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The AMF Enforcement Committee fines Prologue for failing to comply with the obligation to draw up a prospectus and Le Quotidien de Paris Editions

In its decision of 31 December 2019, the Enforcement Committee fined Prologue €150,000 and Le Quotidien de Paris Editions €100,000. However, it cleared Mr. Nicolas Miguet, accused of failing to disclose the breach of shareholding thresholds.

Breaches alleged against Prologue

In October 2014, Prologue initiated a project of takeover bid by means of an exchange offer of shares of O2i. On 2 April 2015, the AMF published a decision of non-compliance of the planned offer. On the same day, Prologue published a press release inviting all O2i's shareholders and bearers of bonds convertible into shares to conclude individual capital contribution agreements with it.

Prologue was accused of having, through this press release and the capital contribution agreements that followed, improperly pursued the proposed public exchange offer that had been declared non-compliant, or at least initiated a new public exchange offer under the same terms.

The Enforcement Committee considered that some of the procedures for implementing the exchange of securities presented in this press release differed from those of the proposed exchange offer and that the press release merely expressed the continuation of the

possibility of over-the-counter capital contribution agreements, which had been publicly announced from the outset and which was to be suspended only during the period of the exchange offer. It concluded that Prologue had neither opened the exchange offer that had been declared non-compliant nor proposed a new exchange offer. The Committee therefore dismissed the breaches based on Prologue's infringement of the operating rules and general principles governing public offers.

Conversely, it considered that in carrying out five capital increases as consideration for the above-mentioned capital contributions through the issue of shares subsequently admitted to trading on Euronext, without drawing up a prospectus subject to prior approval by the AMF, Prologue had failed to comply with the rules governing the admission of securities to trading on a regulated market.

Breach alleged against Le Quotidien de Paris Editions

The Enforcement Committee decided that Le Quotidien de Paris Editions had failed to comply with the provisions of Article 329-5 of the AMF General Regulation, which were applicable at the time, by failing to disclose in its investment recommendations the existence of commercial ties with Prologue at the time of the events, which were likely to constitute a significant conflict of interest.

The Committee noted in this respect that Le Quotidien de Paris Editions could not be exempted from its responsibility on the grounds that it had disclosed the existence of financial ties likely to constitute significant interests in Prologue at the same time, in its legal notices.

Breach alleged against Nicolas Miguet

Lastly, the Enforcement Committee cleared Mr. Nicolas Miguet, President of the Association pour la Représentation des Actionnaires Révoltés. Some members of the Association, who are shareholders of Prologue, had sent him proxies to exercise their voting rights at general meetings. He had been accused of failing to disclose the breach of several shareholding thresholds owing to these proxies. The Committee ruled that Mr Miguet was not obliged to disclose the breach of these thresholds.

An appeal may be lodged against this decision.

Appeal by Prologue to the Cour de Cassation against the judgment of the Paris Court of Appeal of 22 April 2021

By judgment of 8 November 2023 (No. 21-18.318), the Cour de Cassation (i) annulled and set aside the judgment of the Paris Court of Appeal of 22 April 2021, but only insofar as it declared inadmissible the appeal lodged by Prologue against the AMF Enforcement Committee's decision of 31 December 2019, seeking its annulment concerning the alleged breach of the provisions of Article L. 412-1 of the Monetary and Financial Code and 212-1 and 212-2 of the AMF General Regulation and the fine of €150,000 imposed on it, imposed a fine of €750,000 on Prologue, and ruled on costs and the application of Article 700 of the Code of Civil Procedure between the parties, (ii) declared that there was no need to refer back the admissibility of the appeal lodged by Prologue on 13 March 2020, (iii) declared admissible the appeal lodged by Prologue on 13 March 2020 against the AMF Enforcement Committee's decision of 31 December 2019 seeking its annulment concerning the alleged breach of the provisions of Article L. 412-1 of the Monetary and Financial Code and 212-1 and 212-2 of the AMF General Regulation and the fine of €150,000 imposed on it and (iv) restored the case and the parties to the position they were in before the judgment and referred the case back to the Paris Court of Appeal, in a different composition, with regard to the fine of 750,000 euros imposed on Prologue, the costs and the application of Article 700 of the Code of Civil Procedure.

Preliminary question of constitutionality (Question Prioritaire de Constitutionnalité) raised by the Prologue in its appeal before the Cour de Cassation against the judgment of the Paris Court of Appeal of 22 April 2021

By judgment of 15 December 2021, (No. V 21-18.318), the Cour de Cassation referred to the Conseil constitutionnel the preliminary question of constitutionality raised by Prologue in its appeal against the decision of the Paris Court of Appeal of 22 April 2021.

By Judgment of 11 March 2022 (No. 2021-979), the Conseil Constitutionnel ruled that the second sentence of the third paragraph of Article L. 621-30 of the Monetary and Financial Code, in the version resulting from Law No. 2014-1662 of 30 December 2014 containing various provisions adapting legislation to European Union law in economic and financial matters, complied with the Constitution.

Appeals lodged by Prologue and Le Quotidien de Paris Editions against decision SAN-2020-01

By judgement of 22 April 2021 (No. 20/03915), the Paris Court of Appeal (i) declared inadmissible the cross-appeal lodged by Prologue against the Enforcement Committee's decision of 31 December 2019, (ii) declared inadmissible Prologue's request that the AMF be ordered to pay the sum of €750,000 in damages as set out in its summary submissions in defence, (iii) dismissed the appeal lodged by Le Quotidien de Paris Editions against the Committee's decision. Then, ruling on the appeal lodged by the AMF Chairman, the Paris Court of Appeal amended the Committee's decision, but only insofar as it ruled that the alleged breaches of the rules and the general principles governing takeover bids by Prologue had not been established, and imposed a fine of €150,000 on Prologue, then, ruling again on these points (i) declared that these two alleged breaches had been established against Prologue, (ii) imposed a fine of €750,000 on Prologue and (iii) rejected the other requests to amend the fine imposed on Le Quotidien de Paris Editions and to clear Mr Miguet.

By judgement of 22 April 2021 (No. 20/04294), the Paris Court of Appeal (i) rejected the plea of illegality of the recusation procedure provided for by Articles R. 621-39-1 to R. 621-39-10 of the Monetary and Financial Code, based on Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms and the preliminary article of the Code of Criminal Procedure, and (ii) dismissed the appeal lodged by Le Quotidien de Paris Editions against the Enforcement Committee's decision of 26 November 2019 ruling on its application to recuse two members based on a lack of impartiality, and consequently, the application for annulment of all the acts of procedure 18/12 subsequent to that decision and relating to Le Quotidien de Paris Editions.

Main appeal lodged by the AMF's Chairman before the Paris Court of Appeal against decision SAN-2020-01

By judgement of 22 April 2021 (No. 20/03915), the Paris Court of Appeal (i) declared inadmissible the cross-appeal lodged by Prologue against the Enforcement Committee's decision of 31 December 2019, (ii) declared inadmissible Prologue's request that the AMF be ordered to pay the sum of €750,000 in damages as set out in its summary submissions in defence, (iii) dismissed the appeal lodged by Le Quotidien de Paris Editions against the Committee's decision. Then, ruling on the appeal lodged by the AMF Chairman, the Paris Court of Appeal amended the Committee's decision, but only insofar as it ruled that the alleged breaches of the rules and the general principles governing takeover bids by Prologue had not been established, and imposed a fine of €150,000, then, ruling again on these points (i) declared that these two alleged breaches had been established against Prologue, (ii)

imposed a fine of €750,000 on Prologue and (iii) rejected the other requests to amend the fine imposed on Le Quotidien de Paris Editions and to clear Mr Miguet.

About the Enforcement Committee

The Enforcement Committee, which is made up of judges and professionals, has total freedom to make decisions. It can impose sanctions on any person or company whose practices contravene laws and regulations that fall within the jurisdiction of the AMF. It ratifies settlement agreements signed by the Secretary General and respondents. And it takes part in the AMF's educational efforts by clarifying financial regulations when explaining its decisions.

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Read more

SAN-2020-01 - Décision de la Commission des sanctions du 31 décembre 2019 à l'égard des sociétés Prologue et Le Quotidien de Paris Editions et de M. Nicolas
↳ Miguet (In French only)

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