courts, the Court issued opinions concerning funeral services and various practices of the SACEM and an opinion relating to the dispute between CAMIF and UGAP.

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IV. Resources of the competition authorities

4. 1. Total resources (current figures and change on previous year)

a) Annual budget

DGCCRF and Competition Council: FF 60 million; unchanged.

b) Human resources (person years)

All staff (DGCCRF and Competition Council): 200

4. 2. Staff assignments (person years):

a) anti-competitive practices: 175 staff

b) merger control and enforcement: 15 staff

c) legal action: 10 staff

V. Summary of new reports and studies on issues concerning competition policy (or bibliographic references

1. Articles

Articles of the *Journal de la Concurrence et de la Consommation* published by La Direction Générale de la Concurrence, Consommation et Répression des Fraudes:

Competition workshops

1. 26 June 1996 Workshop, published in number 96, “Champ et limites de l’Ordonnance, l’article 53”

   - Michel BAZEX, professeur de droit public à l’Université de Paris X Nanterre: “olysémie de l’article 53”
   - Alain Serge MESCHRIAKOFF, professeur de droit public à l’IEP de Lyon: “Le droit applicable aux interventions de l’État”
   - J.-L. LESQUINS, administrateur civil, chef de bureau à la DGCCRF “’article 53, l’approche matérielle”
   - Dominique BERLIN, professeur à l’Université de Paris I (Panthéon-Sorbonne), “l’article 53, vrais problèmes-fausses solutions”

- Jacques BIANCARELLI, Conseiller d'État, ancien juge du TPICE "approche communautaire, mesures étatiques et comportements d'entreprise"

2. 11 September 1996, Workshop published in number 97 of the Journal "droit de la concurrence et secteur de la santé"

- Stéphane JACOBZONE, économiste, "Concurrence et mécanismes de remboursement"
- Diane DAWSON, Université de Cambridge, Royaume Uni "Concurrence et filière de soins"
- Jean-Louis PORTOS, professeur de médecine interne, Chef de service à l'Hôpital Mondor. "les filières de soin"
- Jurgen MENSCHIG, chef d'unité à la DGIV "les stratégies industrielles face aux coûts et aux contraintes de santé publique, le secteur du médicament"

3. 29 janvier 1997 Workshop, published in number 98: "La commercialisation des données publiques"

- M. BISCHOFF, DGXIII, "l'accès conditionnel ou droit universel d'accès à la donnée publique à des fins commerciales"
- Jean MARTIN, avocat, "Droit de la concurrence et commercialisation de données par les institutions publiques"
- Jérôme HUET, professeur à la faculté de droit de Paris V "l'appropriabilité des données publiques et les principes de tarification"
- Jean-Philippe GRELOT, Institut géographique national "Les principes de tarification"

4. 6 December 1996 Workshop, published in number 98 (juillet-aout 97) "règles de concurrence dans le secteur de l'information"

- Jean-Alain HERAUD, professeur de Sciences économiques à Strasbourg: "Quelques éléments prospectifs sur l évolution technologique"
- Abdelaziz MOULINE, maître de conférence à l'Université de Rennes "la problématique des alliances dans le multimédia"
- Cyrille DU PELOUX, PDG Lyonnaise Communication et Marc-André FEFFER, vice-président de Canal plus: "les stratégies d'entreprise"

5. 13 novembre 1996 Workshop, published in number98 of the Journal, “le droit de la concurrence face à l’urgence et à la préservation de l’effet utile des décisions”

   - M.A. FRISON-ROCHE, professeur de droit à l’Université de Paris Dauphine, “la concurrence et le temps”
   - Helmut SCHROTER, chef d’unité à la DGIV, “préservation de l’effet utile des décisions, l’expérience communautaire”
   - Emmanuel PUTMAN, professeur de droit à l’université d’Aix-Marseille “les spécificités du droit processuel économique de l’urgence”
   - Michel BAZEX, professeur de droit à l’Université de Paris X Nanterre “le référé administratif précontractuel”
   - Alain BLANCHOT, premier substitut au Tribunal de grande Instance de Paris, “le dispositif pénal de cessation d’une publicité.”

6. 9 avril 1997 Workshop “Analyse des restrictions verticales” , published in number 99 with notably, contributions from:

   - Pierre MESSERLIN, professeur de Sciences Économiques à l’IEP de Paris
   - Louis VOGEL, professeur à l’Université de Paris II,
   - Mario AMADO, avocat à la Cour d’Appel de Paris,
   - Jean LEONNET, conseiller à la Cour de Cassation,
   - J.P. de la LAURENCIE, avocat,
   - Robert SAINT-ESTÉBAN, avocat,
   - Frédéric JENNY, vice-président du Conseil de la Concurrence.

7. 25 June 1997 Workshop “La puissance d’achat”, published in number 100 of the Journal, with notably contributions from:

   - Michel GLAIS, professeur à l’université de Rennes, introduction au sujet,
   - André FADY, maître de conférence à l’Institut de gestion de l’Université de Rennes, “l’accès au linéaire, une ressource essentielle”
   - Michael ANTALICS, Federal Trade Commission.
   - Jérôme PHILIPPE, INSEE,

- Franck FISCHWICK, professeur à Cranfield School of Management, “la dépendance du petit fournisseur au grand distributeur , une question pour les autorités de la concurrence ?”

- Jean-François BOSS, professeur à HEC “l’économie des transactions industrie-commerce”

Seminars :

- “Banque et concurrence”, organised in Poland from 9 to 12 June 1997, by Jean-Louis LESQUINS administrateur civil, chef de bureau à la DGCCRF.

Articles :

In number 95 of the *Journal de la Concurrence et Consommation, January - February 1997):*

- “Télécommunications et régulation” par Pierre JAILLARD, administrateur civil à la DGCCRF ;

- “Tutelle et Régulation” par J.-L. LESQUINS, administrateur civil, chef de bureau à la DGCCRF ;

- “La régulation des entreprises de réseaux au Royaume-Uni” par Luc POYER, administrateur civil à la DGCCRF ;

- “L’avis du Conseil de la Concurrence sur les services financiers de la Poste” par J.L.LESQUINS, administrateur civil, chef de bureau à la DGCCRF.

In number 96 (March - April 97) :

- “La distribution sélective,: deux importantes décisions viennent d’être prises” par Patricia ROBINO, inspecteur à la DGCCRF ;

- “Commentaire du jugement du Tribunal de Commerce de Paris, en date du 25 novembre 1996 condamnant Intermarché” par Catherine GUILLON, inspecteur à la DGCCRF ;

- “Favoritisme dans les marchés publics, bilan jurisprudentiel cinq ans après la création de cette incrimination” par Roberte AMIEL, inspecteur principal à la DGCCRF ;

- “L’affaire FFSA” par Audrey BORNE-BENETT, DESS de droit européen des affaires.

In number 98 (July - August 1997) :

- “Banque et concurrence” par Michel MAIGRE, attaché principal d’administration à la DGCCRF.

FRANCE

In number 99 (September - October1997) :

- "L'administration de la preuve dans les marchés de travaux publics" par Fabienne BIBET, inspecteur à la DGCCRF.

NOTE

1. Favoritism involves "To give or try to give someone an unjustified advantage by an act which is contrary to legal or regulatory provisions which guarantee free access and fair treatment amongst candidates in public procurement or so".

2. The opinion was delivered on the basis of a referral of 7 October 1996 and is therefore counted by the DGCCRF in 1996.