

[FREE TRANSLATION]

OPINION N°2022-A-05 OF DECEMBER 5, 2022  
ON A DRAFT ORDER APPROVING A VOLUNTARY PRICE FREEZE AGREEMENT  
FOR CERTAIN PRODUCTS BY FOOD RETAILERS  
(OR "BASKET OF BLOCKED-PRICE PRODUCTS")

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The Polynesian Competition Authority,

Having regard to the letter received on November 23, 2022 under number 22/0024 A by which the President of French Polynesia referred to the Polynesian Competition Authority for an opinion a draft decree approving an agreement relating to the voluntary freezing of prices of certain products by predominantly food retail businesses or "basket of price-blocked products";

Having regard to the Polynesian Competition Code, in particular Article LP. 620-1;

Having regard to the other documents in the file;

The Deputy General Rapporteur and the Government Commissioner heard on the basis of the provisions of article LP. 630-5 of the Polynesian Competition Code at the meeting of December 5, 2022;

Is of the opinion to respond to the request presented in the sense of the following observations:

## **INTRODUCTION**

1. By letter registered on November 23, 2022 under number 22/0024 A, the President of French Polynesia referred to the Polynesian Competition Authority for its opinion a draft decree approving an agreement relating to the voluntary freezing of prices of certain products by predominantly food retail outlets, known as the "basket of price-blocked products".
2. Article LP 620-1 of the Polynesian Competition Code states that: "*The Authority may be consulted by the President of French Polynesia on any matter relating to competition*".
3. In his letter of referral, the President of French Polynesia invoked the urgency procedure, reducing the response time to fifteen days. Consequently, the Authority must deliver its opinion by December 7, 2022 at the latest.
4. Following a presentation of the decree (I), the effects of these provisions on competition will be examined, and the Authority will make any proposals for improvement (II).

## **I. FINDINGS**

### **A. PRICE REGULATION IN FRENCH POLYNESIA**

5. In principle, prices are free in French Polynesia, but there are a number of special arrangements for setting regulated prices or margins.
6. A recent text, loi du pays n°2022-15, adopted on July 7, 2022 but not yet promulgated due to an appeal before the Conseil d'État, has begun to clarify the different regimes applicable and to codify them within the Competition Code.
7. It includes the following devices:
  - the system of "basic necessities" (PPN) and "fast-moving consumer goods" (FMCG), whose price may be set in absolute terms, or with a ceiling margin, in absolute or relative terms (articles LP 111-1 et seq.);
  - price controls for goods and services deemed "*essential to the economic development of French Polynesia*" (article LP 112-1);
  - price moderation agreements with companies (article LP 110-4);
  - the principle of "*controlled freedom*" (article LP 110-3);
  - setting hydrocarbon prices (articles LP 112-2 et seq.).
8. Other texts also provide for specific regimes for a number of products (pork, copra, bread, flour, medicines, etc.) and services (inter-island freight, port handling, road haulage, cabs, fees for certain liberal professions, ministerial fees, property rental, medical care, etc.).
9. However, this draft decree is not part of these measures, nor of those provided for in decree no. 171 CM of February 7, 1992, setting the general system of product prices and margins at the various marketing stages in French Polynesia, which is still in force.

## **B. THE DRAFT ORDER SUBMITTED TO THE AUTHORITY FOR REVIEW**

10. The draft order submitted for the Authority's consideration authorizes the Minister for the Economy to sign an agreement with the Fédération Générale du Commerce (FGC) relating to the voluntary price freeze on certain products by predominantly food retailers, known as the "Basket of price-blocked products".
11. This agreement concerns a new scheme, open for one year from January 1<sup>er</sup> 2023 to voluntary food retailers. Members of the agreement commit to freezing the prices of certain everyday consumer products, for renewable periods of three months. If the agreement is signed with the sector's representative federation, the FGC, retailers do not need to be members of the federation to take part in the scheme, and membership is by simple declaration.
12. The principles are as follows:
  - the number of products in the basket depends on the surface area of the shop concerned:
    - for stores over 2,500 m<sup>2</sup>: 60 products,
    - for stores between 1,000 m<sup>2</sup> and 2,499 m<sup>2</sup>: 40 products,
    - for stores between 500 m<sup>2</sup> and 999 m<sup>2</sup>: 20 products,
    - for stores of less than 500 m<sup>2</sup>: 15 products.
  - Shops are free to choose their products as long as at least 70% of them are food products, at least 10% are local products and at least 20% are national brands;
  - the retail price of products on the list is set freely by retailers, but they agree to lock it in for one calendar quarter (all taxes included).
13. In return for these commitments, the Pays ensures the visibility of the scheme by various means:
  - an advertising campaign ;
  - the supply of files and other product identification materials, such as labels or graphics, which must be shared by all members.
14. The signatory stores are responsible for the logistics (advertising and visibility at the point of sale) and are free to publicize the operation. They also undertake to ensure the availability of the products concerned and, in the event of a stock shortage of certain products on the list, to inform the Direction générale des affaires économiques (DGAE) and to announce this on all media.
15. The Pays (*via* the DGAE) is in charge of controlling the system, based on the existing regulations on misleading advertising set out in order no. 170 CM of February 7, 1992.

## **II. COMPETITIVE ANALYSIS**

16. Price regulation derogates from the principle of free determination of prices through competition, which is a constitutional principle, as part of entrepreneurial freedom and freedom of contract, principles of constitutional value deriving from article 4 of the Declaration of the Rights of Man and of the Citizen.
17. Generally speaking, a minimum price system is not justified, as it reduces some of the benefits of competitive markets for consumers (absence of competition in the retail sector).

price, absence of incentives to produce quality at lower cost). On the other hand, under certain conditions and in certain specific contexts - such as excessive price rises due to exceptional or manifestly abnormal circumstances - a maximum price system may be justified, particularly when the diversity of supply (actual or potential) is limited. Indeed, price regulation limits the ability of incumbent players to generate monopoly rents to the detriment of consumers. It can also compensate for the lack of consumer information in the event of strong asymmetry and, by increasing price transparency on the market, limit the scope for excessive pricing and increase economic efficiency.

18. In French Polynesia, price regulation mostly consists of setting price ceilings for a certain number of goods and services.

## **A. A NEW SYSTEM WITHIN AN ALREADY DENSE REGULATORY FRAMEWORK**

### **1. A NEW, MORE FLEXIBLE VERSION OF THE PRICE-QUALITY SHIELD**

19. Most overseas territorial collectivities have a measure known as the "quality-price shield", introduced in collectivities governed by Article 73 of the Constitution (notably the overseas departments - DOM) and in Wallis and Futuna as part of the Overseas Economic Regulation Act of November 20, 2012, known as the "Lurel Act", and taken over by New Caledonia since that date. This involves - after negotiations between the State (or the government in New Caledonia) and professionals - setting by decree an overall ceiling price for a list of everyday consumer products (generally between 50 and 150), which distributors (large and medium-sized retailers only<sup>1</sup>) are obliged to respect.
20. The aim of this quality-price shield is to correct the shortcomings of product-by-product price or margin regulation, by giving retailers greater flexibility:
- the distributor must respect an overall price for the basket, but can distribute its margins between the different products on the list,
  - for each product category, the distributor retains the choice of the brand it wishes to include in the list (the obligation only concerns the fact of offering at least one product in the category, with sometimes an additional obligation concerning the origin, whether local, national brand or private label).
21. This system should limit "catch-up" phenomena on off-list products, and also helps to maintain a degree of competition between chains, which retain the ability to have different prices for the same products, so that they are not systematically set at the ceiling price for each product. It also guards against the inflationary effect of margin ceilings, since by setting a ceiling price rather than a ceiling margin, importers and distributors are encouraged to buy the best.
22. However, the operational difficulty of the Quality-Price Shield is considerable. On the one hand, it requires complex annual negotiations between the authorities and professionals (importers, distributors, transporters, producers), to fix the list and the ceiling price, as well as the ability for the authorities to impose their prices if negotiations fail. On the other hand, it requires complex checks by the authorities in stores to ensure that products are available, that they are marked and that the ceiling price of the basket (which is the sum of 50 to 150 individual prices) is respected.
23. The Polynesian system examined in this opinion is more flexible. It retains the principle of setting a price ceiling for a basket of products, but on a product-by-product basis and for a three-month (renewable) period. Above all, the system is optional, and the list, which is determined by professionals alone, is not uniform across all shops. The advantage is that it relieves the country of long, complex and often time-consuming negotiations.

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<sup>1</sup> The surface areas concerned vary from one region to another, with compulsory systems generally in place for larger surface areas (+ 500 or + 1000 m<sup>2</sup>), and optional systems or systems with a reduced number of products for smaller surface areas.

with professionals. The disadvantage is that there is no guarantee that the choice and prices of products on the list will really correspond to the needs of the populations most affected by inflation.

24. In this sense, it is also similar to the price moderation agreements provided for in the future article LP. 110-4 of the Polynesian Competition Code<sup>2</sup>, which can be signed between French Polynesia and professional organizations. This type of agreement was advocated by the French Competition Authority (ADLC), in an opinion<sup>3</sup> concerning New Caledonia, under the heading of "supervised freedom" for prices.

## **2. AN UNCERTAIN RELATIONSHIP WITH OTHER PURCHASING POWER SCHEMES**

25. In its opinion of March 30, 2022<sup>4</sup>, on the draft law of the country finally adopted on July 7, 2022, the Authority welcomed the desire to clarify, clean up and codify all exceptions to the principle of price freedom. However, this new system, even though it may be similar to price moderation agreements, is a derogation in itself, and adds to the complexity of the system by adding to the already numerous existing measures.
26. In terms of its relationship with other price control systems, it is significant that there is a significant difference of opinion between the professionals concerned and the government.
27. In the mind of distributors, this new system is intended, at least in the long term, to compete with existing systems, and in particular with the PPN and PGC system, which they are concerned about being extended to new products with the possibility open to the government of modifying the list by decree in the Council of Ministers, which is one of the reasons for the appeal against the aforementioned text n° 2022-15 of July 7, 2022.
28. For the government, on the other hand, it's more a question of an additional mechanism, which doesn't necessarily target the same products and the same audiences as the NPPs and FMCGs. Indeed, it seems that for certain products, even though they appear to be in competition, price freedom does not always lead to the lowest prices. The DGAE cites the example of hydroalcoholic solutions, whose prices were regulated during the covid 19 crisis, without this leading to a restriction in supply, but also disposable feminine hygiene products, whose prices are currently free and which were the subject of an investigation in March 2022. The results show that, while there are around 100 references including national brands, distributor brands and first-price brands, imported by nine different companies, in an apparently competitive market, the average margin is 135%, well above the margins usually allowed for PPNs (around 50%, without taking into account VAT and duty gains).

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<sup>2</sup> LP n° 2022-15 of July 7, 2022: "Article LP. 110-4 - a price moderation agreement may be signed between French Polynesia and a professional organization or a group of companies representing a branch or sector of activity. Companies that are not members of the signatory professional organization or group of companies may undertake to comply with the price moderation agreement".

<sup>3</sup> ADLC report on competition control structures in New Caledonia, September 21, 2012. "A system of "supervised freedom" seems preferable to a system of price controls, likely to generate distortions of competition [...] Within the framework of supervised freedom, margin moderation agreements could be signed between the New Caledonian government and professionals, along the lines of the June 2004 agreements that led to a slowdown in price rises for food products, while maintaining price freedom.

<sup>4</sup> Notice no. 2022-AO-01 of March 30, 2022 on the conditions governing the prices of certain products and services, amending the legislative part of Book 1 of the Polynesian Competition Code.

## **B. A POTENTIALLY CONSUMER-FRIENDLY SYSTEM OF UNCERTAIN EFFECTIVENESS**

### **1. AN OPTIONAL SYSTEM THAT RELIES SOLELY ON THE GOODWILL OF DISTRIBUTORS**

29. This new system differs from price regulation in that it is a contractual measure, freely negotiated and accepted by the co-signatory companies. As such, it is not a derogation from price freedom, especially as non-signatory distributors are not obliged to respect such commitments, even if they have the opportunity to do so.
30. This flexibility is both an advantage and a disadvantage
31. The advantage is that the companies concerned retain the possibility of competing on price or quality, both on the goods on the list (which can enable them to increase or retain their customer base, on these products as on others) and on other substitutable goods which are not subject to price constraints.
32. The downside of this flexibility and the preservation of price freedom is the uncertainty it implies about companies' commitment to making real efforts to reduce prices. Indeed, companies :
- can choose whether or not to join the scheme;
  - are free to choose which products they wish to include on the list;
  - have a choice of ceiling prices for each of these products.
33. What's more, while the price ceiling of the price-quality shield in force in the French overseas departments is valid for one year, the "blocked-price basket" scheme only guarantees the prices on the adopted list for three months, even if it is to be hoped that the quarterly revisions of the baskets will provide an opportunity to reduce prices or integrate more attractive products into the basket.
34. Ultimately, the only guarantee of the scheme's success lies in the way Polynesian retailers "play the game", embracing the scheme and offering genuinely attractive prices on products in high demand.

### **2. UNCERTAIN OBJECTIVES AND CRITERIA THAT ARE SOMETIMES DIFFICULT TO ASSESS**

35. Like the PPN and PGC schemes and other price regulation mechanisms, such as the one on fuel prices, the basket of products with blocked prices benefits all consumers equally, whatever their income. In any case, proportionally speaking, the price rises currently observed are above all unfavorable to the most modest populations, particularly when they affect food products or basic necessities, which make up a larger share of their consumer basket.
36. The APC recommended limiting the windfall effects for wealthy households by refocusing the various schemes on priority target groups, for example by experimenting with an alternative direct aid scheme for low-income households (e.g. a card or vouchers giving free or discounted access to essential products).
37. This new scheme does not fit into this framework, and offers no guarantee that the basket of products at blocked prices will benefit priority groups.
38. This means that retailers are free to choose the products and prices they wish to include on the list. Their only constraint, laid down in the agreement, is that they must select a minimum number of products (between 15 and 60, depending on the size of the shop) and certain characteristics (the list must contain at least 70% food products, at least 10% local products and at least 20% "own-brand" products). These are "national" brands (i.e. present in the various chains, as opposed to private labels).

39. These criteria are relatively imprecise:
- It is not specified whether the percentages are by volume (number of products on the list) or by value (weighted by the price of the products concerned).
  - The inclusion of 70% food products in the basket is certainly intended to respond to the sharp rise in prices, particularly over the past year (+11.2%)<sup>5</sup> and seems *a priori* to be geared towards the needs of the most modest populations, whose share of disposable income devoted to food purchases is higher. However, the scheme does not guarantee that they will focus on products that are heavily consumed by these households, or on those that have seen the biggest price rises (oils, meats, vegetables or dairy products, for example, in 2022).
  - Minimum levels of local production or national brands are intended to stimulate local production and to reinforce the possibility of competition between chains for identical products (which is not the case for a private label product). However, they remain at low levels, with few constraints on retailers, who therefore retain considerable latitude in determining their baskets.
40. Above all, no further details are given on priority product categories, for example, or on other social, environmental or health criteria.
41. What's more, while food retailers stock thousands or even tens of thousands of products, the small number of price-locked products (between 15 and 60) in no way guarantees that the products selected will correspond to products for which there is strong demand and which represent a significant proportion of the household shopping basket.
42. The choice of products could thus be defined in a narrower, more targeted way, for example, by reserving it for products representing a constrained expense (as opposed to a chosen expense) or a significant proportion of the household budget, or even by systematically taking into account the impact of these products on health and the environment. The agreement could also take into account consumption habits and constraints linked to the remoteness of the archipelagos.

### **3. POTENTIAL PERVERSE EFFECTS MORE LIMITED THAN WITH CEILING MARGINS, BUT NOT NON-EXISTENT**

43. On several occasions<sup>6</sup>, the Autorité has already highlighted the undesirable effects of price regulation or blocking schemes, which - while reducing the price of certain products - can actually be neutral or even negative for overall price levels.
44. While this new system, which relies above all on voluntary action by distributors, does remove some of them, it does not eliminate them all.
45. Some of the reservations noted by the Autorité in its previous opinions do not apply to this system, notably those concerning the inflationary effects of setting prices on the basis of a margin on cost price, which can lead to the purchase of the most expensive goods (in the case of setting a margin as a percentage) or to aligning prices on the ceiling (in the case of setting a margin in absolute value but with little competition). Setting price ceilings in absolute terms, as will be the case instead of margins, seems better suited to controlling costs and providing a greater incentive to seek productivity gains and maintain price competition.

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<sup>5</sup> Food prices rose by 11.2% year-on-year, including oils and fats by 27.5%, meats by 21.4%, vegetables by 19.8% and milk, cheese and eggs by 17.2%. See *ISPF, Points conjoncture, n°11, November 2022*

<sup>6</sup> See, in particular, opinion no. 2019-A-02 of September 19, 2019 on import and distribution mechanisms in French Polynesia and opinion no. 2019-A-01 of April 2, 2019 on the effects of regulation on the competitive operation of staple goods markets.

46. In addition, the system takes into account some of the comments made by the Autorité. The latter had in fact recommended maintaining a certain degree of pricing freedom and price competition, either by allowing distributors to apply the PPN scheme only to some of the products in the category concerned, or by examining the possibility of implementing an alternative scheme such as the quality-price shield. However, the basket of price-locked products precisely limits price-locking to a limited number of products.
47. This freedom to build baskets and set prices should reduce - but not completely eliminate - the effects of margin squeeze on other products. Indeed, in a structurally restricted market characterized by numerous import exclusivities, which limit the scope for intra-brand and inter-brand competition between players, distributors will still be able to equalize prices between products, by catching up on margins on products not on the list. But these effects will be limited by the fact that they will already have taken account of the effects on their margins when determining the list of products and their prices. The effects will therefore be less than when the price or margin is imposed totally exogenously.

#### **4. A SPECIFIC UNADDRESSED PROBLEM, THAT OF LEAVING THE SYSTEM.**

48. Under the new system, distributors commit to price ceilings for one quarter. However, there is no commitment to manage the exit of products from the scheme at the end of each quarter, which can lead to very significant price increases, notably to make up for any margin losses incurred during this period.

#### **5. A SYSTEM WITH DIFFERENTIATED EFFECTS ON POLYNESIAN DISTRIBUTORS AND NO INVOLVEMENT OF OTHER PLAYERS IN THE CHAIN**

49. Unlike price regulation (PPN, PGC) or related schemes such as the quality-price shield, the price-locked product basket is based on the sole commitment of distributors.
50. Regulations relating to PPNs and PGCs, for example, generally set an overall margin on the CIF prices of products, which is then divided between the various players in the case of long distribution channels (thus involving importers). It is also accompanied, in the case of NPPs, by tax measures or specific aid (exemption from import duties, VAT, transport aid). The quality-price shield is based on annual negotiations with all players in the distribution chain (importers, transporters, manufacturers). To take a recent example, during discussions on Mayotte's Quality-Price Shield 2022, concluded on November 25, 2022, forwarding agents and the port operator undertook to offer discounts on their transport services, so that the burden of this measure would not fall solely on distributors.<sup>7</sup>
51. This is not the case for the Polynesian basket of blocked-price products. The distributors are the only ones to make the effort. There is therefore a risk that the price reductions achieved will be more limited than if all players in the chain were to assume their responsibilities. Placing the burden of the measure solely on retailers may also have the effect of increasing the catch-up effects on other products, as described in § 47.
52. It should be noted that the scheme also runs the risk of reinforcing the asymmetry between member and non-member companies, since the former may see their margins reduced in the case of participation in the scheme, while the latter will retain the possibility of rapidly adapting their prices to changes in supply and demand, and to the cost of products. Admittedly, since membership is optional, companies are not obliged to bear this cost, but this risk could limit the number of memberships, particularly in sectors where supply is limited and customers captive, for example on islands other than Tahiti and Moorea.

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<sup>7</sup> <https://outremers360.com/bassin-indien-appli/pouvoir-dachat-un-plus-grand-bouclier-qualite-prix-contre-linflation-deploye-sur-mayotte>



## C. A SYSTEM WHICH, TO BE EFFECTIVE, WILL REQUIRE THE ACTIVE PARTICIPATION OF THE GOVERNMENT

### 1. ADVERTISING THE SYSTEM IS A KEY FACTOR IN GETTING DISTRIBUTORS ON BOARD

53. The blocked-price basket scheme works on the basis of mutual gain for the government, distributors and consumers:
- the government is taking concrete action to boost purchasing power by freezing prices on a number of products without significantly impacting public finances;
  - shopkeepers benefit from advertising paid for by the Pays and from a gain in reputation through their participation in the scheme, likely to increase customer loyalty;
  - With greater price transparency, consumers are better able to compare retailers' offers and choose between different chains.
54. *Ultimately*, the system is also designed to boost price and product competition, with each retailer seeking to stand out from the crowd by offering more attractive products and prices than its competitors.
55. Triggering this virtuous mechanism requires both the utmost transparency and effective communication.

#### a) Greater transparency on consumer product prices

56. The Autorité has already highlighted the importance of price transparency in various opinions<sup>8</sup>. In theory, the competitive effects of price transparency are ambiguous, as they can facilitate the implementation and stability of tacit or explicit agreements between operators (the other members of the cartel having all the information they need to sanction those who deviate from the agreed price and take retaliatory measures), but such an argument is purely theoretical when it comes to everyday consumer products. Their prices are compulsorily displayed in stores, and can therefore in reality already be monitored by competitors, especially the larger ones, who find it easier to mobilize dedicated staff to carry out price surveys, whereas such work is more complicated for independent stores. As for consumers, when price information is complex or costly to obtain, they are relatively reluctant to change their consumption habits. As a result, even when prices are regulated or capped, without transparency there is an increased risk that they will function as a system of imposed prices. Transparency in the prices of everyday consumer goods thus strengthens the power of small players and consumers, who benefit from the same information as large retailers. Market transparency (displays, price comparisons, quotations, etc.) therefore encourages price competition.
57. Based on this observation, measures have been implemented in the local authorities governed by Article 73 of the French Constitution (price, margin and income observatories instituted by Decree no. 2007-662 of May 2, 2007) and in New Caledonia (the Price Observatory). For its part, French Polynesia has set up a price feedback system, regularly publishes price comparisons ("météo des prix") and has its own mobile application for comparing prices charged by different retailers ("panier fûté").
58. In this case, the "panier fûté" application will also be fed with lists of baskets of blocked-price products, enabling consumers to compare offers from different chains.
59. The Authority is delighted with this development.

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<sup>8</sup> Avis n° 2019-A-02 précité (§ 412 et seq.) and n° 2019-A-01 précité (§ 249 et seq.)

## **b) Communication measures that must be effectively implemented**

60. The gamble is that the scheme will encourage retailers to compete with each other to attract customers, by offering a list of popular products at genuinely attractive prices. The reality and scale of the gains in consumer purchasing power will therefore depend on the scheme's ability to initiate a virtuous circle, which can only come from the popularity of the scheme and the publicity it receives.
61. Indeed, if distributors are sufficiently confident in the scope of the scheme and in its ability to retain their existing customers, or to attract new customers whose purchases will not be limited to the goods on the list, then they can sign up massively and place highly popular goods in their baskets, in order to prevent their competitors from capturing this demand by offering products or prices that are more attractive than their own. The DGAE states that it is counting on a "volume effect" and an "appeal effect", arguing that *"the retailer who sets up an attractive basket will sell higher volumes and attract customers to his store"*.
62. *A priori*, there is no guarantee that this virtuous circle will be set in motion, or that - if it is - it will involve goods specifically targeted at the lower-income segments of the population most affected by price rises. The number of retailers taking part in this price freeze scheme is not known in advance, and while the prices of the products concerned are intended to be frozen for three-month periods, no rules are laid down for setting them, and they may in theory turn out to be higher than the prices charged before the freeze.
63. In the final analysis, the basket's effectiveness will depend on incentives for the businesses concerned to "play the game", join the scheme and genuinely reduce prices. The aim is to stimulate commercial and advertising interest in the scheme. Otherwise, they may either not join the scheme, or only list goods whose prices are in any case already guaranteed for the period (due to large stocks, for example), or which are difficult to sell, or for which demand is low.
64. To put it another way, as this is a purely voluntary scheme, the only leverage the government has to ensure its success lies in the effectiveness of its implementation, and in particular the communication campaign that will accompany it. The more the scheme raises consumers' expectations, the more they will be willing to change their purchasing behavior to take advantage of attractive tariffs, and the more likely it is that the virtuous circle will be set in motion.
65. It would appear that the project presented by the government has taken note of this challenge. Indeed, joining the scheme is relatively straightforward (declaration system), and is accompanied by a fairly elaborate set of communication measures:
- government communication campaign (radio, television, print media, Internet);
  - Specific signage for visual recognition of products on the shelves (graphic charter; labels as for PPN; "shelf-stop" signage);
  - publication of lists of the various price-blocked products and their prices on the "panier fûté" application, on the DGAE website, in stores and in the press.

## **2. CONTROLS LIMITED SOLELY TO POSTING REQUIREMENTS AND COMPLIANCE WITH THE LIST**

66. The effectiveness of a price control measure depends to a large extent on the ability to implement adequate controls.
67. In this case, it is not a question of creating new control mechanisms, but of applying existing common law provisions on misleading advertising (decree n°170 CM of February 7, 1992), which are intended to apply if a price advertised as "blocked" is not.
68. On a number of occasions, the Autorité has taken the view that control could be made even more effective by making the consumer active, particularly on the islands. In this respect, the publication and compulsory display of locked-in prices will be particularly useful, enabling consumers to check whether the price they are paying is

It is not in a position to do this for PPN and PGC, whose determination methods are complex.

69. On the other hand, as this is a voluntary system, there are no controls on the following points:
- the price levels of the products on the list (in relation to the price previously in effect or in effect in other stores);
  - the "popularity" of the products on the list (in relation to consumer habits) ;
  - the choice of products on the list in relation to imperatives other than economic ones (health, social or environmental dimension);
  - estimation of possible carry-over or catch-up effects (simultaneous price increases for other products, or over-pricing of these products at the end of the program, to compensate for margins).
70. Here again, the underlying idea is that distributors will find it to their advantage to play the competition game, lest their competitors capture their customers.
71. A final risk, which needs to be monitored, is that retailers may formally participate in the scheme, but in reality charge relatively high prices on relatively similar products, possibly after reaching an agreement or consulting the baskets of blocked-price products of competitors already in the scheme. Such behavior would lead to artificially high prices, and would have the effect of annihilating the virtuous circle and the pro-competitive nature of the system. In this respect, the Autorité reminds us that, as a competition authority, it is competent - on the basis of article LP 200-1 of the Polynesian Competition Code - to sanction any agreement or concerted action, even tacit, aimed at preventing prices from being set by free market forces, and that it will therefore take great care to ensure that the scheme is not diverted from its objective. In the interests of clarity for the companies concerned, the Authority recommends that this be mentioned in the agreement.

### **3. AN UNRESOLVED ISSUE: EVALUATION AND THE FUTURE OF THE SYSTEM**

72. As a matter of public policy, economic regulation mechanisms must be regularly assessed to see whether they are meeting their objectives, and whether they should be retained, amended or even abolished.
73. This is all the more true for this scheme, which not only adds to an already abundant number of purchasing power schemes, but also relies on the goodwill of companies, which will have to be quantified.
74. At this stage, this purely conventional arrangement is scheduled to run for one year. It is presented as a response to a specific inflation context. It is therefore not intended to continue. However, it would be useful to evaluate it and, if it proves to be a success, to perpetuate the approach, possibly in an amended version. The issue of the high cost of living in island territories is indeed a structural one, and the quality-price shields set up in the French overseas departments, for example, are long-term measures. It is understood that the optional and voluntary nature of the system limits the risks of competition.
75. In the event of success, the question to be answered in particular by the evaluation of this particular system is whether it complements existing measures, or is a possible substitute for more restrictive measures, such as the regulation of NPPs and FMCGs, or at the very least the extension of the list of products subject to price regulation measures to other categories, such as hygiene and household products, which are already present but still limited in number.

## **CONCLUSION**

76. The purchasing power scheme submitted for the Authority's assessment has a number of advantages:
- It is based on a voluntary approach by companies, which are easy to join and only commit to a three-month (renewable) contract;
  - It is easy to understand for the consumer, who will know in advance the prices charged on a certain number of products and should be able to recognize them easily on the shelves, thus also facilitating DGAE controls;
  - it is inexpensive for the Pays, whose main task will be to implement an appropriate communication campaign;
  - from a competitive standpoint, by not freezing either the list of products or their price ceilings beyond three months, it also limits the distortions usually seen with regulatory measures, and may even prove pro-competitive.
77. The main drawback to this flexibility is that, unlike more restrictive price regulation measures, its effectiveness and impact remain uncertain, and will mainly depend on the ability to get retailers on board, so as to trigger a virtuous circle (more members and inclusion of genuinely attractive products on the list). Indeed, it is only if they  
It's only by "playing the game" that the expected pro-competitive effects will be effective.
78. This means making the scheme a selling point for retailers, likely to attract new customers or retain existing ones. In this respect, the effective implementation of the ambitious measures planned by the government to ensure the publicity and transparency of the scheme are fundamental, since effective competition relies on the ability of consumers to be drawn in, who, if sufficiently informed, will be likely to modify their consumption habits and give preference to chains offering the most attractive basket of blocked-price products.
79. On this condition, while the new system cannot be expected to resolve the issue of high living costs on its own, it can be a useful and effective measure.
80. As part of its mission to combat anti-competitive practices, the Autorité will continue to ensure that chains do not empty the measure of its substance, through concerted practices, whether explicit or tacit, leading to a reduction in the attractiveness of the content or value of the baskets offered.
81. However, it would appear that the new system does not specifically address a number of specific situations, in particular that of the lowest income groups - who have been proportionally more affected by inflation - and the situation of islands other than Tahiti and Moorea, where the structural weakness of competition in distribution could render an optional system relatively ineffective.
82. A number of measures have already been taken to improve the clarity, transparency and efficiency of the system:
- Specify whether the criteria (at least 70% food products, 10% local products, 20% national brand products) are based on volume (number of products on the list) or value (weighted by the price of the products concerned);
  - encourage the targeting of products for priority audiences or public initiatives, for example by identifying a few broad categories of priority products (products from the product categories that have seen the biggest price rises; products representing a constrained expenditure but not included in the list of NPPs and FMCGs, such as certain hygiene and cleaning products; products in high demand and representing a significant share of household budgets; introduction of health or environmental criteria; taking into account consumption habits and constraints linked to the remoteness of the archipelagos, etc.).

83. In the medium term, the challenge will be to evaluate this system and, if it works well, to determine whether it complements existing measures, or is a possible substitute for more restrictive measures, such as the regulation of PPNs and PGCs, which could in this case be limited to a smaller number of products, or to a smaller geographical area (islands other than Tahiti and Moorea), in order to respond above all to the needs of the highest-priority populations.
84. Another unaddressed issue is the ability to involve other professionals, such as importers, producers and transporters, in such voluntary initiatives.

Deliberated on the oral report by Antoine Callot, rapporteur, by Johanne Peyre, chairman, Aline Baldassari, Youssef Guenzoui, Marie-Christine Lubrano and Lionel Dantiacq, members.

The President

Johanne Peyre

## **SUMMARY OF RECOMMENDATIONS**

1° Specify whether the criteria are volume-based (number of products on the list) or value-based (weighted by the price of the products concerned).

2° Target the basket towards products intended for priority audiences or public actions, for example by identifying a few major priority product categories.

3° In the medium term, plan to evaluate and adapt the system and, more generally, price control regulations.

4° Include a provision in the agreement reminding companies that it does not exempt them from complying with competition law, and in particular the ban on cartels.