COMPLIANCE PROGRAMME

COMPETITION

BOUYGUES

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EDITORIAL

In addition to our Code of Ethics, I wished to implement a Competition Compliance Programme that will serve as a concrete, operational code of conduct.

Given the growing complexity of competition rules in France and elsewhere, as well as the severe sanctions imposed by the regulators and courts, it is in everyone's interests to have a programme that clearly sets out the rules. It is also an approach recommended by the competition authorities, in particular the French Competition Authority and the European Commission, which encourage companies to draw up their own compliance programmes.

Quite obviously, our Group does not tolerate anti-competitive practices of any kind. The Group's future depends on the continuing trust of its customers, employees, shareholders, and private or public partners: its growth and development will only be assured if a responsible, transparent and honest attitude towards them is taken.

Refusal of all forms of anti-competitive practices must be a fundamental obligation for all of us. I particularly draw the attention of senior executives of Group companies and operating entities of the Group to their responsibilities in this respect. I urge them to read this Compliance Programme carefully, to circulate it broadly among employees and make sure that its rules on the prohibition, prevention and control of anti-competitive practices are implemented effectively both in France and abroad.

Everyone must understand that the Group does not tolerate any violation of the rules prohibiting anti-competitive practices. Anyone who may be exposed to a situation likely to harbour a risk of anti-competitive practices must receive training and must not be left to handle the problem alone should it arise. Employees must be aware that they can always rely on their line management of their relevant company to assume its responsibilities, to help them deal with the problem with assistance from the ethics officers, and to support them when they take the right decisions.

Martin Bouygues
Chairman and CEO

CHAPTER I
COMPETITION COMPLIANCE PROGRAMME

1. PURPOSE OF COMPLIANCE PROGRAMME

1.1 This compliance programme (the "Compliance Programme") supplements Article 15 of the Group[1] Code of Ethics, which prohibits senior executives and employees from engaging in anti-competitive practices.

It describes the prohibited anti-competitive practices and the resulting obligations and responsibilities.

Chapter I sets out the information, prevention, control and sanction measures that must be implemented by each entity of the Group at the initiative of the Business segment's[2] Chief Executive Officer.

Chapter II gives an overview of competition law to all employees, which, although brief, aims to be as instructive as possible. It also includes practical recommendations.

1.2 The competition authorities encourage companies to implement a Compliance Programme. During an investigation, they will check if one exists and, more importantly, if it is implemented effectively.

2. ZERO TOLERANCE OF ANTI-COMPETITIVE PRACTICES

One of the Group's fundamental values is to conduct its business lawfully and fairly, in compliance with the principle of economic competition (Article 15 of the Group Code of Ethics).

Consequently, senior executives and employees are strictly prohibited from engaging in anti-competitive practices of any kind, in particular collusive practices and abuse of a dominant position, but also any other practices that infringe competition law.

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[1] In this Compliance Programme, the term "Group" or "Bouygues group" refers to Bouygues SA and all the companies and entities governed by French or foreign law directly or indirectly "controlled" by Bouygues SA. The concept of "control" is that defined in the provisions of Articles L. 233-3 and L. 233-16 of the French Commercial Code (Code de Commerce) and accordingly covers both de jure and de facto control. The principles set out in this Programme apply automatically to all companies or entities that are "jointly controlled".

[2] In this Programme, the term "Business segment" refers to each of the main activities of the Group, which are, as of the date hereof, "Construction" (Bouygues Construction), "Property" (Bouygues Immobilier), "Roads" (Colas), "Media" (TF1) and "Telecoms" (Bouygues Telecom).

3. DUTIES OF UNDERSTANDING AND CARE

3.1 Duty of understanding

French and European competition law is complex and stringent. It gives the competition authorities the power to impose very severe sanctions, which they frequently do.

SANCTIONS IMPOSED ON LEGAL ENTITIES

Everyone must be aware of the severity of the sanctions that can be imposed on a company, including **administrative sanctions** (fines that can be extremely high[3]), **criminal sanctions** (fines and judicial supervision) and **civil sanctions** (compensation to the victim of the anti-competitive practice, risk of class action in common law countries and now in France as well, and nullity of contracts and commitments). In addition, there may also be "**ancillary sanctions**" (closure of operations, ban from public procurement contracts, and ban on conducting a business activity).

The parent company of the relevant entity can also be held liable for the infringement.

More generally, an infringement of competition law would have extremely serious repercussions not only on the relevant Group entity but also on the Group's results and reputation, which would affect its growth and development. Fines in excess of €100 million are frequently imposed.

SANCTIONS IMPOSED ON INDIVIDUALS

Everyone must be aware that **individuals** who infringe competition law may be subject to heavy **criminal sanctions** (in France, knowingly taking part in anti-competitive practices is punishable by four years' imprisonment and a fine of €75,000) and **civil sanctions** (compensation to the victim).

Everyone must be aware that competition law in all the major industrialised countries as well as many other countries is very similar to French and European competition law.

3.2 Duty of care

All senior executives and employees must feel personally responsible for observing the ban on anti-competitive practices.

All senior executives and employees must therefore take due and proper care in the course of their business activities. They must be aware that any commercial action must be taken in compliance with the applicable competition law and this Compliance Programme. Competition law is technical and changes regularly. Senior executives and employees must therefore always refer to their Legal departments to ensure that any action they envisage taking in their business does not involve a risk of breach or infringement of the competition regulations and does not contravene the principles set out in this Compliance Programme.

All senior executives and employees should also take due and proper care in their relations with customers, suppliers, sub-contractors, co-contractors or partners. If one of the latter infringes the competition laws, the authorities could conclude that the senior executive or employee, or indeed the Group entity, was complicit or took part in the offence.

Senior executives and employees owe a heightened duty of care where their company:

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[3] *The French Competition Authority or the European Commission may impose a fine of up to 10% of consolidated sales per infringement, which in the Group's case would mean a theoretical maximum amount of €3.17 billion for an offence committed by any Group entity, as the Group's consolidated sales amounted to €31.758 billion in 2016.*

- operates in an oligopolistic market (a market with a restricted number of companies capable of providing a good or service);
- enters into temporary or partial cooperation agreements with rival companies, particularly in order to secure a contract;
- submits tenders in competition with another Group company in order to secure a contract;
- appoints representatives to a professional organisation.

4. RESPONSIBILITY OF SENIOR EXECUTIVES - STATEMENT OF POSITION OF SENIOR EXECUTIVES

4.1 One of the fundamental management responsibilities in each Group entity is to comply with competition law and implement information, prevention, control and sanction measures for anti-competitive practices.

This Compliance Programme provides the set of common rules that must be followed, promoted and implemented by all senior executives.

4.2 Senior executives and the management bodies must make a clearly stated commitment to observe and implement the Compliance Programme. As such, all executive officers and the governing or management bodies of Group companies (for example, Boards of Directors, Executive Committees, Management Committees, etc.) must make a written commitment to comply with competition law and to implement the Compliance Programme in a form best suited to the Business segment or its organisational structure. The commitment must be firm, unambiguous and known to everyone.

It should be renewed every two years to demonstrate the importance of the Compliance Programme and maintain the due care and attention that should be paid to it by everyone at all times.

5. APPOINTMENT OF A COMPLIANCE OFFICER

5.1 The Ethics Officer of each Business segment of the Group is appointed as Compliance Officer entrusted with the implementation of the Compliance Programme.

The Compliance Officer **may not change** the basic content of the Programme but may, after assessment of the risks, supplement, illustrate or add to it, where warranted, to take account of the specific nature of the Business segment and to make the Programme more effective. Any such additions should only be made at Business segment level, not at the level of one of its subsidiaries. They will become an integral part of the Compliance Programme and must therefore first be approved by the Group Compliance Officer.

5.2 In all significant entities of the Business segment, the Legal department director (and/or any duly appointed person in the Legal department) is the contact point for the Compliance Officer.

5.3 Senior executives and management bodies must give the Compliance Officers and the Legal department directors the authority, powers and means to implement the Programme effectively.

Compliance Officers and Legal department directors may refer to management bodies either to raise a concern or to ask for measures to be taken to ensure the Compliance Programme's effectiveness.

6. INFORMATION AND TRAINING

6.1 Information

The existence of the Compliance Programme must be made known internally throughout the Business segment and externally to the Business segment's customers, suppliers, sub-contractors, co-contractors or partners, by means to be defined by each Business segment. As described below, the Compliance Programme must be available to all employees electronically.

Compliance Officers shall:

- circulate to senior executives and employees memos about specific issues in their Business segment that require special attention with regard to competition law;
- promptly circulate warning memos or information memos to keep senior executives and employees of the Business segment up to date with any developments (for example, decisions or opinions issued by the competition authorities relevant to the Business segment and to the Compliance Programme);
- make sure that the Business segment's Legal department always provides the information and advice that might be needed by senior executives or employees.

All senior executives and heads of operational units, sales or purchasing departments must regularly remind their employees of the existence of the Compliance Programme and its requirements.

At least once a year, the Group and Business segment Compliance Officers will meet to share best practices developed for the Programme's implementation.

6.2 Training

Senior executives and employees involved in any way in competition in the markets where their company operates, must be aware of and understand the broad outlines of competition law and the risks involved in its breach.

Within one year of being hired or appointed, employees who are given responsibility for any of the following are required to attend a competition compliance training course run by or validated by the Compliance Officer of the relevant Business segment:

- a subsidiary or equivalent entity (division, branch, project, etc.);
- a sales function (involving contact with customers, suppliers, sub-contractors, co-contractors or partners);
- a purchasing department;
- representing a Group company or Business segment within a professional organisation.

The Compliance Officer will determine the most appropriate training method and make sure that these employees are given regular refresher courses to keep their knowledge and assessment of the risks up to date.

More generally, and to help all employees understand what anti-competitive practices are, as well as the prevention measures and applicable penalties, all Group entities are required to include a competition compliance component in their training modules tailored to the various employee categories. These training modules are validated by the Compliance Officer of the relevant Business segment.

All Business segments must, in line with their training policy, introduce a simple, brief general training module, accessible at all times through e-learning on the intranet. This module must be practical, adapted to the specific needs of the Business segment and understandable by all employees. It must also provide links to this Compliance Programme and the information memos issued by the Compliance Officer referred to in section 6.1 above. Employees should be urged to consult this e-learning programme regularly.

7. PREVENTION

7.1 Role of senior executives

As far as the competition authorities are concerned, senior executives are responsible for implementing measures to prevent anti-competitive practices. Senior executives should be aware that if an anti-competitive practice is discovered in their company, the competition authorities will ask about the measures they have taken to prevent such practices and whether they have made a personal commitment to ensuring that they are observed.

All senior executives who have operational responsibility for a Group entity (subsidiary, branch, division, etc.) must implement appropriate measures to prevent anti-competitive practices.

They will be supported in this by the Compliance Officer and the Ethics, CSR and Patronage Committee of the Business segment.

7.2 Expertise of Legal departments

Each Business segment Legal department must have at least one in-house lawyer with experience and expertise in competition law. The Legal departments must also be able to call on outside lawyers specialising in competition law, a list of which is selected by the Business segment Compliance Officer.

Each Legal department is also responsible for providing training and taking preventive actions in the area of anti-competitive practices.

7.3 Risk mapping

As part of the annual risk mapping process required by the Group, each Business segment carries out an analysis of the competition risks inherent in its activities.

7.4 Delegation of authority to senior executives of subsidiaries or entities and to persons in commercial or representation positions

Delegations of authority must clearly set out the person's obligation to comply with competition law and refrain from engaging in anti-competitive practices.

Anyone appointed to represent a Group entity within a professional organisation must, in accordance with section 8.2 below, receive and acknowledge receipt of a letter setting out their obligation to observe the provisions of the Compliance Programme in the course of their representation function.

7.5 Employment contracts – internal regulations

To the extent that it is authorised by employment law, the Group subsidiaries are recommended to:

- include a clause in the employment contracts of employees responsible for a sales department, a subsidiary or equivalent entity (division, branch, etc.) or a purchasing department setting out their obligation to comply with competition law and refrain from engaging in anti-competitive practices; and/or
- include a provision prohibiting anti-competitive practices in the company's internal regulations.

7.6 Compliance audit prior to starting up a business

In accordance with the terms and conditions determined by each Business segment, with the support of the Compliance Officer, an audit of the Business segment's compliance with competition law and the Compliance Programme must be carried out before launching a business or new project. This must be done at inception of, or no later than formal agreement to, all major projects or significant operations (acquisition or sale of a company, cooperation or consortium agreements, etc.) and when launching a new business activity (diversification, starting up a new business activity in a new country, etc.).

7.7 Raising a concern with line management

Senior executives or employees who are in any doubt about a particular practice or who are aware of an anti-competitive practice must refer to their line manager or Legal department.

7.8 Whistleblowing

Senior executives and employees may also use the whistleblowing facility set out in the Group Code of Ethics.

The whistleblowing facility complies with Cnil (French data protection authority) instructions (or similar regulations in the relevant country) and with the provisions of the Group Code of Ethics. The facility anti-competitive practices. Incidents or suspicions should, in principle, be reported to the Business segment Ethics Officer, who is the designated recipient. If the whistleblower believes that the situation goes beyond the scope of the Business segment, he or she may exceptionally alert the Group Ethics Officer instead of the Business segment Ethics Officer.

The procedure for the raising, receipt and processing of whistleblower alerts is set out in the Code of Ethics and in its appendix entitled "Whistleblowing facility: procedure and rules pertaining to the receipt and processing of whistleblowing alerts".

8. SPECIFIC PRECAUTIONS TO BE TAKEN IN CERTAIN SITUATIONS

8.1 Warranties to be obtained when acquiring shares in a company

During the due diligence process prior to acquiring a company, special attention must be paid to the target company's compliance with competition law. General or specific warranties should be obtained from the vendor, which can be called upon if needed (as the target company will continue to bear the risk of sanctions for anti-competitive practices prior to the acquisition), unless otherwise specifically agreed, justified and supervised by the Business segment's senior management, with the support of its Ethics Officer. Senior executives of the acquired company will make sure that the information obtained during the due diligence process is verified and that the measures set out in this Compliance Programme are implemented promptly.

8.2 Specific precautions in the event of joining and taking part in the activities of a professional organisation

Before joining a local, national or international professional organisation, the Group entity must first refer to Senior Management of the relevant Business segment and obtain prior agreement from an executive officer. The Business segment Ethics Officer keeps a list of the professional organisations to which its entity belongs.

Prior enquiries should be made with the assistance of an in-house lawyer to check the professional organisation's bylaws, structure, practices and activities, in particular to determine whether they contain provisions that raise awareness about compliance with competition law.

A Group entity may not join or take even occasional part in a professional organisation that organises or encourages dialogue, information exchange or agreements on the following matters:

- price levels, price developments, methods of establishing prices, discount levels, margin levels, inventory levels;
- sharing out of production capacity;
- exclusive territorial arrangements;
- exchange of non-public information on individual commercial policies, particularly with regard to future commercial actions;
- if the market is an oligopoly (market dominated by a small number of large suppliers), any exchange of information that might create or encourage tacit coordination within the oligopoly.

Representatives appointed by the Group must give their line manager a written statement acknowledging that they are aware of their obligations as regards competition law and undertaking to comply with them in the course of their function, in particular by refusing to give information about their company's commercial strategy (price setting, territory, promotion policy, etc.).

They must ensure that they receive an agenda prior to each meeting and that accurate minutes of each meeting are circulated to all participants. If prohibited subjects are addressed, the representative must leave the meeting, require that the secretary of the meeting record his or her departure in the minutes and send a letter setting out the reasons for leaving the meeting.

8.3 Specific precautions in the event of temporary or partial cooperation with a competitor

This type of cooperation is routine in some Bouygues group Business segments. It is useful and sometimes essential for projects that require specific resources and expertise, or risk sharing. Such agreements are not anti-competitive per se but their object or effect must never be to distort the rules of free competition. In the interests of caution, anything that reduces the independence of the company and the autonomy of its business activities should be considered as a potential risk and must be carefully assessed.

Any form of grouping or cooperation structure between competitors – construction project company *(Sociétés en Participation – SEP),* joint venture, temporary grouping, economic interest grouping, consortium, central buying organisation –must comply with the following rules:

- the object or effect of the cooperation must not be the *de facto* elimination of any competition (restricting competition, concerted allocation of a contract or part of a contract) or bid rigging (for example, cover bidding);
- the cooperation must be limited in time;
- it must have a strictly defined purpose (for example, developing a project) and must not lead to the exchange of strategic information other than the strict minimum required to carry out the joint project;
- the cooperation must be justified by the increased efficiency it will generate, and therefore the ability for each member to build a better commercial offer and provide a better service or product to the client (the "legitimate reasons"): complementary technical or logistics capability, sharing the risk on a major project, improved financial capacity to obtain funding, legal requirement for a partnership with local partners.

A written contract must be signed before the joint activity begins (or before the bid is submitted in the case of a competitive bidding procedure). The recitals must clearly state the "legitimate reasons" that led the competing parties to enter into the agreement or set up a cooperation structure.

The partners must undertake contractually to comply with competition law and similar principles to those set out in this Compliance Programme. Failure to do so during performance of the contract may lead to its termination without notice.

During the summary or wrap-up meeting prior to deciding whether to negotiate or enter into the agreement, the relevant Legal department must present an analysis with regard to competition law.

In the case of competitive bidding procedures, anti-competitive practices include the coordination of bids between competitors or information exchanges before the date on which the results are or might be known (for example, exchanges about the existence of competitors, their organisation, their level of interest in the relevant contract, or prices).

Accordingly, no sensitive information should be exchanged until the cooperation structure (e.g. consortium) has been set up; if negotiations to enter into a cooperation agreement fail once sensitive information has already been exchanged and the companies involved then submit individual bids, this would distort the competition. As soon as the cooperation structure has been set up, which will necessarily result in the exchange of sensitive information, its members may no longer bid individually or take part in another consortium.

A company may not be a member of several consortia bidding for the same contract, as this practice involves too many risks with regard to competition law.

8.4 Specific precautions where Group companies are in competition with each other

Group companies may occasionally or habitually compete with each other.

The French Competition Authority has laid down clear principles, which all Group companies must be aware of and observe:

- "Companies that have legal or financial ties but are commercially autonomous may submit distinct competing bids providing they do not consult beforehand";
- "Companies that have legal or financial ties but are commercially autonomous may waive their commercial autonomy in order to decide which of them shall bid for a contract or to work together on the bid, providing only one bid is submitted";
- "Companies may not submit several bids, thereby manifesting their commercial autonomy, if they have been prepared on a concerted basis or after the exchange of information, as these bids would no longer be independent. Presenting them as such would mislead the client about the nature, scope, extent or intensity of the competition";
- "It is irrelevant whether or not the client knew about the legal ties between the companies, as such ties do not necessarily mean that the companies act in concert or exchange information".

These principles appear in French Competition Authority decisions sanctioning companies of a same group that were found to have engaged in collusive bidding. They apply to any situation where Group companies are in competition with each other. A Group company with commercial autonomy must therefore always observe these principles when in competition with another Group company.

When the competing Group companies join forces to submit a joint bid, the provisions of section 8.3 above must be observed.

8.5 Specific precautions in the event of sub-contracting

COMPANIES USING SUB-CONTRACTORS

Although the sub-contracting relationship is not anti-competitive per se, it must not be disguised and should be disclosed to the client.

The exchange of information prior to entering into a sub-contracting relationship must be limited to the strict necessary and must comply with the competition rules. “The existence of a sub-contracting proposal does not mean that the principal has to disclose full information about its prices to the potential sub-contractor” (French Competition Authority).

The sub-contracting must be justified and not liable to weaken the competition.

SUB-CONTRACTORS

Companies seeking to secure sub-contracting agreements must not exchange information about their prices prior to entering into the contract. If they do, they may not submit individual bids.

Within the same competitive bidding procedure, it is not prohibited per se for a company to be a sub-contractor to several principals or to be both sub-contractor and member of a consortium; however, such situations carry major risks with regard to competition law and should be analysed with the assistance of the Legal departments and the Compliance Officer, and then authorised expressly by an executive officer of the relevant company.

9. CONTROL

9.1 Role of senior executives

All senior executives who have operational responsibility for a Group entity (subsidiary, branch, division, etc.) must ensure that their operations are compliant, implement appropriate controls, react to any whistleblowing alert and use the control methods at their disposal within the Group or Business segment. These methods are described below.

9.2 Group Internal Control Reference Manual

The fight against anti-competitive practices is treated as a specific topic in the Group Internal Control Reference Manual. A Business segment may add specific provisions to this Manual where necessary to ensure that the Compliance Programme is effective.

The Compliance Programme’s effectiveness is monitored annually by means of a self-assessment of the internal control principles implemented in the Business segments and their subsidiaries.

Should the self-assessment reveal deficiencies in the implementation of the Compliance Programme, an action plan will be drawn up and implemented promptly.

9.3 Audits

During their regular or specific audit assignments, the internal audit departments, assisted by the Compliance Officers, make sure that the Group’s operations comply with the principles of the Compliance Programme and the Group and Business segment Internal Control Reference Manual. Everyone is required to cooperate with the internal audit departments.

The conclusions of the internal audit report will be sent to the Business segment Ethics, CSR and Patronage Committee. They will be taken into account to strengthen where necessary the Compliance Programme, the internal control principles and any other procedures or mechanisms implemented to ensure that it is duly and properly followed.

9.4 Reporting

To enable the Group to comply with the CSR reporting requirements under French law, the Compliance Officer of each Business segment sends the Group Ethics Officer an annual report on the implementation of the Compliance Programme, the improvements made or to be made, the information memos circulated, the number of training courses given during the year in the Business segment, and the number of employees who attended the training. The reports are sent to the Ethics, CSR and Patronage Committee of the Business segment and the Ethics, CSR and Patronage Committee of Bouygues SA's Board of Directors. The report should also include information about the controls and audits carried out in accordance with sections 9.2 and 9.3 above. This information is also sent to the Accounts Committee of each Business segment.

9.5 Annual appraisals of senior executives and directors

Implementation of the Compliance Programme and paying due care and attention in the field of anti-competitive practices are elements taken into account in the annual appraisals of senior executives and department heads (for example, failure to implement anti-competitive preventive measures will be to the senior executives' or department heads' detriment).

10. SANCTIONS - DEALING WITH INFRINGEMENTS OF THE COMPETITION RULES

10.1 Infringements discovered by the company

Senior executives or employees who expose their company to the consequences of an infringement of competition law will be liable to sanctions, which may include termination of their executive office, disciplinary action and dismissal, even if no action is taken by the competition authorities or the public prosecutor.

The company must immediately cease its participation in the infringement and remedy its behaviour at its own initiative. Doing so may be considered as attenuating circumstances by the competition authorities.

In the event of a horizontal collusive practice (and in accordance with the recommendation of the French Competition Authority or the European Commission or as provided for by competition law in the relevant country), the Business segment's senior executives and Ethics Officer, after consulting with their internal and external advisers, shall determine whether to apply to the competition authorities for leniency. Under the leniency procedure, a company may be granted partial or total immunity from sanctions.

10.2 Infringements discovered during an investigation initiated by a competition or judicial authority

The Business segment's senior executives, after consulting with their Ethics Officer, shall review the option of a no contest plea if this could lead to a settlement[4], where permitted by the legislation. This is particularly the case in France, where the General *Rapporteur* of the French Competition Authority Investigation Services may offer to settle with the company in the event of a no contest plea, setting the minimum and maximum amount of the fine envisaged. If the company or organisation undertakes to change its behaviour, this may be taken this into account in the proposed settlement. If it agrees to the proposed settlement within a defined period, the General

[4] In France, settlements were introduced in the French Commercial Code under Article L. 464-2 III by the law of 6 August 2015 (the Macron law) for growth, activity and equality of economic opportunity. Settlements replace the no contest plea procedure.

Rapporteur of the French Competition Authority Investigation Services will recommend that the French Competition Authority impose a fine within the limits stipulated in the settlement.
The European Commission (DG Competition) may also agree to a settlement if, in the light of the information presented by the Commission, the company admits to taking part in the collusion and accepts liability.

Senior executives or employees who expose their company to the consequences of an infringement of competition law may be liable to the same punishment referred to in section 10.1 above.

The company must cease its participation in the established infringement and remedy its behaviour at its own initiative. Doing so may be considered as attenuating circumstances.

The company should cooperate and assist fully in any investigation; it is an offence to hinder the investigators' work.

10.3Fines and other financial penalties

Senior executives and employees will remain responsible for paying any fines or other financial penalties imposed on them by a court.

CHAPTER II
MAIN PROVISIONS OF COMPETITION LAW

FACT SHEET 1 – OVERVIEW

1. FREE AND FAIR COMPETITION: A REQUIREMENT THAT GOES BEYOND NATIONAL BORDERS

Free and fair competition is vital to an effective economy. This is one of the key principles underpinning the legislation of all the major industrial countries and the creation of the single European market. Globalisation is gradually putting pressure on the emerging economies to fall into line. Those are the rules of the game.

Most countries therefore have enacted very comprehensive competition laws.

This convergence has been accompanied by a spectacular rise in the penalties imposed on companies that engage in anti-competitive practices. International standards have emerged: for example, the maximum fine liable to be imposed on a company that infringes competition law (for example, a subsidiary of a major group) is typically set at 10% of consolidated worldwide sales of the group.

The following practices are universally prohibited:

- horizontal or vertical collusive practices between operators in a same market;
- abuse of a dominant position in a particular market;
- discriminatory practices intended to exclude a competitor from the market.

2. HIGHLY EFFECTIVE LEGISLATION

Competition law is implemented effectively through regulatory authorities with broad powers of investigation (requests for information, onsite inspections, confiscation of all business documents of any kind, in all types of premises and in whose ever possession they may be, cooperation with other competition authorities and courts in Member States, emergency interim measures). They have the power to impose extremely high financial penalties. They may sometimes give opinions on general and sector competition issues.

Procedural rules have considerably improved their effectiveness:

- leniency: when a party to a collusive practice voluntarily comes forward with evidence of collusion;
- settlement: when the authorities and the company (having waived the option of a no contest plea) agree on a fine in exchange for full cooperation during the investigation.

In France, the regulator is the French Competition Authority (*Autorité de la Concurrence*). For infringements affecting the European market, the regulator is the European Commission's Directorate-General for Competition (or DG IV).

In the past few years, cooperation between States has strengthened in order to fight anti-competitive practices, which often go beyond a country's borders (exchange of information between courts or competition authorities, cooperation in investigations).

The same anti-competitive practice may be identified and sanctioned by the authorities of several States if:

- one of the elements of the infringement is committed in the other State;
- the beneficiary of the anti-competitive practice is based in the other State;
- the victim of the infringement is based in the other State;
- the infringement has repercussions on the relevant market in the other State.

3. IMPORTANCE OF THE NOTION OF RELEVANT MARKET

The competition authorities are not bound by a restrictive legal framework.

While any practice can be considered as anti-competitive, whether it actually is or not will be determined by an analysis of its impact on how the market operates.

The notion of relevant market is therefore fundamental to determining whether there is abuse of a dominant position or an anti-competitive agreement in a market.

It has a geographical dimension (the market may be regional, national, European or global) and a product or service dimension (the market is the intersection of supply and demand for products or services regarded as interchangeable or substitutable by buyers or users).

Substitution is established when it can reasonably be supposed that buyers or users will regard the goods or services as suitable alternatives to satisfy a given demand. An example of a relevant market is the market for smartphones or tablets in mobile telephony.

The relevant market used by the authorities to assess the impact of a practice on the competition may be extremely narrow: a project put out to competitive tender has been considered as a distinct market in itself.

4. EVIDENCE OF ANTI-COMPETITIVE PRACTICES

The authorities have substantial freedom to establish evidence of anti-competitive practices. An accusation based on a tenuous set of indicators may be sufficient.

The form of the agreement or practice is irrelevant. The authorities may decide that a collusive practice exists based on a body of serious, accurate and consistent evidence, for example, parallel behaviour (a sudden increase in prices revealed upon publication of statistics), minutes, emails, reports, faxes or diaries referring to meetings with competitors, exchange of correspondence or taking part in meetings with competitors.

Anyone involved in a commercial function and all senior executives or employees, regardless of their hierarchical level, should be regularly reminded that it only takes slightly clumsy or ambiguous behaviour, comments or wordings of a personal or internal memo to expose the company to extremely severe penalties. There should be an unequivocal refusal to engage in any anti-competitive practice. The accused company is never given the benefit of the doubt.

5. RESPONSIBILITY OF THE PARENT COMPANY

The practices of a subsidiary may be attributed to its main shareholder (parent company, head company of a Business segment) if elements reveal that it gave instructions to or tolerated unlawful behaviour on the part of its subsidiary by failing to take action. European law takes a different approach as it is based on a presumption of the parent company's liability for the actions of its subsidiary even if it has not taken part in the infringement. This presumption can only be rebutted by providing evidence that the subsidiary takes its own independent decisions, which is very difficult to do.

In any event, if the parent company is held liable, the amount of the fine imposed can be based on the parent company's sales instead of that of the subsidiary.

FACT SHEET 2 – COLLUSIVE PRACTICES

A collusive practice is any form of concerted action between several competing companies in a same market ("horizontal" collusive practice) or between companies operating at different levels in the production and distribution chain ("vertical" collusive practice).

A collusive practice is anti-competitive and therefore prohibited when its purpose or effect is to distort the competition in that market. Therefore, a practice that has an anti-competitive purpose but does not have an anti-competitive effect can be sanctioned as can a practice that does not have an anti-competitive purpose but has an anti-competitive effect (in the latter case, the absence of intent will be taken into account).

1. HORIZONTAL COLLUSIVE PRACTICES (collusion between direct competitors)

A horizontal collusive practice is a concerted action between economic agents operating at the same level of the production and distribution chain (for example, several producers of a similar type of product).

Prohibited practices include but are not limited to the following:

- discussion and/or agreement between competitors on prices or pricing policies: simultaneous price increases, simultaneous promotions;
- agreement on sales volumes;
- agreement on market shares;
- agreement to restrict supply and therefore increase prices or stabilise the market;
- concerted refusal to supply certain customers (boycott);
- sharing out geographical areas, market segments or customers;
- concerted decision on the future winner of a public procurement contract;
- cover bidding in a public procurement contract tender invitation;
- exchange of information, even if not used, between companies operating in the same market, where they enable the market to be manipulated: information on present, past or future prices or market shares; prior exchange of information between competitors before a price increase; information about a price structure; business volumes, identity of customers, terms and conditions of sale, intentions as regards tender invitations, distribution channels; intentions as regards investment or innovation; information about prices given to an official organisation that publishes quarterly statistics;
- exchange of information between companies bidding for the same public procurement contract before the final bids are submitted;
- import or export restrictions;
- restricting or controlling production, outlets, technical development or investments.

The competition authorities will look very closely at:

- the activities of professional organisations that bring together competitors in a same business sector and which give their members the opportunity to exchange sensitive information;
- any form of consortium or cooperation, even temporary, between competitors.

Special case of an anti-competitive practice instigated or tolerated by the client or contracting authority

It may be that a client or contracting authority instigates, tolerates or approves a collusive practice. The competition authorities do not regard this as an attenuating circumstance reducing the seriousness of the practice or exonerating the parties to it.

2. VERTICAL COLLUSIVE PRACTICES (collusion with suppliers or distributors)

A vertical collusive practice is a concerted action between economic agents at different levels in the production and distribution chain (a supplier and its distributor, or several of them).

Prohibited practices include but are not limited to the following:

- imposing on the purchaser or distributor a specific resale price, a minimum resale price, the product margin or the same resale price as the competition;
- giving a discount or sharing a portion of the marketing costs on condition that the purchaser or distributor commits to a resale price;
- threatening, intimidating, imposing penalties on or any other reprisals to set the resale price;
- forcing the purchaser or distributor to sell the product only in a given territory (absolute territorial protection clauses);
- entering into exclusive long-term agreements when the product has a large market share;
- applying economically unjustified discriminatory prices or conditions;
- forcing a purchaser to buy a product (or service) in order to buy another product (or service).

3. EXEMPTION OF CERTAIN AGREEMENTS

In a few relatively restricted cases that are strictly defined by regulations, the French and European competition authorities exempt certain agreements that could be regarded as collusive if they contribute to improving production or distribution of the goods or to promoting technical or economic progress (Article 101, paragraph 3 of the Treaty on the Functioning of the EU), provided that:

- consumers obtain a fair share of the resulting benefit, and
- they do not impose needless restrictions or afford the possibility of eliminating the competition in respect of a substantial part of the products in question.

The cases in which exemption applies are specified in the regulations and mainly concern vertical agreements.

The Legal department of the company must imperatively be consulted before any proposal to negotiate an agreement to check whether it might benefit from exemption.

FACT SHEET 3 – ABUSE OF A DOMINANT POSITION

A company holding a dominant position is one that is able to prevent effective competition and does not have to take into account competitive or consumer pressure. This position allows it to behave independently of its competitors: it has "market power" allowing it to set its commercial and pricing policy without concern for the competition. A dominant position may be held individually (by one company) or collectively (by a grouping of several companies). In some markets, a weak market share may be enough to create a dominant position. For example, this is the case when there are numerous competitors each holding a tiny market share compared with the market leader.

Holding a dominant position in a market is not per se a prohibited practice. However, a company that abuses its dominant position will be severely sanctioned by the competition authorities. Collusion and abuse of a dominant position are not mutually exclusive. Prohibited vertical collusive practices are even more severely sanctioned when carried out by a company in a dominant position.

Examples of abuse of a dominant position

- Taking advantage of its position to engage in practices that exclude or squeeze out competitors
- Entering into long-term exclusive agreements with customers
- Refusing a sale
- Applying discriminatory prices or conditions (practice of predatory prices)
- Imposing the resale price
- Practising bundled sales or services
- Refusing to grant a licence
- Granting discounts or advantages that effectively exclude a competitor

Abuse of superior bargaining position

Abuse of superior bargaining position is when a company takes unfair advantage of the weaker bargaining power of a supplier, sub-contractor or customer. This provision of French law theoretically allows abusive practices to be sanctioned even if the perpetrator does not hold a dominant position in a market. But the practice is usually assessed from the perspective of abuse of dominant position.

Three conditions must be met:

- there must be a superior bargaining position: this will be analysed on the basis of the company's contribution to the sales of its partner or partners; the brand awareness and size of market share of the partner or partners; whether there are any alternative solutions and the factors that led to the unequal bargaining position (deliberate strategy or choice dictated or imposed on the victim of the abuse).
- there must be abuse of the superior bargaining position: refusal to sell, bundled sale, discriminatory practices (any practice involving a departure from usual behaviour that could be considered as abuse).
- there must be a real or potential harmful effect on competition in the market.

A company that suffers abuse of superior bargaining position may refer to the French Competition Authority and may also file a claim for damages in the civil courts.

FACT SHEET 4 – SANCTIONS

The same infringement may be liable to several different sanctions:

- administrative sanctions imposed by the competition authorities;
- compensation to the victim granted by civil courts; nullity of contracts and commitments;
- criminal sanctions against the company and/or its senior executives and employees personally involved in the infringement;
- "ancillary sanctions", including debarring from public procurement contracts.

When the offence is committed or produces effects in several States, the offender risks being sanctioned in each of them (see Fact sheet 1 – section 2).

1. ADMINISTRATIVE SANCTIONS IMPOSED BY THE COMPETITION AUTHORITIES

The following table shows the sanctions, and the method for calculating them, that can be imposed by the European and French competition authorities for anti-competitive practices, thus underlining the scale of the risks run by companies that infringe anti-competition law:

	European Commission – DG IV	French Competition Authority
Basic fine	**= Percentage of the value of the relevant sales (0-30%)** **x Period** (in years or period of less than a year) **+ 15-25% of the value of the relevant sales:** additional deterrent effect against cartels	**= Percentage of the value of the relevant sales** (0-30% and 15-30% for horizontal collusive practices involving price fixing, dividing up markets or customers or restricting production) **x Period** (in years or period of less than a year)
Increased by	**Aggravating factors** For example, ringleader, repeat offender, obstructing the investigation	**Aggravating factors** For example, ringleader, repeat offender, (same infringement in less than 15 years – increase of 15-50%), obstructing the investigation, coercion of or reprisals against competitors, the company is influential or has a moral authority (for example, responsible for a public service); the company is large, economically powerful or has substantial global resources
Reduced by	**Attenuating factors** For example, minor role or practice encouraged by the legislation	**Attenuating factors** (victim of coercion, infringement encouraged or authorised by the public authorities, compliance programme, competitive activity in a substantial part of its products and services, mono-product company, cooperation in the investigation, commitments made, payment of compensation to the victim under a settlement agreement)
Maximum amount	**10% of consolidated worldwide sales** of the company that committed the infringement (per infringement); presumption of parent company liability (=> basis for fine = parent company sales)	**10% of consolidated worldwide sales** excluding tax (per infringement) Or €3 million if not a company (for example, professional organisation)
Possibility of increase		Increase possible, up to a maximum of 10% of the financial penalty to finance support for victims
Possibility of additional reduction	**Leniency:** 100% for the first company to come forward, 30-50% for the second, 20-30% for the third and up to 20% for the others	**Leniency** (before statement of allegations made): 100% for the first company to come forward if the competition authority does not already have information about the infringement (first degree leniency), second degree leniency up to 50% if further evidence of significant value is provided
	Settlement: reduction of up to 10% of the penalty (can be cumulated with the reduction for leniency)	**No contest plea** **+ ceasing and desisting from the practice** **+ commitment made**: reduction possible as part of a settlement
	Reduction related to inability to pay (when payment of the fine affects the company's economic viability)	**Reduction related to inability to pay** (when payment of the fine affects the company's economic viability)

Sanctions imposed by a competition authority are intended to protect the public economic order, not to compensate for losses sustained by the parties. They are therefore paid to the State (or the European Union). They are not tax deductible in France or, typically, in other countries.

Competition authorities impose financial penalties that are intended to act as a deterrent: they do not simply seek to sanction unlawful practices but to raise awareness and send a dissuasive message to other companies. In line with this objective, the competition authorities deliberately impose more severe penalties on large groups as they set the example.

Other sanctions imposed by the French Competition Authority:

- publication of an extract of the decision (L. 420-6 and L. 464-2 of the French Commercial Code (*Code de Commerce*));
- the competition authority may order the company to cease and desist from the anti-competitive practice within a given time period, impose special conditions or accept commitments from the companies designed to put an end to the practices (L. 464-2 of the French Commercial Code (*Code de Commerce*)).

The 15 largest fines imposed by the French Competition Authority

Amount (€ million)	Business sector Infringement	Year
672.3	**Carrier industry (parcel delivery** Two instances of collusion, the main one (fine of €670 million) involving 20 companies and the trade association TLF for repeated cooperation on annual price rises (2004-2010period)	2015
575.4*	**Steel industry** Collusive practices between 11 companies	2008
534	**Mobile telephony** Collusive practices between Bouygues Telecom, Orange and SFR	2005
384.9	**Cost of cheque processing** Collusive practices between 12 banks	2010
367.9	**Washing powder** Collusive practices between 4 manufacturers	2011
350	**Business telephony** (no contest plea) Abuse of dominant position by Orange, anti-competitive price rebates, discrimination	2015
242.4	**Flour (France-Germany)** Collusive practices between 13 flour producers or Franco-German flour groups	2012
192.3	**Dairy products** Price agreements and volume sharing between 11 companies – Cartel reported by Yoplait, which obtained full immunity from its fine (€44 million) under the leniency programme (first degree)	2015
183.1	**Mobile telephony** Abuse of dominant position by Orange and SFR, by practising excessively dissimilar prices for calls within and outside their network	2012
174.5	**Preventing the renegotiation of mortgage loans by individuals** Collusive practices between 9 banks	2000
100	**Energy** Abuse of dominant position by Engie	2017
94.4	**Price agreements on certain services between temporary employment agencies** Collusive practices between 3 major companies in the market	2009
69.2	**Zinc** Abuse of dominant position by Umincore (exclusive supply)	2016
54.9	**Road signalling** Collusive practices between 8 companies in the sector including a Colas subsidiary (Aximum)	2010
47.9	**Public procurement contracts in the Paris region** Collusive practices between 34 construction companies, including subsidiaries of the Bouygues Group (Screg Île-de-France, Colas, Colas Île-de-France Normandie, Bouygues Bâtiment Ile-de-France)	2006

(*) Reduced to €73 million by the Paris Appeal Court.

The ten largest fines imposed by the European Commission

Amount (€ million)	Business sector Infringement	Year
2,926	**Truck manufacturers** Collusive practices between 6 manufacturers for 14 years (price fixing, collusion on timeline for introducing new emissions technology to bring medium and heavy goods vehicles into line with European standards)	2016
2,420	**Online search engines** Abuse of dominant position by Google	2017
1,470	**Cathode ray tubes** Collusive practices between 7 companies for 10 years (price fixing, market allocation, customer allocation , coordination of production capacity and exchange of sensitive commercial information)	2012
1,383	**Manufacturers of flat glass for the automotive industry** Collusive practices between 4 manufacturers	2008
834 **(initial fine: 992)**	**Lifts and escalators** Collusive practices between the subsidiaries of 3 major groups for installation and maintenance in 4 countries	2007
799	**Air cargo carrier**	2010
790 **(initial fine: 855)**	**Vitamins** Collusive practices between 8 companies to allocate markets and fix prices for 10 years	2001
676	**Candle wax** Price cartel between 9 groups	2008
648	**LCD manufacturers**	2010
622	**Manufacturers of bathroom equipment** Collusive practices between 17 manufacturers in 6 countries for 12 years	2010

2. CIVIL "SANCTIONS": COMPENSATION FOR THE VICTIM OF THE ANTI-COMPETITIVE PRACTICE – NULLITY OF CONTRACTS AND COMMITMENTS

2.1. Compensation for harm

EUROPEAN UNION

Any victim (individual or legal entity) of a practice contrary to European competition law may seek compensation for the harm sustained provided that evidence of the company's wrongdoing, the amount of the loss, and the cause and effect between the wrongdoing and the loss can be provided[5]. Around 25% of the decisions taken by the European Commission against cartels have been followed by compensation claims by the victims.

The Commission recommends the enactment of class actions for victims of anti-competitive practices.

FRANCE

Several laws have been passed in France recently to make it simpler and easier for victims of anti-competitive practices to claim compensation through the courts. This is a clear signal to companies engaging in anti-competitive practices that they will be at much greater risk of having to pay compensation to the victims.

Introduction of class actions

In 2014, following the European Commission's recommendation, France introduced the class action, which allows consumers to group together to claim compensation for losses caused by an anti-competitive practice.

It is similar in many respects to the class action system that exists in the United States, although the French system includes a number of mechanisms to prevent excesses. For example, class actions may only be brought by certain approved consumer protection organisations.

Class actions allow consumers to act collectively and thus share the legal costs and expenses involved. Previously, cost was often a serious deterrent for consumers wishing to make a claim, particularly when the loss sustained by each one was perhaps only a few tens or hundreds of thousands of euros. Class actions now enable thousands or even hundreds of thousands of consumers to take collective action against a perpetrator of anti-competitive practices, even when their individual loss is relatively small.

Through this new mechanism, the French legislator is sending a clear message that anti-competitive behaviour practised on a wide scale, even if it only results in a small loss to each individual victim, will no longer go unpunished or uncompensated.

At the end of 2016, nine class actions had been brought against large industrial groups and banks. However, none of them are seeking compensation for loss caused by anti-competitive practices.

[5] *European Commission – Competition – Delivering for consumers: http://ec.europa.eu/competition/consumers/contacts_en.html#1*

Introduction of new provisions to make it easier to claim compensation

Victims of an anti-competitive practice may seek compensation for losses sustained on the basis of Article 1240 (formerly 1382) of the French Civil Code (*Code Civil*) and the new provisions introduced in Articles L. 481-1 *et seq.* of the French Commercial Code (*Code de commerce*) [6].

The new laws set out the fundamental principle that "Individuals and legal entities shall be liable for the harm they cause by practising anti-competitive behaviour".

They also contain several provisions to make it easier for victims of anti-competitive practices to claim compensation through the courts:

- "There is now a conclusive presumption that an individual or legal entity is guilty of anti-competitive behaviour when a final decision to that effect has been taken by the French Competition Authority or other jurisdiction". If a claim for compensation is made, individuals or legal entities that have been found guilty of anti-competitive practices by the French Competition Authority or other jurisdiction will automatically be held liable unless they can prove that they did not take part in those anti-competitive practices, which will not be easy to do. This should considerably ease the task of the victims, who previously had to establish proof of the offender's wrongdoing;

- "Where the European Commission has established the existence of an anti-competitive practice, the French court in which a claim for compensation has been brought on the grounds of that practice cannot take a decision that runs counter to the Commission's ruling". This principle should also make things easier for victims, as they will now be able to use the European Commission's decision as grounds for their compensation claim;

- It is also easier for victims to prove that they have suffered harm. Previously, this was a serious deterrent for victims seeking compensation. The legislation now provides that "An anti-competitive practice between competitors is presumed to cause harm unless proved to the contrary". The burden of proof has therefore been reversed and the perpetrator now has to prove that the anti-competitive practice did not cause harm to the victim. Otherwise, the victim will automatically be presumed to have suffered harm and need only justify the amount of compensation claimed;

- The new laws also set out what is meant by "harm". It not only covers the actual loss sustained, but also loss of profit, loss of opportunity and moral damages;

- Lastly, the new laws establish a principle of joint and several liability between the offenders. If several individuals or legal entities have colluded in an anti-competitive practice, they are jointly and severally liable for the resulting harm, in proportion to the severity of their wrongdoing and their role in causing the harm.

Ultimately, these provisions should encourage and prompt victims to make claims for compensation against anyone who engages in anti-competitive practices.

[6] *These new provisions result from the implementation in French law (through the Sapin 2 law of 9 December 2016 as well as a decree and Ruling of 9 March 2017) of the principles set out in Directive 2014/104/EU pertaining to certain rules governing actions for damages under national law for infringements of the competition law.*

Perpetrators should be aware that apart from administrative sanctions, they risk having to pay increasingly large amounts of compensation to the victims, who now have strong legal means to make a claim.

Increase in compensation claims

Claims for compensation due to infringements of competition rules have been increasing in the past few years.

For example, Île-de-France (Paris region) is claiming compensation of €242 million for harm sustained from some 15 construction companies and some ten individuals, senior executives, employees and consultants on the grounds of collusion on public procurement contracts for schools in the Paris region).

UNITED STATES

In the United States, a perpetrator of anti-competitive practices may be ordered to pay punitive damages (triple the compensation awarded).

OTHER COUNTRIES

In some countries, if the exact amount of the loss cannot be proved, the law sets a percentage of the sales generated by the anti-competitive practice (for example in Hungary).

2.2. Nullity of contracts and commitments

French law provides that any contract or commitment relating to an anti-competitive practice is null and void. A public client may seek nullity of contract for wilful misrepresentation and seek a refund of the entire contract price with interest. Under French case law, a company may be unable to reclaim costs from the public authority when a contract is voided on the grounds of an unlawful practice that obtained the administrative authorities' consent through wilful misrepresentation.

3. CRIMINAL SANCTIONS

In France, any person who knowingly plays a decisive and personal role in developing, organising or implementing collusive practices or abuse of a dominant position is liable to four years' imprisonment and a fine of €75,000.

A legal entity may also be ordered to pay criminal fines either directly or jointly, along with its offending senior executives.

Several countries have chosen to combat anti-competitive practices through criminal sanctions aimed more specifically at senior executives and employees of companies. The United States focuses on criminal sanctions against individuals: in 2010, the Department of Justice (DoJ) imposed a total of more than 26,000 days' imprisonment (i.e. more than 71 years in total) for cartel cases. Between 2007 and 2016, the DoJ lost only 17 of a total of 580 cases brought in the criminal courts for competition offences.

FACT SHEET 5 – LENIENCY IN HORIZONTAL COLLUSIVE PRACTICES

What to know

Today, 80% of the cases handled by the European Commission's Competition Directorate come from applications for leniency.

For example, a cartel between truck manufacturers, which resulted in the heaviest fine ever imposed by the European Commission (€2.93 billion), was reported by MAN in 2016. Under the leniency programme, MAN was given full immunity (first degree leniency) from the fine it would otherwise have incurred (more than €1.2 billion) in exchange for reporting the practice and cooperating in the investigation.

In 2017, Daimler is said to have informed the European Commission of wide scale collusion between the main German car manufacturers whose aim was to limit innovation.

In general, leniency programmes are becoming increasingly successful in Europe. The European Commission and 26 member States now have such a leniency programme.

In France, companies are making more and more use of leniency programmes.

In France and Europe, the benefit of leniency is restricted to horizontal collusive practices regarded as serious.

French law confers immunity from a fine on the first company to come forward and report the collusive practice. The company can only benefit from immunity if the French Competition Authority did not already have evidence of the collusive practice (first degree leniency). Failing that, providing further evidence of significant value may, depending on the French Competition Authority's opinion, warrant a reduction of up to 50% of the penalty.

European law provides either full immunity or a scale of reduction depending on the order of the leniency applications: 30-50% for the second, 20-30% for the third and up to 20% for the others.

The competition authority is free to grant or refuse immunity.

Leniency is not available for companies that have coerced their competitors.

If leniency is refused, a company that does not contest the allegations may be offered a settlement agreement by the competition authority or the European Commission. It may also appeal against the refusal of leniency in the competent courts.

What to do

If a red flag is raised concerning a horizontal collusive practice, the Business segment's senior executives and Ethics Officer, after seeking advice from their internal and external advisers, shall consider the option of applying to the competition authorities for leniency.

Admission to the leniency regime is conditional upon all of the following:

- maintain continuous and complete cooperation as soon as the application is made and throughout the investigation;
- cease further participation in the collusive practice even where it exposes the company to liability for abusive termination of contractual relations;
- not to have destroyed, falsified or hidden evidence and not to have disclosed its intent to apply for leniency;
- the application must not be made known to third parties and participants in the collusive practice.

FACT SHEET 6 – OTHER PRACTICES GOVERNED BY COMPETITION OR SIMILAR LAW

Other provisions of competition law or peripheral to competition law are important to know about due to the heavy sanctions or repayment of undue gains that may be imposed on offenders. These laws include the merger control rules applicable in France, Europe and most other countries, State aid sanctioned under European rules and unfair or discriminatory practices sanctioned under French law in particular. A brief description of these rules is given below.

1. MERGER CONTROL

Mergers and acquisitions (acquisition of companies, creating joint subsidiaries, merger) above a certain threshold are subject to prior approval of the competition authorities. They may prohibit the transaction, give their clearance subject to commitments or remedies (for example, sale of a business operation) or give their unconditional clearance. Companies that fail to report a proposed concentration or that complete the transaction before obtaining authorisation are subject to extremely severe penalties. For example, in 2016, Altice and SFR group were jointly ordered by the French Competition Authority to pay a fine of €80 million for having completed two concentration transactions before obtaining consent from the French Competition Authority. If the transaction is completed without obtaining approval or before seeking approval, the competition authorities can also order the companies to reverse it.

Any Group entity should therefore verify whether a proposed concentration is notifiable and include a condition precedent in the acquisition or sale agreement making the deal contingent on obtaining approval from the relevant competition authorities (bearing in mind that a transaction may require approval from several different competition authorities).

2. STATE AID

European competition law has a procedure for controlling aid granted to a company by the State or any public body, as this could create a competitive imbalance in the market. The European Union authorities regard State aid as very broadly covering any direct or indirect public participation in funding a project. If the aid is declared illegal by the European Union authorities, the recipient will be required to pay it back. The fact that a public authority grants aid (directly or indirectly) is not a guarantee that it complies with European regulations. An in-house lawyer must always be consulted when a public body grants aids, such as public guarantees or subsidies.

3. UNFAIR OR DISCRIMINATORY PRACTICES

3.1 General information

In France, manufacturing, trading or industrial companies engaging in any of the following practices will be held liable and will be required to compensate for losses sustained (Article L. 442-6, I, of the French Commercial Code (*Code de Commerce*)):

- Undue advantage: obtaining or seeking to obtain an advantage of any kind from a commercial partner without providing a commercial service in exchange, or which is manifestly disproportionate to the value of the service provided.

- Significant imbalance: imposing or seeking to impose obligations on a commercial partner that would create a significant imbalance between the rights and obligations of the parties.

- Obtaining or seeking to obtain an advantage as a condition to placing an order, without providing a written commitment to a proportionate purchase volume.

3.2 Termination of or threat of terminating an established business relationship

Among the unfair or discriminatory practices, the termination of or the threat of terminating an established business relationship is particularly significant because of the amount of litigation that it generates.
An established business relationship is one that is stable, ongoing and regular, providing a reasonable expectation of continued business with a partner in the future.

THREAT OF TERMINATION

It is a civil offence for a company to obtain or seek to obtain manifestly abusive conditions in terms of prices, payment periods, terms and conditions of sale or services by threatening to abruptly terminate the business relationship either in full or in part.

TERMINATION

It is a civil offence for a company to abruptly terminate an established business relationship, either in full or in part, without giving sufficient prior written notice, which is assessed by reference to customary practices and taking account of the length of the business relationship.
The company may terminate a contract without notice in the event of serious misconduct by its partner, but not on the grounds of the partner's economic difficulties.

4. SANCTIONS FOR UNFAIR OR DISCRIMINATORY PRACTICES

Sanctions against companies engaging in unfair or discriminatory practices have been significantly increased by the French legislator in recent years[7].

A claim for compensation for the harm caused by such practices may be made by (i) anyone with a vested interest (i.e. the victims of the unfair or discriminatory practices), (ii) the President of the French Competition Authority, (iii) the French Ministry of the Economy, or (iv) the French public prosecutor. The latter two may request additional sanctions, including:

- an order to cease the unlawful practice;
- nullity of clauses or of unlawful contracts;
- recovery of undue payments;
- civil fine of up to €5 million (which may be increased to triple the sums unduly paid or, commensurate with the undue gain made, 5% of sales before tax generated in France by the offender;
- compensation for loss sustained by the victim.

The court will systematically order the decision to be published and may also order the company to disclose it in its annual report.

If the victim of abuse of superior bargaining position becomes insolvent, the offender may be regarded as the co-employer of all employees whose job is threatened.

[7] *Law of 6 August 2015 (the Macron law) for growth, activity and equality of economic opportunity and the Sapin 2 law of 9 December 2016.*

FACT SHEET 7 – USEFUL LINKS AND REFERENCES

Consult the links below for key information on competition law. If the link has been changed, the information can be found by entering the title in a search engine.

FRANCE

French Commercial Code (*Code de Commerce*)

Please refer to Book IV of the French Commercial Code (*Code de Commerce*): *"De la liberté des prix et de la concurrence":*
http://www.legifrance.gouv.fr/
Click on: les codes en vigueur > choisir un code > code de commerce > consulter

French Competition Authority (*Autorité de la Concurrence*) – Proceedings

http://www.autoritedelaconcurrence.fr/user/index.php?lang=en

EUROPEAN UNION

Treaty on the Functioning of the European Union (particularly Articles 101 and 102)

http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012E/TXT

Other applicable laws

http://europa.eu/pol/comp/index_en.htm

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The Bouygues group's Code of Ethics and Compliance Programmes (Competition, Anti-corruption, Financial Information and Securities Trading, Conflicts of Interest, and Embargoes and Export Restrictions) can be consulted on the Group's Intranet site (ByLink).

DISCLAIMER
This document gives an overview of applicable French regulations as at 1 June 2017.
Any updates shall be made available exclusively on the Group's intranet.