

# Code of Commercial Law

**Legislative section**

**BOOK IV -**

**ON THE FREEDOM TO SET  
PRICES AND TO COMPETE**



**Title I :  
General Provisions**



**Title II :  
On Anti-competitive Practices**



**Title III : On Mergers  
and Acquisitions**



**Title V :  
On Investigation Powers**



**Title VI :  
On the Competition Council**

## ► Title I : General Provisions

### *Art. L. 410-1*

The rules defined in this book shall apply to all production, distribution and service activities, including those carried out by public entities, especially within the framework of public utility concessions.

### *Art. L. 410-2*

Unless otherwise stipulated by law, the prices of goods, products and services which were subject before January 1st, 1987, to the ordinance No. 45-1483 of June 30, 1945, shall be determined by the play of competition.

However, in industries or areas where price competition is limited either by monopoly situations, by lasting supply difficulties or by legislative or regulatory provisions, prices may be regulated by decree of the Council of State (Conseil d'Etat) after consulting the Competition Council (Conseil de la concurrence).

The provisions of the first two paragraphs do not stand as an obstacle to a Government decision, by means of a decree of the Council of State (Conseil d'Etat), to act against excessive price increases or decreases, to take temporary measures justified by a crisis, extraordinary circumstances, a public calamity or a manifestly abnormal situation on a specific industry market. The decree will be passed after consulting the National Consumption Board. It shall indicate its period of validity, which may not exceed six months.

## ► Title II : On Anti-competitive Practices

### *Art. L. 420-1*

Joint actions, agreements, express or tacit agreements or coalitions are prohibited, even through the direct or indirect agency of a company belonging to a group established out of France, if they have the purpose or may have the effect of barring, restricting or distorting the play of competition in a market, particularly when they aim at:

- 1° - Limiting other companies' access to the market or free exercise of competition by other companies ;
- 2° - Hindering the free setting of prices by artificially controlling their increase or decrease;
- 3° - Limiting or controlling output, outlets, investments or technological progress;
- 4° - Sharing out the markets or sources of supply.

### *Art. L. 420-2*

Is prohibited, in the conditions set forth in article L. 420-1, the abusive exploitation of a dominant position by a company or group of companies in the domestic market or a substantial segment thereof. These abuses may consist of, in particular, a refusal of sale, tied sales or discriminatory selling conditions as well as of a breach of established commercial relations on the sole ground that the partner refuses to be subjected to unjustified marketing conditions.

Is also prohibited, whenever it is susceptible to affect the functioning or structure of the competition, the abusive exploitation, by a company or group of companies, of the condition of economic dependence in which a customer company or supplier finds itself vis à vis such company. These abuses may consist of the refusal of sale, tied sales or the discriminatory practices mentioned in article L. 442-6.



### *Art. L. 420-3*

**A**ny commitment, agreement or contract clause relating to a practice prohibited by articles L. 420-1 and L. 420-2 is null and void.

### *Art. L. 420-4*

**I.** The following practices shall not be subject to the provisions of articles L. 420-1 and L. 420-2:

- 1°. Practices resulting from the application of a legislative text or by-law adopted for purposes of the implementation of the former;
- 2°. Whose authors can give evidence that they have the effect of ensuring economic progress, including through the creation or preservation of employment, and that they set aside a fair share of the resulting profit for the users without giving the concerned companies the possibility to eliminate the competition concerning a substantial portion of the products involved. These practices, which may consist of organizing, in the case of agricultural products or products of agricultural origin, under the same trademark or sign, the volumes and the quality of production as well as the marketing policy, including by means of agreeing to a common selling price, will be allowed to restrict competition only to the extent that they are indispensable to the achievement of said intended progress.

**II.** Some categories of agreements or some agreements, especially if their purpose is to improve the management of medium-size or small companies, may be acknowledged as meeting these conditions by a decree issued with the Competition Council's approval.

### *Art. L. 420-5*

**C**onsumer prices offered or selling price practices that are excessively low compared to

production, processing and marketing costs are prohibited if such offers or practices have the purpose or may have the effect of eliminating a company or one of its products from a market or of barring market access.

Marketing costs shall also include all the expenses resulting from the legal and regulatory obligations linked with the safety of the products.

These provisions are not applicable to "as is" resale except for sound recordings reproduced on physical media.

### *Art. L. 420-6*

**A**ny individual who fraudulently takes part, personally and decisively, in the design, organization or implementation of practices referred to in articles L. 420-1 and L. 420-2 shall be sentenced to four years' imprisonment and fined FF 500,000.

The court may order that its decision shall be published in full or by extracts in the newspapers of its choice at the penalized party's expense.

Actions suspending the term of limitation before the Competition Council (Conseil de la concurrence) pursuant to article L. 462-7 shall also suspend the term of limitation applicable to public prosecution.

### *Art. L. 420-7*

**W**ithout prejudice to articles L. 420-6, L. 462-8, L. 463-1 to L. 463-4, L. 463-6, L. 463-7 and L. 464-1 to L. 464-8, the disputes relating to the application of the rules set forth in articles L. 420-1 to L. 420-5, and those in which said provisions are invoked shall be referred, as applicable, to the County courts (Tribunaux de Grande Instance) or to the commercial courts whose list is set by decree.



## ► Title III : On Mergers and Acquisitions

### *Art. L. 430-1*

**I. A** merger operation is effective:

- 1° . When two or more previously independent companies merge;
- 2° . When one or more persons already holding a controlling interest in at least one company, or when one or more companies acquire, directly or indirectly, either via equity participation or a purchase of assets, or a contract or any other means, a controlling interest in all or parts of one or more other companies.

**II. T**he creation of a joint company exercising for a lasting period all the functions of an autonomous economic entity constitutes a merger within the meaning of this article.

**III. F**or purposes of the application of this title, a controlling interest shall result from the rights, contracts or other means which give, alone or jointly, given factual or legal circumstances, the possibility to exercise a decisive influence on the company activity, including, in particular :

- rights of ownership or use of all or part of company assets ;
- rights or contracts that confer a decisive influence on the composition, the deliberations or the decisions of a company's management bodies.

### *Art. L. 430-2*

**A**ny merger operation within the meaning of article L. 430-1 is subject to the provisions of articles L. 430-3 ff. of this title if the following three conditions are met:

- the total worldwide revenues, net of taxes, of all the companies or groups of individuals or entities which are parties to the merger exceed 150 million Euros;
- the total revenues, net of taxes, posted in France by at least two of the companies or groups of individuals or entities concerned exceed 15 million Euros;
- the operation is not reviewable under the EEC rule No. 4064/89, issued by the Council on December 21, 1989, which relates to the control of merger operations between companies.

However, a merger operation reviewable under the abovementioned rule which was totally or partly remanded to the national authority shall be subject, within the limit of said remanding, to the provisions of this title.

### *Art. L. 430-3*

**T**he combination transaction must be notified to the Minister of Economy. This notification occurs when the concerned party or parties have made an irrevocable commitment (e.g., in particular, after drawing up the deed of partnership, the publication of the offer of purchase or exchange or the acquisition of a controlling interest). The remanding by the Commission of the European Communities shall be equivalent to a notification.

The obligation to notify is incumbent on the individuals or entities that take control of all or part of a company, or, in the case of a merger or of the creation of a joint company, on all the concerned parties, which must then send a joint notification. The contents of the notification are set by decree.



The receipt of the notification, or the total or partial remanding of a Community-wide operation, shall give rise to an announcement published by the Minister of Economy in accordance with methods set by decree.

Upon receipt of the notified file, the Minister shall send a copy thereof to the Competition Council (Conseil de la concurrence).

#### *Art. L. 430-4*

**T**he effective completion of a merger operation may occur only further to the approval of the Minister of Economy and, as applicable, of the Minister in charge of the concerned economic sector.

In the event of a duly substantiated special necessity, the parties which sent the notice may ask the Minister of Economy for an exemption allowing them to effectively complete all or part of the merger without waiting for the decision mentioned in the preceding paragraph, and without prejudice to the latter.

#### *Art. L. 430-5*

**I.** The Minister of Economy renders his decision concerning the merger within five weeks from the date of receipt of the complete notification.

**II.** The parties to the merger operation may make the commitment to remedy, if need be, the anti-competitive effects of the merger either on the occasion of the notification, or at any time before the expiration of the five-week period running from the date of receipt of the complete notification, as long as the decision specified in **I.** has not have been rendered. If the commitments are received by the Minister more than two weeks after the complete notification of the merger, the period mentioned in **I.** shall expire three weeks after the date of receipt of said commitments by the Minister of Economy.

**III.** The Minister of Economy can :

- either acknowledge, through a reasoned decision, that the notified operation does not fall under articles **L. 430-1** and **L. 430-2** ;
- or authorize the operation, eventually subordinated, in a reasoned decision, to the effective fulfillment of the commitments made by the parties.

However, if he deems that the operation is likely to undermine competition and that the commitments made are not sufficient to remedy this, the Minister of Economy submits the matter to the Competition Council (Conseil de la concurrence) for advice.

**IV.** If the Minister does not take any of the three decisions specified in **III.** of this article within the period mentioned in **I.** (which may be extended pursuant to **II.**), the operation is deemed to be authorized.

#### *Art. L. 430-6*

**I**f a merger operation has been subject, pursuant to **III.** of article **L. 430-5**, to a referral to the Competition Council (Conseil de la concurrence), the latter ascertains whether such an operation may undermine competition, especially through the creation or reinforcement of a dominant position or through the creation or reinforcement of purchasing power creating economic dependence at the supplier's expense. It shall ascertain whether the operation contributes sufficiently to economic progress to compensate anti-competitive effects. The Council takes account of the companies' competitiveness in the light of international competition.

The procedure specified in paragraph two of article **L. 463-2** and in articles **L. 463-4** to **L. 463-7** is applicable to this consultation of the Competition Council (Conseil de la concurrence).



However, the parties having proceeded to the notification and the Government official must submit their observations in response to the report within three weeks.

Prior to ruling, the Council (Conseil de la concurrence) may hear third parties in the absence of the parties which sent the notification. The labor-management councils of the companies that are parties to the merger operation shall be heard by the Council, at their request, in the same conditions.

The Competition Council (Conseil de la concurrence) delivers its opinion to the Minister of Economy within three months.

The Minister of Economy transmits without delay this opinion to the parties which proceeded to the notification.

#### *Art. L. 430-7*

**I.** Once referred to the Competition Council, the merger operation is subject to a decision within four weeks from the delivery of the Council's opinion to the Minister of Economy.

**II.** After acknowledging the Council's opinion, the parties may suggest commitments remedying the operation's anti-competitive effects within a four-week period as from the date of delivery of the opinion to the Minister, unless the operation has already given rise to the decision mentioned in **I**.

If the commitments are transmitted to the Minister more than one week after the date of delivery of the opinion to the Minister, the period mentioned in **I** shall expire three weeks after the date of receipt of said commitments by the Minister.

**III.** The Minister of Economy, and, as the case may be, the Minister in charge of the concerned economic sector, may, by a reasoned decree:

- either prohibit the merger operation and enjoin, as the case may be, the parties to take

any measure capable of restoring sufficient competition;

- or authorize the operation by enjoining the parties to take any measure capable of ensuring sufficient competition or by compelling them to comply with requirements fostering sufficient economic and social progress in order to compensate anti-competitive effects.

The orders and demands mentioned in the above two paragraphs shall be mandatory regardless of the contract clauses that may have been subscribed by the parties.

The draft decree is transmitted to the concerned parties, who are given sufficient time to submit their comments.

**IV.** If the Minister of Economy and the Minister in charge of the concerned economic sector do not intend to render either of the two decisions mentioned in **III**. of this article, the Minister of Economy authorizes the operation by means of a reasoned decision. The decision can be subordinated to the actual fulfillment of the commitments made by the parties which sent the notification.

**V.** If none of the three decisions mentioned in **III**. and **IV**. of this article has been made within the period mentioned in **I**., which may be extended pursuant to **II**., the operation is deemed to be authorized.

#### *Art. L. 430-8*

**I.** If a merger operation has been performed without notification, the Minister of Economy may inflict on the persons on which the charge of the notification was incumbent a fine not exceeding, in the case of entities, 5% of the net revenues posted in France during the last fiscal year closed, plus, as the case may be, those posted in France during the same period by the acquired party, and, in the case of individuals, of 1.5 million Euros.



Moreover, the Minister enjoins the parties, under penalty of a fine, to notify the operation unless they return to the situation that existed prior to the merger. He may also refer the matter to the Competition Council without awaiting notification. The procedure mentioned in articles L. 430-5 to L. 430-7 is then applicable.

**II.** If a merger operation notified but not entitled to the exemption provided for in paragraph two of article L. 430-4 was performed prior to the rendering of the decision mentioned in paragraph one of this article, the Minister of Economy may inflict on the persons which sent the notification a financial penalty not exceeding the amount defined in I.

**III.** In case of omission or inaccurate information contained in the notification, the Minister of Economy may inflict on the persons having proceeded to the notification a financial penalty not exceeding the amount defined in I.

This penalty may be accompanied by a withdrawal of the decision authorizing the performance of the operation. Unless the parties return to the situation existing prior to the merger, they shall then be required to send a new notification of operation within the month following the withdrawal of the decision, subject to the penalties specified in I.

**IV.** If the Minister of Economy deems that the parties did not comply with an injunction, requirement or commitment within the periods mentioned, he may submit the matter for advice to the Competition Council.

Should the Competition Council's opinion acknowledges noncompliance, the Minister of Economy, and, as the case may be, the Minister in charge of the concerned economic sector may:

**1°** - Withdraw the decision that authorized the performance of the operation. Unless they return to the situation existing prior to the merger, the parties shall be required under

penalty of the fines mentioned in I. to notify the operation within one month from the withdrawal of the decision;

**2°** - Order, subject to a fine, the parties on which the unfulfilled obligation was incumbent, to comply with the injunctions, requirements or commitments set by the Ministers.

In addition, the Minister of Economy may inflict on the persons on which the unfulfilled obligation was incumbent a financial penalty not exceeding the amount defined in I.

#### *Art. L. 430-9*

**T**he Competition Council may, in case of abusive exploitation of a dominant position or of a condition of economic dependence, ask the Minister of Economy to adopt, jointly with the Minister in charge of the sector, a reasoned decision forcing the company or the group of companies in question to modify, complete or cancel, within a determined period, any agreements and any acts embodying the pooling of economic power that made the abuses possible even if such acts complied with the procedure set forth in this title.

#### *Art. L. 430-10*

**I.** The decisions rendered pursuant to articles L. 430-5 to L. 430-8 are publicized, together, as the case is, with the Competition Council's opinion, according to methods set by decree.

**II.** **W**hen questioning third parties about the operation, its effects and the commitments made by the parties, and publicizing his decision in the conditions specified in I., the Minister of Economy takes into account the legitimate interest of the parties which proceeded to the notification or of the persons mentioned so as to prevent the disclosure of any business secrets.



## ► Title V : On Investigation Powers

### *Art. L. 450-1*

Civil servants capacitated for this purpose by the Minister of Economy may conduct the investigations necessary to the application of the provisions of this book. Competition Council case handlers have the same powers regarding the cases referred to the Council.

Class A civil servants of the Ministry of the Economy, specially authorized for this purpose by the Minister of Justice, on the proposal of the Minister of Economy, may receive letters rogatory from examining magistrates.

The authorized civil servants mentioned in this article may exercise the powers of investigation they hold under articles L. 450-1 ff. in the entire national territory.

### *Art. L. 450-2*

The investigations give rise to the preparation of records, and, if necessary, of reports.

The records are transmitted to the competent authority. A duplicate thereof shall be left with the concerned parties. These records constitute authentic statements of facts until otherwise demonstrated.

### *Art. L. 450-3*

The investigators may have access to any premises, land or means of transportation for business use, ask for the submission of the books, invoices and any other business documents and obtain or make copies thereof by any means and on any media, order the production of information and substantiating documents at their offices or on location.

They may ask the authority to which they report to appoint an expert for purposes of conducting any expert's inquiry required in the presence of both sides.

The Investigators may pay visits to any places and seize any documents and any information medium only within the framework of investigations requested by the Minister of Economy or by the head of investigation (rapporteur général) of the Competition Council, on the case handler's proposal and after a court authorization given in an order issued by the president of the relevant County Court (Tribunal de Grande Instance) or by a judge delegated by the former. If these premises are located within the areas of jurisdiction of several courts and a simultaneous action must be taken in each of them, a single order may be issued by one of the competent presidents.

The judge must verify that the request for authorization submitted to him is properly grounded; this request must contain all the items of information in the requesting party's possession capable of justifying the visit. When the visit aims at establishing that violations of Book IV's provisions are in the process of being committed, the authorization request may include only the clues making it possible to suspect, in the case at hand, the existence of the practices for which evidence is sought.

The visit and the seizure are carried out under the authority and control of the judge who authorized them. He puts one or more judiciary police inspectors in charge of attending these operations and of keeping him informed of their progress. Should visits and seizures take place outside the district of his County Court (Tribunal de Grande Instance), the judge issues letters rogatory empowering the President of the County Court (Tribunal de Grande Instance) of the district in which the visit takes place to control the operations.

The judge may go on location during the visit. He may decide to suspend or stop the visit at any time.





The order mentioned in paragraph one of this article may be appealed from only before the Supreme Court (Cour de Cassation) according to the rules set forth in the Code of Criminal Procedure. Appeal does not suspend the enforceability of the order.

The order is notified verbally and on location at the time of the visit to the occupant of the premises or his representative, who shall receive a full copy thereof in exchange for a receipt or a signature affixed to the record. In the absence of the occupant of the premises or of his representative, the order is notified after the visit by registered letter with return receipt requested. The notification is deemed to have been served on the date of receipt mentioned on the return receipt.

The visit, which may not begin before 6 a.m. or after 9 p.m., takes place in the presence of the occupant of the premises or of the latter's representative. Should this be impossible, the judiciary police inspector requires the presence of two witnesses chosen among persons who are not placed under his authority or that of the administration of the General Directorate of Competition, Consumer affairs and Fraud Control (DGCCRF), or of that of the Competition Council.

The investigators, the occupant or his representative, as well as the judiciary police inspector, are the only persons allowed to acknowledge the items and documents prior to the seizure thereof.

The inventories and affixing of the seals are performed in accordance with article 56 of the Code of Criminal Procedure

The original copies of the record and of the inventory are transmitted to the judge who ordered the visit.

The items and documents no longer useful to the ascertainment of the truth are returned to the occupant of the premises.

The items and documents seized shall be returned to the occupant of the premises within six months from the date on which the decision of the Competition Council becomes definitive. The occupant of the premises is given formal notice, by registered letter with return receipt

requested, to come and recover them within two months. Upon expiration of this time period, should he abstain from doing so, the items and documents are returned to him as his expense.

The progress of the visit or seizure operations may give rise to a recourse before the judge who authorized them within a two-month period. This period runs, for the persons occupying the premises where said operations took place, from the notification of the order authorizing them. For the other persons subsequently implicated by reason of the documents seized during said operations, it runs from the date on which they became aware of the existence of these operations, and no later than the date of the notification of charges provided for in article L. 463-2. The judge issues his decision on this recourse by means of an order that may be appealed only before the Supreme Court (Cour de Cassation) according to the rules set forth in the Code of Criminal Procedure. This appeal shall not suspend the term of limitation.

#### *Art. L. 450-5*

**T**he head of investigation of the Competition Council (rapporteur général) is informed without delay of the initiation and of the completion of the investigations mentioned in article L. 450-4 if they were ordered by the Minister of Economy and relate to facts susceptible to fall within the scope of articles L. 420-1 and L. 420-2. He may propose that the case be automatically referred to the Council.

#### *Art. L. 450-6*

**T**he head of investigation (rapporteur general) shall appoint one or more case handlers (rapporteurs) for purposes of reviewing each case. At his request, the authority to which the agents mentioned in article L. 450-1 belong shall appoint investigators and order any investigation that the case handler deems useful. The latter shall define the orientations of the investigation and shall be kept informed of the progress thereof.



A decree shall specify the conditions in which, if the Chairperson of the Competition Council makes a reasoned request to that effect, the authority to which the agents mentioned in article L. 450-1 belong, will make investigators available, for a determined period, to the head of investigation (rapporteur général) of the Competition Council for purposes of conducting certain enquiries in accordance with the guidelines defined by the case handlers (rapporteurs).

#### *Art. L. 450-7*

The investigators may, without trade secrecy being set against them, have access to any document or item of information held by State services and agencies and by other public authorities.

#### *Art. L. 450-8*

Anyone opposing, in any manner whatsoever, the exercise of the functions with which the agents mentioned in article L. 450-1 and the case handlers of the Competition Council are charged pursuant to this book shall be penalized by six months imprisonment and a fine of FF 50,000.

## ► Title VI : On the Competition Council

### CHAPTER 1 : ORGANIZATION

#### *Art. L. 461-1*

**I.** The Competition Council consists of seventeen members appointed for six years by a decree issued further to a report prepared by the Minister of Economy.

**II.** It is composed of:

- 1° . Eight present or former members of the Council of State (Conseil d'Etat), the Supreme Court (Cour de Cassation), the General Accounting Office (Cour des Comptes) or of other administrative or judicial bodies;

- 2° . Four personalities chosen on account of their competence in economics, or in the fields of competition and consumption;
- 3° . Five personalities exercising or having exercised their activities in the sectors of production, distribution, crafts, services or independent professions.

**III.** The Chairperson and three vice Chairpersons are appointed, in the case of three of them, from among the members or former members of the Council of State (Conseil d'Etat), the Supreme Court (Cour de Cassation), or the General Accounting Office (Cour des Comptes) and, in the case of one of them, from among the categories of personalities mentioned in 2° and 3° of II.

**IV.** The four personalities mentioned in 2° of II are chosen on a list of eight names submitted by the eight members mentioned in 1° of II .

**V.** The term of the Competition Council members may be renewed.

#### *Art. L. 461-2*

The Chairperson and the vice Chairpersons exercise their office on a full-time basis. They are subject to the incompatibility rules stipulated for government employment.

The Minister declares that any member of the Council who has not taken part, without a valid reason, in three consecutive meetings or who does not meet the obligations mentioned in the following two paragraphs has automatically resigned. Any member of the Council must inform the Chairperson of the interests he holds or comes to hold and of the offices he exercises in an economic activity.

No member of the Council may take part in a case in which he has an interest, or if he represents or has represented one of the concerned parties.

The Government Official appointed to the Council is designated by the Minister of Economy.



### *Art. L. 461-3*

The Council can meet in plenary sessions, or in sections, or as a permanent commission. The permanent commission is composed of the Chairperson and of the three vice Chairpersons. The vote of the Chairperson of the concerned body breaks ties.

The head of investigation (rapporteur general), the deputy head(s) of investigation (rapporteurs généraux adjoints) and the permanent case handlers are appointed, on the Chairperson's proposal, by the Minister of Economy. The other case handlers are appointed by the Chairperson.

The head of investigation (rapporteur général) may delegate all or part of the duties ascribed to him under book **IV** of this code to one or more deputy heads of investigation (rapporteurs généraux adjoints).

The public funds allocated to the Competition Council for its running are budgeted by the Ministry of the Economy.

The Chairperson makes decisions concerning the Council's revenues and expenses.

## CHAPTER II : ATTRIBUTIONS

### *Art. L. 462-1*

The Competition Council may be consulted by parliamentary committees concerning draft bills as well as any issue pertaining to competition. It renders an opinion on any competition issue at the Government's request. It may also give its opinion on the same issues at the request of local or regional governments, trade associations or unions, approved consumer organizations, chambers of agriculture, chambers of trades or chambers of commerce and industry as regards the interests they are in charge of.

### *Art. L. 462-2*

The Council must be consulted by the Government concerning any draft decree which would directly :

- 1° - Subject trading or market access to quantitative restrictions ;
- 2° - Establish exclusive rights in certain zones ;
- 3° - Impose uniform practices in prices and selling conditions.

### *Art. L. 462-3*

The Council may be consulted by the courts regarding the anti-competitive practices defined in articles **L. 420-1**, **L. 420-2** and **L. 420-5** and found in the cases referred. The Council may render an opinion only after hearing both sides. However, if it possesses information collected during a previous proceeding, it may render its opinion without applying this procedure.

The effect of the term of limitation may be suspended by the consultation of the Council.

The Council's opinion may be published following the decision of non-suit or the judgment.

### *Art. L. 462-4*

The Council may be consulted by the Minister of Economy regarding any projected merger or any merger likely to harm competition in the conditions specified in title **III** above.

### *Art. L. 462-5*

Any practice mentioned in articles **L. 420-1**, **L. 420-2** and **L. 420-5** may be referred to the Competition Council by the Minister of Economy. The Council may open a case on its own initiative or have one referred to it by companies, or, in any issue concerning the interests of which they are in charge, by the organizations mentioned in paragraph two of article **L. 462-1**.



### *Art. L. 462-6*

The Competition Council determines whether the practices referred to it fall under articles L. 420-1, L. 420-2 or L. 420-5 or may be justified pursuant to article L. 420-4. As is the case, it pronounces penalties or issue orders.

If the facts fall under article L. 420-6, the Council files the case to the Head of Criminal Prosecution. This transmission suspends the term of limitation applicable to the public prosecution.

### *Art. L. 462-7*

Facts older than three years cannot be referred to the Council if no action was taken regarding the investigation, acknowledgement or penalization thereof.

### *Art. L. 462-8*

The Competition Council may declare, in a reasoned decision, that the referral is barred because of a lack of interest or capacity to act of its' author of the referral, or if the facts are subject to the term of limitation within the meaning of article L. 462-7, or if it deems that the facts invoked are not within its purview.

It may also reject a referral by a reasoned decision if it deems that there is not sufficient evidence in support of the facts invoked.

When its' author renounces to a referral, a decision of the Chairperson of the Competition Council or of a vice Chairperson delegated by him gives official notice of the renouncement.

### *Art. L. 462-9*

The Competition Council may, within his purview and after previously informing the Minister of Economy, communicate information or the documents it holds or receives, on request, to the Commission of the European Communities or to the authorities of other States exercising similar functions, subject to reciprocity, and on the condi-

tion that the competent foreign authority is subject to trade secrecy rules with the same guaranties as in France.

The Competition Council may, following the same procedures, conditions and penalties as those stipulated for the performance of its mission, conduct investigations, or request that the Minister of Economy do so, at the request of foreign authorities exercising similar functions and under the condition of reciprocity.

The obligation of trade secrecy does not bar communication, by competition authorities, of the information or documents they hold or receive, requested by the Commission of the European Communities and the authorities of other States exercising similar functions and bound by the same trade secrecy obligations.

The assistance requested by a foreign authority exercising similar functions in the conduct of investigations or the transmission of information held or received by the Competition Council can be refused if the acceptance of the request can undermine France's sovereignty, security, essential economic interests or public order, or if a criminal proceeding has already been instituted in France on the basis of the same facts and against the same persons, or if the latter have already been penalized by a final decision in relation to the same facts.

Within their purview, competition authorities may use information or documents transmitted to them by the Commission of the European Communities or the authorities of other member States exercising similar functions.

For purposes of implementing this article, the Council may conclude agreements organizing its relations with the authorities of other States which exercise similar functions. These agreements are approved by the Council in the manner stipulated in article L. 463-7. They are published in the Journal Officiel.



## CHAPTER III : ON PROCEEDINGS

### *Art. L. 463-1*

The fact-finding process and the proceedings held before the Competition Council require the full participation of both sides.

### *Art. L. 463-2*

Without prejudice to the measures stipulated in article L. 464-1, the head of investigation (rapporteur général) notifies the charges to the parties and to the Government Official. They may have access to the files and submit their observations within a two-month period.

The report is then notified to the parties, the Government Official and the concerned Ministers, together with the documents on which the case handler bases the charges and any comments made by the concerned parties.

The parties may submit a brief in response during a two-month period. The brief may be consulted by the persons mentioned in the preceding paragraph for up to fifteen days before the session.

Given extraordinary circumstances, the Chairperson of the Council may, by a decision not subject to appeal, grant an additional one-month period for examining and submitting the file to parties' observations.

### *Art. L. 463-3*

The Chairperson of the Competition Council or a vice Chairperson delegated by him may, after notifying the charges to the parties, decide that the case shall be judged by the Council without previous preparation of a report. This decision is notified to the parties.

### *Art. L. 463-4*

The Chairperson of the Competition Council or a vice Chairperson delegated by him may refuse to communicate documents containing business

secrets, except in cases where the transmission or viewing of these documents is necessary to the proceeding or to the exercise of the parties' rights. The documents in question shall be removed from the file, or part of the information appearing thereon shall be erased.

### *Art. L. 463-5*

The courts in charge of the examining procedure and judgment may transmit to the Competition Council, at the latter's request, the records or reports of investigations that directly relate to the facts referred to the Council.

### *Art. L. 463-6*

The disclosure by a party of information concerning another or a third party, of which it may have become aware as a sole result of the communications or reviews made, is subject to the penalties stipulated in article L. 226-13 of the Criminal Code.

### *Art. L. 463-7*

The meetings of the Competition Council are not public. Only the parties and the Government Official may attend them. The parties may ask to be heard by the Council and be represented or assisted.

The Competition Council may hear any person whose testimony seems likely to give further information.

The head of investigation, the deputy head(s) of investigation (rapporteurs généraux adjoints) and the Government Official may make observations.

The head of investigation (rapporteur général), the deputy head(s) of investigation and the case handlers attend the deliberations on an advisory basis, except if the Council rules on practices referred to it pursuant to article L. 462-5.



### *Art. L. 463-8*

The head of investigation may decide to call on experts in the event of a request made by the case handler or a party at any time of the investigation. This decision shall not be subject to appeal.

The task and the time period given to the expert are mentioned in the decision which appoints him. The expert's investigation takes place in the presence of both sides.

The cost of the expert's investigation is borne by the party which requests it, or by the Council if it is ordered at the case handler's request. However, the Council may, in its decision on the substance, charge the final cost to the penalized party or parties in the proportions it deems appropriate.

## **CHAPTER IV : ON DECISIONS AND MEANS OF RECOURSE**

### *Art. L. 464-1*

The Competition Council can, at the request of the Minister of Economy, of the persons mentioned in the last paragraph of article L. 462-1 or of the companies, after hearing the parties to the case and the Government Official, take the interim measures that are asked for or that it deems necessary.

These measures may be taken only if the contentious practice seriously and immediately undermines the Economy as a whole, or that of the concerned industry, the consumers' interest or the plaintiff company.

These measures may include the suspension of the practice in question and an order that the parties return to the ex ante state of affairs. They must remain strictly limited to what is required in order to face the emergency.

The interim measures are published in the Official Bulletin of Trade, Consumption and Fraud Repression.

### *Art. L. 464-2*

**I.** The Competition Council may enjoin the concerned parties to stop anti-competitive practices within a determined period or impose special conditions.

It may inflict a financial penalty applicable immediately or in case of noncompliance with the orders.

Fines are proportioned to the gravity of the facts blamed, to the damage caused to the economy, to the position of the penalized organization or company or of the group to which the company belongs, and to the possible repetition of practices prohibited by this title. Fines are reasoned and determined individually for each company or organization penalized.

If the contravening party is not a company, the maximum amount of the penalty is three million Euros. For a company, the maximum amount of the penalty is 10% of the highest worldwide turnover (taxes not included), posted during one of the fiscal years closed since the fiscal year preceding that during which the practices were engaged in. If the accounts of the concerned company were consolidated or combined pursuant to the norms applicable to its corporate form, the turnover taken into account is the one figuring in the consolidated or combined accounts of the consolidating or combining company.

The Competition Council may order the publication, broadcasting or posting of its decision or of an extract in the manner it defines. It may also order the inclusion of the decision or of the extract in the report of operations for the year prepared by the managers, the board of directors or the executive board of the company. The costs are borne by the concerned party.

**II.** If an organization or a company does not challenge the reality of the charges notified to it and pledges to change its behavior, the head of investigation may propose that the Competition Council, which hears the parties and the Government Official in the absence of a



previously established report, order the financial penalty specified in **I**, taking the absence of contest into account. In this case, the maximum amount of the penalty incurred is reduced by half.

**III.** Total or partial relief from the financial penalties may be granted to a company or organization which, together with others, engaged in a practice prohibited by the provisions of article **L. 420-1** if it helped establishing the reality of the prohibited practice and identifying the perpetrators by providing items of information not previously available to the Council or the administration. Further to the company's or organization's initiative, the Competition Council, at the request of the head of investigation or of the Minister of Economy, issues for this purpose an advice of leniency indicating the conditions to which the contemplated relief is subordinated, once the Government Official and the concerned company or organization have submitted their comments. This advice is transmitted to the company or organization and to the Minister, and is not published. In the event of a decision rendered pursuant to **I.** of this article, the Council may, if the conditions specified in the advice of leniency were observed, grant relief from financial penalties in proportion to the contribution made to establishing the violation.

*Art. L. 464-3*

**I.** If the measures and orders stipulated in articles **L. 464-1** and **L. 464-2** have not been complied with, the Council can order a financial penalty within the limits set forth in article **L. 464-3**.

*Art. L. 464-4*

The financial penalties are collected like Government claims other than taxes or State property fees.

*Art. L. 464-5*

When ruling according to the simplified procedure set forth in article **L. 463-3**, the Council may pronounce the measures stipulated in **I** of article **L. 464-2**. However, the financial penalty ordered may not exceed 750,000 Euros for each of the perpetrators of the prohibited practices.

*Art. L. 464-6*

When no practice likely to harm the competition is established, the Competition Council may decide, after the author of the referral and the Government Official have been able to examine the file and make their observations, that there are no grounds for continuing proceedings.

*Art. L. 464-7*

A Council decision handed down under article **L. 464-1** may give rise to an appeal for judicial review or reversal before the Paris Court of Appeal, by the parties to the case or the Government Official, no more than ten days after the notification of said decision. The Court rules within a month from the appeal's receipt.

The appeal does not have the effect of a stay of execution. However, the first president of the Court of Appeals of Paris may order that the enforcement of the interim measures be deferred if they are susceptible to have manifestly excessive consequences or if new, exceptionally serious facts have occurred since the notification of such measures.



### *Art. L. 464-8*

The decisions of the Competition Council mentioned in articles L. 462-8, L. 464-1, L. 464-2, L. 464-3, L. 464-5 and L. 464-6 are notified to the parties to the case and to the Minister of Economy. Each of them may lodge an appeal for reversal or judicial review before the Paris Court of Appeals within a one month period.

The decisions are published in the Official Bulletin of Competition, Consumption and Fraud Repression. The Minister of Economy monitors their enforcement.

The appeal does not have the effect of a stay of execution. However, the first president of the Paris Court of Appeal may order that the enforcement of the decision be deferred if it is susceptible to have manifestly excessive consequences or if new, exceptionnally serious facts have occurred since the notification thereof.

Any appeal before the Cassation Court (Cour de Cassation) must be lodged against the ruling of the Court of Appeals within one month from the notification of the latter.

