

FIRST APPLICATION OF THE LENIENCY PROCEDURE BY THE CONSEIL DE LA CONCURRENCE

September 2006

A complaint against two national cartels in the door manufacturing sector provided the French Competition Authority, the *Conseil de la concurrence*¹ with the first opportunity to apply, since its introduction by the law of 15 May 2001 on New Economic Regulations, the leniency procedure (some twenty cases are currently being reviewed).

Governed by Article L. 464-2, IV of the French Commercial Code, the objective of the leniency procedure is to introduce permanent uncertainty among cartel members by inciting, by an offer of total or partial exoneration from the fines applicable, members of a cartel to cease their anticompetitive practices and denounce them to the competition authorities, i.e. to act as whistleblowers.

In the present instance, nine undertakings operating in the door manufacturing sector were fined for price-fixing. The fines totalled EUR 5 million. The undertaking having applied for leniency was facing a fine of EUR 1.25 million.

As the first to blow the whistle on the existence of this cartel to the competition authorities, this undertaking was able to benefit from a full exemption of the financial penalty, the Competition Authority having found that it had: (i) provided convincing evidence to it that contributed to establishing the existence of the infringement and to identifying the perpetrators, (ii) fully cooperated with the authorities throughout the proceedings, (iii) refrained from taking measures to coerce other undertakings to participate in the infringement, (iv) ended its involvement in the cartel at the start of the leniency procedure, and (v) refrained from notifying the other undertakings facing prosecution on the basis of those practices.

The Competition Authority published, in a statement concerning the procedure, the conditions of application and of implementation of its leniency procedure on its website.²

¹ Decision no. 06-D-09 of 11 April 2006.

² "Communiqué de procédure du 11 avril 2006 : le programme français de clémence" available on its website at: www.conseil-concurrence.fr

AREAS OF LEGAL PRACTICE

• **MERGERS & ACQUISITIONS**

Engineering of takeovers and deal structuring, legal due diligence, restructuring operations, joint ventures, obtaining necessary administrative permits and licenses, drafting and negotiation of documentation (letters of intent, sale & purchase agreements, warranties that assets and liabilities are as stated, bank guarantees, shareholders' agreements, etc.), merger deals, takeovers of companies in difficulty or in the framework of collective procedures.

• **CAPITAL INVESTMENTS AND LBOS**

Representation of investment funds, issuers, targets and company officers, during the due diligence, advisory and negotiation processes.

• **COMPANY LAW**

"Long-term capital" transactions, capital increases, issuance of composite securities (convertible or repayable in shares, investment certificates, priority dividend shares etc.), stock option agreements, company founder share plans, temporary business combinations, management fees and cash management agreements, changes to charter/by-laws and legal secretariat services.

• **SECURITIES LAW**

IPOs and preparatory work, drafting of prospectuses, legal secretariat services for listed companies, relations with market authorities, securities litigation.

• **BANKING AND FINANCE**

Advice on loan and financing agreements, warranties/guarantees, syndication, banking regulations, financing of acquisitions and structured asset financing (particularly of real estate).

• **COMMERCIAL CONTRACTS / ECONOMIC LAW**

Advice and litigation with commercial contracts, i.e. service, sale, distribution, concession, franchise, commercial agent agreements, distributor/supplier relations, general terms of purchase/sale, commercial partnerships, manufacturing and subcontracting agreements, business sale agreements, management leases, consumer law, public and private procurement contracts.

• **ADVERTISING / MARKETING**

Advice and litigation work in advertising and marketing law (validation of advertising or promotional campaigns on all media and related litigation).

• **LABOUR AND EMPLOYMENT LAW**

Advice and litigation work in collective and individual disputes as well as in social security law and criminal labour law.

• **INTERNATIONAL LITIGATION / ARBITRATION**

Advice and litigation work covering all facets of business, company and securities law, as well as collective procedures and white-collar crime. Representation at all stages of the dispute, from pre-litigation to litigation before judicial or arbitral courts, protective measures and enforcement.

• **REAL ESTATE LAW**

Advice and litigation work in connection with commercial leases, real estate due diligences, purchase/sale of property and of preponderantly real estate companies, financing of real estate acquisitions.

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• **COMPETITION LAW (FRENCH AND EU)**

Advice and litigation work in respect of industrial cooperation agreements and structuring of distribution networks. Advice and representation before the competition authorities and courts in cartel, anti-competitive practices, abuse of a dominant position and unfair competition cases. Advice on the control of concentrations (conduct of feasibility studies, preparation of notification files, negotiation with the national and Community control authorities) and on State aids/subsidies.

• **NEW TECHNOLOGIES AND INTELLECTUAL PROPERTY LAW**

Advice and litigation work, notably in IT matters (development and integration of software, licenses, assignments and other software-related contracts, facilities management, maintenance of IT systems and software, software infringement), in the field of new technologies (multimedia, Internet, e-commerce). Creation and hosting of websites, affiliation, partnership, online auctions, ASP licenses.

• **INTELLECTUAL PROPERTY**

Literary and artistic property rights & neighbouring rights. Distribution license, rights of performing artists, infringement litigation. Industrial property, trademark, patent and/or design and model applications, licenses and assignments, transfers of technology and/or know-how, trademark, patent and/or design and model litigation (infringement, opposition proceedings, etc.).

• **AUDIOVISUAL AND MULTIMEDIA LAW**

Advice and litigation work in connection with the production, publishing, co-production, distribution and licensing agreements, in France and abroad, of motion picture and/or audiovisual and/or multimedia works and related agreements. Navigation of audiovisual and motion picture regulations and assistance with financing.

• **TELECOM**

Legal advice and preparation of applications for telecom operator licenses, legal aspects of foreign investments in the telecom sector, link leasing (cable and fibre), co-leasing, leasing of capacity, service and/or capacity supply agreements and general terms of service and/or capacity supply, legal aspects and local loop unbundling.

• **COLLECTIVE PROCEDURES**

Alert, restructuring and reorganisation procedures, conciliation and ad hoc representation procedures. Court-ordered reorganisation, preparation of reorganisation plans, sale and recovery plans, liquidation. Representation and assistance of creditors, company officers (action to make good the shortfall in assets, extension procedures, etc.).

Wide network of foreign correspondents

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ISO 9001

The Firm was the first Paris law firm to obtain ISO 9001 certification back in 1998.

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