Pre-cast concrete products: the Autorité sanctions four cartels and imposes a total fine of €76,645,000 on 11 companies

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Background

The *Autorité de la concurrence* has fined four cartels in the pre-cast concrete products sector. Eleven companies have been fined a total of €76,645,000.

While the *Autorité* has fined cartel practices for periods ranging from seven to 10 years, depending on the objections (from 2008 or 2011 to 2017 or 2018), it stresses that the evidence in the case file shows that, in reality, these practices were deeply rooted in the way the sector operated, to the extent that some participants in the practices stated that they had "*lost sight*" of the illegal nature of their actions and were unable to pinpoint the precise start of the practices, which, they declared, could date back to the 1980s.

The existence of a criminal law component

Informed by a report from the Directorate General for Competition Policy, Consumer Affairs and Fraud Control (DGCCRF) (Lille Interregional Competition Investigation Brigade [BIEC]), the General Rapporteur of the *Autorité* sent a report to the public prosecutor based on Article 40 of the French Criminal Procedure Code (*Code de procédure pénale*).

Following this report, the investigating judge intercepted telephone calls and conducted raids at the premises of several of the companies involved. A raid was also carried out at the Mercure Hotel in Roissy, interrupting a meeting attended by seven company representatives. The *Autorité*'s decision in no way prejudges the outcome of the criminal proceedings.

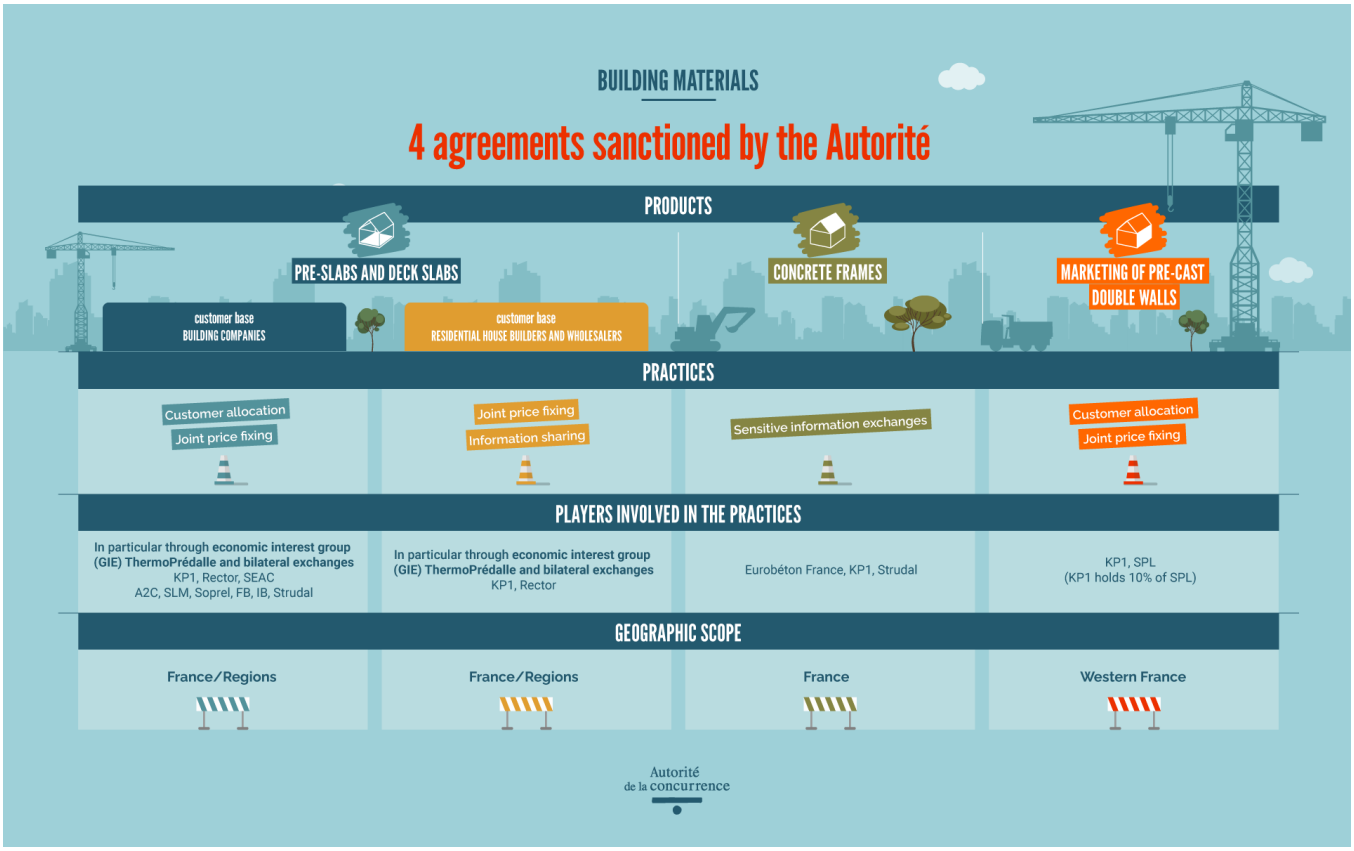
Two leniency applications

Following the criminal searches, KP1 and Rector filed two leniency applications with the *Autorité*. In response, the *Autorité* started proceedings *ex officio* into possible anticompetitive practices in the pre-cast concrete products sector. In particular, KP1's declarations enabled the *Autorité* to identify anticompetitive practices other than those detected on the basis of the criminal investigation information forwarded to the *Autorité* by the investigating judge.

Four cartels fined:

- KP1, Rector and SEAC for setting up a nationwide cartel aimed at sharing worksite volumes by distorting competition in calls to tender issued by building companies. KP1, Rector, SEAC, Strudal, A2C, FB, L'Industrielle du béton (IB), Saint-Léonard Matériaux (SLM) and Soprel have also been fined for implementing this national strategy in several regions.
- KP1 and Rector for setting up a cartel relating to the rates of price increases applicable to wholesalers and residential house builders.
- KP1, Eurobéton France and Strudal for sharing sensitive information in connection with calls to tender for concrete frame projects.
- KP1 and Société de préfabrication de Landaul (SPL) for implementing a bilateral agreement on prices and customer allocation.

The *Autorité* has imposed an additional fine of €75,000 on Eurobéton France for obstructing the investigation, as the company provided incorrect information in response to a request for information from the Investigation Services, and only corrected this error after the statement of objections.



Practices revealed through criminal searches

The practices at issue in this case came to light as a result of criminal searches carried out under the supervision of an investigating judge.

The criminal investigation was carried out following a report from the General Rapporteur of the *Autorité de la concurrence*, who in turn was informed by a report from the Directorate General for Competition Policy, Consumer Affairs and Fraud Control (DGCCRF), based on a report from the Lille Interregional Competition Investigation Brigade (BIEC).

This report to the public prosecutor led the investigating judge to intercept telephone calls and carry out raids in 2018 at the premises of several of the companies involved, as well as at the Mercure Hotel in Roissy, where a meeting was being held between representatives of some of the companies involved in

the practices in question.

The *Autorité* received two leniency applications, from KP1 and then Rector, following these searches. As a result, the *Autorité* started proceedings *ex officio* into practices in the pre-cast concrete products sector and asked the investigating judge to disclose any documents in the case file directly related to the facts mentioned in the referral.

The implementation of four cartels in the pre-cast concrete products sector

Four cartels have been fined on the basis of documents from the criminal investigation and statements and documents submitted by the leniency applicants.

First cartel: pre-cast concrete products (pre-slabs, deck slabs) sold to building companies

- *National management of the cartel*

The investigation carried out by the *Autorité* and the evidence gathered during the raids and telephone interceptions enabled the *Autorité* to identify a national cartel between KP1, Rector and SEAC. This cartel enabled the parties to jointly fix selling prices for pre-cast concrete products and to share worksite volumes by distorting competition in calls to tenders issued by building companies.

To reach agreement, the parties took part in secret meetings organised within the framework of different groupings whose purpose – the promotion of pre-cast concrete products – was diverted. Discussions between competitors during multilateral meetings took the form of “round-tables”. At these meetings, the parties exchanged information on sales volumes to building companies at national and regional level and set sales quotas to be met for each region.

To monitor market sharing, the parties’ national headquarters compiled their exchanges in tables, which were then forwarded to the regional levels for the implementation of the cartel at local level. The two leniency applicants pointed

out that these tables contained codes for concealing the names of the companies and the content of the anticompetitive discussions.

- *Regional variations of the cartel, particularly in the Ile-de-France region*

The practices were implemented across most of France, with characteristics and methods that varied from region to region. In some regions, several local players joined the cartel implemented by KP1, Rector and SEAC.

For the Ile-de-France and neighbouring regions (Normandy, Nord-Pas-de-Calais, Champagne-Ardenne) in particular, the *Autorité* found that the three players in question collaborated with A2C, FB, IB, SLM, Strudal and Soprel. Here too, the evidence in the case file showed the existence of minimum price grids for pre-cast concrete products, and exchanges of information on the prices of these products between competitors. As with exchanges at national level, the members taking part in regional meetings used code names to conceal the illegal nature of their practices. By interrupting a meeting taking place in a hotel in the Paris region, the *Autorité* found the existence of market-sharing tables and agreements between the companies present at the meeting.

In addition to these physical meetings, the *Autorité* found that the cartel continued during bilateral exchanges, notably by telephone, during which the parties ensured that they were each complying with the agreements reached during the round-table discussions. The evidence in the case file attested to the existence of over a hundred bilateral telephone exchanges between cartel members in the Ile-de-France and neighbouring regions. These practices were also taking place in other regions affected by the cartel. For example, a regional manager in south-west France communicated with his competitors *via* a pre-paid mobile phone. The competitor would ring the regional manager's business phone once or twice, and they then understood that their pre-paid mobile phone had to be switched on to correspond with the competitor.

Second cartel: pre-cast concrete products sold to residential house builders and wholesalers

KP1 and Rector also implemented a national cartel for seven years relating to the rates of price increases applicable to wholesalers and residential house builders. These exchanges generally took place at the time of annual increases or increases in raw material prices. They took place between KP1 and Rector management during meetings or telephone discussions. Decisions taken at national level were implemented by the regional divisions.

KP1 and Rector also reached agreement on net prices and certain commercial conditions granted to wholesalers, on sales volumes to wholesalers, and on the passing on of price increases to the prices applied to residential house builders.

Third cartel: concrete frame worksites

The *Autorité*'s investigation revealed that KP1, Eurobéton France and Strudal had exchanged sensitive information in the context of calls to tender. These exchanges took place from 2011 to 2018, despite a pause between 2013 and 2016. The cartel took the form of exchanges of sensitive pricing information.

The *Autorité* noted that these exchanges of information took place before the date on which the outcome of these calls for tender could be known, in circumstances which necessarily tainted the replies of the respondents, by affecting their autonomy. Such exchanges altered effective competition.

Fourth cartel: a bilateral agreement between KP1 and Société de Préfabrication de Landaul (SPL)

In 2010, KP1 and SPL entered into a number of agreements, including the acquisition by KP1 of a 10% stake in SPL, and contracts for supply and procurement, technical services, transport and technical assistance. These contracts included an exclusivity clause for SPL's products in favour of KP1, as well as a non-solicitation clause, thus reducing the parties' commercial freedom. In addition, the *Autorité* found that for the marketing of pre-cast double walls manufactured by SPL, the parties regularly exchanged information to determine the price of their services and allocate customers between them. For example, KP1 and SPL drew up a customer allocation table, which was regularly updated during meetings and telephone exchanges. With regard to the pricing cartel, the

leniency applicant stated that the "*concerted practices were aimed at exchanging information on price increases and resale prices offered to their respective customers for products and their inserts*".

The *Autorité* considered that insofar as the contractual clauses and regular exchanges set up by the companies within this framework enabled them to decide jointly on all aspects of SPL's economic life, they constituted an anticompetitive practice, contrary to Article L. 420-1 of the French Commercial Code (*Code de commerce*). The *Autorité* considered that Article 101 of the TFEU was not applicable to this cartel, given the absence of any effect on trade between Member States.

The total fines amount to €76,645,000

Company	Amount
KP1	€19,040,000
Strudal	€3,910,000
A2C	€6,390,000
FB	€550,000

Company	Amount
IB	€3,110,000
Rector	€25,450,000
including Rector Lesage	€21,440,000
including Planchers Fabre	€4,010,000
SEAC	€10,990,000
SLM	€2,840,000
Soprel	€150,000

Company	Amount
Eurobéton France	€3,445,000 (including €75,000 for obstruction)
SPL	€770,000
TOTAL	€76,645,000

The establishment of four cartels in the pre-cast concrete products sector led the *Autorité* to impose a total fine of €76,645,000, divided between 11 companies. This overall fine takes into account the *Autorité*'s decision to grant KP1 and Rector a reduced fine under the leniency procedure, and to impose a specific additional fine on Eurobéton France (€75,000) for obstructing the investigation. Eurobéton France had provided incorrect information in response to a request for information from the Investigation Services, and only corrected this error after the statement of objections had been sent, as part of its observations in response to this statement of objections.

The *Autorité* dismisses the case against Fidal

The Investigation Services issued an objection against Fidal, accusing it of facilitating the cartel by providing its clients with advice aimed at concealing these practices. In particular, the Investigation Services accused Fidal of giving a training course on competition law to FIB members, during which Fidal allegedly provided advice on concealing evidence of competitive behaviour.

However, while the *Autorité* noted that this presentation provided specific advice to a company with a view to concealing evidence of potentially anticompetitive behaviour that could be classified as facilitating a cartel or obstructing the detection of anticompetitive practices, it does not, on its own, demonstrate that Fidal was aware of the existence of a cartel between FIB member companies. In addition, as the training took place in 2007, the *Autorité* cannot, given the 10-year statute of limitations, sanction any anticompetitive practices demonstrated by the training material.

Information for companies

Why ask for leniency?

If your company participates or has participated in a cartel, it can avoid a high fine by reporting the infringement and providing the *Autorité* with evidence.

You are acting in your own best interests. Not taking the initiative to report an infringement exposes you to double jeopardy:

- the action of a third party (a competitor, a former employee, etc.) that discloses the infringement to the *Autorité de la concurrence*;
- an investigation initiated by the *Autorité* (possibly including dawn raids).

Total immunity from fines applies to the company that is the first to contact the *Autorité de la concurrence*, which is why it is in your interest to act without delay when you become aware of the cartel.

The other companies involved in the cartel, which do not approach the *Autorité* until later, can only benefit from partial immunity from fines (depending on their rank), and only on condition that they provide new information and evidence in relation to that already available to the *Autorité*.

A leniency application can be submitted directly on the *Autorité* website by following this link.

DECISION 24-D-06 OF 21 MAY 2024

regarding practices implemented in the pre-cast concrete products sector

See the full text of the decision (in French)

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