



The opinion of the authority on rating systems designed to provide consumers with information on the sustainability-related characteristics of consumer products and services

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***Resume:** The Competition Authority was consulted on the issue of the rating systems designed to provide consumers with information on the sustainability-related characteristics of consumer products and services (French Competition Authority, January 9th, 2025, Opinion No. 25-A-01). Sustainability rating systems provide consumers with simplified, reliable information on product or service environmental and social attributes, influencing purchasing decisions and company behavior. They can promote competition by incentivizing firms to improve product quality and innovate, aligning with competition law principles. However, these systems also carry risks of anti-competitive practices, requiring careful design, transparency, and regulatory oversight to ensure fair market functioning.*

Product or service – and, in our case, rating systems –, when they constitute market benchmarks capable of influencing economic behavior, must be assessed with regard to the risks of competition restrictions. In this context, the national competition authority published, on January 9th, 2025, an opinion¹ concerning rating systems intended to inform consumers about the sustainability characteristics of consumer products and services.

Rating systems may be defined as instruments that allow the evaluation and assignment of a score, in a simple form represented by numbers, letters, or colors, to a product or a consumer service, in order to provide information to consumers, at the point of purchase, regarding the sustainability attributes of the product or service under consideration².

Sustainable development is also defined as “*development that meets the needs of the present*

¹ French Competition Authority, Opinion 25-A-01 of January 9th, 2025 concerning rating systems aimed at informing consumers about sustainability development characteristics of consumer products and services

² French Competition Authority, Opinion 25-A-01 of January 9th, 2025, §9.

*without compromising the ability of future generations to meet their own needs*³.

Rating systems have increasingly become part of everyday consumer experience, notably within large-scale distribution, enabling consumers to compare different products and services. They are also integrated into digital applications such as Yuka or MyLabel. Initially, these systems were limited to evaluating product composition, allowing consumers to distinguish between “healthy” and “less healthy” foods.

However, in recent years, rating systems have also aimed to inform consumers about the sustainability characteristics of products and services, reflecting the growing importance of ecology in both economic activity and European or French regulations⁴.

Consequently, sustainability-related rating systems provide consumers with information that is both synthetic and valuable, presented in the form of numbers, letters, or color. These systems are to be published by either private or public publishers and, according to the national competition authority, may

constitute a potentially structuring parameter of competition⁵.

Furthermore, such rating systems may be either mandatory or voluntary. For example, the energy label has been mandatory for household appliances since the decree of 12 June 2018⁶. In addition, the 2021 The Climate and Resilience Act⁷ provides that environmental labeling will be made compulsory for certain categories of goods and services, as determined by decree, to assess the impact of their production on the environment.

Moreover, rating systems may involve various stakeholders. In this context, it is readily apparent that such systems are not neutral; they constitute a genuine tool of differentiation for companies, insofar as they influence consumer behavior. Rating systems will affect the commercial and marketing strategies of businesses. In extreme cases, they may even lead to boycotts⁸ or substantial modifications of the product or service offering.

Thus, after having outlined the context of the opinion published on 9 January 2025, it

³ United Nations, Report of the World Commission on Environment and Development, *Our Common Future* (“Brundtland Report”), Aug. 1987, p. 42.

⁴ Directive (EU) 2024/825 of the European Parliament and of the Council of February 28th, 2024 amending Directives 2005/29/EC and 2011/83/EU to empower consumers to take action for the green transition through better protection against unfair practices and better information.

⁶ French Competition Authority, Opinion 25-A-01 of January 9th, 2025 concerning rating systems aimed at

informing consumers about the sustainable development characteristics of consumer products and services.

⁶ Decree No. 2018-479 of June 12, 2018

⁷ Law No. 2021-1104 of August 22nd, 2021 on combating climate change. strengthening resilience to its effects

⁸ For instance, one can take the example of the “Stop Esso campaign” implemented by Greenpeace in the 1990’s.

becomes clearer why the national competition authority deemed it necessary to explain, in this opinion, the way rating systems should be designed to comply with competition law rules. It is therefore pertinent to first examine the competitive benefits of such systems **(I)** and then the competitive risks they may give rise to **(II)**.

I. Sustainability Rating System: An Instrument Serving Consumers and the Market

The opinion underlined the idea that rating systems can both serve consumers and the market **(A)**. More specifically, rating systems are a true factor of competition by improving the incentives to compete in the market **(B)**.

A. An Instrument Serving Consumers and the Market

On the one hand, it is important to emphasize that rating systems help reduce information asymmetry between producers and consumers⁹. Indeed, this was their primary purpose. They simplify complex information for the end user¹⁰.

Moreover, there exists a plurality of information sources and rating systems, which is also viewed positively by the authority with respect to consumers, as it

highlights the diversity of rating mechanisms¹¹.

However, it should be noted that the opposite effect may occur. Indeed, excessive diversity among rating systems may result in consumers paying less attention and facing greater difficulty in processing information¹². Therefore, the benefits provided by rating systems may be diminished.

Furthermore, regarding the diversity of rating systems, one association has criticized the Nutri-Score. The association argues that the system does not consider certain important factors, such as the level of product processing or the presence of additives. The association therefore seeks to promote alternative systems, such as those proposed by UFC-Que Choisir¹³. However, this solution does not appear to be appropriate. Indeed, if a company holds a dominant position in a market, it is subject to a special duty not to impair effective competition. This obligation derives from Article 102 of the Treaty on the Functioning of the European Union which prohibits the abusive exploitation of a dominant position that may affect consumers or the market structure.

The Nutri-Score rating system currently occupies a central place in consumer nutritional information. Due to its strong notoriety and wide dissemination, it exerts a

⁹ French Competition Authority, Opinion 25-A-01 of January 9th, 2025, §78.

¹⁰ Public Health France, Excerpt from the Nutri-Score webpage

¹¹ French Competition Authority, Opinion 25-A-01 of January 9th, 2025, §79.

¹² *Ibid.*, §80.

¹³ *Ibid.*, §82.

significant influence on consumer choices. Nonetheless, certain stakeholders have pointed out that this system does not consider specific criteria, such as the level of product processing or the presence of additives. Therefore, if such an influential rating system fails to take essential factors into account for assessing product quality, it may limit the quality of information available to consumers.

It may therefore be appropriate to impose on a rating system that occupies a structuring position in the market a requirement of transparency and comprehensiveness in its methodology. The operators of rating systems must assume a special responsibility with respect to their methodological approach.

In sum, rating systems contribute to greater transparency regarding the environmental or social characteristics of products and services: thus, rating systems benefit to consumers and, more broadly, to competition in the market.

B. A Lever for Incentives to Compete in the Market

Rating systems also constitute a genuine lever for incentives and competition among companies, particularly in certain sectors such as the food industry. Indeed, several studies demonstrate that nutritional labels can encourage companies to modify the composition of their products to obtain a better rating. In other words, when the nutritional quality of a product is made visible to consumers through a rating system, manufacturers are incentivized to improve their product composition, notably by reducing sugar, salt, or fat content.

More specifically, the opinion of the competition authority specifically cites a study on the Health Star Rating system¹⁴, a voluntary front-of-pack nutrition label used in New Zealand, based on a star rating indicating the nutritional quality of food products¹⁵. This study highlights that 83% of products adopting this label were reformulated within a two-year period, thereby demonstrating the incentivizing effect of such mechanisms on companies¹⁶.

These results illustrate that rating systems can promote merit-based competition, with

manufacturers claim that nutrients helped them improve their food composition.

¹⁴ French Competition Authority, Opinion 25-A-01 of January 9th, 2025, §103.

¹⁵ Ni Mhurchu C., Eyles H., Choi Y.-H., “Effects of a voluntary front-of-pack nutrition labelling system on packaged food reformulation: The Health Star Rating System in New Zealand”, *Nutrients*, vol. 9, no. 8, 2017, p. 918. See also the 2019 Yuka study in which

¹⁶ C. Ni Mhurchu, H. Eyles, Y.H. Choi, “Effects of a voluntary front-of-pack nutrition labelling system on packaged food reformulation”, *Nutrients*, vol. 9, no. 8, 2017, p. 918.

companies incentivized to improve the quality of their products to obtain higher ratings and attract consumers. Such a dynamic may thus contribute to stimulating innovation and enhancing the overall quality of the food supply, which, over time, can alter the competitive structure of the market. This logic aligns with the objective pursued by competition law of fostering competition based on the merits of enterprises¹⁷.

In view of these potentially pro-competitive effects, the question of generalizing such rating systems arises. Within the framework of the European “Farm to Fork” strategy, the European Commission has considered the introduction of a simplified and harmonized mandatory nutrition labeling at the EU level, to enable consumers to make more informed dietary choices¹⁸. Such a measure could indeed strengthen the effectiveness of these systems, insofar as their voluntary nature may lead some companies, particularly those whose products have lower nutritional quality, not to adopt these labels, thereby limiting consumers’ ability to compare products.

However, the effectiveness of these mechanisms may also be limited in certain

cases, particularly with respect to companies possessing significant economic power or a particularly strong brand image. For illustration, The Coca-Cola Company has historically held a dominant position in the carbonated beverages market across several European states¹⁹. In such a situation, the brand’s notoriety and market position could mitigate the impact of a potentially unfavorable rating on consumer behavior. Nevertheless, case law recalls that companies in a dominant position are subject to a special duty to maintain effective competition.

Thus, while rating systems can serve as a market-orienting tool, their effectiveness also depends on the competitive structure of the sector concerned and the economic power of the actors involved. From this perspective, it should be noted that the establishment of a harmonized rating system at the European level is currently under consideration. Within the framework of the “Farm to Fork” strategy, the European Commission has indeed announced its intention to introduce a simplified and harmonized mandatory nutrition labeling across the European Union, a project often associated with the Nutri-Score model²⁰.

¹⁷ Court of Justice of the European Union (CJEU), Judgment of March 27th, 2012, Case C-209/10, *Post Danmark I*.

¹⁸ European Commission, Farm to Fork Strategy – For a fair, healthy and environmentally-friendly food system, COM(2020) 381, pp. 1-22.

¹⁹ In several European states, these brands represent more than 40%–50% of the soda market, a classic indicator of a dominant position.

²⁰ European Commission, Farm to Fork Strategy – For a fair, healthy and environmentally-friendly food system, COM(2020) 381, pp. 1-22.

After having demonstrated the pro-competitive effects of rating systems, it is now important to highlight the significance of their regulatory framework.

II. Sustainability Rating Systems: A Mechanism Requiring Regulatory Oversight

Rating systems require regulatory oversight to preserve the free functioning of competition. Accordingly, it will be necessary to examine the conditions required for the proper competitive functioning of the system **(A)**, and then to analyze the competition-related risks associated with the implementation of rating systems **(B)**.

A. Conditions of a Competitive Functioning of Sustainability Rating Systems

First, one can recall that the European guidelines provide that sustainability rating systems are a practice subject to article 101 TFEU: more specifically, it provides that *“[s]ustainability agreements do not constitute a distinct category of horizontal cooperation agreements for the purposes of applying Article 101. Accordingly, where a horizontal cooperation agreement falls within one of the types of horizontal agreements covered by the preceding chapters of these Guidelines and pursues a*

sustainability objective, it must be assessed based on the guidance provided in the relevant preceding chapter(s) as well as the guidance provided in this chapter”²¹.

Thus, it is important to demonstrate how sustainability systems can also constitute competitive parameters to be considered. Articles 101 and 102 of the Treaty on the Functioning of the European Union, as well as Articles L.420-1 and L.420-2 of the French Commercial Code, prohibit practices that have the object or effect of restricting competition in a market. Traditionally, only price, quality, innovation, or similar factors are considered; however, there is no exhaustive list in practice²².

Thus, while price has traditionally been a central criterion, other factors such as quality, innovation or product diversity may also constitute competitive parameters. More originally, the opinion classified sustainability as a competition factor in itself²³.

De facto, in the current context of increasing ecological awareness, sustainability considerations also become competitive parameters. The proposed European directive on environmental claims further highlights that products marketed as environmentally friendly or sustainable experience higher growth than standard

²¹ European Commission, *Guidelines on Horizontal Cooperation Agreements*.

²² French Competition Authority, Decision 23-D-15 of December 29th, 2023.

²³ French Competition Authority, Opinion 25-A-01 of January 9th, 2025, §§127-138.

products, making sustainability a factor of competitiveness.

Competition authorities now recognize the sustainability as a competition parameter. Thus, the opinion²⁴ underlined a decision of 8 July 2021 of the European commission in the *AdBlue* case²⁵, in which several automobile manufacturers were sanctioned for coordinating to delay the introduction of less polluting technology, thereby depriving consumers of more environmentally friendly vehicles.

Similarly²⁶, the French Competition Authority has sanctioned practices that limited consumer information regarding the environmental performance of products²⁷ or regarding the absence of Bisphenol A in food containers²⁸.

In sum, these examples demonstrate that criteria related to health protection or environmental sustainability can constitute essential competitive parameters. Accordingly, sustainability rating systems represent a powerful lever of competition.

B. Competition Risks Related of Sustainability Rating Systems

Finally, the use of rating systems also entails competition risks. These mechanisms may facilitate anti-competitive practices.

Firstly²⁹, access to the data necessary to establish ratings may be limited or unequal, creating an imbalance between companies and potentially distorting product comparisons. Moreover³⁰, rating systems may give rise to selective communication or disparagement campaigns if certain companies publish only favorable ratings or highlight only their highest-rated products.

Lastly³¹, there is a risk that dominant companies may impose their own rating system on commercial partners, for example within supply or distribution relationships, which could restrict contractual freedom and exert anti-competitive pressure on smaller market participants.

In principle, many arguments can be invoked to justify sustainability rating systems by legitimate objectives or efficiency gains. However, case law and the Authority's practice impose strict control over these justifications.

²⁴ *Ibid.*, §134.

²⁵ European Commission, July 8th, 2021.

²⁶ French Competition Authority, Opinion 25-A-01 of January 9th, 2025, §§135-136.

²⁷ French Competition Authority, Decision 17-D-20 concerning floor coverings.

²⁸ French Competition Authority, Decision 23-D-15.

²⁹ French Competition Authority, Opinion 25-A-01 of January 9th, 2025, p. 47.

³⁰ *Ibid.*, p. 48.

³¹ *Ibid.*, p. 53.

Firstly³², in theory, agreements can be justified by the pursuit of legitimate objectives, such as consumer information or the promotion of sustainable development. The idea is that certain coordinated practices between companies may have a pro-consumer purpose or contribute to environmental, social, or sustainability goals. However, consistent case law from the Court of Justice of the European Union makes clear that the mere presence of a legitimate objective does not prevent an agreement from being considered anti-competitive if it constitutes the object, the means, or the consequence of a restriction of competition. For example, an agreement aimed at harmonizing sustainability rating systems among competitors could, even if pursuing an ecological objective, be deemed anti-competitive if the cooperation restricts competition on prices, quality, or innovation.

Secondly³³, some ancillary restrictions may escape the prohibition under Articles 101 of the TFEU and L.420-1 of the French Commercial Code if they are directly related to the main activity of the agreement, necessary for its implementation, and proportionate to its objectives. However, case law and the practice of the Competition Authority show that these conditions are strictly interpreted and applied. For instance,

the restriction must not constitute the main purpose of the agreement, must be essential to its execution, and must not exceed what is necessary to achieve the intended benefits. In practice, companies must demonstrate concretely and with evidence the link between the ancillary restriction and the main purpose, as well as its proportionality, otherwise the Authority may reject this argument.

In the context of abuse of a dominant position³⁴, a company can also invoke certain justifications in its defense. These may include consumer protection, sustainability, technical reasons, or product safety. The company must show that its conduct is objectively necessary to achieve the legitimate goal pursued and that the anti-competitive effects are offset, or even outweighed, by efficiency gains that also benefit consumers. EU courts, however, emphasize that these measures must be proportionate and justified: any unilateral initiative aimed at eliminating products deemed less competitive is excluded, even if the stated intent is to protect consumers or the environment.

Finally, when determining the level of sanctions, the Authority considers the severity of the practices and their impact on competition, innovation, quality, and the environment. Practices that limit consumer

³² *Ibid.*, p. 55.

³³ *Ibid.*, p. 56.

³⁴ *Ibid.*, p. 58.

access to essential information or prevent improvements in the environmental and health performance of products are considered particularly serious. As a result, such practices can increase the amount of sanctions, as shown by decisions regarding flooring coverings or the non-disclosure of BPA in food containers, where the Authority highlighted the importance of protecting the most vulnerable consumers and preserving innovation within the sector.

In sum, sustainability-related rating systems are instruments that can significantly enhance

consumer information and steer competition toward sustainability criteria. When designed with robust, transparent, and reliable methodological standards, they have an objectively pro-competitive impact. However, their development and implementation entail significant risks, particularly regarding coordination between competitors, abuse of a dominant position, or other anti-competitive practices.

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