This country-specific Q&A provides an overview of cartels laws and regulations applicable in France.

For a full list of jurisdictional Q&As visit [here](#)
1. What is the relevant legislative framework?

Prohibited cartels and concerted practices are regulated by Articles L. 420-1 to L. 420-7 of the French Commercial Code (‘FCC’). The terms of Article L. 420-1 of the FCC are similar to those of Article 101 of the Treaty on the Functioning of the European Union (‘TFEU’).

Article L. 420-1 of the FCC does not provide any legal definition of a cartel. However, as in Article 101 TFEU, any agreement, written or oral, between two or more undertakings, express or tacit, is prohibited if its object or effect is to prevent, restrict or distort competition within a relevant market, in particular if it:

1. limits access to the market or the free exercise of competition by other undertakings;
2. prevents price setting by the free play of market forces, by artificially encouraging the increase or reduction of prices;
3. limits or controls production, opportunities, investments or technical progress;
4. shares out markets or sources of supply.

Procedural rules are provided in Articles L. 450-1 to L. 470-8 of the FCC, and the principles relating to their implementation are described at Articles R. 450-1 to R. 470-7 of the FCC.

According to Regulation (EC) No. 1/2003, the French competition authority (‘FCA’) must also apply Article 101 TFEU to agreements, decisions by associations of undertakings or concerted practices within the meaning of Article 101(1) TFEU which may affect trade between Member States.

The legislative framework applies (i) to both corporations and individuals as long as they are considered competitors, (ii) to any entities, regardless of legal status (professional organisations, trade unions, sporting federations, etc) and to (iii) all activities and industries (i.e. there are no provisions for investigating cartel conduct in specific industries or industry-specific exemptions).

Potential defences are laid down in Article L. 420-4 of the FCC according to which cartels and concerted practices falling under Article L. 420-1 of the FCC may be exempted under specific circumstances and conditions, as follows:

- in the event that the anti-competitive agreement or practice results from the application of a legislative act or a regulation adopted in application thereof;
- as in Article 101(3) TFEU, Article L. 420-4 exempts agreements or practices for which the authors can justify that they:
  - have the effect of ensuring economic progress, including by creating or maintaining jobs;
  - reserve for users a fair share of the resulting profit;
  - do not give the undertakings concerned the possibility to eliminate competition for a substantial part of the products in question; and
- do not impose restrictions on competition that are not indispensable to the achievement of this aim of progress.

Certain categories of agreements or certain agreements, in particular when they are intended to improve the management of small or medium-sized enterprises, may be recognised as satisfying the conditions hereupon by a decree adopted following a favourable opinion from the FCA. Such decrees have similar effects to European block exemptions but are very rarely issued (to our knowledge, only three decrees have been issued on this basis, two in the agricultural sector and a third one has been issued in December 2007 in the automobile sector).

2. **To establish an infringement, does there need to have been an effect on the market?**

Pursuant to Article L. 420-1 of the FCC, cartels are prohibited if they have as their object or effect the prevention, restriction or distortion of competition on the French market. Thus, cartels can constitute an infringement irrespective of whether they effectively have an anti-competitive effect on the market. As such, cartels which are anti-competitive by object are presumed to have anti-competitive effects on the market.

3. **Does the law apply to conduct that occurs outside the jurisdiction?**

French competition law applies to concerted actions, agreements, or coalitions that have the objective to affect the French market or have an effect on the French market regardless of the place where (i) the companies involved in the alleged cartel have their headquarters, (ii) the anticompetitive agreements were entered into, or (iii) the alleged acts were committed.

4. **Which authorities can investigate cartels?**

The authority in charge of enforcing national and European provisions related to prohibited cartels and concerted practices is the (French) Competition Authority, which replaced the Competition Council. The FCA is an independent administrative public body.

It is worth mentioning that administrative and some judicial (commercial, civil and criminal) courts are also competent to enforce Articles L. 420-1 to L. 420-7 of the FCC when assessing cases falling under their jurisdiction. In this respect, in the cases they have to deal with, these courts may refer competition questions raised to the FCA for advice.

**The decision-making body: the Board (“Collège”)**

The FCA’s Board comprises 17 members, including a president and four vice-presidents.

As a collegiate board, the FCA may meet either in plenary session, in divisions or in a standing committee.
The Investigating Services

FCA’s members are assisted by one general case handler, heading the Investigating Services.

The Investigating Services comprises approximately 200 case handlers who are appointed by the Minister of the Economy from among judges, civil servants, economists and legal experts. They are allocated among different services, each of them being headed by a vice-general case handler. As of today, the investigation services consist of five antitrust units (anticompetitive practices, advisory activity, etc.), one inspections unit (investigations, dawn raids, follow-up of litigation), one mergers Unit (merger control), the chief economist’s team (assessments, modelling and studies), one regulated professions unit and the leniency officer.

The FCA carries out and controls the entire investigations phase for antitrust cases via its Investigating Services.

If the Minister of the Economy would like an investigation to be carried out on practices that may qualify for Articles L. 420-1 to L. 420-2-2 and L. 420-5 of the FCC or are likely to be contrary to the measures taken pursuant to Article L. 410-3, he/she has to inform the general case handler before starting the investigations. In such a case, the Minister of the Economy sends the general case handler the documents that justify such investigations. Pursuant to Article D. 450-3 of the FCC, the general case handler has one month to take the lead of the investigations wanted by the Minister of the Economy. If it does, it informs the Minister of the Economy. If the general case handler does not take the lead of the investigations or does not give any answer to the Minister of the Economy within 35 days of the receipt of the documents sent, the latter may lead investigations. The general case handler is then informed immediately of the result of the investigations led by the agents of the Minister of the Economy. He/she can propose to the FCA to act on its own motion.

Commissaire du Gouvernement

The Minister of the Economy also appoints a representative of the government to represent the interests of the State during the FCA’s hearings (Commissaire du Gouvernement). He or she may submit a range of observations on all cases referred to the FCA.

Hearing Officer

The French legislator has instituted a hearing officer who must be a magistrate or offer equivalent guarantees of independence and appraisal and is appointed for five years (renewable once). Its office consists in ensuring the good order of the proceedings. In this respect, he/she may collect observations that the relevant parties may provide regarding the proceedings as soon as the statement of objections is issued. He/she may also ex officio draw the attention of the general case handler regarding the proceedings when he/she considers
that a question relating to a possible violation of parties’ rights is at stake. He/she may then transmit a report to the FCA’s president containing his/her evaluation of the parties’ observations. He/she can also propose, if necessary, any measure that may improve the exercise of the parties’ rights. The modalities of his/her intervention were specified by Decree No 2009-335 of 26 March 2009 (now codified in Article R. 461-9 of the FCC).

5. **What are the key steps in a cartel investigation?**

a) Initiating an investigation

The FCA can start an investigation:

1. after having been approached by one of the cartel members acting as a whistle-blower;
2. following a complaint by a third party (*i.e.* companies, local or regional authorities, professional bodies and chambers, trade unions, consumer organisations, or even an individual, should it be within the framework of its economic activity);
3. by referral from the Minister of the Economy;
4. at its own initiative (*ex officio*) based on information obtained from public sources such as the media.

b) Investigation phase (non-contradictory phase)

Once a case has come to the FCA’s attention, the FCA will try to collect further information to determine whether there are relevant and reasonable evidence to establish an infringement of Articles L. 420-1 of the FCC and 101 TFUE.

For that purpose, the general case handler usually appoints one or more agents of the Investigating Services as case handlers to examine each case.

In case the proceeding is initiated by a complaint, the FCA has to assess the admissibility of the referral (competence, time-barring, etc), and then decide whether to investigate further. In other words, the FCA will analyse the existence of relevant and reasonable information tending to establish an alleged infringement of Article L. 420-1. When considering whether a case should be investigated, the FCA is not bound by the parties’ complaint (facts, qualification or requests).

The FCA may organise unannounced inspections, send requests for information and set up interviews with any relevant directors/employees. The investigation phase is not subject to any specific timeframe. However, in order to prevent excessive duration of the procedure, the investigation services try to limit as much as possible the length of this phase.

c) Ending an investigation
Further to its investigation, the case handler in charge of the case may propose (i) not to proceed with the case or (ii) to issue a statement of objections towards the suspected cartelists.

A decision not to proceed with the case can be taken by the FCA at any stage of the procedure. The FCA cannot take such a decision before giving the parties and the Commissaire du Gouvernement (i.e. the government representative) access to the file. They have two months to submit their observations. The FCA can afterwards either uphold the case handler’s opinion or request further investigations.

d) Key procedural steps (contradictory phase)

If the FCA considers that its investigation is justified, the general case handler will issue a statement of objections to the undertakings concerned and will grant them with an access to its files, i.e. non-confidential version of the investigating acts conducted and the evidence gathered during the investigation, which support the statement of objections.

Once the statement of objections is issued, the procedure becomes contradictory. The recipients of the statement of objections have two months to submit their observations in response to the statement of objections in writing (Article L. 463-2 of the FCC). Upon reasoned request, this period can be extended (to a maximum of one month).

Under no specific timeframe, the case handler will then examine the different responses received and may initiate additional acts of investigation, before notifying its report to the suspected cartelists, the Commissaire du Gouvernement and the ministers concerned. This report aims at (i) responding to the parties’ observations and (ii) proposing the Collège (the FCA’s Board) to take into account a number of factors in determining the amount of the fines.

The parties again have the right to submit their observations in response to the report within 2 months of receipt of the report.

As an exception to this ‘normal’ procedure, when the case does not raise significant concerns, the president (or the vice-president) of the FCA may submit the case to a ‘simplified procedure’, at the end of which a decision may be taken without a prior report.

Following this ‘written’ phase, an oral hearing before the Collège is held at which the Investigating services, the Minister of the Economy (through its representative, the Commissaire du Gouvernement), the plaintiff (as the case may be) and each of the parties who have been notified the statement of objections, present their observations orally. As the case may be, the Hearing Officer may also be invited by the president of the FCA to attend the hearing and present its report. Oral hearings before the FCA are not public.
Approximately 1 to 2 months after the hearing, the FCA issues its final decision.

6. **What are the key investigative powers that are available to the relevant authorities?**

Investigation regimes are twofold under French law: ordinary investigations (a) and investigations under judicial control (b).

In practice, investigations under judicial control are usually preferred to ordinary investigations in cartel cases.

a) **Ordinary investigations (Article L. 450-3 of the FCC)**

Pursuant to Article L. 450-3 of the FCC, officials of the FCA’s Investigating Services (duly authorised by the general case handler) may:

- access to all business premises, land or means of transport for professional use;
- request copies of books, invoices and all other professional documents and obtain or take copies of these by any means and on any medium (either hard or electronic copies);
- for the purposes of checking operations involving the use of IT, they shall have access to the software and data stored and to the unencrypted reproduction of information;
- access to the data stored and processed by telecommunications operators, under the conditions and within the limits provided for in Article L. 34-1 of the French Post and Electronic Communications Code;
  - access to the data shall be subject to a request for prior authorisation from the general case handler of the FCA to a controller of connection data requests;
  - the controller of requests for connection data is alternately a member of the *Conseil d’Etat* (the highest French administrative court) or a magistrate of the *Cour de Cassation* (the highest French civil court);
  - the request for authorisation shall mention the elements collected by the agents mentioned in Article L. 450-1 of the FCC that give rise to a presumption of an infringement of Article L. 420-1 of the FCC;
- request an explanation/information from any employee or representative; and
- order a second expert opinion.

Any opposition to the investigation can be punished by a fine of up to 300,000 euros and a two-years prison sentence (Article L. 450-8 of the FCC). In particular, the investigators cannot be opposed on the grounds of business secrets.

The FCA may also impose fines of up to 1% of an undertaking’s total annual worldwide turnover to undertakings that obstruct an investigation, in particular by supplying incomplete or inaccurate information, or by submitting incomplete or misleading information or documents (Article L. 464-2-V of the FCC).

Under ‘ordinary investigation’, there is no ‘surprise effect’. Investigated undertakings are
informed by the FCA’s officials of their visit, whom shall schedule a meeting with the investigated undertaking and will, generally, request for a list of documents to be prepared and provided for the scheduled visit.

b) Investigations under judicial control (Article L. 450-4 of the FCC)

The investigations carried out pursuant to Article L. 450-4 refer to searches and seizures in all locations that are subject to a judicial order from a specific judge (‘le juge des libertés et de la détention’) upon request of the Minister of the Economy or the general case handler, or the European Commission.

The investigations are carried out under the supervision of the judge and in the presence of the company’s representative (or if not available, two independent witnesses) and a police officer or officers who are entitled to compel the party to hand over the documents.

Pursuant to Article L. 450-4 of the FCC, officials of the investigation services of the FCA may:

- conduct unannounced (and often simultaneous) visits to any place (business and residential);
- seize documents and any information medium;
- affix seals to all business premises, documents and electronic storage media within the limit of the duration of the visit to these premises;
- access to the data stored and processed by telecommunications operators (see above);
- ask any representative for explanations of facts or documents relating to the subject matter of the investigation.

The order issued by the Juge des libertés et de la détention must be notified verbally and on the spot to the occupant of the premises or its representative, who shall receive a full copy of the order. The order must mention the possibility to be assisted by an external legal counsel. However, the inspectors do not have to wait for the external legal counsel to arrive on site to start the investigation.

The judicial order authorising the dawn-raid and the conduct of the dawn raid may each be appealed before the first president of the Court of Appeal, in accordance with the rules laid down in the French Code of Criminal Procedure. Time is of the essence in this regard, as such an appeal has to be lodged within 10 calendar days following the notification of the judicial order or the receipt of the minutes of the investigation established by the inspectors. The decision of the first president of the Court of Appeal can then be challenged before the Cour de cassation (the highest French civil court) within 5 calendar days.

Any opposition to the investigation can be punished by a fine of up to 300,000 euros and a two-years prison sentence (Article L. 450-8 of the FCC). In particular, the investigators cannot be opposed on the grounds of business secrets.
The FCA may also impose fines of up to 1% of an undertaking’s total annual worldwide turnover to undertakings that obstruct an investigation, in particular by supplying incomplete or inaccurate information, or by submitting incomplete or misleading information or documents (Article L. 464-2-V of the FCC). Obstruction to an investigation also includes any deliberate or negligent conduct on the part of the company with a view to obstructing or delaying, by any means whatsoever, the conduct of the enquiry or investigation (see for instance, FCA decision n° 19-D-09 of 22 May 2019 imposing a 900 000 euros fine to visited companies who broke seals during a dawn raid and tampered with the receipt of emails).

7. **On what grounds can legal privilege be invoked to withhold the production of certain documents in the context of a request by the relevant authorities?**

Legal privilege covers written communications between external qualified lawyers and their clients. In theory, under French law, any such documents would be covered by legal privilege. However, recent experience shows that in practice, as under EU law, are covered by legal privilege only written communications between external qualified lawyers and their clients made for the purpose and in the interest of the client’s rights of defence related to the subject of the investigation.

Internal correspondence summarising and reflecting the advice of external legal counsels can usually also be protected under legal privilege.

However, legal privilege does not cover written communications between in-house counsel and company’s employees.

Since a couple of years now, due to a number of litigations in this respect, FCA’s officials implemented a new practice consisting in affixing temporary seals to seized electronic files to allow the undertaking concerned and its external legal counsels to identify within 15 days legally privileged documents or documents unrelated to the inspection. This is a very burdensome work which shall not be underestimated. The FCA may grant an extension but it is not keen to.

8. **What are the conditions for a granting of full immunity? What evidence does the applicant need to provide? Is a formal admission required?**

The principle and conditions for the enforcement of the leniency programme are set down in paragraph IV of Article L. 464-2 of the FCC and in Article R. 464-5 of the FCC (see details below).

In addition, a procedural notice about the French leniency programme was adopted on 11 April 2006 and lastly revised on 3 April 2015 to clarify the conditions for obtaining full or partial immunity.
Under the leniency programme, undertakings have an incentive to end their participation in anti-competitive practices and to inform the FCA of the existence of such practices.

Where an undertaking has taken part in an anti-competitive practice under the provisions of Article L. 420-1, full or partial immunity can be granted if it helps to prove that the infringement occurred.

1. **Eligibility conditions**

a) **Full immunity (100% reduction of fine)**

The leniency notice provides for two types of cases:

- **Type 1A cases**: cases in which the FCA has no information on the alleged cartel; the FCA will grant full immunity from financial penalties if the following two conditions are met:
  1. the FCA did not previously have sufficient information and evidence to carry out or arrange for targeted investigation measures on its own initiative under Article L. 450-4 of the FCC; and
  2. in the FCA’s view, the information and evidence provided by the undertaking as support of its leniency application enables it to carry-out the investigation measures; for this purpose, the applicant for leniency must provide, in writing or orally:
     - name and address of the legal entity applying for full exemption;
     - names and addresses of the other participants in the alleged cartel;
     - detailed description of the alleged cartel, including the nature and use of the products involved, the territories in which the practices in question are likely to have an effect, the nature of the practices and an estimate of their duration;
     - information on any leniency application relating to the alleged cartel that it has made or intends to make to other competition authorities; and
     - any documentary or other evidence in its possession.

- **Type 1B cases**: cases in which the FCA already has information on the alleged cartel; the FCA may grant a full immunity if the three following conditions are met:
  1. the leniency applicant is the first one to provide evidence which, in the FCA’s view, is sufficient to enable it to establish the existence of an infringement of Article L. 420-1 of the FCC and, where appropriate, of Article 101 TFEU;
  2. at the time of the application, the FCA did not have sufficient evidence to establish the existence of an infringement;
  3. no other company has obtained a type 1A conditional total exemption.

b) **Partial immunity (partial reduction of fine)**
Undertakings which do not meet the conditions laid down in type 1A or 1B cases may benefit from a partial exemption. The leniency applicant must provide the FCA with ‘significant added value’ evidence of the existence of the alleged cartel compared to the evidence already in the FCA’s possession.

According to the FCA’s leniency notice, written contemporaneous evidence is of greater value than evidence subsequently established, incriminating evidence has a value greater than the items indirectly related, and indisputable evidence is of greater value than the evidence that should be corroborated.

To determine the level of exemption, the FCA will take into account the timing of the application and the degree of significant added value of the information provided by the applicant. The reduction of fine will in principle be within the following range:

- first undertaking that provides information of a significant added value: reduction of 25% to 50% of the amount of the fine;
- second undertaking that provides information of a significant added value: reduction of 15% to 45% of the amount of the fine;
- for every other undertaking that provides information of a significant added value: maximum reduction of 25% of the amount of the fine.

2. Substantive conditions

In addition to the eligibility conditions, the applicant must meet all of the following substantive conditions to be granted full or partial immunity:

- end its participation in the alleged anti-competitive activities immediately and at the latest from notification of the leniency position; however, in order to preserve the confidentiality and the efficiency of the investigation procedures, the FCA may decide to postpone this date;
- cooperate fully and in good faith with the FCA as soon as the application has been lodged and throughout the investigation; in particular, the applicant must:
  - provide the FCA with all evidence in, or that may come into, its possession relating to the suspected infringement;
  - not call into question the factual elements it has revealed to the FCA as part of its leniency application;
  - promptly answer any request relating to the alleged cartel;
  - make current and, if possible, former employees and legal representatives available for interrogation;
  - abstain from destroying, falsifying or concealing relevant information or evidence relating to the alleged cartel; and
  - abstain from disclosing the existence or the content of its leniency application before the FCA has issued its statements of objections, unless otherwise agreed;
- when contemplating filing a leniency application, the applicant must not have destroyed
or falsified evidence of the alleged cartel, nor disclosed its intention to apply for leniency except to other competition authorities; and
- not have taken any measures to coerce other undertakings into participating in the infringements.

9. **What level of leniency, if any, is available to subsequent applicants and what are the eligibility conditions?**

Being the first applicant ensures the granting of a full immunity, provided that the conditions mentioned above are met. Applicants that are not first or that do not meet the above-mentioned conditions may still apply for a partial immunity to obtain a reduction of fine (see question above).

10. **Are markers available and, if so, in what circumstances?**

Contacts can be initiated with the general case handler or the ‘special leniency advisor’ (*Conseiller Clémence*) (by telephone or email, as specified in the procedural notice). The applicant must file its application with the general case handler in writing or orally. Receipt of the application by the general case handler (either by registered mail with acknowledgement of receipt or the redaction of the minutes by the general case handler) allows the applicant to apply for a marker.

Markers protect the applicant’s rank in the leniency queue for a period of time specified by the general case handler. Marker is provided subject to the supply by the applicant of all information and pieces of evidence relating to the infringement which are necessary to support its application.

11. **What is required of immunity/leniency applicants in terms of ongoing cooperation with the relevant authorities?**

A leniency applicant must cooperate fully throughout the investigation and until the end of the procedure before the FCA (*i.e.* the decision). It must submit all relevant information that comes into its possession during the investigation and remain available to answer any questions the FCA may have, while respecting confidentiality obligations (see above).

12. **Does the grant of immunity/leniency extend to immunity from criminal prosecution (if any) for current/former employees and directors?**

The grant of immunity/leniency by the FCA to the applicant concerned does not extend to immunity from criminal prosecution for its current/former employees and directors.

The FCA is an independent administrative public authority which has no power to impose criminal sanctions on individuals involved in cartel conducts. Criminal penalties can only be imposed by the criminal courts.
According to Article L. 462-6 of the FCC, where the facts appear to justify the application of Article L. 420-6 of the FCC (which provides for criminal penalties), the FCA shall inform the public prosecutor and send the relevant file. In its Leniency Notice, the FCA considers that leniency is one of the legitimate reasons for not transmitting to the public prosecutor’s office a file in which natural persons belonging to the company that benefited from a leniency procedure could also be the subject of a criminal proceeding.

13. **Is there an ‘amnesty plus’ programme?**

Amnesty plus is not available.

14. **Does the investigating authority have the ability to enter into a settlement agreement or plea bargain and, if so, what is the process for doing so?**

The principle and conditions for enforcement of the settlement procedure are set down in paragraph III of Article L. 464-2 of the FCC. In a nutshell:

- any company can request a settlement before or following the issuance of a statement of objections;
- if a statement of objections has been sent, the undertaking must act quickly and contact without delay the general case handler as a settlement report must be finalised and signed within two months of the statement of objections’ issuance;
- the settlement procedure may be implemented in conjunction with the leniency procedure;
- to apply, the undertaking must agree to waive its right to challenge the reality of the practices, *i.e.* their materiality, duration, scope and the undertaking’s participation to the practices. The waiver does not constitute, in itself, an admission of guilt;
- the general case handler has no obligation to accept the implementation of the settlement procedure and has broad discretionary powers in this respect, on a case-by-case basis;
- as a general rule, the FCA intends to favour the implementation of the settlement procedure where all parties waive their right to contest the objections and have made a settlement request;
- if the general case handler considers that the settlement can be implemented, he will submit to the undertaking concerned a settlement submission setting the minimum and maximum amount of the anticipated financial penalty;
- the amount of the reduction of penalty attached to the implementation of the settlement procedure shall not be predetermined and is assessed on a case-by-case basis;
- if, within a period of time to be determined by the general case handler, the undertaking concerned agrees to the settlement proposal, the general case handler will propose to the FCA’s Board to impose a fine within the financial range set by the settlement;
- the agreement between the undertaking and the general case handler shall be recorded in a settlement report;
- the general case handler may inform the other parties involved in the same investigation of the existence of one or more ongoing settlement(s) in order to give them a chance to
also present a settlement request if they wish so;
- the FCA’s board examines the facts and objections notified to the undertaking concerned and the settlement report:
  - if it considers that the conditions are met, it shall impose a fine within the limits of the range set out in the settlement report (taking into account, where appropriate, the contribution of the leniency applicant);
  - if it considers that the conditions are not met, it may decide to refer the case to the investigation under the ordinary procedure; in such case, the signed settlement report become null and void.

Beside the leniency and settlement procedure, there is another ‘alternative dispute resolution’ namely the ‘commitment procedure’, which can only be engaged before the statement of objections is issued. However, such a procedure is mainly used in abuse of dominant cases or vertical practices and is not really appropriate for cartels.

15. **What are the key pros and cons for a party that is considering entering into settlement?**

**Main advantages:** the settlement procedure allows the company to end the proceedings more quickly, with a reduction of fine which amount is now more predictable (vs the former “no-challenge procedure” which only provided the company with a rebate amount in percentage applicable to a basic amount which was not known before the FCA’s decision).

**Main disadvantages:** the settlement procedure can have a detrimental impact for the undertaking’s position before other competition authorities and potential civil claimants; indeed, as the applicant waives its right to challenge the reality of the practices, even though it is clearly stated that such a waiver is not an admission of guilt, a settlement procedural cannot be totally neutral when assessing the fault of the undertaking concerned in a private enforcement procedure. In this respect, new Article L. 483-5 of the FCC provides that the judge may not order the communication or production of an exhibit containing a written statement voluntarily submitted to a competition authority “expressing his or her willingness to waive the right to contest the reality of the objections notified to him or her and the liability arising therefrom”.

The use of the settlement procedure does not prevent the beneficiary from appealing against the decision of FCA. However, it may only contest the amount of the fine imposed but not the reality of the practices, unless it will call into question the benefit of the settlement procedure.

16. **What is the nature and extent of any cooperation with other investigating authorities, including from other jurisdictions?**

The FCA works in close collaboration with the European Commission and the 26 other national competition authorities (plus the UK) to ensure coherent, unified regulation within
In this regard, the FCA is one of the most active authorities within the European Competition Network (‘ECN’) and thus the rules laid down in Regulation 1/2003 apply. The ECN is used by the national competition authorities (‘NCAs’) and the European Commission to keep each other informed of new cases involving cartels or abuses that could affect trade between Member States, coordinate with one another and provide mutual assistance with investigations, exchange information on open cases, guarantee the coherence of EU competition policy, or work together on general or sector-specific topics.

The FCA also maintains a strong and influential international presence with third-countries jurisdictions, whether as part of the International Competition Network, within multilateral bodies like UNCTAD and the OECD, or as part of regional organisations such as the West African Economic and Monetary Union and the Association of Southeast Asian Nations.

17. What are the potential civil and criminal sanctions if cartel activity is established?

a) Criminal sanctions

Concerning individuals, only those who have fraudulently taken a personal and decisive part in the conception, organisation or implementation of the prohibited practices can be fined up to 75,000 euros and even sentenced to a four-year term of imprisonment (Article L. 420-6 of the FCC).

Since the implementation of criminal law No. 2004-204 of 9 March 2004, criminal sanctions (fines only) can now also be imposed on companies infringing Article L. 420-1 of the FCC. Such criminal sanctions cannot be imposed by the FCA, which is only empowered to refer the criminal part of the case to the public prosecutor.

So far, criminal sanctions very rarely occur. However, they might increase in the next years.

b) Administrative sanctions

A wide range of sanctions can be applied by the FCA, such as injunctions, publication and fines. Each sanction must be individually justified since, as a general principle, the FCA’s decisions have to be properly grounded to preserve each party’s rights.

1. Injunctions

The FCA may issue injunctions obliging the parties to terminate the anti-competitive practices within a determined period. This order may be imposed with the use of financial penalties in case of non-fulfilment.
The FCA may also issue injunctions through interim measures provided that a strong presumption exists that the alleged practice will seriously and immediately impede the general economy, the economy of the concerned sector or the interest of consumers or the plaintiff (Article L. 464-1 of the FCC).

The Minister of the Economy may also issue orders obliging companies to terminate anti-competitive practices in cases where:

- the affected market is local;
- the practices do not fall within the scope of Article 101 or 102 of the TFEU;
- the national turnover of either company does not exceed 50 million euros; and
- the aggregated turnover does not exceed 200 million euros.

The Minister of the Economy cannot issue orders if the FCA is already involved (Article L. 464-9 FCC).

Articles R. 464-9-1 to R. 464-9-3 of the FCC that were introduced by a decree of 10 February 2009 specify the Minister of the Economy’s prerogatives in this respect.

2. Fines

Pursuant to Article L. 464-2 of the FCC, the FCA may impose fines of up to 10 per cent of an undertaking’s total annual worldwide turnover. Fines imposed on individuals are limited to 3 million euros.

Periodic penalty payments of up to 5% of the average daily turnover of a company can also be ordered by the FCA to compel a company to comply with its decision or a binding commitment undertaken by the company.

The FCA may also impose fines of up to 1% of an undertaking’s total annual worldwide turnover to undertakings that obstruct an investigation, in particular by supplying incomplete or inaccurate information, or by submitting incomplete or misleading information or documents.

3. Publication

Pursuant to paragraph I of Article L. 464-2 of the FCC, the FCA has the power to order the publication in the press of a summary of the decision. The purpose of this is to alert companies in the sector and/or the general public of the harmful nature of the unlawful behaviour.
18. **What factors are taken into account when the fine is set? In practice, what is the maximum level of fines that has been imposed in the case of recent domestic and international cartels?**

On 16 May 2011, the FCA issued a procedural notice on the method of calculation of fines. To calculate the amount of a fine, the FCA:

- sets a ‘basic amount’ for each company in light of a number of criteria, such as the size of the affected market, the seriousness and the duration of the practices;
- as a general rule, the basic amount corresponds to a proportion of the value of the sales of products or services to which the infringement relates (this percentage varies between 15 and 30% in cartel cases, when their object is prices fixing, markets or customers allocation, or the limitation of output, subject to the harm to the economy); a multiplying factor is then applied to this amount to take into account the duration of the infringement (1 for the first year of participation to the infringement; 0.5 for each year after the first one and, beyond the last full year of participation in the infringement, the remaining period shall be taken into account to the nearest month);
- adjusts the basic amount based on the individual situation of each company; in this respect, the FCA takes into account aggravating circumstances (recurrence, leadership role, etc.) or mitigating circumstances (maverick role, company has been compelled to participate in the cartel, the infringement has been authorised or encouraged by public authorities, etc.);
- compares the amount against the legal maximum (10% of the worldwide turnover) and then adjusts the amount to take into account, where appropriate, the total or partial exemption granted under the leniency programme or the reduction granted on account of a settlement;
- finally, adjusts the amount, where appropriate, in the light of the undertaking’s ability to pay if the undertaking concerned faces financial difficulties.

The FCA imposed extremely high fines in recent years. As regards overall fines imposed by the FCA on a given cartel, the highest amounts as of January 2020 were as follows:

- home and personal care products (case 14-D-19): 951.2 million euros;
- delivery service (transporting parcels) industry (case 15-D-19): 672.3 million euros;
- mobile telephony (case 05-D-65): 534 million euros;
- interbank fees (case 10-D-28): 384.9 million euros;
- laundry detergents (case 11-D-17): 367.9 million euros.

As of January 2020, the highest individual cartel fine ever imposed by the FCA was 302 million euros (imposed to ArcelorMittal Group in the steel case, case 08-D-32 of December 16, 2008; this amount was reduced to 41.63 million euros by the Paris Court of Appeal).

In 2019, the overall fines imposed by the FCA amounted to 481 million euros (nearly 5 billion euros between 2009 and 2019). The highest fine in 2019 was imposed in the meal voucher
sector (415 million euros – see question 24).

19. **Are parent companies presumed to be jointly and severally liable with an infringing subsidiary?**

   The FCA’s approach is in line with the approach of the European Commission. As such, the conduct of a subsidiary can be attributed to the parent company, in particular where, although having separate legal personality, that subsidiary does not autonomously determine its conduct on the market but essentially carries out the instructions given to it by the parent company, having regard in particular to the economic, organisational and legal links between those two legal entities.

   To impute to a parent company the acts committed by its subsidiary, the FCA is not required to prove that the parent company was directly involved in the practices, or had knowledge of the incriminated conduct.

   In accordance with EU case law, in the particular case where a parent company holds, directly or indirectly through an intermediary company, 100% or almost 100% of the capital of its subsidiary engaged in an infringing conduct, there is a rebuttable presumption that the parent company exercises decisive influence over the conduct of its subsidiary. In such a situation, it is sufficient for the FCA to provide proof of this capital ownership in order to attribute the behaviour of the subsidiary, author of the practices, to the parent company.

20. **Are private actions and/or class actions available for infringement of the cartel rules?**

   Victims of anti-competitive practices may act individually following a sanction procedure by the FCA. Since the Consumer Affairs Act of 17 March 2014, they also have the possibility of bringing a class action before the competent civil courts.

   Furthermore, Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union was transposed into French law by an order no. 2017-303 and a decree no. 2017-305 of March 9, 2017. The new provisions:

   - introduce an irrebuttable presumption of fault as soon as the existence and imputation of the anti-competitive practice have been established by a decision of the FCA which can no longer be the subject of an appeal before the Paris Court Appeal (Article L. 481-2 of the FCC);
   - introduce a presumption according to which, until there is evidence to the contrary, an agreement between competitors causes harm;
   - establish a non-exhaustive list of various damages, including the loss incurred, the lost profit, but also the loss of opportunity and moral prejudice;
• consecrate the solidarity principle between the undertaking concerned;
• facilitate the access to evidence;
• adapt the rules applicable to the exchange of documents containing sensitive information; or
• provides for measures designed to promote consensual settlements of disputes (conciliation, mediation, participatory procedure).

21. **What type of damages can be recovered by claimants and how are they quantified?**

   The right to compensation can cover notably the loss incurred, the lost profit, but also the loss of opportunity and moral prejudice.

22. **On what grounds can a decision of the relevant authority be appealed?**

   Appeals before the Paris Court of Appeal are full appeals, meaning they are not limited to points of law.

   Therefore, the Court of Appeal can annul FCA decisions either partially (i.e. reduction of fine) or totally. However, the Court of Appeal may not raise the amount of the fine.

   The appeal in *cassation* is limited to points of law.

23. **What is the process for filing an appeal?**

   Pursuant to Article L. 464-8 of the FCA, decisions of the FCA can be appealed before the Paris Court of Appeal within one month of their notification to the parties concerned, and to the Minister of the Economy. Appeals of the FCA’s decisions do not have a suspensive effect.

   The ruling of the Paris Court of Appeal can be appealed in *cassation*, a further form of appeal (limited to the points of law), before the *Cour de Cassation* (the highest French civil court), within one month of their notification.

   In this respect, the FCA’s President may lodge an appeal in *cassation* against the ruling of the Paris Court of Appeal which rescinds or reverses a decision of the FCA.

   The appeal in *cassation* is not suspensive.

   As regards the interim measures, an appeal may be lodged against the FCA’s decision not later than 10 days after its notification. The Paris Court of Appeal shall then give its decision within one month.

   Articles R. 464-18 to R. 464-21 of the FCC lay down the conditions under which the FCA and the Minister of the Economy may present written and oral observations before the Paris
24. **What are some recent notable cartel cases (limited to one or two key examples, with a very short summary of the facts, decision and sanctions/level of fine)?**

1. In December 2019, the FCA fined the four historical issuers of meal vouchers in France (Edenred France, Up, Natixis Intertitres and Sodexo Pass France, as well as the Centrale de Règlement des Titres (CRT), which ensures, on their behalf, the processing and reimbursement of meal vouchers with their customers) for a total of nearly 415 million euros for anticompetitive practices; two types of practices were implemented:
   - between 2010 and 2015, Edenred France, Up, Natixis Intertitres and Sodexo Pass France exchanged confidential commercial information every month, through the CRT, regarding their respective market shares;
   - between 2002 and 2018, the FCA found that Edenred France, Up, Natixis Intertitres and Sodexo Pass France adopted a series of agreements designed to foreclose the market for meal vouchers by controlling the entry of new players and by reciprocally banning the launch of dematerialised vouchers issuing (in the form of a card or mobile application);

2. In December 2019, following a leniency procedure, the FCA fined a national cartel between the main fruit-compote manufacturers, which lasted from October 2010 to January 2014, for more than 58 million euros. The agreement concerned:
   - products sold to food retailers under retailers’ own-brand labels;
   - products sold to food service distributors (‘out-of-home catering’);

Coroos, the leniency applicant, benefited from a full exemption from fines in exchange for its cooperation during the investigation.

25. **What are the key recent trends (e.g. in terms of fines, sectors under investigation, applications for leniency, approach to settlement, number of appeals, etc.)?**

In 2019, the FCA focused on certain sectors or activities such as the digital economy, the health sector, the distribution sector, the energy field, competition in the French overseas territories, and regulated professions.

26. **What are the key expected developments over the next 12 months (e.g. imminent statutory changes, procedural changes, upcoming decisions, etc.)?**

Several topics that were among the FCA’s priorities for 2019 will remain relevant for 2020, including the digital sector, the retail sector, or competition in the French overseas territories.

Among new subjects for 2020, it may be worth noting that the FCA will be particularly interested in the:
- impact of the digital revolution on the financial sector, through electronic financial services, fintech, blockchain technology and the emergence of digital giants in payment services; these topics should be addressed in a specific study to be completed in 2020;
- sustainable development and in particular the environment;
- compliance of trade associations and unions with competition rules.

From a procedural point of view, the ECN+ Directive, which should be transposed in 2020 will confer new prerogatives to the FCA. In particular, the FCA will be able to reject referrals that are not considered to be a priority. The Directive also widens the scope of admissible evidence in antitrust matters.