



The authorization from the French Competitive Authority of the exclusive control of the group Stokomani by the Zouari family, already owner of many specialized stores

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Resume: French Competition Authority decides on the legality of the Stokomani group’s (specialized in discount retail products and decoration) acquisition by the Zouari family, already possessing market power in the same field. The point is to reveal if such a merge would affect the competition and the players on the same market. After analyzing Zouari’s notification for the merge, the French Authority rules that the merge won’t have any anticompetitive effect, as the new unit represents a moderate market power in the decoration and discount products field, and due to the presence of multiple same players on a national and local level.

By a Decision from the French Competition Authority on the 21st of march 2022, the Zouari family has been allowed to get the exclusive control of the Stokomani group¹. The Zouari family already possesses, in France, 57 shops under the name « Maxi Bazar », and 8 shops called « Dya Shopping » that are both specialized in discount decoration and retail products. Stokomani is known as a discount shop too, by selling decoration, and beauty products, and counts 127 shops over the French territory. This is why the French Competition Authority led a deep analysis on the potential restriction of competition due to the will of the exclusive

control from the Zouari family of the Stokomani group thanks to holding society. Indeed, the French Competition Authority needed to check out the main dangers of the control thanks to the procedure (I) before focusing their researches on the relevant market's boundary (II) and the competition’s analysis on the exclusive control (III) to appreciate the potential antitrust effects.

¹ Decision 22-DCC-31 ADLC of the 21st March 2022 about the exclusive control from the Stokomani group by the Zouari family

I. Procedural aspects

Each company willing to take the control of another one, needs to notify this operation to the French Competition Authority, in order to ensure the legality of such a transaction. In this case the possibility from the Zouari family to get the Stokomani group (owning notorious shops as Maxi Bazar and Dya Shopping) was wondered, as they are usually competing on the same market, with the same sold products and the same range of prices. If so, by absorbing the Stokomani group, the Zouari family could restrict the competition as they would be seen as leader in the discount decoration and retail products field². That merger can result in a risk of merge prohibited by the French commercial code³. Indeed, this text provides that prior notification must be given to the French Competition Authority before any kind of merging procedure. The merge leads to a lasting change in market structures, a loss of independence for the individual companies involved and a strengthening of the economic power of the whole. Resulting to the notification, the French Competition Authority will give a decision: an approval, an approval under conditions, or a disapproval.

On the date of the 23rd of February 2022, the Zouari family notified to the French

institution the will of the merge. The French Competition Authority took the demand in charge, and started to analyze the potential risks as the vanishing of one of the biggest operator in this market, and the considerable increase of the market power to the Zouari family.

To do so, the French Competition Authority started first to control the relevant's market boundary.

II. Relevant market's boundary research

This is a major research led by the Authority, as it results to take a look *in concreto* to the situation. This step will allow to determine whether there is an overlap between the activities of the parties to the operation, as well as the market shares of the parties on these markets thus defined. In fact, it will have to examine the sphere of action of the store (Stokomani), and focus on similar players in order to witness a potential competition between them. The point is to unseal if, on a given marketplace, only stores owned by the Zouari's are presents. If so, the Zouari family will own all the stores on the market, adding to the Stokomani ones, and therefore, will restrain competition. So, it is major to watch if there are other competitors on the same space to give a fair decision.

² « La famille Zouari fait une entrée choc dans le bazar », weekly magazine LSA Conso

³ Article L430-1 French Commercial code

The French Competition Authority unravels each aspects of the procedure starting by the review of the targeted markets. The institution early decided that the Zouari family's companies and Stokomani were not producers of furniture that they are selling, but only buyers of the furnitures with a resale purpose. So French Authority is focusing on the companies that are the same actors on the market, which is the downstream market.

The French Authority decided to take a deeper look at the presence of the Stokomani shops around France , and compare it with shops owned by the Zouari's. It decided that they were both offering low prices, discounted products, and not selling known trademarks. Once again, they are in a competitive situation as they are originally independent from another, and play on the same field. Moreover, the French Competition Authority decided to juxtapose the size of Stokomani shops with other competitive actors in the retail products and decoration. As a matter of fact, Stokomani delivers a wide range of articles resulting the obligation to have major premises. Thus, only stores of the same range would be able to compete with Stokomani. This is why the French Competition Authority had to further research if other actors would be able to compete with Stokomani shops on a same

given territory. Consequently, the Authority only compared Stokomani with other shops having a selling area superior to 6000 square meters.

Following further analysis, the French Competition Authority decided to exclude from the study the online sales, as this kind of stores are based on the consumer's impulsiveness. So according to the Authority, it is not necessary to retain in this examination the market of the online sales, but rather to concentrate exclusively on the physical market, which is the one constituting the majority of the consumer's purchases.

A geographic analysis is also led to appreciate the presence of these kinds of stores over different territories. The French Competition Authority considered the question of retaining a national criterion, as the tariffs and products' distribution were done by the heads of the networks on the French territory. However , in the Decision n°17-DCC-216⁴, it had judged, considering stores of bazaar, trade of details and decoration, it was better to retain a local analysis. Indeed, the Authority decides according to the habits of the consumer who is ready to make 40 minutes of road to reach one of these stores. In fact, consumers have a local approach of these stores. Therefore, due to their own precedents, the French Authority retained a

⁴ Decision 17-DCC-216 ADLC of the 18th December 2017

local market. Although the local market is now limited, the institution made the decision to split the market boundary according to some cities : if Stokomani shops were in Paris, consumer's habits are billeted to 2km around shops, and out of Paris, consumers habits are stationed to 40 minutes of road.

This type of analysis let allows to compare at best all the competitors , and guarantee that we are taking in consideration these competitors on the same given market. This way, the comparison is the fairest to established the potential effects of the merge, and see if it's anticompetitive.

Once the market is limited, the French Competition Authority proceeded to a competition analysis on the exclusive control.

III. Competition analysis on the exclusive control

The competitive analysis must assess the actual or potential effects of the transaction, as a merge is likely to produce different anticompetitive effects.

In this case, as Stokomani and its competitors are on the downstream market, the examination is pointed out on the potential horizontal effects.

The horizontal effect allows to analyze whether the entity resulting from the transaction will acquire market power enabling it to significantly increase its prices or reduce the diversity or quality of the products or services it offers⁵. It is common to consider that obtaining more than 50% of market power presume an important power for the actor. According to guideline principle⁶ erected by the French Competition Authority, a merge is considered dangerous when the purchaser will acquire more than 25% of the market power.

a) The analysis on national level

The Zouari's had to lead an analysis on the value of their market power and transfer them to the French Competition Authority to predict their importance on the given market of decoration, retailing products and discount articles.

The first part of the examination focuses on the national level. As said earlier, the delimited market is based on big selling areas, in the bazar and decoration field. This is what the French Authority called « a restrained market ». In this selected branch, it has been declared that the actors of the merge (Zouari's and Stokomani) are not over 10% of the market power. So 10% of market power is not presuming an excessive

⁵ Lamyline, Formulary ProActa Economic Law, «I.135-10 La procédure de contrôle des opérations de concentration »

⁶ Guideline Principle from the French Competitive Authority about merging control, point 624

domination, and leads the Authority to not fear such an operation.

On top of that, the French Competition Authority established that other competitors on the same market enjoyed more market power as it represents for some of them, more than 20%. Indeed, thanks to this appreciation, the discovery of major bazar and decoration shops as big as Stokomani, such as Gifi detaining 20.4% or Action with 22.5%⁷ of the market power, let Stokomani as a minor actor of the market. Indeed, these competitors can still exert a competitive pressure despite the merge.

Also on a national level, the Authority took a look at the online sales. They can also restrict the competition if most of the sales are done via internet and allows to the Zouari's looking to own Stokomani, to benefit from a wider market power. The Zouari family said that they had no concrete information about their online sales. However, even without these information, the French Competition Authority declared that the major part of their share turnover aren't coming from internet (10% from the Zouari's shops, and 1% for the Stokomani group). The Authority also thought in this way : if the actors of the merge would benefit from a major market power online, they won't be anticompetitive

as other online actors like Cdiscount, LaRedoute or even Amazon will maintain a competitive situation.

But in contrast, this comparison relies on none effective data or information. The link established with Amazon might be a little too remote and pat.

b) The analysis on a local level

Therefore, the French Competition Authority investigated about the effects of the merge on a local level. The Stokomani group represents 127 stores on French territory, so to appreciate that merge, the guideline principles from the French Competition Authority expose two points to examine⁸: on one hand, the market power of the new unit, and on the other hand, the merge of the market.

The Authority noticed that all the Stokomani stores are out of intra-muros Paris. Indeed, consumers must take the road for 20 minutes to reach it. Based on that, the determination of zones led to identify 36 trading areas, centered on the target's stores, in which the parties' activities overlap.

Once again, the French Authority is using the technique view of « restrained market »,

⁷ « Comment les magasins Action ont conquis la France », published on the 19th June 2022 by the weekly magazine L'OBS

⁸ Guideline Principle from the French Competitive Authority about merging control, paragraph 565.

meaning that it only selects the direct and effective competitors. In this way, it shows that other competitors are presents on the same market, but not taken into the calculation as their selling area is a bit smaller than Stokomani. In this case, the French Authority is using its own precedents as it always judges in a strict way using this « restrained market », which makes it harder for the merge to be effective. Indeed, by only selecting competitors with the same exact fields, and the same huge surface, it consequently restricts the possibility to see other competitors, as they aren't considered as « effective » competitors, even though they are presents on the decorating and discount products market.

So the Authority is being quite strict about the research in its cases and adopts a restrictive view.

The French Competition Authority does a calculation on the market power of the future merge, and its competitors on the same catchment areas.

Proceeding from this calculation, three types of catchment areas are distinguished: areas in which the new unit's market power is under 25%, the areas in which the market power's new unit is between 25% and 45%, and finally the areas in which the new unit's market power is over 45%.

Resulting from the analysis, the French Competition Authority discovered that 12 on the 36 zones studied were under 25% of the market power detained by the new unit, so won't have any horizontal restrictive effect on competition.

In 23 other zones, the market power of the new unit wobbles between 25% and 45%. So the Authority took complementary measures to observe the potential danger of restrictive competition effects in these areas. Finally, the further observations shown the presence of three others direct and effective competitors with a wide selling surface, and led the French institution to dismiss the anticompetitive effects.

Lastly, only one catchment area of the new unit has more than 45% of market power. In the aforementioned decision n°17-DCC-216 of the French Competition Authority, a new unit detained more than 45% of market power which led to further research. But in this case, it is fair to remind that there is a restrained market technique applied to other competitors which makes it harder to check on a competition situation. On top of that, on this last area, French institution has pointed out that other competitors were presents , including one specialized in bazar and discount products, and decoration, owning 40% of the market power, and two others in decoration field and outlet products.

All these elements led the Authority to consider that the merge of Stokomani and Zouari's group won't have anticompetitive effects on the market, and to allow it without any conditions. This decision results in a deep analysis thanks to different tools used by the institution to witness, at best, the fairness of the transaction for other players.

Conclusion

This decision is showing the procedural aspects from the French Competitive Authority to allow merges. Indeed, the Authority is present to protect the different players which must all have the same chance to sell products and attract consumers.

In this Decision, French Competition Authority has allowed the merge without any conditions. It results there from a very deep analysis on different levels to admit it.

First, the notification of the future merge to the French Authority is a necessary step to do such an operation.

Then, the examination focuses on the given market delimited by the French institution. Once it's done, the competitive analysis starts to further research in each catchment areas, the potential anticompetitive effects.

The chance of Zouari family in this case, relies on their moderated market power over French territory and local zones, and also the presence of many other competitors

specialized in the same field, especially the big surfaces' ones. The decision could have been different if the new unit created by the merge would have more than 40% of the market power, or if other competitors were less presents.

All these elements lead the French Competition Authority to fairly reject the anticompetitive effects.

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