

# memorandum

CONFIDENTIEL – Communication avocat-client

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A / To : UTIPULP

Objet / Re : Review of the « Competition Law & GTR » presentation

1. At the request of UTIPULP, we reviewed the slides “Competition Law & GTR”, prepared by EPIS’ lawyer, and dated September 2024.
2. The presentation explains that the exchange of sensitive information between competitors constitutes an anticompetitive agreement. We fully agree with this principle: if competitors exchange such information, the parties must immediately cease all discussions, as this would amount to a collusive arrangement.
3. However, we believe that the General Trade Rules constitute a form of standardisation agreement. On this point, the Guidelines on Horizontal co-operation agreements (2011/C11/01) provide that:

*“Standardisation agreements usually produce significant positive economic effects, for example by promoting economic interpenetration on the internal market and encouraging the development of new and improved products or markets and improved supply conditions. Standards thus normally increase competition and lower output and sales costs, benefiting economies as a whole. Standards may maintain and enhance quality, provide information and ensure interoperability and compatibility (thus increasing value for consumers).” (§263)*

4. On the draft of standard terms, the European Commission mentions that:

*“Standard terms can give rise to restrictive effects on competition by limiting product choice and innovation. If a large part of an industry adopts the standard terms and chooses not to deviate from them in individual cases (or only deviates from them in exceptional cases of strong buyer-power), customers might have no option other than to accept the conditions in the standard terms. However, the risk of limiting choice and innovation is only likely in cases where the standard terms define the scope of the end-product. As regards classical consumer goods, standard terms of sale generally do not limit innovation of the actual product or product quality and variety.” (§270)*

5. Thus, in order to be valid under competition law, these General Trade Rules must neither have an anticompetitive object nor an anticompetitive effect.
6. Regarding a potential restriction by object, an example would be where a trade association does not allow a new entrant access to its standards terms, the use of which is vital to ensure entry to the market. Any standard terms containing provisions which directly influence the prices charged to customers (that is to say, recommended prices, rebates, etc.) would constitute a restriction of competition by object.

7. Regarding a potential restriction by effect, effectively accessible and non-binding standard terms for the sale of consumer goods or services (on the presumption that they have no effect on price) thus generally do not have any restrictive effect on competition since they are unlikely to lead to any negative effect on product quality, product variety or innovation.
8. There are, however, two general exceptions where a more in-depth assessment would be required where (i) the standard terms define the scope of the product sold to the customer, and where therefore the risk of limiting product choice is more significant, (ii) even if the standard terms do not define the actual scope of the end-product they might be a decisive part of the transaction with the customer for other reasons.
9. Regarding the General Trade Rules as currently drafted, we believe they would be valid under competition law insofar as competitors may have access to them, the document is public (easily accessible on the internet) and they have no impact on pricing.
10. Therefore, we believe that the content of this document is not sensitive from a competition law perspective. It would be possible to refer to these rules in pulp purchase contracts.
11. Finally, **in the future, we believe discussions could take place between UTIPULP and EPIS.**
12. We do not identify any issues on this point and remain at EPIS's disposal to discuss the matter further.

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