

17 May 2011: Antitrust enforcement: new guidance on antitrust fines

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The French *Autorité* publishes the method according to which it sets financial penalties in cases of cartels and abuses of dominance

[> *Version française*](#) 

The aim of the notice is twofold: i) enhancing transparency on the method followed by the *Autorité* in order to set financial penalties in antitrust cases; ii) providing upfront guidance on which parties can rely when arguing their case before the *Autorité* takes its decision.

The notice explains in detail how the *Autorité* sets financial penalties on a case-by-case basis, pursuant to the four criteria provided by the law, namely: i) the seriousness of the infringement; ii) the importance of the harm done to the economy; iii) the situation of the undertaking or of the group to which the undertaking belongs; and iv) reiteration.

The *Autorité*'s guidance takes into account, within the framework of the French Code of Commerce, the "Principles for convergence" agreed upon by all the competition authorities of the European Union (EU) in order to ensure the effective and consistent implementation of European competition rules.

Background

On 17 January 2011¹, the *Autorité* published a draft notice describing the method that it follows when setting financial penalties intended to punish antitrust infringements and to deter market players from breaking the law.

Until 11 March 2011, it launched a wide public consultation, in the course of which it gathered 22 contributions coming from a broad range of stakeholders (other competition authorities, business associations, consumer organizations, antitrust bar, specialized economists, academics, etc.). On 30 March, it held a public roundtable in Paris, in order to give all interested parties the opportunity of informing themselves on the main comments received during the consultation² and of exchanging views.

The final notice builds on these comments, as well as on the "Principles for convergence" agreed upon in May 2008 by the European Commission and by the 26 other European NCAs³, pursuant to two years of benchmarking and common thinking, in order to guarantee the consistent and effective implementation of European competition rules.

A transparent and pragmatic approach

The notice explains the different steps of the method followed by the *Autorité* when applying the criteria provided by the French Code of Commerce⁴. It also incorporates the main guidelines of the *Autorité*'s decisional practice and the main teachings of the case-law of French review courts as well as of European courts in relation to antitrust fines.

In practice, the *Autorité* assesses, in a first step, the seriousness of the infringement and the importance of the harm done to the economy. It then sets the basic amount of the financial penalty on the basis of this assessment. This basic amount corresponds, for each undertaking, to a proportion of the value of their sales of products or services relating to the infringement during a reference year which is usually their last business year of participation in the infringement. This proportion is fixed on a case-by-case basis, on a range comprised between 0 and 30%⁵. The *Autorité* then takes into account the duration of the infringement.

In a second step, the basic amount is adjusted downwards or upwards, in order to take into account the specific behavior and the individual situation of each

