

IN-DEPTH

# Cartels And Leniency

FRANCE



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# Cartels and Leniency

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Contributing Editors

**Romina Polley and Julian Alexander Sanner**

Cleary Gottlieb Steen & Hamilton LLP

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In-Depth: Cartels and Leniency (formerly The Cartels and Leniency Review) provides a practical overview of the laws and policies aimed at combating cartel activity across key jurisdictions worldwide. It addresses major emerging and unsettled issues surrounding unlawful agreements with competitors, and analyses recent enforcement trends and regulatory changes – offering valuable insights to practitioners and corporates alike.

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# France

Séverine Schrameck, Anita Magraner Oliver and Stéphanie Patureau

Cleary Gottlieb Steen & Hamilton LLP

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## Introduction

Cartel enforcement in France has generally remained stable over the past three years but is still below the pre-covid-19 peak levels. In terms of number and total amount of fines, while the Autorité de la Concurrence (the Competition Authority) adopted as many fining decisions in 2023 as in the 2019–2020 period, total fines imposed in 2023 amounted to €154 million, which is significantly lower than the record fines imposed in 2019 and 2020. This is particularly noteworthy as the Competition Authority was expected to significantly ramp up its enforcement action following the 2022 record low. The Competition Authority conducted four unannounced inspections for anticompetitive agreements and abuses of dominance, in line with other years, save for the year 2019 which saw a significant rise in the number of inspections.

Year	2017	2018	2019	2020	2021	2022	2023
Total fines (in € million)	302	212	481	1,120	153	3	154
Leniency applications	7	6	2	1	3	3	NA <sup>2</sup>
Inspections	3	5	8	1	4	5	4
Closed proceedings	3	9	11	6	7	5	10
Infringement decisions	2	8	10	6	7	5	9
Horizontal cases	1	7	8	5	4	5	6
Vertical cases	1	1	2	2	3	0	3
Settlement cases	2	2	4	0	2	2	2
* Includes abuse of dominance cases.							

The number of leniency applications has gradually declined in France over the past five years, in line with the general downward trend in OECD Member States.<sup>3</sup> Overall, about half of cartel investigations are started ex officio, as opposed to a leniency application or a complaint, with a number of investigations triggered by whistle-blowers.<sup>4</sup> In each of the years 2021 and 2022, only three leniency applications were filed.<sup>5</sup> Competition Authority President Benoît Coeuré acknowledged that 'the low number of applications had been remarkable given the size of the French economy'.<sup>6</sup>

In December 2023, as part of the implementation of the ECN+ Directive and the Damages Directive, the Competition Authority published a revised Leniency Notice to provide greater legal certainty for leniency applicants and modernise the leniency procedure. The revised Notice, however, does not go as far as immunising leniency applicants from civil damages, a measure opposed by the Competition Authority President.<sup>7</sup> It remains to be seen whether the revised Notice will provide enough legal certainty to encourage companies to file for leniency.

Cartel enforcement remains a key priority for the Competition Authority in 2024. The Competition Authority's President announced at the start of his mandate that 'cartel detection is more important than ever, especially in relation to public procurement which is about protecting taxpayers' money.'<sup>8</sup> Since 2021, the Competition Authority has begun announcing inspections disclosing the sector concerned, with a view to fostering transparency for leniency applications. The Competition Authority also published revised Fining Guidelines in 2021, which allow it to impose higher fines, including for practices involving trade associations. In 2023, the Competition Authority set up a specific framework for the collection and processing of whistle-blower reports.<sup>9</sup> Most recently, the Competition Authority launched a public consultation on a draft notice on the compatibility of sustainability agreements with competition rules.<sup>10</sup> Thus, if anything, the Competition Authority is expected to increase – and not slow down – its cartel enforcement activity.

## Year in review

### Overview

In 2023, the Competition Authority adopted nine fining decisions under Article L420-1 of the French Commercial Code (FCC) for a total amount of €154 million. In terms of new and ongoing investigations, the Competition Authority targeted companies in the digital sector and 'sectors that matter most to household budgets', as previewed in its 2023–2024 roadmap.<sup>11</sup> It conducted one unannounced inspection or audition in the train ticketing sector,<sup>12</sup> one in the graphic cards sector<sup>13</sup> and two in the food and non-food sectors.<sup>14</sup> It also issued statements of objections for alleged non-poach practices in the IT sector<sup>15</sup> and price-fixing in the aviation sector in the Caribbean.<sup>16</sup>

### Horizontal infringements

The Competition Authority concluded six horizontal cases resulting in a fining decision. Half of these cases related to bid rigging practices – a constant area of focus of the Competition Authority. A leniency application was filed in two of these cases. One decision involved a settlement, with the General Rapporteur declining to settle in another decision.

In March 2023, the Competition Authority fined a provider of security systems €25,000 for bid rigging.<sup>17</sup> The French Directorate-General for Competition, Consumer Affairs and Fraud Control (DGCCRF) had detected the practices and referred the case to the Competition Authority after the company refused to settle. The Competition Authority based

its fine on a percentage of the company's total French turnover (1 per cent), as provided in its Fining Guidelines for bidding practices.[18](#)

In April 2023, the Competition Authority fined a business intelligence provider €3.5 million as part of a settlement procedure for having engaged in price-fixing and client allocation with a competitor for over 30 years.[19](#) Having filed for leniency, the competitor was granted full immunity.[20](#)

In June 2023, upon the DGCCRF referring the case, the Competition Authority fined three renovation specialists a total amount of €174,000 for bid rigging in public tenders for the restoration of two churches.[21](#) The Competition Authority based the fine on a percentage of the companies' total turnover (0.8 per cent).

In September 2023, the Competition Authority fined six undertakings active in nuclear decommissioning services a total amount of €31 million for bid rigging.[22](#) A leniency application triggered the investigation in September 2018, and was followed by unannounced inspections in February 2019. The Competition Authority granted the leniency applicant full immunity. For the other undertakings, the Competition Authority based its fines on 15 per cent of the value of sales. It applied mark-ups of 40 per cent to 60 per cent to three undertakings that were part of a large group, and of 15 per cent to two repeat offenders. The decision was appealed.

The same month, following an ex officio investigation, the Competition Authority fined a tobacconist trade association €750,000 for organising a boycott against a French gambling operator.[23](#) To determine the amount of the fine, the Competition Authority departed from its Fining Guidelines because the trade association did not have a turnover of its own. Instead, it used a lumpsum amount, taking into account the association's resources and its ability to call on members to contribute.

In December 2023, following an unprecedented and very large ex officio investigation involving several dozens of companies, the Competition Authority fined four professional organisations and 11 member undertakings a total of €19.5 million for practices limiting the marketing of Bisphenol-free (BPA-free) cans and products in the canned food value chain.[24](#) To determine the amount of the fine, the Competition Authority departed from its Fining Guidelines on the basis that 'the infringements are attributed to both professional organisations and companies, whose heterogeneity stems from both their economic weight and their nature and role within the sector,'[25](#) and certain professional organisations did not have a turnover of their own. The Competition Authority therefore considered that applying the Fining Guidelines would be 'inadequate and contrary to the principle of proportionality,' and imposed fines on a lump sum basis. It applied mark-ups based on the individual roles played as well as for repeat offences. Fines ranged from €1,000 to €3 million.[26](#) The decision was appealed.

In addition, the Competition Authority dismissed a case brought by its investigation services for market-sharing practices in the management of district heating networks.[27](#) The Competition Authority found that:

1. the joint bid at stake did not lack an 'economic or technical justification' because the undertakings involved had different capabilities and experiences; and
- 2.

it was not established that the exchanges of information that took place in the context of other bids restricted competition, as each party offered 'very different' technical solutions and had put in place internal firewalls.

## Vertical infringements

The Competition Authority concluded three vertical cases in 2023, all ending with a fining decision, two of which related to online sales restrictions – a practice that was repeatedly sanctioned in 2022.[28](#)

In April 2023, the Competition Authority fined a bakery equipment producer and its distributors' trade associations for fixing resale prices and prohibiting passive sales outside of a distributor's exclusive area.[29](#) The Competition Authority opened an investigation ex officio following a DGCCRF report. All parties settled. The Competition Authority fined the producer €1.2 million.[30](#) The Competition Authority found that one of the trade associations played a central role in the vertical price-fixing scheme and imposed a fine of €1.75 million.

In December 2023, the Competition Authority fined a luxury watch manufacturer €91.6 million for prohibiting its retailers from selling its watches online.[31](#) A distributor and a trade association complained in 2017, and the Competition Authority carried out unannounced inspections at the manufacturer's premises in 2019. The Competition Authority used a base percentage of 4 per cent of the value of sales and increased the fine by 10 per cent in light of the manufacturer's group size. The decision was appealed.

In December 2023, after the DGCCRF referring the case in 2019, the Competition Authority fined a luxury tea supplier €4 million for prohibiting its distributors' online sales and resale to other selective network distributors.[32](#) The Competition Authority departed from its Fining Guidelines and used a fixed-amount method. The company has since appealed the fine.

## Court case law

French courts generally uphold Competition Authority decisions on the merits but regularly reduce the fines.[33](#) In 2023, the Paris Court of Appeal upheld the Competition Authority's infringement findings in all four cartel-related judgments and reduced the amount of the fine in two of them.[34](#) At the highest court level, the Court of Cassation sided with the Competition Authority in two of three cartel-related cases.[35](#)

## Enforcement policies and guidance

### Cartels

There is no specific legal definition of cartels in France. Cartels generally refer to horizontal agreements or concerted practices between competitors. The prohibition of cartels is contained in Article L420-1 FCC – largely aligned with Article 101 of the Treaty for the Functioning of the European Union (TFEU) – that prohibits all concerted practices, tacit or

express agreements, or coalitions that have the object or may have the effect of preventing, restricting or distorting competition.

## Competition Authority

The Competition Authority, an independent authority, is the main administrative body responsible for competition law enforcement. The President of the Competition Authority is appointed by the President of the French Republic and vetted by the Parliament. The Competition Authority is composed of:

1. investigation services, which lead investigations under the direction of the General Rapporteur<sup>36</sup> assisted by economists as well as a specific digital economy unit<sup>37</sup> and a special sustainability adviser;<sup>38</sup> and
2. a board of 17 members (collège),<sup>39</sup> which adopts decisions.

Competition Authority decisions can be appealed before the Paris Court of Appeals.

The Competition Authority's key guidance on cartels and leniency include:

1. the Settlement Notice, published on 21 December 2018;<sup>40</sup>
2. the Fining Guidelines, last updated on 30 July 2021;<sup>41</sup>
3. the Notice on Enforcement Priorities, published on 20 October 2022;<sup>42</sup> and
4. the Leniency Notice, last updated on 15 December 2023.<sup>43</sup>

Since the transposition of the ECN+ Directive into French law<sup>44</sup> and the publication of its Notice on Enforcement Priorities, the Competition Authority has greater discretion to dismiss cases for lack of enforcement priority, thereby giving more weight to its roadmaps.-<sup>45</sup> It dismissed a case for the first time under this Notice in 2022.<sup>46</sup>

## DGCCRF

The DGCCRF enforces domestic competition law where the undertakings involved in the practice generated an aggregate turnover below €200 million and an individual turnover below €50 million.<sup>47</sup> The DGCCRF plays a role in cartel detection at the local level and can – and regularly does – forward cases to the Competition Authority.

## Cooperation with other jurisdictions

### Cooperation

The Competition Authority actively participates in competition networks, including in the field of cartels. In 2018–2021, under the Competition Authority's co-chair, the International Cooperation Network (ICN) Cartel Working Group conducted a project on the challenges raised by big data and algorithms in the fight against cartels.<sup>48</sup> In the European Union, the



European Cooperation Network (ECN) Cartel Working Group regularly meets to discuss cartel cases and leniency programmes.

## Assistance

The Competition Authority regularly requests assistance from or assists ECN national competition authorities (NCAs) in carrying out fact-finding measures under Article 22 of Regulation 1/2003. It requested assistance to conduct dawn raids for the first time in 2008.[49](#) Between 2012 and 2022, the Competition Authority requested assistance in five Member States,[50](#) and received requests for assistance from 13 Member States.[51](#) Requests for assistance may lead the Competition Authority to open an investigation of its own and to closely cooperate with other NCAs in the context of parallel investigations.[52](#) In 2023, the Court of Cassation held that the Competition Authority could initiate an investigation and carry out dawn raids on the basis of a request for inspection issued by another NCA.[53](#)

## Information exchanges

The Competition Authority regularly exchanges information in relation to cartel cases with other NCAs and the EC, whether formally, under Article 12 of Regulation No. 1/2003,[54](#) or informally. Informal exchanges may include coordination measures in cases investigated by different NCAs in the same sector or questions related to decisional practice. In 2022, the Competition Authority received 66 requests in relation to the enforcement of Articles 101 and 102 TFEU, compared to 49 in 2021, and requested information from ECN members once in 2022, compared to five times in 2021.[55](#)

## Extraditions

France generally refuses to extradite French citizens.

# Jurisdictional limitations, affirmative defences and exemptions

## Jurisdictional limitation

Liability under French competition law arises if a conduct restricts competition in France (effect doctrine), even if the conduct is implemented directly or indirectly by a group of companies located outside France.[56](#)

## Affirmative defences

In line with Article 101(3) TFEU, Article L420-4, I, 2, FCC exempts conduct where the authors can justify that:

- 1.

it has the effect of ensuring economic progress, including the creation or maintenance of jobs;

2. reserves for users a fair share of the resulting profit;
3. imposes restrictions (if any) that are indispensable to achieving this objective; and
4. does not afford such undertakings the possibility of eliminating competition for a substantial part of the products in question.[57](#)

## Exemptions

Article L420-4, I, 1, FCC exempts practices resulting from a legislative or regulatory text. Article L420-4, II, FCC allows the government, upon Competition Authority approval, to exempt certain agreements or categories of agreements, including when they aim at improving the management of medium or small enterprises.

## Statute of limitations

Article L462-7, FCC sets out two statutes of limitations.

First, the Competition Authority may not enforce the cartel prohibition against practices dating back more than five years if no action to investigate, establish or punish those practices has been taken. The statute of limitations is interrupted if:

1. the Competition Authority, an NCA of another Member State or the European Commission takes such an action; or
2. the Competition Authority refers the case to the French public prosecutor, until the decision of the relevant authority or appeal court can no longer be appealed.[58](#)

Second, the statute of limitations expires 10 years from the termination of the infringement if the Competition Authority has not issued a decision.[59](#) This statute of limitations is suspended until the order authorising the Competition Authority to conduct inspections, an Competition Authority decision or a decision by the Competition Authority's General Rapporteur to refuse or withdraw business secrets protection can no longer be appealed.

## Leniency programmes

The French leniency programme was introduced in 2001[60](#) and is set out in Articles L464-2 and R464-5 et seq, FCC. The applicable procedural framework is detailed in the recently updated Leniency Notice.

### Scope of application

Undertakings and associations of undertakings can apply for leniency in relation to horizontal and 'hub and spoke' practices. Vertical agreements are excluded from the leniency programme. Employees, board representatives and managers of an undertaking

that has been granted full immunity are immune from criminal prosecution if they have actively cooperated during the investigation.[61](#)

## Eligibility

Applicants are eligible to leniency provided they contribute to establishing the existence of the infringement and identifying the participants by providing evidence that was not in the authorities' possession. Applicants may be granted full immunity in so-called Type 1-A or 1-B cases, and partial immunity in Type 2 cases.

1. Type 1-A cases:[62](#) full immunity may be granted to the undertaking that first provides sufficient information enabling the authorities to carry out targeted on-site inspections. This includes information on locations, dates, contacts or meetings between the alleged cartel participants. The applicant will be eligible when:
  - neither the Competition Authority nor the DGCCRF already holds sufficient evidence to carry out such inspections; or
  - no targeted on-site inspections have already been conducted, including in the context of a criminal investigation.
2. Type 1-B cases:[63](#) full immunity may be granted to the undertaking that first provides sufficient information enabling the authorities to establish the infringement, provided no undertaking qualifies for a Type 1-A immunity. The applicant will be eligible when neither the Competition Authority nor the DGCCRF already holds sufficient evidence to establish the existence of the infringement.
3. Type 2 cases:[64](#) partial immunity is available to undertakings not qualifying for Type 1-A or 1-B cases, provided the information brought forward is of 'significant added value'. This includes information that by its very nature or granularity reinforces the authorities' ability to establish the existence of the alleged cartel, taking into account information already in their possession.

The level of the fine reduction is based on the order of arrival: the first applicant benefits from a 25 to 50 per cent fine reduction, the second between 15 to 40 per cent and the subsequent applicants up to 25 per cent.

The Leniency Notice provides useful guidance on the probative value of certain information: contemporaneous written evidence, information directly related to the infringement, and self-sufficient information that does not need to be corroborated will be considered of a higher probative value.[65](#)

## Other conditions

The applicant must also fulfil the following cumulative conditions:[66](#)

1. the undertaking must put an end to its involvement in the anticompetitive practice no later than following the submission of the leniency application, unless directed otherwise by the authorities;
2. the undertaking must cooperate in good-faith with the investigation, including by:

3. promptly providing all additional relevant information that may become available;
4. swiftly responding to requests for information;
5. ensuring that current staff and legal representatives remain available, and that reasonable efforts are made to ensure former employees remain available;
6. not destroying, doctoring or withholding evidence;
7. not calling into question the evidence put forward; and
8. keeping the existence and content of the leniency application strictly confidential; and
9. upon applying for leniency, the undertaking must not have destroyed or doctored evidence, nor disclosed its intention of applying for leniency or the content of such application, except, as the case may be, to other competition authorities.

## Procedure

Undertakings must address leniency applications to the Competition Authority General Rapporteur, or to the Director General of the DGCCRF, either in writing, orally or via a secure online tool.<sup>67</sup> Leniency applications are ranked by order of receipt.<sup>68</sup> Undertakings may apply for a provisional marker, temporarily preserving their rank, when more time is needed to collect additional information. The deadline to provide additional information is set by the General Rapporteur of the Competition Authority or to the Director General of the DGCCRF (usually one month).<sup>69</sup> Finally, putative leniency applicants may anonymously reach out to the Competition Authority's leniency officer for guidance.

## Disclosure

The content of a leniency application is protected from third-party disclosure, such that a judge may not order the disclosure of evidence containing the written transcript of the declarations made by a leniency applicant,<sup>70</sup> unless said evidence already exists independently from the antitrust proceedings.<sup>71</sup> Finally, a judge may not order the disclosure of evidence in the Competition Authority or DGCCRF's case file until a decision has been reached.<sup>72</sup>

## Penalties

### Administrative fines

The Competition Authority may impose administrative fines of up to 10 per cent of the total group worldwide turnover on an undertaking or association of undertakings participating in a cartel.<sup>73</sup>

### Fining Guidelines

The Competition Authority published a revised Fining Guidelines in July 2021 as part of the implementation of the ECN+ Directive. According to the Competition Authority, the revised Fining Guidelines also aim to take stock of the last decade's decision-making practice and case law and to 'come closer to the principles applied by the European Commission when determining the amount of fines'.<sup>74</sup> In practice, the revised Fining Guidelines will likely result in a significant increase in the level of fines imposed by the Competition Authority.

The methodology of the Fining Guidelines is set out below.

### Step one: the basic amount

The basic amount of the fine is determined by reference to a proportion of the value of sales of the products or services 'directly or indirectly' related to the infringement.<sup>75</sup> The value of sales corresponds to the turnover generated by those products or services in France.<sup>76</sup> The Competition Authority may adapt this method in cases where it considers that the reference to the value of sales, or the method of evaluating those sales, would lead to a result that 'clearly does not adequately reflect the economic scale of the infringement or the relative weight of each undertaking or association of undertakings that took part in it'.<sup>77</sup>

The Competition Authority retains a proportion of the value of sales based on the gravity of the facts,<sup>78</sup> which is between zero and 30 per cent.<sup>79</sup> For price-fixing, market-sharing and output-fixing horizontal agreements, which are 'among the most serious restrictions of competition', the proportion of value of sales will generally be between 15 and 30 per cent.<sup>80</sup> Under the revised Fining Guidelines, the Competition Authority may add an amount corresponding to 15 to 25 per cent of the value of sales for such practices.<sup>81</sup>

The Competition Authority then multiplies the amount determined on the basis of the value of sales by the number of years of participation in the infringement.<sup>82</sup> For infringement periods of less than a year, the Competition Authority calculates the amount of the fine on a pro rata basis.<sup>83</sup>

### Step two: the individualisation

The Competition Authority adjusts the basic amount to take into account:

1. mitigating or aggravating circumstances;<sup>84</sup> and
2. other relevant individual factors relating to the situation of each undertaking to ensure that the fine is both deterring and proportionate.<sup>85</sup>

Mitigating circumstances include the fact that the undertaking:

1. put an end to the infringement as soon as the Competition Authority intervenes, although this circumstance does not apply to cartels;
2. has consistently adopted competitive behaviour;
3. was forced to participate in the infringement;
- 4.

has cooperated effectively with the Competition Authority, going beyond the obligations to which it is legally bound and outside the scope of the leniency procedure; or

5. implemented remediation measures for the victims of the conduct.

The Competition Authority may also take into account the fact that the infringement was authorised, solicited or encouraged by public authorities.

Aggravating circumstances include whether the undertaking was a ringleader, took steps to coerce others to take part in the infringement or enjoyed special powers of influence or moral authority.

As to the individual factors, the Competition Authority may reduce the basic amount if the undertaking faces financial difficulties or conducts most of its business in the sector related to the infringement. Conversely, it may increase the basic amount if the undertaking or the group to which it belongs is of a significant size, has substantial economic power or global resources.

### **Step three: repeat offences**

The Competition Authority may increase the amount of the fine as determined in Step Two by 15 to 50 per cent if the conduct is identical or similar to a conduct that was found to constitute an infringement by a decision of the European Commission, a court or an NCA of a Member State in the last 15 years.<sup>86</sup> The concept of repeat infringement is interpreted broadly.

### **Step four: final adjustments**

The Competition Authority ensures that the amount of the fine does not exceed the statutory cap, which is 10 per cent of the highest total group worldwide turnover that the undertaking has achieved in one of the previous years. In line with the ECN+ Directive, trade associations, which previously benefited from a €3 million ceiling, may be subject to fines of up to 10 per cent of the association's turnover or of its members' total turnover, where the conduct 'relates to the activity of its members'.<sup>87</sup> Finally, the Competition Authority may reduce the fine to take account of:

1. any full or partial immunity of fines resulting from a leniency application;<sup>88</sup> or
2. the undertaking's inability to pay, subject to providing 'reliable, complete and objective' evidence.<sup>89</sup>

The Fining Guidelines set out a methodology that the Competition Authority intends to apply 'in general cases'.<sup>90</sup> The Competition Authority may, however, depart from the Fining Guidelines 'after an overall analysis of the particular circumstances of the case, in particular the characteristics of the practices in question, the activities of the parties involved and the economic and legal context of the case, or for reasons of general interest'.<sup>91</sup> In practice, the Competition Authority regularly departs from its Fining Guidelines, notably

when it considers that the application of the Fining Guidelines will not result in a sufficiently deterrent fine.[92](#)

## Criminal penalties

Individuals 'fraudulently playing a personal, decisive role in the design, organisation, or implementation' of anticompetitive practices prohibited by Article L420-1, FCC can be punished by up to four years of imprisonment and a fine of up to €75,000.[93](#) Criminal courts may consult the Competition Authority or request that it produce documents that are not available to a party to the proceedings, with the exception of documents prepared or collected as part of a leniency application.[94](#) In practice, criminal prosecutions are rare, with yearly convictions remaining in the single digits and modest fines imposed.[95](#)

## Injunctions

The Competition Authority may order undertakings to put an end to anticompetitive practices within a specified period or impose any structural or behavioural corrective measures. It may also accept commitments offered by undertakings.[96](#) Since 2020, the Competition Authority has accepted commitments once and has not yet imposed injunctions.[97](#)

## Publication

The Competition Authority may order the publication of all or an excerpt of its decision, including in the undertaking's financial reports, in the press and online,[98](#) at the infringer's costs.[99](#) Since 2020, the Competition Authority has ordered such a publication in 14 of the 17 fining decisions adopted under Article L420-1, FCC.

Finally, over the past few years, the Competition Authority has intensified its own communication on fining decisions, for instance by publishing detailed press releases, including in English, along with explanatory videos, including on social media, as well as reaching out to undertakings likely to make a claim for damages, such as distributors.[100](#) Undertakings can challenge these 'name and shame' practices and seek interim relief in court.[101](#)

## 'Day one' response

### Simple inspections

In the context of simple inspections, Competition Authority agents may access professional premises during opening hours[102](#) without any warrant or police presence,[103](#) but may not freely roam therein. Where such premises are also used for residential purposes, inspections may only be carried out between 8am and 8pm and, if the occupant objects, only upon an authorisation from the liberty and custody judge.

Competition Authority agents may request copies of specifically designated documents, which must be professional in nature.<sup>104</sup> They may also request any information related to the investigation, although they may not pose self-incriminatory questions. All questions and answers should be recorded in the inspection minutes.

## In-depth inspections

An in-depth inspection requires judicial authorisation from the juge des libertés et de la détention. It allows the Competition Authority to search professional and personal premises for evidence under police supervision.<sup>105</sup> The judge's search warrant must set out the Competition Authority's suspicions and supporting evidence, and specify the premises that may be searched. However, it need not set a date for the unannounced inspection, nor specify with certainty the documents concerned by the order.

Upon arrival of the Competition Authority agents, company staff should ask for the search warrant and immediately inform the company's legal department or external counsel. Competition Authority agents need not wait for the company's counsel to arrive. In practice, however, Competition Authority agents can be asked – and usually agree – to wait up to 30 minutes for external counsel to come.

Competition Authority agents may set up seals on professional premises as well as documents and IT devices. They may also interview on-premise staff or their representatives. Finally, Competition Authority agents may seize any original documents and information related to the suspected practices unless it is legally privileged. Electronic mailboxes are considered to be inseverable and may be seized entirely. However, companies may request that the Competition Authority provisionally seal mailboxes or other seized documents to identify legally privileged documents to be expunged from the case file.

## Sanctions for obstructing inspections

Obstructing an Competition Authority inspection, including through negligence or by concealing or destroying documents, may be punished by a fine of up to 1 per cent of a company's total group worldwide turnover.<sup>106</sup> Employees may also be subject to criminal penalties, namely a fine of €300,000 or two years' imprisonment, or both.<sup>107</sup>

## Guidance

Companies should set up a plan to prepare for such inspections. Such a plan should include, at a minimum:

1. a protocol to inform the legal department or external counsel as soon as the Competition Authority agents arrive;
2. a notice to be sent to all employees asking them to cooperate fully with the Competition Authority agents and to refrain from destroying evidence;
3. the appointment of a dedicated team to monitor operations – including listing and keeping a copy of all documents seized during the inspection, providing the list of



- external counsel for legal privilege purposes, and accompanying the Competition Authority agents at all times; and
4. the appointment of employees best placed to answer any questions the Competition Authority agents may have, depending on the departments or business units involved.

## Private enforcement

### Available actions

Any person affected by a cartel infringement is entitled to claim damages before national courts.<sup>108</sup> This can take the form of a stand-alone claim or, as is more often the case, as a follow-on claim once the Competition Authority or the EC has concluded an investigation. Collective actions are also available since 2014 for consumer associations.<sup>109</sup> A draft bill implementing the 2020 EU Collective Redress Directive<sup>110</sup> into French law seeking to encourage the use of collective actions is currently awaiting parliamentary approval.<sup>111</sup>

### Burden of proof

Claimants bear the burden of proof. They are required to establish fault, loss and a causal link between the two.

Following the implementation of the 2014 EU Damages Directive,<sup>112</sup> a final Competition Authority decision or French court judgment establishing the infringement and the participants' liability constitutes an irrefutable presumption of fault. Findings of infringement issued by other NCAs are not binding upon French courts, but may be taken into account as evidence of an infringement. In addition, French courts cannot adopt a ruling that would contravene a final Commission infringement decision.<sup>113</sup>

The loss resulting from anticompetitive practices might comprise several components:

1. the overcharge paid by the claimant, unless it has been passed on further down the value chain by the claimant to its own customers, or the loss incurred by the lower price paid to the claimant by the cartel participant;
2. the loss resulting from lower volumes of sales achieved by the claimant due to the cartel;
3. the loss of opportunity; and
4. moral prejudice.<sup>114</sup>

As to the first of these components, since the implementation of the 2014 EU Damages Directive, the burden of proof has shifted to the defendant to prove that the claimant has in fact passed on the overcharge to its customers. Victims may also seek compensation for losses incurred by general price increases across the market resulting from non-cartelists adjusting their price levels to the cartelists' prices ('umbrella effects').<sup>115</sup>

## Legal costs

Generally, the party whose claims were dismissed bear the associated legal costs.<sup>116</sup> Third-party funding is, in principle, also available but limited in practice.<sup>117</sup> Lawyers are barred from charging fees that are fully contingent on the outcome of the court proceedings.

## Outlook and conclusions

Cartel enforcement in France has been a constant priority of the Competition Authority and is set to remain so in the years to come. As previewed in its latest roadmap,<sup>118</sup> the Competition Authority will focus its enforcement actions, including against cartels, on the digital economy, sustainability-related issues and sectors relevant to the purchasing power of households, such as consumer goods, transport and energy. In particular, in 2024, the Competition Authority is expected to issue guidance on the compatibility of certain sustainability projects with competition rules. It will also examine the competitive functioning of product rating systems, which provide consumers with information on the sustainability-related characteristics of consumer products and services. In the digital space, the Competition Authority has announced an opinion on generative artificial intelligence, which is expected to lay the ground for further enforcement. Finally, the Competition Authority is set to issue its awaited decision concluding its investigation into alleged anticompetitive agreements in the labour market, further to a statement of objections issued in November 2023 in the IT services job sector.<sup>119</sup> Procedurally, the Competition Authority has announced that it will continue exploring the possibility of developing AI-based tools to better detect anticompetitive conduct in the digital space and, more generally, to facilitate its investigations. The Competition Authority's detection tools, along with its new leniency regime, aim at increasing the number of cartel decisions in the year to come.

## Endnotes

- 1 Séverine Schrameck and Anita Magraner Oliver are partners and Stéphanie Patureau is a senior attorney at Cleary Gottlieb Steen & Hamilton LLP. The authors thank Thomas Harbor, Ambroise Simon, Pauline Heingle and Louise Caffrey for their contributions. ^ [Back to section](#)
- 2 At the time of writing, the Competition Authority has not yet published its 2023 annual report. As such, the number of leniency applications filed in 2023 is not available. ^ [Back to section](#)
- 3 OECD Competition Trends 2022, page 12, available here: <https://web.archive.oecd.org/2022-03-21/624967-oecd-competition-trends-2022.pdf>. ^ [Back to section](#)

- 4 PaRR, 'Half of UK, French cartel cases started without leniency applications', 23 October 2023. [^ Back to section](#)
- 5 At the time of writing, the Competition Authority has not yet published its 2023 annual report. The Competition Authority President, however, indicated in February 2023 that the Competition Authority had already received two complete leniency applications. See PaRR, 'France sees uptick in leniency from historic lows, says agency head – OECD Open Day', 23 February 2023. [^ Back to section](#)
- 6 *ibid.* [^ Back to section](#)
- 7 *ibid.* [^ Back to section](#)
- 8 GCR, 'An interview with Benoît Cœuré', 24 June 2022, available here: <https://globalcompetitionreview.com/article/interview-benoit-coeure>. [^ Back to section](#)
- 9 Competition Authority press release, 'The Autorité de la concurrence provides whistleblowers with a framework for collecting and processing reports', 20 October 2023, available here: <https://www.autoritedelaconcurrence.fr/en/press-release/autorite-de-la-concurrence-provides-whistleblowers-framework-collecting-and>. [^ Back to section](#)
- 10 Competition Authority press release, 'The Autorité submits for public consultation a draft notice aimed at providing undertakings with informal guidance on the compatibility of their sustainability projects with competition rules', 26 December 2023, available here: <https://www.autoritedelaconcurrence.fr/en/press-release/autorite-submits-public-consultation-draft-notice-aimed-providing-undertakings>. [^ Back to section](#)
- 11 Competition Authority 2023-2024 roadmap, 3 March 2023, available here: <https://www.autoritedelaconcurrence.fr/en/article/autorite-publishes-its-roadmap-2023-2024>. [^ Back to section](#)
- 12 Competition Authority press release, 'The General Rapporteur of the Autorité de la concurrence indicates that unannounced inspections were carried out in the passenger rail transport, travel agency services and products distribution, and digital mobility systems sectors', 12 May 2023, available here: <https://www.autoritedelaconcurrence.fr/en/press-release/general-rapporteur-autorite-de-la-concurrence-indicates-unannounced-inspections-were>. [^ Back to section](#)
- 13 Competition Authority press release, 'The General Rapporteur of the Autorité de la concurrence indicates that an unannounced inspection was carried out in the graphics cards sector', 27 September 2023 available here: <https://www.autoritedelaconcurrence.fr/en/press-release/general-rapporteur-autorite-de-la-concurrence-indicates-unannounced-inspection-was>. [^ Back to section](#)

- 14** Competition Authority press release, 'The General Rapporteur of the Autorité de la concurrence indicates that unannounced hearings have been carried out in the production and marketing of food and non-food product sectors', 18 October 2023, available here: <https://www.autoritedelaconcurrence.fr/en/press-release/general-rapporteur-autorite-de-la-concurrence-indicates-unannounced-hearings-have>; Competition Authority press release, 'The General Rapporteur of the Autorité de la concurrence indicates that unannounced inspections were carried out in the production and marketing of food and non-food product sectors', 27 November 2023, available here: <https://www.autoritedelaconcurrence.fr/en/press-release/general-rapporteur-autorite-de-la-concurrence-indicates-unannounced-inspections-0>. [^ Back to section](#)
- 15** Competition Authority press release, 'The General Rapporteur of the Autorité de la concurrence announces that several companies from the engineering, technology consulting and IT services sectors were notified of statements of objections regarding anticompetitive agreements in job markets', 23 November 2023, available here: <https://www.autoritedelaconcurrence.fr/en/press-release/general-rapporteur-autorite-de-la-concurrence-announces-several-companies-engineering>. [^ Back to section](#)
- 16** Competition Authority press release, 'The Autorité's General Rapporteur sends statement of objections to three companies in the intra-Caribbean regional air transport sector', 21 March 2023, available here: <https://www.autoritedelaconcurrence.fr/en/press-release/autorites-general-rapporteur-sends-statement-objections-three-companies-intra>. [^ Back to section](#)
- 17** Decision 23-D-03 of the Competition Authority, 'On practices implemented in the sector of securing tobacco outlets in the Hauts-de-France and Île-de-France regions', 20 March 2023 (no press release), available here: <https://www.autoritedelaconcurrence.fr/fr/decision/relative-des-pratiques-mises-en-oeuvre-dans-le-secteur-de-la-securisation-des-debits-de-0>. [^ Back to section](#)
- 18** Competition Authority Fining Guidelines, 30 July 2021, paragraphs 62–63, available here: [https://www.autoritedelaconcurrence.fr/sites/default/files/Communique\\_sanction.pdf](https://www.autoritedelaconcurrence.fr/sites/default/files/Communique_sanction.pdf). [^ Back to section](#)
- 19** Decision 23-D-04 of the Competition Authority, 'concerning practices in the sale of subscriptions to business intelligence and corporate information products', 12 April 2023 available here: <https://www.autoritedelaconcurrence.fr/fr/decision/relative-des-pratiques-mises-en-oeuvre-dans-le-secteur-de-la-vente-dabonnements-des>; Competition Authority press release, 'Sale of access to company databases: The Autorité condemns several Bureau van Dijk Group companies and Ellisphere for price fixing and client allocation', 13 April 2023, available here: <https://www.autoritedelaconcurrence.fr/en/press-release/sale-access-company-databases-autorite-condemns-several-bureau-van-dijk-group>. [^ Back to section](#)

- 20** Settlement decisions do not disclose the methodology used to set the fine range. According to the decision, the company achieved a 2016 turnover of €31.2 million in France. Thus, the fine amounted to around 11 per cent of the company's turnover. [^ Back to section](#)
- 21** Decision 23-D-06 of the Competition Authority, 'concerning practices implemented in the renovation and restoration of roofing and carpentry for public and private heritage buildings in the Hauts-de-France region', 14 June 2023 available here: <https://www.autoritedelaconurrence.fr/fr/decision/relative-des-pratiques-mises-en-oeuvre-dans-le-secteur-de-la-renovation-et-de-la#:~:text=Présentation%20de%20la%20décision&text=Sur%20le%20même%20fondement%2C%20sanction%20de%2028%20000%20euros>; Competition Authority press release, 'Three companies fined for anticompetitive agreements in public tenders for heritage building renovation in the Hauts-de-France region', 14 June 2023, available here: <https://www.autoritedelaconurrence.fr/en/press-release/three-companies-fined-anticompetitive-agreements-public-tenders-heritage-building>. [^ Back to section](#)
- 22** Decision 23-D-08 of the Competition Authority, 'concerning practices implemented in the sector of engineering, maintenance, dismantling and waste treatment services for nuclear sites', 7 September 2023 available here: <https://www.autoritedelaconurrence.fr/fr/decision/relative-des-pratiques-mises-en-oeuvre-dans-le-secteur-des-prestations-de-services>; Competition Authority press release, 'Decommissioning operations at the Marcoule nuclear site (Gard): the Autorité fines six companies for anticompetitive agreements in calls for tender organised by the CEA', 7 September 2023, available here: <https://www.autoritedelaconurrence.fr/en/press-release/decommissioning-operations-marcoule-nuclear-site-gard-autorite-fines-six-companies>. [^ Back to section](#)
- 23** Decision 23-D-09 of the Competition Authority, 'on practices in the gambling distribution sector', 26 September 2023 available here: <https://www.autoritedelaconurrence.fr/fr/decision/relative-des-pratiques-mises-en-oeuvre-dans-le-secteur-de-la-distribution-des-jeux-de>; Competition Authority press release, 'The Autorité de la concurrence sanctions the French National Confederation of Tobacconists (Confédération nationale des buralistes de France) for organising boycott practices aimed at hindering the distribution of FDJ games by the Florajet florist network', 27 September 2023, available here: <https://www.autoritedelaconurrence.fr/en/press-release/autorite-de-la-concurrence-sanctions-french-national-confederation-tobacconists>. [^ Back to section](#)

- 24** Decision 23-D-15 of the Competition Authority, 'concerning practices in the sector of the manufacture and sale of foodstuffs in contact with materials which may contain or may have contained bisphenol A', 29 December 2023 available here: <https://www.autoritedelaconurrence.fr/fr/decision/relative-des-pratiques-dans-le-secteur-de-la-fabrication-et-la-vente-de-denrees>; Competition Authority press release, 'Bisphenol A in food containers: almost €20 million in fines', 11 January 2024, available here: <https://www.autoritedelaconurrence.fr/en/press-release/bisphenol-food-containers-almost-eu20-million-fines>. ^ [Back to section](#)
- 25** *ibid.* ^ [Back to section](#)
- 26** As the practices ended before 2021, the Competition Authority applied the then-applicable €3 million fine ceiling for trade associations. ^ [Back to section](#)
- 27** Decision 23-D-11 of the Competition Authority, 'on practices implemented in the delegated management of heating networks sector', 7 December 2023, available here: <https://www.autoritedelaconurrence.fr/fr/decision/relative-des-pratiques-mises-en-oeuvre-dans-le-secteur-de-la-gestion-deleguee-des-reseaux>. ^ [Back to section](#)
- 28** Decision 22-D-16 of the Competition Authority, 'on practices in the optical lens sector', 6 October 2022, available here: <https://www.autoritedelaconurrence.fr/fr/decision/relative-des-pratiques-mises-en-oeuvre-dans-le-secteur-des-verres-optiques>; Decision 18-D-23 of the Competition Authority, 'Decision 18-D-23 of 24 October 2018 regarding practices implemented in the retail of outdoor power equipment', 23 October 2018, available here: <https://www.autoritedelaconurrence.fr/en/decision/decision-18-d-23-24-october-2018-regarding-practices-implemented-retail-outdoor-power>; and Decision 19-D-14 of the Competition Authority, 'concerning practices implemented in the high-end bicycle distribution sector', 1 July 2019, available here: <https://www.autoritedelaconurrence.fr/fr/decision/relative-des-pratiques-mises-en-oeuvre-dans-le-secteur-de-la-distribution-des-cycles-haut>. ^ [Back to section](#)
- 29** Decision 23-D-05 of the Competition Authority, 'concerning practices in the bakery equipment distribution sector', 18 April 2023, available here: <https://www.autoritedelaconurrence.fr/fr/decision/relative-des-pratiques-mises-en-oeuvre-dans-le-secteur-de-la-distribution-de-materiels-de>; Competition Authority press release, 'Several entities sanctioned in bakery equipment distribution sector', 25 April 2023, available here: <https://www.autoritedelaconurrence.fr/en/press-release/several-entities-sanctioned-bakery-equipment-distribution-sector>. ^ [Back to section](#)
- 30** The decision notes that the manufacturer achieved a 2016 French turnover of €31.2 million. ^ [Back to section](#)

- 31** Decision 23-D-13 of the Competition Authority, 'concerning practices in the luxury watch distribution sector', 19 December 2023, available here: <https://www.autoritedelaconurrence.fr/fr/decision/relative-des-pratiques-mises-en-oeuvre-dans-le-secteur-de-la-distribution-de-montres-de>; Competition Authority press release, 'The Autorité de la concurrence fines Rolex €91,600,000 for prohibiting its authorised retailers from selling its watches online', 19 December 2023, available here: <https://www.autoritedelaconurrence.fr/en/communiqués-de-presse/lautorite-de-la-concurrence-sanctionne-rolex-dune-amende-de-91-600-000-euros>. ^ [Back to section](#)
- 32** Decision 23-D-12 of the Competition Authority, 'concerning practices in the luxury tea sector', 11 December 2023, available here: <https://www.autoritedelaconurrence.fr/fr/decision/relative-des-pratiques-mises-en-oeuvre-dans-le-secteur-des-thes-de-luxe>; Competition Authority press release, 'The Autorité de la concurrence fines Mariage Frères teas for hindering its distributors' commercial freedom', 11 December 2023, available here: <https://www.autoritedelaconurrence.fr/en/press-release/autorite-de-la-concurrence-fines-mariage-freres-teas-hindering-its-distributors>. ^ [Back to section](#)
- 33** Out of 20 Paris Court of Appeal judgments since 2019, 11 upheld the Competition Authority's decision entirely, eight upheld the decision on the merits but revised the fine (reducing the fine an average of 42 per cent; the smallest single reduction being about 1.6 per cent and the largest being of 97.2 per cent) and one annulled the decision (see judgment of 20 December 2021, No. 20/04626, available here: [https://www.autoritedelaconurrence.fr/sites/default/files/appealsd/2021-12/ca3\\_10d28\\_dec21.pdf](https://www.autoritedelaconurrence.fr/sites/default/files/appealsd/2021-12/ca3_10d28_dec21.pdf), which annulled Decision 10-D-28 of the Competition Authority, 'on tariffs and related conditions applied by banks and financial institutions for the processing of cheques submitted for collection', 20 September 2010, available here: <https://www.autoritedelaconurrence.fr/sites/default/files/commitments/10d28.pdf>). ^ [Back to section](#)



- 34** Paris Court of Appeal, (i) judgment of 15 June 2023, No. 21/08411, available here: <https://www.cours-appel.justice.fr/sites/default/files/2023-10/Arrêt%20RG%20n°2021-08411.pdf>, which upheld Decision 21-D-09 of the Competition Authority, 'concerning practices implemented in the sector of the manufacture and marketing of private label sandwiches', 24 March 2021, available here: [https://www.autoritedelaconurrence.fr/sites/default/files/integral\\_texts/2021-03/21d09.pdf](https://www.autoritedelaconurrence.fr/sites/default/files/integral_texts/2021-03/21d09.pdf); (ii) judgment of 14 September, No. 20/17860, available here: <https://www.cours-appel.justice.fr/sites/default/files/2023-09/Arrêt%20RG%20n°2020-17860.pdf>, which upheld Decision 20-D-17 of the Competition Authority, 'concerning practices in the dental surgery sector', 12 November 2020, available here: <https://www.autoritedelaconurrence.fr/fr/decision/relative-des-pratiques-mises-en-oeuvre-dans-le-secteur-de-la-chirurgie-dentaire>; (iii) judgment of 16 November 2023, No. 20/03434, available here: <https://www.autoritedelaconurrence.fr/sites/default/files/appealsd/2023-12/Arrêt%20RG%20n°2020-03434.pdf>, which upheld Decision 21-D-05 of the Competition Authority, 'concerning practices implemented in the building management sector of the Lille Metropole Urban Community', 4 March 2021, available here: <https://www.autoritedelaconurrence.fr/fr/decision/relative-des-pratiques-mises-en-oeuvre-dans-le-secteur-de-la-gestion-technique-des>, on the merits but reduced the fine from a total of €45 million to €27.5 million due to the undertaking's financial difficulties; and (iv) judgment of 9 March 2023, No. 21/06028, available here: <https://www.autoritedelaconurrence.fr/sites/default/files/appealsd/2023-03/Arrêt%20RG%20n°2021-06028.pdf>, which upheld Decision 21-D-05 of the Competition Authority (supra), but reduced the fine from €435,000 to €272,000 due to errors in the assessment of the damage to the economy and gravity factors. ^ [Back to section](#)
- 35** Court of Cassation, Commercial Division, (i) judgment of 18 October 2023, No. 680 F-D, available here: [https://www.autoritedelaconurrence.fr/sites/default/files/appealsd/2023-11/pourvoi\\_n°20-17.092\\_18\\_10\\_2023-1.pdf](https://www.autoritedelaconurrence.fr/sites/default/files/appealsd/2023-11/pourvoi_n°20-17.092_18_10_2023-1.pdf), in relation to Decision 14-D-19 of the Competition Authority, 'Decision 14-D-19 of 18 December 2014 on practices implemented in the home care products and insecticides sector and in the personal and body care products sector', 18 December, 2014, available here: <https://www.autoritedelaconurrence.fr/en/decision/decision-14-d-19-18-december-2014-practices-implemented-home-care-products-and>; (ii) judgment of 1 February, No. 20-21.844, available here: [https://www.autoritedelaconurrence.fr/sites/default/files/appealsd/2023-02/pourvoi\\_n°20-21.844\\_01\\_02\\_2023.pdf](https://www.autoritedelaconurrence.fr/sites/default/files/appealsd/2023-02/pourvoi_n°20-21.844_01_02_2023.pdf), in relation to Decision 19-D-19 of the Competition Authority, 'regarding practices implemented in the sector of online search advertising sector', 30 September 2019, available here: <https://www.autoritedelaconurrence.fr/en/decision/regarding-practices-implemented-sector-online-search-advertising-sector>; and (iii) judgment of 28 June 2023, No. 468 FS-D, available here: [https://www.autoritedelaconurrence.fr/sites/default/files/appealsd/2024-01/pourvoi\\_n°21-26.015\\_28\\_06\\_2023.pdf](https://www.autoritedelaconurrence.fr/sites/default/files/appealsd/2024-01/pourvoi_n°21-26.015_28_06_2023.pdf), in relation to Decision 10-D-28 of the Competition Authority (supra No. 33). ^ [Back to section](#)



- 36** The procedure before the Competition Authority is set out in Articles L463-1–8, FCC. [^ Back to section](#)
- 37** Competition Authority press release, 'The Autorité creates a digital economy unit', 9 January 2020, available here: <https://www.autoritedelaconurrence.fr/en/communiqués-de-presse/autorite-crées-digital-economy-unit>. [^ Back to section](#)
- 38** Competition Authority press release, 'Elise Provost is appointed adviser to the General Rapporteur and head of the sustainable development network', 7 September 2022, available here: <https://www.autoritedelaconurrence.fr/en/article/appointment-elise-provost-appointed-adviser-general-rapporteur-and-head-sustainable>. [^ Back to section](#)
- 39** For the current members of the collège, see the Competition Authority's website, available here: <https://www.autoritedelaconurrence.fr/en/college>. [^ Back to section](#)
- 40** Competition Authority Settlement Notice, 21 December 2018, available, here: [https://www.autoritedelaconurrence.fr/sites/default/files/cque\\_transaction\\_dec18\\_1.pdf](https://www.autoritedelaconurrence.fr/sites/default/files/cque_transaction_dec18_1.pdf). [^ Back to section](#)
- 41** Competition Authority Fining Guidelines, supra, No. 18. [^ Back to section](#)
- 42** Competition Authority Notice on Enforcement Priorities, 20 October 2022, available here: <https://www.autoritedelaconurrence.fr/sites/default/files/2022-10/Communiqué-Rejet-pour-défaut-de-priorité.pdf>. [^ Back to section](#)
- 43** Competition Authority Leniency Notice of 15 December 2023, available here: <https://www.autoritedelaconurrence.fr/sites/default/files/2023-12/communiqué-clemence-15-dec-2023.pdf>. [^ Back to section](#)
- 44** Ordinance No. 2021-649 of 26 May 2021 relative to the transposition of Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, in application of Article 37 of Law No. 2020-1508 of 3 December on various provisions for adapting to European Union law in economic and financial matters (DDADUE Law). The FCC was revised by decree No. 2021-568 of 10 May 2021. [^ Back to section](#)
- 45** Competition Authority 2023-2024 roadmap, supra, No. 11. [^ Back to section](#)

- 46** Decision 22-D-19 of the Competition Authority, 'regarding practices implemented in the postage stamp distribution sector', 20 October 2022, available here: <https://www.autoritedelaconcurrence.fr/en/decision/regarding-practices-implemented-postage-stamp-distribution-sector>; Competition Authority press release, 'Resale of postage stamps for franking: the Autorité rejects the complaint of Culture Presse against La Poste and, for the first time, makes use of the procedure of dismissal due to lack of priority', 20 October 2022, available here: <https://www.autoritedelaconcurrence.fr/en/press-release/resale-postage-stamps-franking-autorite-rejects-complaint-culture-presse-against-la>. ^ [Back to section](#)
- 47** Article L464-9, FCC. ^ [Back to section](#)
- 48** ICN Cartel Working Group Sub-Group 2, 'Project on "Big Data and Cartels". The impact of digitalization in cartel information', 28 April 2020, available here: <https://www.internationalcompetitionnetwork.org/wp-content/uploads/2020/06/CWG-Big-Data-scoping-paper.pdf>. ^ [Back to section](#)
- 49** Decision 08-D-30 of the Competition Authority, 'Decision 08-D-30 of 4 December 2008 on practices implemented by the companies Pétroles Shell, Esso SAF, Chevron Global Aviation, Total Outre-Mer and Total Réunion', 4 December 2008, available here: <https://www.autoritedelaconcurrence.fr/en/decision/decision-08-d-30-4-december-2008-practices-implemented-companies-petroles-shell-esso-saf>. (The Competition Authority requested assistance from the UK Office of Fair Trading and ultimately fined four oil companies for engaging in the fixing of aviation fuel prices and volumes during a tender offer by Air France on France's Réunion Island). ^ [Back to section](#)
- 50** Germany (34 per cent), the Netherlands (33 per cent), Italy (11 per cent), the United Kingdom (11 per cent) and Belgium (11 per cent). See Annex to the 2022 Competition Authority Annual Report, 11 July 2023, page 55, available here: <https://www.autoritedelaconcurrence.fr/sites/default/files/2023-07/RA2022-annexe.pdf>. ^ [Back to section](#)
- 51** Luxembourg (16 per cent), the Czech Republic (13 per cent), Greece (13 per cent), the United Kingdom (11 per cent), the Netherlands (8 per cent), Belgium (8 per cent), Romania, Slovenia, Germany, Austria and Lettonia (each 5 per cent), Spain and Slovakia (each 3 per cent). In addition, the Competition Authority assisted the Spanish, Dutch and Czech NCAs in the context of requests for information; *ibid.*, page 54. ^ [Back to section](#)

- 52** For instance, in the flour mill case, the Federal Cartel Office conducted dawn raids in Germany that triggered leniency applications in several Member States, including in France. The Competition Authority opened an investigation and conducted dawn raids in Germany with the assistance of the Federal Cartel Office, and vice versa. The French, German, Dutch and Belgian NCAs closely cooperated throughout their respective investigations. See Decision 6306 of the Autoriteit Consument & Markt, 'NMa imposes fines totalling more than EUR 80 million for cartel agreements in flour industry', 16 December 2010, available here: <https://www.acm.nl/en/publications/publication/5827/NMa-imposes-fines-totaling-more-than-EUR-80-million-for-cartel-agreements-in-flour-industry>; Decision 12-D-09 of the Competition Authority, 'Decision 12-D-09 of 13 March 2012 on practices in the packaged flour sector', 13 March 2012, available here: <https://www.autoritedelaconcurrence.fr/en/decision/decision-12-d-09-13-mars-2012-practices-packaged-flour-sector>; Decision B11-13/06 of the Federal Cartel Office, 'Fine proceedings against companies in the flour milling industry', 19 February 2013, available here: [https://www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/Fallberichte/Kartellverbot/2013/B11-13-06.pdf?\\_\\_blob=publicationFile&v=2](https://www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/Fallberichte/Kartellverbot/2013/B11-13-06.pdf?__blob=publicationFile&v=2); and Decision 13-IO-06 of the Belgian Competition Authority, 'Anti-competitive practices in the market for the supply and sale of flour in Belgium', 28 February 2013, available here: [https://www.belgiancompetition.be/sites/default/files/content/download/files/2013IO06\\_pub.pdf](https://www.belgiancompetition.be/sites/default/files/content/download/files/2013IO06_pub.pdf). [^ Back to section](#)
- 53** Court of Cassation, Criminal Chamber, judgment of 17 February 2021, No. J 19-84.310 F-D, available here: [https://www.courdecassation.fr/decision/602fcbdac43d29bb00853b05?search\\_api\\_fulltext=&date\\_du=2021-02-01&date\\_au=2021-02-28&judilibre\\_jurisdiction=cc&judilibre\\_chambre%5B0%5D=cr&op=Rechercher%20sur%20judilibre&page=3&previousdecisionpage=3&previousdecisionindex=7&nextdecisionpage=3&nextdecisionindex=9](https://www.courdecassation.fr/decision/602fcbdac43d29bb00853b05?search_api_fulltext=&date_du=2021-02-01&date_au=2021-02-28&judilibre_jurisdiction=cc&judilibre_chambre%5B0%5D=cr&op=Rechercher%20sur%20judilibre&page=3&previousdecisionpage=3&previousdecisionindex=7&nextdecisionpage=3&nextdecisionindex=9), (where, in 2018, following a request for assistance received from the BCA, the Competition Authority initiated an investigation into potential infringements of French competition rules and conducted an inspection at the company's premises on the basis of evidence provided by the BCA). [^ Back to section](#)
- 54** In 2022, the Competition Authority received information from the Italian and Dutch NCAs, and transmitted information to the German, Polish and Romanian NCAs as well as to the EC under Article 12 of Regulation 1/2003. See Annex to the 2022 Competition Authority Annual Report, supra, No. 47, page 55. [^ Back to section](#)
- 55** *ibid.* [^ Back to section](#)
- 56** Article L420-1, FCC. [^ Back to section](#)

- 57** Article L420-4, I, 2, FCC provides that such practices may consist, for agricultural products or products of agricultural origin, in organising under the same brand or trade name production volumes and quality, as well as commercial policy, including by agreeing on a common transfer price. [^ Back to section](#)
- 58** Article L462-7, I, FCC. [^ Back to section](#)
- 59** Article L462-7, II, FCC. [^ Back to section](#)
- 60** Law No. 2001-420 of 15 May 2001 on new economic regulations. [^ Back to section](#)
- 61** Article L420-6-1, FCC. [^ Back to section](#)
- 62** Article R464-5-1, I, 3°, a, FCC; Leniency Notice, supra No. 42, paragraph 15. [^ Back to section](#)
- 63** Article R464-5-1, I, 3°, b, FCC; Leniency Notice, supra No. 42, paragraph 17. [^ Back to section](#)
- 64** Article R464-5-2, FCC; Leniency Notice, supra No. 42, paragraph 18 et seq. [^ Back to section](#)
- 65** Leniency Notice, supra No. 42, paragraph 19. [^ Back to section](#)
- 66** *ibid.*, paragraph 22. [^ Back to section](#)
- 67** Article R464-5, FCC; Leniency Notice, supra No. 42, paragraphs 26–28. [^ Back to section](#)
- 68** Leniency Notice, supra, No. 42, paragraph 30. [^ Back to section](#)
- 69** *ibid.*, paragraph 35. [^ Back to section](#)
- 70** Article L483-5-1, FCC. [^ Back to section](#)
- 71** Article L483-9, FCC. [^ Back to section](#)
- 72** Article L483-8, FCC. [^ Back to section](#)
- 73** Article L464-2, I, FCC, paragraph 4. [^ Back to section](#)
- 74** Competition Authority Fining Guidelines, supra, No. 18, page 1. [^ Back to section](#)
- 75** Fining Guidelines, paragraph 22. [^ Back to section](#)
- 76** *ibid.*, paragraph 23. [^ Back to section](#)
- 77** *ibid.*, paragraph 26. [^ Back to section](#)

- 78** *ibid.*, paragraph 29. Since the publication of the revised Fining Guidelines, the Competition Authority may notably take into account the conduct's impact on the environment, innovation or captive buyers. [^ Back to section](#)
- 79** *ibid.*, paragraph 30. [^ Back to section](#)
- 80** *ibid.* [^ Back to section](#)
- 81** *ibid.*, paragraph 31. [^ Back to section](#)
- 82** *ibid.*, paragraph 34. [^ Back to section](#)
- 83** *ibid.* [^ Back to section](#)
- 84** *ibid.*, paragraph 37–38. [^ Back to section](#)
- 85** *ibid.*, paragraph 39–42. [^ Back to section](#)
- 86** *ibid.*, paragraphs 43–45. [^ Back to section](#)
- 87** *ibid.*, paragraph 50. [^ Back to section](#)
- 88** *ibid.*, paragraph 53. [^ Back to section](#)
- 89** *ibid.*, paragraphs 54–58. The revised Fining Guidelines introduce a new regime in case of a trade association's insolvency: either the infringement relates to the association's activities and the association may demonstrate its financial difficulties in the same way as any other company; or the infringement relates to its members' activities, and in this case the Competition Authority may require the association to ask its members to contribute to the payment of the fine (paragraph 62). [^ Back to section](#)
- 90** *ibid.*, paragraph 6. [^ Back to section](#)
- 91** *ibid.* [^ Back to section](#)
- 92** In the 27 fining decisions imposed since 2020, the Competition Authority applied its Fining Guidelines 12 times, applied them only for part of the practices or undertakings involved four times and did not apply its Guidelines 11 times. The Competition Authority departed from the Guidelines where: parties settled (six cases); the practice involved a trade association which did not generate sales (four cases); the Guidelines would result in too high a fine given the undertakings' size or behaviour (four cases); and the Guidelines would result in too low a fine which would not reflect the undertaking's economic weight and the gravity of the infringement (one case). [^ Back to section](#)
- 93** Article L420-6, FCC, paragraph 2. [^ Back to section](#)

- 94** Article L462-3, FCC. [^ Back to section](#)
- 95** Between 2013 and 2017, there were 19 criminal convictions for involvement in cartels, with fines averaging €7,679. Among these, five received suspended prison sentences. See Impact study, Draft law on the European Public Prosecutor's Office and Specialized Criminal Justice, 27 January 2020, page 136, available here: <https://www.senat.fr/leg/etudes-impact/pjl19-283-ei/pjl19-283-ei.pdf>. [^ Back to section](#)
- 96** Article L464-2, I, supra, No. 73, paragraph 1. [^ Back to section](#)
- 97** Decision D-22-01 of the Competition Authority, 'on practices in the bailiff sector', 13 January 2022, available here: <https://www.autoritedelaconurrence.fr/fr/decision/relative-des-pratiques-mises-en-oeuvre-dans-le-secteur-des-huissiers-de-justice-0>; Competition Authority press release, 'The Autorité de la concurrence hands down fines for cartel practices to two joint service offices and several of their members, all court bailiffs in Paris and Seine-Saint-Denis départements', 13 January 2022, available: <https://www.autoritedelaconurrence.fr/en/communiqués-de-presse/autorite-de-la-concurrence-hands-down-fines-cartel-practices-two-joint> (where the Competition Authority accepted the commitments offered by a trade association). [^ Back to section](#)
- 98** Decision 19-D-26 of 19 December 2019 regarding practices employed in the online search advertising sector. The Competition Authority required Google to publish the summary of the Decision, to be accessible using an html link entitled 'Google fined by Autorité de la concurrence, the French competition authority' on the home page of the [www.google.fr](http://www.google.fr), [www.google.com](http://www.google.com) and [www.ads.google.com](http://www.ads.google.com) websites accessible in France, for a period of seven consecutive days, available: [https://www.autoritedelaconurrence.fr/sites/default/files/attachments/2020-04/19d26\\_en.pdf](https://www.autoritedelaconurrence.fr/sites/default/files/attachments/2020-04/19d26_en.pdf). [^ Back to section](#)
- 99** *ibid.*, No. 97. [^ Back to section](#)
- 100** Decision 23-D-13 of the Competition Authority, 'concerning practices in the luxury watch distribution sector', 19 December 2023, available here: <https://www.autoritedelaconurrence.fr/fr/decision/relative-des-pratiques-mises-en-oeuvre-dans-le-secteur-de-la-distribution-de-montres-de>. The Competition Authority required Rolex to communicate 'at its own expense, to all of its authorised distributors, the text on page 2 of this decision [which summarised the Decision]'. [^ Back to section](#)
- 101** Court of Cassation, Commercial Division, judgment of 23 March 2023, No. 21-16.868, available here: <https://www.courdecassation.fr/decision/641aaa500c73d704f534820c>, (where the Court held that the First President of the Paris Court of Appeal should suspend such communications if they are likely to have 'manifestly excessive' consequences). [^ Back to section](#)

- 102** Opening hours are the hours during which the premises are open to the public or during which production, manufacturing, processing, packaging, transport or marketing activities are being carried out. [^ Back to section](#)
- 103** Article L450-3, FCC. [^ Back to section](#)
- 104** The notion of 'professional documents' allows for a wide margin of appreciation. Some practitioners consider that mixed documents, such as a diary with personal annotations, do not have to be handed over. [^ Back to section](#)
- 105** Article L450-4, FCC. [^ Back to section](#)
- 106** Article L464-2, V, FCC. The Competition Authority has so far imposed one fine for obstruction during inspections. See Decision 19-D-09 of the Competition Authority, 'concerning obstruction practices implemented by the Akka group', 22 May 2022, available: [https://www.autoritedelaconcurrence.fr/sites/default/files/integral\\_texts/2019-08/19d09.pdf](https://www.autoritedelaconcurrence.fr/sites/default/files/integral_texts/2019-08/19d09.pdf). (Where the Competition Authority fined Akka I&S, Akka Ingénierie Produit, Akka Informatique et Systèmes and their parent company Akka Technologies €900 000 for deleting emails during a dawn raid and negligently breaking a seal that had been placed across an office door.) This decision was later upheld by the Paris Court of Appeals in its judgment of 26 May 2020, No. 19/11880, and ultimately by the Court of Cassation in its judgment of 1 December 2021, No. 848 FS-B. [^ Back to section](#)
- 107** Article L450-8, FCC. [^ Back to section](#)
- 108** Article L1240 of the French Civil Code; Article L481-1, FCC. [^ Back to section](#)
- 109** Law No. 2014-344 ('Hamon Law') of 17 March 2014. See also Article L623-1 et seq, FCC. [^ Back to section](#)
- 110** Directive (EU) No. 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers. [^ Back to section](#)
- 111** Draft bill regarding the legal regime applicable to collection actions, adopted by the French National Assembly on 8 March 2023 and scheduled for review by the Senate, available here: <https://www.senat.fr/rap/l23-271/l23-271.html>. [^ Back to section](#)
- 112** Directive (EU) No. 2014/104 of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union, implemented into French law by Ordinance 2017-303 of 9 March 2017. See Article L481-2, FCC. [^ Back to section](#)
- 113** Article L481-2, FCC. [^ Back to section](#)

**114** Article L481-3, FCC. [^ Back to section](#)

**115** Court of Cassation, judgment of 7 June 2023, No. 22-10.545, available here:

[https://www.concurrences.com/IMG/pdf/pourvoi\\_no22-10\\_545\\_07\\_06\\_2023.pdf?111390/51d98bd9673f36ca33ce3fc67db9374f947082728b7d841c7f2bd4fc0abe62f8](https://www.concurrences.com/IMG/pdf/pourvoi_no22-10_545_07_06_2023.pdf?111390/51d98bd9673f36ca33ce3fc67db9374f947082728b7d841c7f2bd4fc0abe62f8).

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**116** Articles 695 et seq, French Civil Procedure Code. [^ Back to section](#)

**117** Court of Cassation, first civil chamber, judgment of 10 January 2006, No. 03-17.839. [^](#)

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**118** Competition Authority, 2024-2025 Roadmap, available here:

<https://www.autoritedelaconcurrence.fr/en/article/autorite-publishes-its-roadmap-2024-2025>. [^ Back to section](#)

**119** Competition Authority, Press release of 23 November, 2023, available here:

<https://www.autoritedelaconcurrence.fr/fr/article/secteurs-de-ingenierie-d-u-conseil-en-technologies-et-des-services-informatiques>. [^ Back to section](#)

## CLEARY GOTTLIB

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**Séverine Schrameck**  
**Anita Magraner Oliver**  
**Stéphanie Patureau**

sschrameck@cgsh.com  
amagraneroliver@cgsh.com  
spatureau@cgsh.com

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Cleary Gottlieb Steen & Hamilton LLP

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