FRANCE

(2000)

I. Changes or proposed changes to competition laws and policies

1. Summary of new legal provisions

1. Order No. 86-1243 of 1 December 1986 was codified in Book IV of the Commercial Code under Articles L. 410-1 to L.470-8 on 21 September 2000.

2. The effect of this codification was to change the order of the provisions as follows: general provisions (Title 1), anticompetitive practices (Title II), mergers (Title III), transparency, restrictive and other prohibited practices (Title IV), powers of investigation (Title V), Competition Council (Title VI) and sundry provisions (Title VII).

3. A table of equivalence is given in an annex to the 2000 Annual Report of the Competition Council.

2. Other relevant measures, including instructions or guidelines

4. None.

3. Government-proposed changes to competition law or policy

3.1 Draft legislation on new economic regulations

5. This bill includes provisions that would amend competition law with regard to merger review and measures to counter anticompetitive practices.

3.1.1. Countering anticompetitive practices more effectively:

6. *Making penalties more dissuasive*: The basis for fines will be extended to include global turnover, and perhaps also consolidated group turnover, in order to thwart practices whereby firms shift turnover to their subsidiaries, and the ceiling rate will be doubled (from 5 to 10 %). Repeat offences will also incur stiffer penalties.

7. A clemency mechanism is planned to encourage firms belonging to cartels to help establish proof of the incriminated practices. Such a system, which would be an innovation in French law, has been implemented successfully by the European Commission and in certain foreign countries, including the United States; it is expected to lead to better detection of cartels.

8. *Procedural reorganisation for cases brought before the Competition Council*: This involves a clearer separation between the investigative and judicial functions in order to provide better protection for

the rights of defendants, in line with recent case law and Article 6 of the European Convention on Human Rights. Other measures seek to ensure that all cases will be dealt with thoroughly and as expeditiously as possible, but also to preclude situations in which firms can escape justified penalties on procedural grounds.

9. Reinforcing and updating investigative powers and resources.

3.1.2 More systematic and more transparent merger review

10. The proposed system would harmonise national procedures with those in force at the Community level.

11. *A systematic and transparent mandatory prior notification procedure*, with review thresholds expressed in turnover volume, is planned. *For single transactions*, the review deadline will be shortened to five weeks, from nine today. *For more complex transactions*, or those entailing decisions that will have a binding effect on the companies involved, the (longer) procedure will continue to include referral to the Competition Council, with substantial guarantees for operators.

12. *Transparency will be enhanced* through systematic disclosure of transactions and consultation of the market, while respecting the legitimate right of firms to preserve their business secrets.

13. The proposed law on new economic regulations was adopted on its first reading by the National Assembly on 28 April 2000, and by the Senate on 17 October 2000.

3.2 Opening up monopolies and public enterprises to competition

3.2.1 Deregulation of monopolies

3.2.1.1. Electricity

14. In 2000, the French Government completed the transposition into French law of the Community Directive of 19 December 1996.

15. On the one hand, the Act of 10 February 2000 on the modernisation and development of public service in the realm of electric power was promulgated, and, on the other, a series of implementing decrees were published.

a) A framework for effective competition was put in place. It comprises the following mechanisms:

- Stipulation of the conditions of market entry for producers, with a compulsory authorisation mechanism and an optional bidding mechanism;
- Stipulation of eligibility rules for electricity consumers, with transparent disclosure ensured by a published list of those eligible;
- Pricing principles for activities remaining under monopoly control;

16. Technical and environmental regulations enabling any operator to enter the market in a transparent manner and suffer no discrimination were instituted.

17. For integrated electric companies, an obligation to keep separate books for generation, transmission and distribution activities, as well as for any diversified lines of business, was imposed.

18. Rules to ensure the independence of the grid manager, notwithstanding the fact that the manager remains a part of the integrated electric company EDF, were laid down.

19. The Act provides a precise definition of public service obligations.

20. For grid access, a system for settling disputes between operators by the regulatory authority, the *Commission de Régulation de l'Electricité* (CRE), was put in place.

b) A regulatory mechanism tailored to the opening of the electricity market is now operational.

21. The regulation in place calls for the intervention of a number of parties, whose complementary actions ensure that the full range of issues raised by this initial phase of electricity market liberalisation is covered.

22. The CRE's authority is centred essentially on problems of grid access and does not extend to all of the sector's activities. Apart from the aforementioned dispute settlement mechanism, the CRE proposes grid access charges and ensures that integrated electric companies separate their bookkeeping by activity. In contrast, it is the Minister for Energy who is empowered to license electric power plants. Ultimate responsibility for controlling the prices of activities still under monopoly control lies jointly with the Minister for Energy and the Minister for Economic Affairs, after taking advice from the CRE.

23. Moreover, the transmission over power grids of electricity generated by independent suppliers may, like any economic activity, give rise to disputes of a purely commercial nature. It is to settle such routine disputes, which involve individual interests and do not affect the workings of the market, that the CRE was invested with dispute settlement jurisdiction. The CRE will enforce the regulations on grid access and stipulate the applicable technical and financial conditions in decisions that state grounds and are notified to the parties.

24. The CRE's decisions may be appealed to the Paris Court of Appeal, which was already the appellate jurisdiction for rulings by the Competition Council. This ensures coherency between the electric power-related decisions of the regulatory authority and those of the Council. Naturally, any dispute involving competition issues will be referred to the Competition Council.

25. The law spells out exactly how the sectoral powers of the CRE and the Competition Council are to be apportioned. The Chair of the CRE shall refer to the Competition Council any abuses of dominant position and anticompetitive practices of which (s)he is aware in the electricity sector. The Council may also be petitioned for its opinion regarding any other issue in its area of authority.

26. In exercising its traditional responsibilities, the Competition Council may seek the CRE's technical expertise, consulting the Commission in respect of competition disputes that involve grid access, or about any other issue involving the electric power industry.

27. The introduction of the new framework for electricity gave the Competition Council the opportunity to issue, at the government's request, various opinions in 2000, in particular on the boundaries between the activities of the new transmission, distribution and generation entities, the keeping of separate books by the EDF for its various activities, and electricity prices for non-eligible customers.

28. Lastly, civil and commercial disputes involving electric power operators may be examined by the relevant courts of law, without prejudice to the jurisdiction of administrative tribunals in certain cases.

3.2.1.2. *Gas*

29. In the gas sector, competition issues are different from those in the electricity sector. The drafting of legislation to implement the Single Market Directive of 22 June 1998 was the highlight of 2000. After wide-ranging consultations with the actors concerned, a draft law was prepared and adopted by the Council of Ministers on 17 May 2000. It is obviously essential that the gas law be passed. Because of the heavy parliamentary agenda, Parliament will have to examine later this draft law to implement the Directive on the single market for natural gas.

30. However, it should be noted that transitional "network access" arrangements were put in place from 10 August 2000 for the first eligible customers who wished to benefit from the direct effects of the European Directive.

31. Thus, third-party access to existing networks was introduced for end-customers whose annual natural gas consumption is over 25 million cubic metres on the same site, pursuant to Article 18.2 of the Directive.

32. The general conditions and pricing of network access were made public by the various transport operators and are available on their web sites. It seems that gas transport prices compare favourably with access prices in other member states of the European Union.

33. Gaz de France also published the commercial terms for using two liquefied natural gas processing terminals it operates on French territory.

34. Lastly, Gaz de France and the Compagnie Française de Méthane introduced "flexibility contracts" for eligible customers which allow them to deposit gas temporarily at certain points of the network during periods of low consumption, for withdrawal at a later stage.

35. This system has enabled the first eligible customers to renegotiate their gas supply contracts and in some cases to change their supplier.

36. The network access arrangements will naturally need to be improved in the light of experience. In this connection, it is worth mentioning that these arrangements will be appraised by the future joint regulatory commission for the gas and electricity sectors, which will oversee the establishment of rules to regulate access prices for natural gas networks. Moreover, on 3 August 2000 the government asked the chairman of the electricity regulator (CRE) to carry out such an appraisal.

3.3 Reform of the government procurement code

37. The DGCCRF took an active part in work to reform the laws governing government procurement.

38. Reform of the government procurement code has pursued the following main objectives:

- Make government procurement more open to small and medium-sized businesses (SMEs)—a dynamic, job-creating sector—through heightened competition;

- Enhance procedural transparency and legal security for purchasers, thanks to a reinforcement of competition and joint decision-making, but also to clarification and simplification of the rules;

- Clarify the scope of application of renovated and simplified government procurement, and better delineate the boundaries with other types of intervention (e.g., delegation of public services);

- Improve the efficiency of government procurement and ordering procedures via increased use of new information and communication technologies.

39. Aggregate purchases of goods and services by general government has been estimated at FF 740 billion (€112.81 billion) per year, or about 9% of GDP. The justification for such a reform lies first in the volume of government procurement, and second in the complexity of the laws comprising the code. This complexity is a source of obscurity, likely to facilitate practices which, whether voluntarily or not, lie outside the law. This is why it was deemed necessary to conduct a thorough overhaul of government procurement, so as to guarantee the basic principles thereof—namely: free access to government contracts, equal treatment for all bidders, and supervision of how public funds are spent.

3.4 Consultation of the Competition Council on the reform of the government procurement code

40. With an eye to the adoption of the new government procurement code in 2000, the Minister for Economic Affairs consulted the Competition Council on a draft decree reforming that code.

41. In its opinion, which followed on from previous opinions, the Council ruled on the following issues:

– The general rules for government procurement; government procurement can be efficient only if markets functions in accordance with the rules of competition. The Council regretted that this condition did not figure in the text submitted to it for examination, and considered it timely to reiterate that government procurement can be efficient only if it is conducted in a competitive market.

– Opening up government procurement more to SMEs and tradesmen; among the proposed measures, the Council found that two of them were likely to distort competition; the maintenance and even the strengthening of the principle that preference be given, in the case of equivalent bids, to SMEs and tradesmen, and the possibility for public bodies to conclude contracts for certain categories of services (legal - social --sports-cultural) without putting them out to tender. In contrast, other measures concerning time limits for payment and retention monies are conducive to making government procurement more open without inducing serious distortions of competition.

42. By and large, the Council stressed that measures in favour of SMES needed to distinguish between SMES that were small, local -- and often family -- firms, and SMEs that belonged to large national or regional groups, either as their subsidiaries or via stakes taken in ailing local firms. Likewise, it underlined the need to establish a proper framework for the division of contracts into lots, so that the procedure is not used to split up a contract in several smaller contracts, each of an amount below the threshold set by the government procurement code, in order not to have to put the contract out to tender, or to divide the contract up artificially.

- The simplification and transparency of procedures, harmonisation with Community law: a reduction of red tape and the number of thresholds, and harmonisation with Community law, are beneficial to competition. The Council also considers that the obligation on public purchasers to specify their needs and selection criteria in writing prior to any bargaining or putting contracts out to tender is compatible with the principle of free competition, and necessary in order to be able to verify the conditions in which contracts are awarded. On the other hand, informing bidders in advance of selection criteria is liable to facilitate cover bidding and market sharing cartels (Opinion No. 00-A-25).

II. Enforcement of competition laws and policies

1. *Action against anticompetitive practices, including cartels and abuse of dominant position*

1.1 Summary of the activities of the competition authorities

1.1 Summary of the activities of the DGCCRF

a. Government procurement

a.1. Preventive role

43. The DGCCRF supervises government procurement and public service concessions via the presence of DGCCRF officials on contract boards, and through checks on legality. Compliance with the rules of competition when government contracts are awarded leads, *inter alia*, to improved public procurement.

44. A precise definition of community needs, suitable advertising, sufficient time for firms to submit bids, and contracts that are short enough to preserve the government's flexibility over procurement policy and tailor it to changing economic and social trends, are the main ways to maximise value for money. The DGCCRF advises government purchasing agents so that they exploit competition to the fullest possible extent, in the public interest.

a.2. Enforcement role

45. Pursuant to its mission to ensure fair competition in access to government contracts, the DGCCRF wields powers based on the Commercial Code, which authorises it to look out for and note anticompetitive practices on the part of bidders.

46. To this end, the agency's staff, in their capacity as representatives of the Minister for Competition Affairs, sit on contract boards and then, by virtue of the powers invested in them by Articles L. 450-1 to 450-4 and 450-7 of the Commercial Code, conduct extensive investigations of selected contracts.

Year	1997	1998	1999	2000
Number of seats on contract boards	**21 422**	**23 523**	**24 603**	**24 723**

47. In 2000, DGCCRF staff also reviewed 6 507 government procurement files that had been submitted to them by prefects for legality checks, and 822 public service concession files.

48. Evidence of anticompetitive practices detected during audits of government contracts and public service concessions was the basis for a substantial percentage of referrals to the Competition Council in 2000 (6 out of 19).

49. In addition, whenever an investigation uncovers a criminal violation of Article L.420-6 of the Commercial Code, which prohibits natural persons from taking part personally and decisively in the design, organisation or execution of anticompetitive practices with intent to defraud, the case file is handed over to the State Prosecutor. Some five such referrals to prosecutors were made in 2000 on the basis of Article L. 420-6.

50. Apart from referrals to the Competition Council and submissions to prosecutors regarding violations of L. 420-6 of the Commercial Code, audits of government contracts and public service concessions gave rise in 2000 to a very large number of deficiency letters proposing referrals to the Administrative Tribunal. Lastly, prosecutors are advised when government procurement audits uncover evidence of wrongdoing.

b. Monitoring a sector recently opened up to competition: telecommunications

Three aspects of competition in this sector received special attention:

b.1 France Télécom prices

51. Most of France Télécom's prices are currently subject to approval by the Minister for Economic Affairs, Finance and Industry, pursuant to the Post and Telecommunications Code (Art. L 36-7, paragraph 5) and the decree approving France Télécom's mandate (Article 17 of Decree No. 96-1225 of 27 December 1996), which stipulate that the Minister for telecommunications (the Secretary of State for Industry) and the Minister for Economic Affairs shall approve two categories of rates: rates for universal service and rates for services for which there are no competitors. This gives rise to public opinions from the Telecommunications Regulatory Authority (ART). The approval procedure for France Télécom's retail prices was the subject of comments and proposals designed to define less restrictively the services covered by it. It was pointed out that, in a period of transition from a monopoly situation to one of total competition, the competitive advantages of the historical operator warrant that its retail prices be subject to an approval procedure. The aim of the procedure is to achieve the complementary objectives of protecting the consumer, in the case of universal service rates, and developing competition in the case of other rates. The technical implementation of the approval procedure for the pricing proposals submitted by France Télécom makes it possible to identify the competition issues raised by them. Thus, in 2000, of the 121 pricing proposals submitted by the public operator for approval, the ART issued unfavourable opinions regarding 17 of them. With the exception of the decisions concerning the increase in the flat-rate subscription charge, "Global ATM HD" and "Atout RPV" (in the latter two cases, France Télécom took account of the ART's comments), the authorities went along with the ART's opinion.

b.2 Practices

52. Begun in 1998, the complete opening up of the telecommunications sector to competition has foundered on the question of subscriber access. Thus, the markets for access to the public operator's network and local calls are still a quasi-monopoly. To address this situation, the procedure for unbundling France Télécom's local loop was laid down by decree No. 2000-881 of 12 September 2000, confirmed by the European Regulation of 18 December 2000.

53. The Competition Council also ruled on practices involving these markets: in the 9 Télécom Réseau case, in its ruling of No. 00-MC-01 of 18 February 2000, the Council called on France Télécom to allow its competitors to submit bids for high-speed internet access by offering them technical and commercial access to a permanent virtual circuit or an equivalent technical and commercial solution. Also, further to a referral by the Chairman of the Telecommunications Regulation Authority (ART) concerning France Télécom's "Ligne France" service (all-in prices for local and national long-distance calls), the Council called on France Télécom to suspend the service to residential customers until the conditions had been put in place to allow third-party operators to offer equivalent services.

54. Regarding subscriber access to a mobile telephone network, the Council had to rule on a referral by the company Wappup challenging the marketing by France Télécom Mobiles (FTM) and the Société Française de Radiotéléphone (SFR) of mobile terminals which automatically connect users of the terminal's WAP functionality to their own portals. Bearing in mind the commitments entered into by FTM and SFR to market phones which were not pre-set to connect to their portals, in its decision No. 00-MC-17 of 17 December 2000 the Council rejected Wappup's request for interim protective measures.

55. The Government also referred to the Competition Council, for its opinion, the review procedure for France Télécom's retail prices for calls to other local loop operators (fixed or mobile).

b.3 Consumer protection

56. The National Consumer continued its work on the harmonisation of the format of mobile and fixed-line telephone bills. Its work should result in a decree being drawn up specifically for the sector.

1.1.2 Summary of the activities of the Competition Council

57. In 2000, 109 disputes were submitted to the Competition Council, along with 35 requests for opinions, giving a total of 144 new case referrals.

58. 2000 saw a moderate increase in adjudicative referrals.

59. There was an increase in the number of cases brought by local authorities (4 in 2000 compared with 1 the previous year). The number of requests for interim protective measures also increased (23 in 2000 compared with 17 in 1999). It may thus be noted that, over the medium term, parties have been resorting to this procedure more and more often.

60. In 2000, the Council held 109 sessions (83 in 1999) and handed down 112 decisions (109 in 1999.

Table 1

PENALTIES IMPOSED BY THE COUNCIL

	1996	1997	1998	1999	2000
Number of decisions imposing penalties	41	36	32	13	28
Total amount of penalties (FF million)	106.3	164.4	93.0	61.4	1240.4

61. The total amount of penalties was sharply up (FF 1.2 billion) due to the large fines (FF 1.1 billion) imposed on the main credit institutions under Decision 00-D-28 concerning the competition situation in the housing loan sector.

62. At the advisory level, the number of requests for opinions totalled 35 (27 the previous year). Of these, 14 involved general competition issues, 3 draft decrees, 5 draft regulations introducing new regimes, 6 mergers and acquisitions; 4 were from jurisdictions, 2 were from the Telecommunications Regulation Authority and 1 from the Electricity Regulation Commission.

63. In 2000, the Council handed down 31 opinions.

1.1.2.1 Cartels (Article L. 420.1)

i) Hard core cartels

64. A number of the price or market-sharing cartels disciplined in 2000 were, in the terminology of the OECD, "hard core cartels", that is to say, lasting covert cartels covering an entire market or virtually an entire market, on prices, quantities or market sharing.

65. Such cartels can cause lasting damage to the economy, and economic theory shows that they have two main consequences: a transfer of wealth from customers to the members of the cartel, and an overall loss of wealth for the economy. The most blatant example of this was the cartel in the banking sector.

66. In a context of sharply falling interest rates, the main banks concluded a "non-aggression pact" whereby each of them undertook not to poach the customers of other banks by offering to renegotiate their mortgages. They were thus in a stronger position to resist the requests from their own customers to renegotiate their mortgages since the latter were unable to go to other banks.

67. The Competition Council pointed that, although banking was subject to specific regulation, it was nonetheless subject to competition law. The penalties imposed totalled FF 1.14 billion (Decision No.00-D-28).

ii) Vertical restrictions

68. In the Interflora case, the Council recognised that, for the network to function properly, certain restrictions on competition were warranted, such as the obligation on the network's members to open a clearing account in a designated bank or to have the same telecoms equipment. The imposition of uniform prices on members via a catalogue of floral compositions was considered to be an unlawful agreement, while the exclusivity clauses imposed on florists (exclusive membership of the Interflora network and exclusive right to display the Interflora sign) were deemed to be an abuse of dominant position given Inteflora's position in the flower ordering market (Decision No. 00-D-75).

69. In the medical optics distribution market, the Council reproved the pricing practices of the Afflelou franchise network, whose main sales argument was that it sold spectacle frames at cost price. The latter was defined by the franchiser as the purchase price net of the rebates granted by the supplier as known at the moment of invoicing. In reality, franchisees were unable to take these rebates into account when setting their prices, since the opaqueness of the system of rebates prevented them from knowing exactly how much they amounted to. They were thus denied the possibility of passing them on to the consumer, and the alleged cost price thus amounted in fact to a minimum resale price (Decision No. 00-D-10).

iii) Electronic commerce

70. The Competition Council attaches great importance to this emerging sector and has put in place a competition monitoring system to analyse the strategic mechanisms in the market and to monitor the decisions handed down by the other competition authorities with responsibility for the sector.

71. The decision concerning the AFNIC (Decision 00-D-32) attests the Council's vigilance with regard to market access issues and the visibility of e-commerce operators.

72. The firm SA Concurrence had been refused the use of the domain name "concurrence.fr". It alleged that the AFNIC had abused its dominant position in the "fr." domain market, and that the refusal resulted from an agreement between the members of the AFNIC commission. The referral on the substance of the case was deemed to be inadmissible, and thus the request for interim protective measures was rejected.

73. It is however worth noting that, as regards the principle, the Council did not exclude that the deliberating body of the AFNIC could be described as an anticompetitive body if operators active in the same market as Concurrence had participated in that body and had used their influence to deny it access to that market. The Council also recognises the importance of domain names and does not rule out *a priori* that the allocation of these electronic identities may be vitiated by anticompetitive practices.

74. It did not exclude either the possibility that operators proposing on-line site search services (engines and directories) could be in a collective dominant position, and pointed out, as it had already done in opinion No. 99-A-10, that the referencing policy of portals and directories endowed with market power could present a danger to competition.

1.1.2.2 Abuse of dominant position (Article L.420.2)

75. In several cases, the Council reiterated that an undertaking with a statutory monopoly which uses all or part of the surplus revenue arising from its monopoly to subsidise a product or a service in a competitive market, may be considered to have abused its position. It is the case when the subsidy is used to conduct predatory pricing or has caused lasting disruption in the market. On the other hand, the Council reaffirmed the principle that it is lawful for a public undertaking with a dominant market position by virtue of a statutory monopoly, to enter a competitive market provided that it does not abuse its dominant position to restrict, or try to restrict, access to the market for its competitors, by resorting to means other than competition based on merit.

i) Practices in the electricity sector

76. On the basis of these principles, the provision by EDF of human and material resources that were part of its monopolistic activity, to its subsidiary Citélum (via EDF-GDF Services centres), as well as the support that those centres gave Citélum for its sales canvassing of local authorities, was not deemed to be anticompetitive given the context in which it took place and the fact that it was for a limited duration.

77. In contrast, the Council considered that EDF had abused its dominant position by submitting a particularly low bid to the town of Tourcoing in order to win the maintenance for the street lighting system. The price of the bid had dissuaded the town from putting the contract out to tender and had enabled EDF to sign a 10-year contract, tacitly renewable.

78. The Council reached the same conclusions concerning the street lighting maintenance agreements which the EDF had signed with 62 communes, which it considered to be overly long (over 5 years and tacitly renewable). It noted that these agreements were negotiated and concluded by the EDF-GDF Services centres, which, by virtue of a quasi-monopoly of the local distribution of EDF electricity, were in constant close contact with the communes. These centres benefit from the EDF's reputation and name with regard to distribution, and they can exploit this advantage when negotiating with small and medium-sized communes (Decision 00-D-47).

ii) Practices in the lottery sector

79. La Francaise des Jeux, which has statutory monopoly of games of pure chance, was disciplined for having channelled resources derived from its monopoly to a computer maintenance subsidiary, La Francaise Maintenance, by means of a subsidy from the parent company. This subsidiary charged prices in the competitive computer maintenance market which were below its variable costs, enabling it to win seventeen maintenance contracts and to acquire a reputation and an economic weight which were crucial for its future. By its impact on other firms in the sector, it disrupted the market (Decision No. 00-D-50).

iii) Practices in the telecommunications sector

80. Several cases involving practices by France Télécom were also referred to the Council, in respect of which it ordered interim protective measures (see the box on the net economy, page --).

iv) Practices in the information technology (net economy) sector

81. The Council handed down rulings in two cases in which the same issue was involved: the combined effects of the vertical integration of telephone operators and the technological progress over which they have relative control.

82. The Wappup.com case (petition for interim protective measures 00-MC-17) prompted the Council to look more closely at the relationship between telephone operators and portal operators in the mobile internet market.

83. Wappup.com wished to develop a WAPP-based internet portal and accused the main two operators, Itinéris and SFR, of marketing terminals that connected users automatically to their own portals (respectively I-itinéris and Vizzavi). The Council considered that, subject to examination of the substance of the case, this could constitute an anticompetitive practice or abuse of dominant position. On the other hand, it refused to order interim protective measures.

84. The question of telecommunications operators' access to the ADSL-based high-speed Internet access market also gave the Council the opportunity to state its position on the new economy: operators controlling technology that consumers have to use in order to access the Internet are able to impede the diffusion of innovations, in which case the classic concept of abuse of dominant position can be applied.

85. The Council noted that an operator's ability to offer an ADSL-based service was dependent on its access to the local loop, over which France Télécom has a virtual monopoly. It considered that France Télecom's refusal to allow operators to develop their own high-speed Internet access service, and the fact of restricting them to a function of resale of its own service, could be deemed to constitute an anticompetitive practice. It thus called on France Télécom to give the operators technical and commercial access to the permanent virtual circuit for the supply of ADSL-based internet access or an equivalent solution, within a period of eight weeks (interim measures 00-MC-01).

1.2 Court decisions

1.2.1 Summary of decisions by the Paris Court of Appeal

86. In 2000, the Paris Court of Appeal, which has appellate jurisdiction over decisions of the Competition Council, handed down 35 rulings in respect of appeals against the Council's decisions.

87. Some of those rulings (18 of them) confirmed the Competition Council's decisions. The Court of Appeal sent two cases back to the Council and re-opened the debate on one of them. It reversed five decisions. It quashed six decisions, four of which due to the presence of the *rapporteur* and *rapporteur-général* at the Council's deliberations, and imposed penalties or issued injunctions equivalent to those initially imposed or issued by the Competition Council. Of these 35 rulings, 8 were in turn appealed to the Court of Cassation.

88. The main sectors covered by these rulings were transport, printing, electricity, audiovisual production and public procurement.

Transport

89. By a decision of 15 December 1998, the Competition Council had disciplined Aéroports de Paris (ADP), on the basis of Article L. 420-2 of the Commercial Code (abuse of dominant position), for having refused access to the passenger information facilities located in the airport, to hotels situated on the outskirts of the airport site.

90. The Appeal Court confirmed that the Council was competent to examine the practices in question, considering that the provision of information in the airport concerning hotels on the site did not come under a public service mission involving the implementation of public service prerogatives, but the provision of a service to which competition rules applied.

91. It quashed the Council's decision on the grounds that the rapporteur and rapporteur-general were present at the deliberations and, pursuant to Article L 464-8 of the Commercial Code which gives it full jurisdiction, issued a new ruling. It concluded that ADP had abused its dominant position in the market for access to passenger information facilities in Roissy airport, by denying the hotels around the site access to those facilities, with a view to preserving the competitive advantage of the hotels on the airport site and the fees they pay. This abuse had repercussions on the hotel market. The Court imposed a fine of FF 500 000 on ADP.

Printing

92. By a decision of 22 June 1999, the Competition Council had considered that four syndicates in the Comité intersyndical du livre parisien (CLIP) had colluded to prevent the firm "Les meilleures éditions" from publishing its newspapers more cheaply. The Council had deemed that competition law applied to syndicates and found against them accordingly. On the other hand, it deemed that Article L. 420-2 (on abuses of dominant position) was not applicable to the CLIP as it was neither an economic operator nor an enterprise.

93. The Court of Appeal quashed the Competition Council's decision. It said that Article L.420.1 (on cartels) of the Commercial Code required that at least one of the parties in the cartel be an economic actor in the market. In the case in question, the Court pointed out that the Council had considered that the syndicates, the sole parties to the cartel, did not have an economic activity in the reference market or in the neighbouring labour placement market. It added that the fact that that competition had been infringed by a one-off action on their part did not make them economic actors, and thus Article L. 420-1 was not applicable.

Electricity sector

94. On 20 July 1999, the Competition Council had found that Electricité de France (EDF) had committed an abuse of dominant position by tying the provision of financial aid to certain customers, to their agreeing to buy their energy exclusively from EDF for a period of between six and twenty years. The Council had also considered that EDF and Gaz de France (GDF) had violated Article L. 420-1 of the Commercial Code by subordinating jointly the provision of financial aid to a customer, to its agreeing to buy its energy exclusively from them during a period of ten years. The Council had imposed a fine of FF 30 million on EDF and FF 2 million on GDF.

95. The Court of Appeal confirmed the Council's decision. It considered that the sole supply clause enabled the EDF to deny potential competitors access to the heating and air conditioning market and that it constituted an abuse of dominant position. It confirmed that the provision of aid to the Bibliothèque de

France was subject to the library agreeing to the EDF being the sole suppler for its air conditioning plant. This aid was provided by a dominant operator in the electricity market for air conditioning and heating. By preventing the customer from using alternative sources of supply, it distorted competition.

96. The Court also found that the aim and effect of the collusion between EDF and GDG was to exclude potential competitors by restricting competition to these two undertakings, and the choice of the end consumer to these two energy suppliers. Lastly, it considered that the gravity of the facts involved stemmed both from the facts themselves and the economic power of EDF. The damage to the economy consisted in the obstacle put in the way of the development of new competing energy systems for the exceptional projects under consideration.

Audio-visual production

97. On 22 December 1999, the Competition Council had disciplined TF1 (the leading non-pay TV broadcaster in terms of audience and advertising revenue), considering that the exclusivity clauses in audiovisual co-production contracts, under which TFI reserved the video reproduction of audiovisual works to a subsidiary, constituted collusion. It had also considered that the discriminatory conditions of sale offered by TF1 Publicité to its subsidiary TF1 Entreprises constituted an abuse of dominant position by TF1 Publicité, which was in a dominant position in the television advertising market for videos.

98. The Court of Appeal confirmed the fine of FF 10 million on TF1 and instructed it to delete from its audiovisual co-production contracts the clause reserving the rights of video reproduction to one of its subsidiaries, and to abstain from giving TF1 Entreprises preferential terms for television advertising for videos.

99. The Court considered that the collusive practices with which TF1 was reproached resulted in third companies being excluded from the market. It confirmed the delineation of a relevant market in television advertising for videos, in which TFI had a dominant position which it abused by granting its subsidiary preferential terms without any receiving anything really substantive in return.

Public works contracts

100. By a decision of 16 June 2000, the Competition Council had found that the firms Somaco, Domoservices Ouest, Proxima and Cgst Save, had constituted a prohibited cartel when bidding for the maintenance contracts for the individual heating and hot water systems in apartment buildings in Normandy and Brittany.

101. The Court of Appeal confirmed the Council's decision and reiterated that, where public works contracts were concerned, proof of collusion could be established either by formal proof or by a collection of serious, specific and corroborating evidence.

102. It said that the fact that some bids were lower than those of competitors outside the cartel did not mean that competition had not been infringed, since the collusion may have prevented a lower price from being set. The absence of initiative for a firm in the cartel, the fact that contracts were awarded on grounds other than price, and that the prices were lower than those proposed previously, were not sufficient to warrant a reduction in penalties; the fact a firm in the cartel was a SME and benefited from only a tiny part of the contracts did not justify such a reduction either.

1.2.2 Summary of decisions by the Court of Cassation

103. In 2000, the Court of Cassation handed down 11 rulings in respect of appeals against Paris Court of Appeal decisions on challenges to findings of the Competition Council. It dismissed five appeals and reversed two rulings of the Court of Appeal.

104. In the France Telecom case of 18 April 2000, the Court of Cassation held that interim protective measures may be ordered if a practice is seriously and immediately detrimental to the economy as a whole, to the sector in question, to consumer interests or to the appellant companies, even if it has not been established beforehand that the practices are clearly illegal under the rules of competition.

105. In the case of the Central Council of the National Order of Pharmacists of 16 May 2000, the Court of Cassation held that the letter sent by the Order expressing its opposition to the activity of home delivery of medicines could not be considered as a prerogative of a public body but constituted a cartel.

1.2.3 Summary of decisions by criminal, civil and commercial jurisdictions

a. Criminal action taken in respect of business practices

106. In 2000, the DGCCRF maintained the pace of its monitoring of compliance with the provisions of Title IV, Book IV, of the Code of Commerce. The irregularities detected resulted in its services referring nearly 750 cases to the public prosecutor's office. Many of these cases involve failure to comply with invoicing rules (failure to specify the nature and quantity of goods and services).

107. In particular, the invoicing of business co-operation services rendered by distributors to suppliers gave rise to violations related both to the form of the invoice and the description of the services supposedly provided.

108. The Criminal Chamber of the Court of Cassation handed down a ruling on 28 November 2000 imposing a FF 50 000 fine for illegal invoicing on a distributor (a legal person) that had invoiced services described as "rental of display space" and "regional optimisation of shelf space" that concealed discounts calculated on the basis of a percentage of turnover; these discounts, which were effective on the day of the sale and an integral part of the sales transaction, should have been included in the sales invoice.

109. Other cases that were referred to the public prosecutor's office or resulted in significant rulings by the criminal courts mainly involved failure to comply with regulated payment deadlines, with the obligation to establish business co-operation contracts, with the prohibition of loss leaders or the imposition of minimum prices or margins.

110. For example, on 31 October 2000, the Criminal Chamber of the Court of Cassation upheld the ruling of a Court of Appeal that had found a supplier guilty of imposing minimum prices for refusing to allow a distributor to sell its products because the retail prices charged were lower than it recommended. The supplier (a natural person) was sentenced to a fine of FF 50 000.

111. Similarly, regarding loss leaders, a distributor (a legal person) was fined FF 50 000 by the Reims Court of Appeal on 22 June 2000 for having accepted two invoices for one and the same order, one containing a very low purchase price and the other the price usually charged. This made it possible to justify the particularly low retail price advertised for a promotional operation.

b. Civil action taken in respect of business practices

112. The relations between suppliers and distributors can give rise to unfair practices. The solicitation of financial benefits in exchange for business co-operation services or discounts are considered unfair when these benefits are disproportionate to what the supplier is offering in return. Those who engage in these discriminatory practices are legally liable for their actions.

113. Nevertheless, appellant companies remain very reluctant to ask the courts to award commercial damages in connection with these practices because they are afraid that their distributors will take retaliatory measures or discontinue stocking their products.

114. In 2000, the DGCCRF only exercised once of its option of bringing cases before civil and commercial courts on behalf of the Minister responsible for Economic Affairs, since the Paris Court of Appeal had, through its ruling of 9 June 1998, limited this option to requests that the courts stop illegal activities. This ruling was upheld by the Commercial Chamber of the Court of Cassation on 5 December 2000.

115. The amendments made to Article L. 442-6 of the Code of Commerce by the New Economic Regulations Act of 15 May 2001 will make it possible to broaden action in this field since the Minister is now allowed to ask the courts to invalidate illegal agreements, to order the reimbursement of undue sums and to impose fines of up to 2 million euros.

116. Furthermore, cases involving sudden decisions to discontinue stocking distributors' products with no written advance notice were brought before the courts on the basis of Article 36-5 of the Order of 1 December 1986 (now Article L. 442-6 I 4 of the Code of Commerce). The Minister responsible for Economic Affairs often intervened voluntarily in cases that enabled plaintiffs to obtain substantial damages when the sudden cessation of business relations was unfair.

117. For example, in its decision of 13 July 2000, the Commercial Court of Nanterre imposed FF 450 000 in damages and interest on a tour operator who had suddenly stopped doing business with the company that had prepared its semi-annual catalogues for over ten years. The investigation conducted by the services of the Minister for Economic Affairs, the intervener, had made it possible to inform the court of the practices involved. The Versailles Court of Appeal recently upheld this decision in its ruling on 8 March 2001.

2. Mergers and acquisitions

118. The year 2000 saw a continuation of the wave of corporate mergers, close co-operation between the French authorities and the European Commission, and the confirmation of the growing role played by the Council of State in competition law.

119. It was also marked by the preparation and discussion in Parliament of the New Economic Regulations Act (*Loi sur les Nouvelles Régulations Economiques,* NRE), which provides for an in-depth reform of merger review as from autumn 2001.

2.1. Cases dealt with by the DGCCRF: activity profile

Mergers and acquisitions in France

Annual data

	1997	1998	1999	2000
Number of operations	478	505	369	342
Notifications received	28	28	27	30
Referrals to the Council	6	6	6	8

120. In 2000, 342 mergers and acquisitions were examined, and 53 of them were examined in depth; of those, 30 gave rise to formal notification.

121. Two operations examined had been referred back to the French authorities by the European Commission, on the basis of Article 9 of Council Regulation 4064/89, in respect of their local aspects (TotalFina/Elf and Carrefour/Promodès). These operations were authorised, subject to the fulfilment of certain commitments by the parties.

122. The Minister petitioned the Competition Council for its opinions on eight operations. As a result, one merger was prohibited, and two others were authorised subject to conditions. One operation was authorised without conditions. Two operations were abandoned subsequent to the referral. Lastly, two operations were still under review by the Competition Council at the end of 2000.

123. It should be noted that seven operations were authorised in the initial phase, without referring the case to the Competition Council, on the condition that the parties thereto make certain commitments so as to restore effective competition on the markets concerned. Those commitments were in general structural, supplemented in certain cases by other pledges regarding behaviour. Structural commitments involved divestment of assets (stores, storage deposits, subsidiaries, etc.). Other commitments involved alteration of the shareholder base of the new entity, to eliminate all structural ties between businesses and their customers, for example. Behavioural commitments included arrangements aimed at preventing cross subsidisation between activities or at managing transfers of information between companies.

124. Such commitments, particularly when they are undertaken during the initial phase of a merger review, are especially useful because they preserve competition while at the same time allowing companies to obtain authorisations within a very short (two-month) period.

125. The year 2000 also saw a growing number of operations in which firms consulted the DGCCRF at a very early stage in their project, even before any agreement had been signed. In a very few cases, these discussions led the companies to abandon the operation, given the magnitude of the problems raised and the foreseeable cost of solving them. More often, these discussions enabled the parties to adapt their project in the light of the results of the analysis of competition issues. This practice has the advantage of

providing firms with greater legal security and saving time, and the final project, which then takes into account any competition difficulties, can subsequently be approved in two months or less. It also makes it possible to value the assets acquired or divested more accurately, since final agreements take into account any future changes in scope imposed by the rules of competition. The fact that the requirements of competition were taken into consideration by the parties in the initial planning phase of the operation made it possible to realise most of these projects, after considerable work both by firms and the administration.

126. Lastly, regarding disputes, the Council of State ruled on three merger-related decisions by the Minister. It confirmed the legality of two of them (Coca-Cola/Orangina, on an appeal by Pernot-Ricard, and Opéra, the joint purchasing pool of the distributors Casino and Cora). It blocked the third decision since the seller, which the Minister had considered as no longer being concerned by the review procedure, had not been notified that the case had been referred to the Competition Council (Koramik/Wienerberger).

127. In its Opéra ruling, the Council of State defined the concept of merger and acquisition in the often difficult case of the creation of a joint venture. Lastly, Article 9 of the Community Regulations was invoked in two cases: TotalFina/Elf and Carrefour-Promodès.

2.2. Examples of major operations dealt with in the initial phase

128. In the TotalFina/Elf merger, *which had partially been referred back to the French authorities by the European Commission*, the local market for petroleum product storage in the Pont-la-Nouvelle area, in Lyon and in the southern and northern Paris region, was referred to the French authorities. The Minister authorised the merger in view of the divestment commitments proposed by the companies, which made it possible to restore competition on the storage market in the each of the four areas concerned, since this market directly controls the distribution market.

129. As regards operations reviewed in France under the national notification system, five concerned the air transport sector in 2000. One of these operations was unsuccessful, in particular because of the competition problems raised. Formal notification was filed for three operations, which were ultimately authorised, and which enabled the Minister, who had not previously reviewed operations in this sector, to define the boundaries of this market. France's practice in this field is in line with that of the Community authorities, but focuses more specifically on co-ordinated airports, where air traffic is strictly limited. These decisions reflect the central role played by Orly airport regarding competition on French domestic routes.

2.3. Cases in which the Competition Council's opinion was sought

130. The Competition Council may be consulted by the Minister for Economic Affairs and Finance on any merger or acquisition project or any merger or acquisition that might be detrimental to competition, in particular by creating or reinforcing a dominant position. In general, the Council has observed an acceleration of mergers and acquisitions on many markets, particularly at the international level. When the merger or acquisition only concerns the national level, the existence of potential competitors based abroad is a positive factor, particularly since the construction of Europe and the globalisation of the economy tend to favour their future entry onto the market. However, when oligopolistic structures become world-wide, these safeguards no longer exist.

131. In 2000, the Council handed down eight opinions regarding mergers and acquisitions, at the request of the Minister for Economic Affairs. The following table shows the number of merger-related opinions handed down by the Council at Ministerial request.

1994	1995	1996	1997	1998	1999	2000
15	5	5	7	4	4	8

132. Four cases merit discussion in greater depth.

2.3.1 Acquisition of the Clemessy company by the EDF, Cogema and Siemens groups (Opinion No. 00-A-03.

133. The principles of diversification had been laid down by the Competition Council in Opinion No. 94-A-15 of 10 May 1994 on the situation of EDF and GDF. In order to prevent an operator with a legal monopoly from taking advantage of this status (privileged financing, a nation-wide network, public service image) in order to crowd out other actors on the competitive markets in which it is diversifying, the Council laid down the principle that diversified activities should be completely separate from the legal monopoly. This separation is not only legal (creating subsidiaries), but also physical (no use of staff, of infrastructure used for the activities of the monopoly; in particular, limited use, under market conditions, of the EDF/GDF service centres; financing under conditions prevailing on capital markets, with monopolies prohibited from owning equity).

134. Given EDF's current position on the electricity supply market and the prospects opened up by the Act of 10 February 2000, these risks would mainly consist of the possibility that EDF would have of providing non-eligible customers, whether through subsidiaries or associations, with technical or commercial services linked to its supplying of electricity.

135. Attention was also drawn to the risk of hidden subsidies that might result from the centralised purchasing of EDF and Clemessy and from Clemessy's use of the commercial power of EDF/GDF service centres, without there being any financial compensation for the advantages obtained reflecting the real costs.

136. Lastly, the Competition Council warned against making available to Clemessy the register of all French electricity consumers, both eligible and non-eligible, which is currently used solely by EDF.

137. The Council ultimately considered that the acquisition was not detrimental to competition provided that the reservations that it had formulated were taken into account.

2.3.2. Acquisition of the Promodès company by the Carrefour company (Opinion No. 00-A-06)

138. Following notification of the merger between Carrefour and Promodès, on 5 October 1999, the European Commission concluded, with regard to the supply market, that the operation was compatible with the Common Market, subject to the commitments made by Carrefour. At the French government's request, the Commission referred the project to the national competition authorities for review regarding the 99 market areas identified in the application, in which the operation might create or strengthen a local dominant position.

139. In defining boundaries of the relevant markets, the Council retained two types of markets for each of the areas concerned: that of hypermarkets located less than 30 minutes away by car and that of supermarkets (and equivalent forms of retailing) located less than roughly 15 minutes away.

140. The examination of the areas showed that in 27 of them, the operation would give the Carrefour company a predominant position that might affect competition adversely without it having been demonstrated that it would bring sufficient economic benefits. The operation was authorised by the Minister responsible for Economic Affairs, subject to the divestment commitments undertaken by Carrefour.

2.3.3. Acquisition of the Biwater Industries Coney Green company by Saint-Gobain (Opinion No. 00 A-27)

141. Through this operation, the Saint-Gobain Pipelines company (a UK subsidiary of the Saint-Gobain group) acquired 100% of the Biwater Industries Coney Green company (a UK subsidiary of the Biwater PLC group), thereby taking over the production of ductile iron pipes and fittings of the Biwater PLC group.

142. The Council considered that the operation was potentially able to have an effect on the national market, since, by eliminating a producer in the United Kingdom, it might deprive French importers of a source of supply.

143. Nevertheless, the Council ruled that the operation would not be detrimental to competition. In particular, it held that the current and future production capacities available in the other European countries were sufficiently large to ensure regular supply on the market, that their was a growing substitutability between the different materials used and, lastly, that the concession-granting and managing authorities were determined to keep the price of water supply low.

2.3.4. Acquisition by the Vivendi company of the Richemont group's 15% interest in the Canal Plus company (Opinion No. 00 A-04)

144. In this agreement, the Richemont company transferred its 15% equity holdings in Canal Plus to Vivendi in exchange for Vivendi shares. This agreement enables Vivendi to exert a decisive influence on the Canal Plus company.

145. The Council held that the operation did not have direct horizontal effects on the main markets concerned, i.e. French cinema production, catalogues of films and audio-visual production.

146. The Council also examined the impact of the Vivendi's acquisition of equity in BskyB, the foremost provider of satellite and cable pay television services in the United Kingdom and Ireland. The objective was to verify whether Vivendi's shareholding in BskyB, in conjunction with its control of Canal Plus, might not facilitate the convergence of the two groups, which might result in a weakening of competition. It pointed out that on the markets concerned -- the market of rights to broadcast sports events, the decoder market and Internet markets -- the development of co-operation between the two operators did not present a risk of jeopardising competition.

147. However, the Council noted that the vertical integration of the group might potentially enhance its power to centralise purchasing and sell products and crowd out less vertically integrated competitors. But it ultimately held that the vertical effects of the operation would not be detrimental to competition

given the positive effects for the national economy, the potential international competition from other groups of the same type and the rapidly changing structure of the market in question.

2.4 Analysis of certain cases from the standpoint of the legislation governing mergers and acquisitions (DGCCRF)

148. Among these cases, three seem to be particularly important with regard to the legislation on mergers and acquisition: one concerned an operation involving large chain stores, another an operation on the market of shoe care products retailed in large chain stores and another an operation in the electrical engineering sector.

2.4.1 Large chain stores

149. The Carrefour/Promodès merger was referred to the French authorities by the Commission for 99 local areas that might be affected by the operation. The merger was authorised by the Minister for Economic Affairs, Finance and Industry on 5 July, after consulting the Competition Council, after the parties had undertaken substantial commitments: divestment of 34 stores within one year by selling or exchanging them or by terminating subsidiary, franchising or licensing contracts, and a commitment not to operate a new outlet predominantly retailing food in the areas in which it had made a commitment to divest itself of stores.

2.4.2 The market of shoe care products retailed in large chain stores

150. The acquisition of the “Baranne” brand, belonging to the Benckiser group, by the Sara Lee group, owner of the “Kiwi” brand, would have resulted in a virtual monopoly on the market of shoe care products retailed in large chain stores, thereby creating a dominant position in which no current or potential competitor would be able to offset this market power. It was observed that in this market the competitors were highly fragmented, and were too small to be able to meet the demand of large chain stores. Lastly, the operation also had the effect of combining the only two well-known brands, which in itself constituted a new barrier to entry. The Minister, differing with the positive opinion of the Competition Council that was based on the low barriers to entry, ultimately prohibited the operation.

2.4.3 The buyout of Clemessy by EDF, Cogema and Siemens

151. One of the main issues at stake in this operation was the need to take into account the new context of the liberalisation of the government-owned electricity company when analysing the diversification of a historic operator in a monopoly situation.

152. The EDF/Clemessy case was the second opportunity for the competition authorities to rule beforehand on a diversification operation of EDF, and their first opportunity to adapt the principles laid down by the Council to the European and French context of the deregulation of electricity markets. The review of this operation made it possible to ensure that specific markets were effectively opening up to competition. The injunctions contained in Minister’s decision place very stringent limitations on the operation in question.

153. Regarding “non-eligible” customers, the decision prohibits Clemessy from providing them with any services, since EDF’s captive customers for electricity supply might think that Clemessy’s services were part of EDF’s overall services, i.e. that electricity supply was being combined with the installation

and maintenance of electric appliances. However, since EDF has an upstream legal monopoly, no other electrical installer would have been able to offer such services. The Competition Council and the Minister therefore went beyond the 1994 opinion by affirming that separation is not sufficient and that it is necessary to prohibit all downstream activity for an operator having a legal monopoly upstream.

154. Regarding eligible customers, the decision concretely applied the principle of separation, since EDF may not divulge information about its customers to Clemessy, and the two entities must invoice each other at market prices in order to avoid cross subsidisation.

III. The role of the competition authorities in formulating and implementing other measures, such as regulatory reform measures and trade or industrial policy measures

155. In addition to paying special attention to the conditions under which sectors being deregulated, such as electricity and gas, were being opened up to competitive forces, and within the framework of inter-ministerial co-ordination, the competition authorities made their contribution to the government's review of regulatory developments.

156. In particular, the Competition Council may be consulted:

- in respect of any matter involving competition;
- in respect of any draft regulatory provision instituting a new regime, a direct effect of which would be to subject the exercise of a profession or access to a market to quantitative restrictions, establish exclusive rights in certain areas or impose uniform practices in the realm of pricing or terms of sale;
- by the jurisdictions in respect of anticompetitive practices noted in cases brought before them;
- at the request of the Telecommunications Regulatory Authority;
- at the request of the Electricity Regulatory Commission.

157. In 2000, in addition to its opinions in the sectors of public procurement, telecommunications and electricity already covered, at the request of Parliament the Competition Council handed down an important opinion aimed at improving competition on the water market.

158. The National Assembly's Commission on Finance, Economic Affairs and Planning asked the Competition Council to "*carry out a study on water prices in France*" and specified that it wished "*the Council to study the formation of water prices, price differences between communes and, more generally, the structure (of the water market)*".

159. Because of the highly concentrated structure of the market, the Council initially recommended that the government monitor carefully merger and acquisition trends in the drinking water sector.

160. It also proposed solutions that would improve competition, such as the participation of small firms and foreign companies in the consultations of local and regional authorities.

161. The collection, processing and dissemination of the available information is crucial to improving the functioning of water markets, and in particular to promoting the access of new operators to these markets. In this regard, it might be advisable to create a monitoring authority that would be responsible for gathering and disseminating information and making *recommendations*. This authority should be able to bring before the Competition Council practices that it observes and deems to be anticompetitive. It could also suggest any legislative and regulatory amendments that it thinks necessary.

162. A legislative amendment might be envisaged to make consultation of the assembly of the local and regional authorities mandatory when a concession agreement expires in order to discuss the advantages of returning to direct management (Opinion No. 00-A-12).

IV. Resources of the competition authorities

1. Resources overall

a) Annual budget (in your currency and in US dollars)

   For the DGCCRF and the Competition Council: FF 252 million, i.e. 38.42 million euros ($35 million) for the DGCCRG, and FF 80 million, i.e. 12.2 million euros ($11.1 million) for the Competition Council

b) Number of employees: 200

Human resources applied to:

a) Combating anticompetitive practices: 175 persons;

b) Merger review and enforcement: 15 persons;

c) Pleading: 10 persons.

3. Period covered by the above information

163. The period covered by the above information is from 1 January to 31 December 2000.

V. New reports and studies on competition policy issues (or bibliographical references)

164. Articles from the *Revue de la Concurrence et de la Consommation*:

- No. 113 (Jan.-Feb. 2000): *Le prix prédateur comme obstacle à la concurrence* [“Predatory pricing as a barrier to competition”];
- No. 115 (May-June 2000): *Le juge civil, le juge commercial et le droit de la concurrence* [“The civil and commercial courts and competition law”];
- No. 116 (July-Aug. 2000): *Le juge administratif et le droit de la concurrence* [“The administrative courts and competition law”];

- No. 117 (Sept.-Oct. 2000): *Politique de la concurrence et économie numérique* [“Competition policy and the digital economy”]

- No. 118 (Nov.-Dec. 2000): *L’efficacité des décisions en matière d’ententes et de concentrations* [“The effectiveness of decisions on cartels and mergers and acquisitions”]