

17 January 2011: Antitrust fines: a public consultation is open for two months

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The French Competition Authority publishes a draft notice giving guidance on the method followed when setting antitrust fines

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During his New Year message, Bruno Lasserre, President of the French Competition Authority (*Autorité de la concurrence*), unveiled the Authority's draft notice on antitrust fines and announced a two-months public consultation on the document. The draft, which provides guidance on the method followed when setting fines in antitrust cases (cartels, bid-rigging and abuses of a dominant position), is available on the Authority's website.

The notice is intended to enhance the transparency of the process followed by the Authority when setting antitrust fines. It will also facilitate the discussion with the parties, during the run-up to the decision, on the main elements taken into account in order to set the fine. The method described in the draft enables the Authority to balance deterrence and proportionality, by setting the fine at a level which reflects the gravity of the offence and the economic harm that it is liable to cause, as well as the individual situation of the firm and, where applicable, of the group to which it belongs.

Stakeholders are invited to comment on the draft notice

The Authority's initiative follows up on the good practices agreed upon by the European competition authorities in May 2008¹, as well as on a report published in September 2010 by an independent mission on antitrust fines².

The good practices and the report rest on a wide consensus, both between competition authorities and among private stakeholders, on the best way to organize the fine-setting process in practice. The report has made a set of suggestions on this basis, while at the same time expressing newer ideas. In the course of its own preparatory work, the Authority has also launched a dialogue on antitrust fines with the review courts, the French *Cour de cassation* (Supreme Court) and *cour d'appel de Paris* (Paris Court of Appeal).

The publication of the draft marks the start of a wide consultation, open until March 11, 2010. All stakeholders (e.g. consumer associations and businesses, but also other competition authorities) are encouraged to contribute.

The consultation will be followed by a public roundtable, scheduled in Paris on March 30, 2010, in order to provide a further opportunity of discussing the draft.

Dedicated guidance will further enhance the transparency of the fine-setting process

The publication of guidance on antitrust fines is intended to foster transparency and to frame the discussion on the main elements taken into consideration in order to set the fine before a decision is taken by the Authority. The draft explains the method followed in practice by the Authority when applying the fining criteria set out by the French Code of Commerce³. It also recalls what are the main elements that can be taken into account, on a case-by-case basis, when setting the fine.

The draft, which builds on the guidelines followed by the Authority in its past decisions, is consistent with the best practices followed by other European competition authorities. This is in line with the case-law of the European Court of Justice, which has held that the National Competition Authorities (NCAs), which are empowered to enforce European competition rules, must make sure that

For more detail, please consult :

- ***the full text of the Authority's draft guidance on antitrust fines***
- ***comparative table on methods implemented by the main competition authorities to set fines***

The New Year's message also provided an opportunity of taking stock on the Authority's action in 2010. For more details, please consult:

- ***facts and figures for 2010***
- ***President Lasserre's speech in video***

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