

17 April 2007: Adoption of a procedural notice relative to revised French leniency programme

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Conseil de la concurrence is the first national competition authority to adapt its leniency programme to the European model programme

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The French leniency programme: a real success

The French leniency programme was introduced by the Law on New Economic Regulations (NRE) of 15 May 2001(1) . Its content was then detailed by the Conseil de la concurrence, which specified the aim and the scope of leniency, the conditions to be met in order to benefit from the programme and the procedure to be followed (2) .

Since then, the programme has met a real success. Almost 30 leniency applications have been introduced by French and foreign companies, and over 75% of them received a favourable opinion from the Conseil de la concurrence.

European cooperation : a more attractive and standardized leniency policy

European Competition authorities within the European Competition Network (ECN) created a working group relative to leniency, co-chaired by the French Conseil de la concurrence and the British Office of Fair Trading. The working group finally adopted a model programme setting the common principles for the processing of leniency applications, applicable to all the EU.

The model programme aims at strengthening the attractiveness of leniency among companies, offering a level of homogeneity and legal security, which had been lacking as a result of discrepancies between the different national leniency programmes.

The public consultation of 29th January 2007 : a new practice

The Conseil de la concurrence committed itself to adapt the French leniency programme to the model programme. On January 29th 2007, the Conseil therefore published a procedural notice project relative to the revision of its programme and, for the first time invited the interested parties to submit their observations.

This public consultation received very positive comments from competition policy players. The Conseil de la concurrence examined the observations, which helped to provide more guidance to applicants in their approach and to increase transparency in the leniency procedure.

The procedural notice of 17th April 2007 : major contributions

The Conseil de la concurrence issues today the revised leniency programme. Following the European Commission, France thus becomes the first member State to set up a programme in accordance with the cooperation notion which prevails in the ECN.

The major contributions of the new procedural notice concern the following points:

- 1) **a marker system has been introduced for immunity applicants to get to know their rank in the order of arrival:** this system enables to inform undertakings rapidly on the type of reduction of fine, which they can hope to obtain from the Conseil de la concurrence;
- 2) **the conditions for immunity and reduction of fines have been made more explicit:** the content of information and/or elements of proof to be provided at the different stages of the procedure in order to benefit from a reduction of fine has been specified; similarly, the way the applicant has to behave during all the

procedure had been explained in details so as to ensure the foreseeable nature of the leniency programme.

3) **the guarantees relative to the statements made by the undertakings have been strengthened**: the transcription and communication methods of these statements are supervised in order to ensure confidentiality;

4) **the possibility to introduce a summary application is established when the European Commission have authority to handle the case**: the content of information to be provided is restricted so as to avoid imposing useless constraints on undertakings as long as the Conseil de la concurrence has not decided to take action in the case.

This procedural notice will come into force on 17th April 2007.

The notice is available, accompanied by an overall presentation of the French leniency programme and questions-answers relative to it, on the Conseil's website.

(1) The relevant provisions of NRE law are now codified in articles L.464-2 et R.464-5 of the code of commercial law

(2) Procedural notice of the Conseil de la concurrence of 11 April 2006, relative to the French leniency programme