The whistleblower system

The *Autorité de la concurrence* is responsible for collecting and processing whistleblower reports from people who meet the conditions for whistleblower status.

What can an alert to the *Autorité de la concurrence* concern?

Whistleblower reports to the *Autorité de la concurrence* must concern a violation of the rules governing:

The ban on cartels (including as part of public procurement) and abuses of a dominant position

An unlawful agreement may take the form of:

- price fixing between competitors
- breaking down geographic markets or customers
- distorting a call for tender
- sharing sensitive commercial information
- limiting markets or technical progress
- restricting market access or free competition for other companies.

An abuse of a dominant position can take the form of:

- a refusal to sell
- tied selling
- discriminatory sales conditions
- unjustified termination of established trade relations
- predatory pricing or loyalty discounts.

A ban on State aid incompatible with the internal market

With a few exceptions, State aid is incompatible with the internal market when it meets four cumulative criteria: (i) it is public, (ii) it is selective, i.e. it favours certain companies or the production of certain goods, (iii) it affects trade between Member States and (iv) it distorts or threatens to distort competition.

The alert must relate to events that have already occurred or where there is a strong probability that they will occur.

Are you a whistleblower to the *Autorité de la concurrence*?

In accordance with the law, before the ***Autorité de la concurrence***, this framework is reserved for identified individuals who report or disclose, without direct financial consideration and in good faith, information concerning a violation of the rules on anticompetitive practices or State aid.

If the information was not obtained in the course of your professional activities, you must have had personal knowledge of it.

Is there a specific procedure that the whistleblower must follow before referring a matter to the *Autorité de la concurrence*?

Where an internal whistleblowing procedure exists within the organisation in question, we encourage you to use it if it does not expose you to the risk of retaliation and there is no risk of evidence being destroyed.

However, the whistleblower is not obliged to make an internal report before reporting to the ***Autorité de la concurrence***.

You may report directly to the ***Autorité de la concurrence*** if you do not wish to use the internal reporting procedure, or if using it exposes you to risks.

How to alert the *Autorité de la concurrence*?

In your report, the *Autorité de la concurrence* asks you to send it any information that might identify you as a whistleblower and any information that might help to demonstrate a breach of the rules on anticompetitive practices or State aid. You can also indicate whether you have already submitted an internal report.

You can contact us:

- **electronically** directly on the *Autorité de la concurrence* website;
- **by post** to the following address *Autorité de la concurrence*, 11 rue de l'Échelle, 75001 Paris.

Using a double envelope system: the first envelope will be addressed to the *Autorité de la concurrence*. It will contain a second envelope marked "Reporting of an alert under the Act of 21 March 2022 on [date sent]" and contain the information you want to report.

- **by telephone**: +33 1 55 04 00 05; you can record a message setting out the facts. You will then be contacted. We can also organise a videoconference or physical meeting following your call at your request and depending on your choice.

Whistleblower protection

Guaranteed confidentiality of the whistleblower's identity

If you have whistleblower status, we guarantee the confidentiality of your identity and that of any third parties mentioned in the report.

Information that could identify the whistleblower may not be disclosed without the whistleblower's consent.

If the facts described in the report constitute a criminal infringement, the *Autorité de la concurrence* must report them to the judicial authorities. Information that could help identify the whistleblower may also be communicated. The whistle-blower will be informed if this is the case.

Disclosing the identity of the whistleblower can be sanctioned by law, as can obstructing the report in any way whatsoever.

Lack of civil liability

Persons granted whistleblower status cannot be ordered to pay damages for harm caused as a result of their report.

The whistleblower must have had reasonable grounds for believing that the report was necessary to safeguard the interests at stake.

Lack of criminal liability

Persons with whistleblower status whose report has led to the violation of a protected secret are not criminally liable.

This lack of liability applies to any infringements committed to obtain the documents needed to prove the reported information, under the conditions and within the limits of Article L122-9 of the French Penal Code (*Code pénal*).

Protection against disciplinary and other retaliatory measures

Protection covers all retaliatory measures, including any of the following:

- suspension, layoff, dismissal
- demotion or refusal of promotion
- transfer of duties, change of workplace, salary reduction
- suspension of training
- negative performance evaluation
- disciplinary measures
- discrimination
- non-renewal of a fixed-term or temporary employment contract.

You are responsible for using your status as a whistleblower before a judge to request the reversal of a retaliatory measure or to defend yourself in civil or criminal proceedings.

Reporting follow-up

The procedure implemented by the *Autorité de la concurrence* guarantees the confidentiality of information obtained in the context of a whistleblowing procedure and in particular the anonymity of the whistleblower.

As part of the processing of an alert, the *Autorité de la concurrence* may ask you for any additional information it deems necessary to assess your status as a whistleblower, its jurisdiction and the accuracy of the allegations made. Under the same conditions, the *Autorité de la concurrence* can provide you with confidential advice.

The *Autorité de la concurrence* can take a range of actions in response to an alert:

- you will be informed if it considers that you do not qualify for whistleblower status;
- if it considers that the alert does not fall within its jurisdiction, or that it also falls within that of other authorities, it may immediately forward the report to the competent external authority or to the *Défenseur des droits*, with conditions that guarantee the integrity and confidentiality of the information it contains. You will be informed if your report is forwarded.

If it considers that you have whistleblower status and that your report falls within its jurisdiction, you will be informed in writing of the receipt of your report within seven workdays of its receipt, except in special circumstances.

In this case, the *Autorité de la concurrence* will carry out the necessary checks to assess the accuracy of your allegations, and may decide to:

- refer the matter to itself, conduct an investigation into it and impose sanctions or any other necessary measure, if it considers that this is justified by the anticompetitive practices reported to it;
- close the report when it has become irrelevant, or when the allegations are inaccurate, unfounded, manifestly minor, or contain no significant new information in relation to a report already closed.

You will be informed in writing, within a period not exceeding three months from the receipt of your notification, except in special circumstances, of the measures envisaged or taken by the *Autorité de la concurrence*. You will also be informed in

writing of the final outcome of the due diligence carried out.

This procedure does not apply to anonymous reports.

The information transmitted in a report is collected and processed by authorised personnel and may be passed on within the *Autorité de la concurrence* to specialised staff involved in the investigation of the alert.

The personal data collected in the event of a report is processed for the purposes of managing the report and for the exclusive use of the *Autorité de la concurrence*. Data subjects may exercise their data protection rights by contacting the *Autorité de la concurrence*'s Data Protection Officer (DPO). For more information.

If you have any questions regarding whistleblower status, please contact the *Défenseur des droits*, who is responsible for coordinating the actions of external authorities with regard to whistleblower reporting:

- by telephone on +33 9 69 39 00 00;
- electronically;
- by post, no postage required, to: *Défenseur des droits* - Libre réponse 71120 - 75342 Paris CEDEX 07.

Reference texts

- Law 2016-1691 of 9 December 2016, amended, on transparency, the fight against corruption and the modernisation of economic life.
- Decree 2022-1284 of 3 October 2022 on procedures for collecting and processing whistleblower reports.