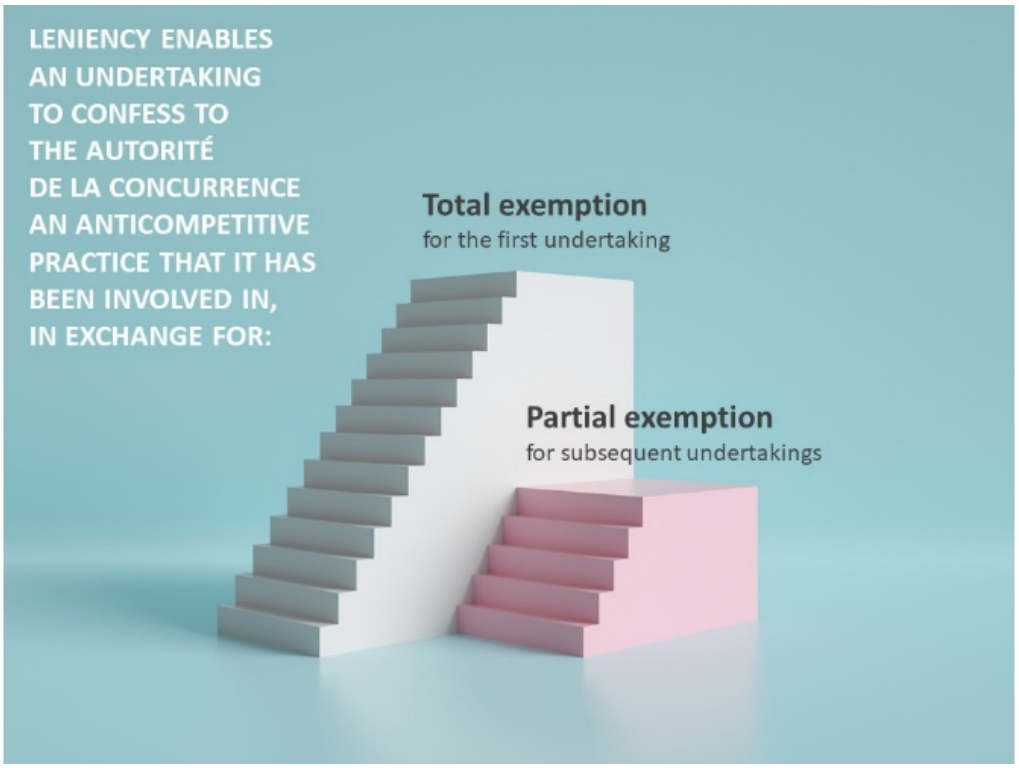
What is the leniency programme?

The fight against anticompetitive practices and cartels is one of the priorities of the *Autorité de la concurrence*. Among the detection tools at its disposal, there is one that is particularly effective: leniency.

Leniency is a powerful factor in cartel destabilisation because it introduces a very strong incentive to "come clean" to the *Autorité de la concurrence*. Undertakings must thus be aware that the threat can also come from within, and it is therefore in their interest to act swiftly to protect themselves.

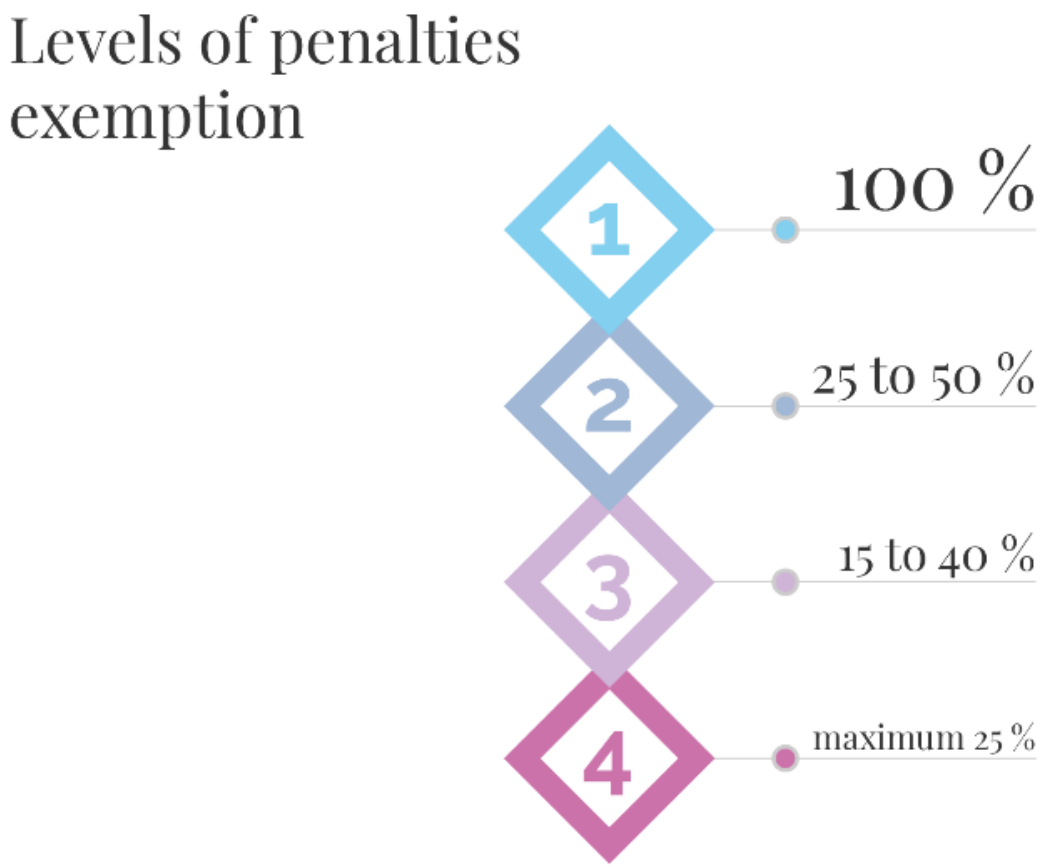


Leaving the cartel first and obtaining immunity

Leniency is one of the detection tools available to authorities, which can give undertakings favourable treatment (total or partial immunity from the incurred fine) if they report that they are now or have in the past engaged in an anticompetitive practice.

The first undertaking to report the offence and supply the necessary evidence receives total immunity from fines (first-rank leniency). Undertakings that apply for leniency later on may incur a reduced fine depending on their order of arrival and their level of cooperation (second-rank leniency).

To make the procedure clearer for undertakings, the *Autorité* explains in its procedural notice (link) the levels of immunity from fines for which undertakings can apply, based on their order of arrival and the added value provided by the evidence they supply.



A powerful detection tool for public economic policy

Nowadays, the *Autorité* faces the use by companies of **increasingly sophisticated methods to hide anticompetitive practices**: secret meetings, use of code names, encrypted messages, mobile phones specific to the anticompetitive practice, sometimes bought in the name of a third party, and storage of compromising documents at home.

While the *Autorité* works hard to detect cartels externally by developing advanced methods and tools for investigation and evidence detection during dawn raids, the leniency programme is also a tool to destabilise cartels from within. The programme has enabled **the *Autorité* to detect secret cartels that are damaging to the economy and consumers**.

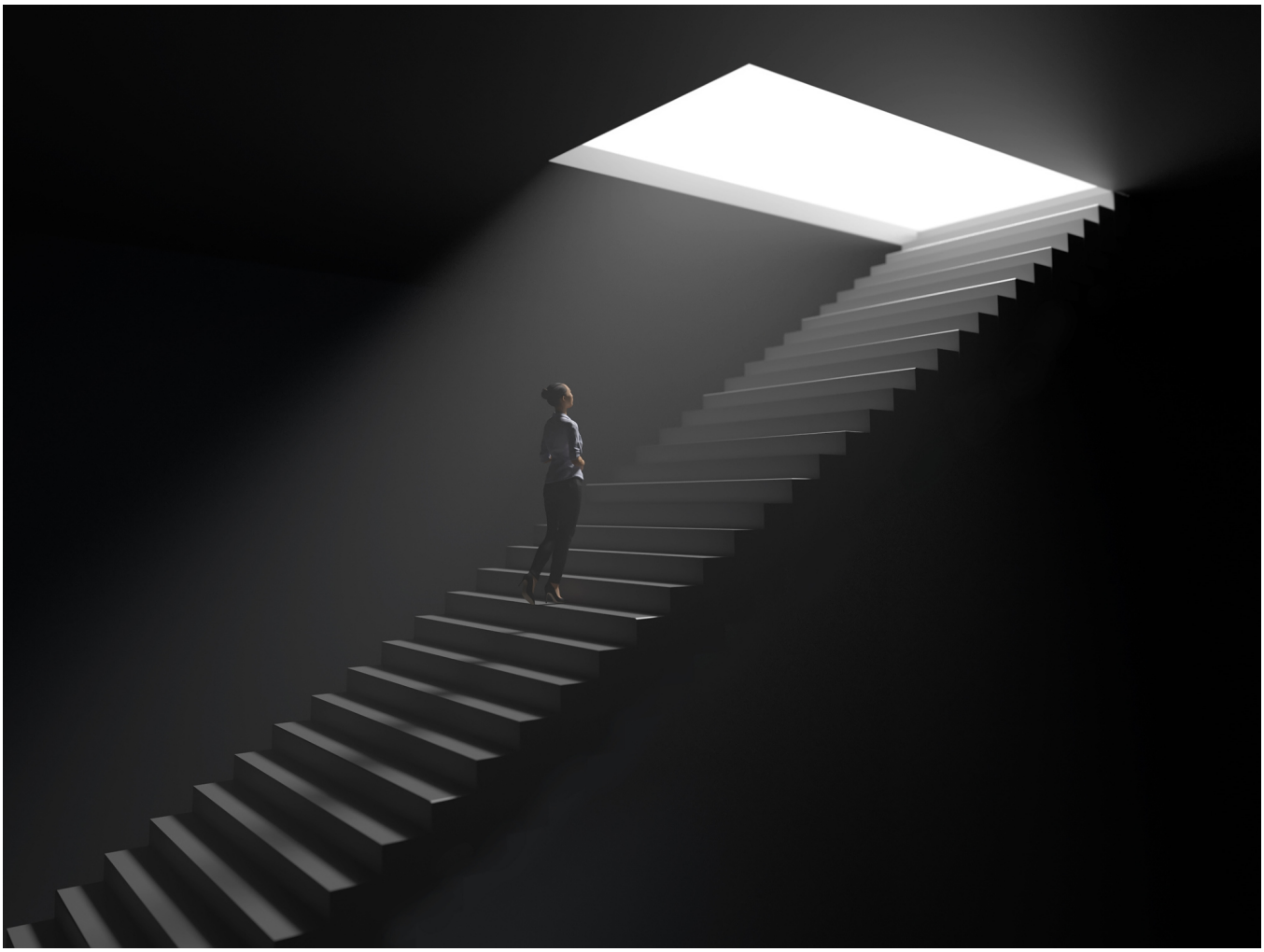
Leniency also **acts as a deterrent, discouraging companies from engaging in anticompetitive practices** because the programme means there is a substantial risk from inside the cartel.



Leniency means making the right call

Certain undertakings are sometimes tempted to engage in unlawful practices in the hope of short-term economic gain. This is a strategy that never pays. **Making commercial gains based on non-compliance with competition rules is risky and cannot last.** This type of behaviour can be unmasked at any time, with undertakings risking fines of up to 10% of their global turnover as a result.

A solution is available to undertakings: applying for the leniency procedure.



Leniency: a smart way to “come out on top” and wipe the slate clean.

What practices are concerned?

The anticompetitive practices concerned are, in principle, horizontal agreements between competing companies in the same market, consisting for example of fixing prices, production or sales quotas, and dividing markets or customers, including during calls for tender, etc. When these are generalised within a market, they are normally referred to as “cartels”.

These practices are extremely damaging because they artificially inflate prices or restrict supply on the market, and they mean that companies are not subject to the pressure that normally gives them an incentive to innovate. This is why these practices have become the priority target of competition authorities.

In France, the leniency procedure was introduced in 2001 (French law on New Economic Regulations ["NRE" Law] of 15 May 2001) and has led to the dismantling of extensive cartels and anticompetitive practices that for years had caused large, unjustified price increases, particularly for consumers and SMEs.

How are offences detected internally?

Many undertakings now have "antitrust risk" built into their strategy, and their governance rules include antitrust training and awareness measures for staff.

Compliance programmes introduced by undertakings can include control and employee whistleblowing mechanisms, so that senior management is alerted as quickly as possible to existing or potential offences.

The senior management team can then decide to refer the matter to the *Autorité* and win the leniency race.

