3 April 2015: Revision of the leniency procedural notice

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The Autorité de la concurrence has published a new notice concerning its Leniency Programme

> Version française

The *Autorité de la concurrence*, meeting in plenary session, has adopted the revised procedural notice relating to its Leniency Programme. This revision of the notice of March 2009 notably makes it possible to take into account the results of the study of 15 April 2014 concerning leniency as well as amendments to the European Model Programme produced by the ECN in November 2012.

A public consultation was held to discuss a draft provisional text between 27 February and 20 March. This made it possible to collect numerous comments and suggestions from competition law practitioners and those involved in the business world, which led to an enrichment of the text and clarification of certain points.

The contributions of the new text

The new notice pursues three objectives.

- Providing clarification as to the practical implementation of the leniency programme

It emerges from the Autorité's experience and its discussions with market players that certain practical aspects of leniency should be transposed into the procedural notice. Several series of amendments are thus made in this spirit.

Firstly, the visibility of the Leniency Officer, who is already playing a central role in the implementation of the procedure, has been reinforced; her functions are specified, especially as the entry point for companies wishing to make an application for leniency, and new clarifications are made to take account of the results of the public consultation.

The new notice then explains the key stages in the review of a leniency application, in particular between the moment when the deadline for the transmission of information and evidence upon which the application is based expires, and the time when the session of the Autorité – prior to the adoption of a leniency notice – is to be held. This point has also been the subject of adaptations on the basis of the results of the public consultation.

- Consolidating the Autorité's practice by incorporating certain principles developed since the most recent revision of the notice

The Autorité incorporates a certain number of principles developed in the context of its decision-making process. The clarifications provided are of two types: they are designed (i) to clarify the obligations of companies with respect to cooperation with the Autorité and (ii) to provide details as to the legal entities benefiting from a single and same application for leniency.

- Incorporating the experience acquired under the EU Model Leniency Programme in its revised 2012 version

The new notice incorporates a major innovation included in the revised 2012 version of the EU Model Leniency Programme, namely, an extension of the admissibility of summary applications to any application, regardless of type and its order of arrival. This innovation is of such a nature as to reduce the administrative burden caused by the submission of a leniency application, when several European competition authorities are likely to be competent.

A final document enhanced thanks to public consultation

In addition to taking into account in the present version of the procedural notice a certain number of remarks designed to make the wording more precise, the Autorité wished to provide two substantial changes to the notice, echoing the requests expressed in the replies to the public consultation.

- Specifying the content of the press release published following the dawn raids

In the draft procedural notice submitted to public consultation, the Autorité specified, as it had done twice in 2014, that it would now be regularly publishing a press release at the outcome of a dawn raid, in order to reinforce equality between companies liable to submit an application for leniency.

This initiative was largely welcomed during the public consultation, although contributors wished the proposed text to be more specific as to the content of the press release to be published. In order to take account of those legitimate remarks, the Autorité specifies in the present procedural notice that press releases published following dawn raids will not mention the identity of the companies inspected and the content will be worded with respect for the principle of the presumption of innocence. Finally, it is specified that when a press release is published as the result of dawn raids, the Autorité will publish a second press release in the event that it decides that there is no grounds to pursue the investigation or closes the investigation to the benefit of the companies inspected.

- Reinforcing incentives for companies to submit type 2 applications

Within the framework of the public consultation, the Autorité wished to receive the opinions of undertakings and competition law professionals on the point of whether the incentives for a company to submit a type 2 leniency application should be increased. It wishes in particular to be enlightened as to the balance proposed between the ranking of the application and analysis of the significant added value provided by the company when assessing the level of conditional reduction in the fine.

Most of the participants in the public consultation stressed that the current system did not offer enough foresight for type 2 applicants as to the level of reduction they could expect to obtain. In order to remedy this situation, several contributors proposed that the Autorité should provide ranges of predetermined reductions depending on the ranking of the type 2 applicants, based for instance on the model of the European Commission.

The *Autorité* took account of these remarks while ensuring a balance was maintained between the two criteria applicable in determining the level of conditional reduction of the fine for type 2 applicants (the ranking of the application and the added value of the elements provided).

The present press release consequently provides for an increase in transparency for companies by publishing ranges of reduction, while ensuring that they are partly overlapping as proposed by one of the contributors, in order to preserve a necessary flexibility that makes it possible to reward the quality of the information supplied.

> See the procedural notice of 3 April 2015

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