The European Antitrust Review **2015**

Published by Global Competition Review
in association with

Kramer Levin Naftalis & Frankel LLP

GCR
GLOBAL COMPETITION REVIEW

www.globalcompetitionreview.com

France: Private Antitrust Litigation

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Through private enforcement, victims of anti-competitive practices become 'associates to the judiciary': they play a crucial part in making fines imposed by competition authorities and courts more dissuasive given that infringers are now fully aware that a conviction for breach of antitrust law may be followed – if not preceded – by private damages actions. By and large, the right to compensation for victims in relation to a breach of law has been recognised as a principle of constitutional value based on tort law by the French Constitutional Court since 1982,[1] in line with two famous rulings – in *Courage* and *Manfredi*[2] – of the Court of Justice of the European Union (CJEU) regarding breach of antitrust law. French civil liability is divided into contract law (article 1147 of the French Civil Code)[3] and tort law (articles 1382 and 1383 of this Code). Article 1382 provides that 'any act of a person, which causes damages to another, shall oblige the person by whose fault it occurred, to compensate it'. Article 1383 states that 'one shall be liable not only by reason of one's acts, but also by reason of one's imprudence or negligence'. As evidenced by this wording, breaches of antitrust law – articles L.420-1 and L.420-2 of the French Commercial Code,[4] as well as the corresponding articles 101 and 102 of the Treaty on the Functioning of European Union (TFEU) – most frequently give place to actions brought on the grounds of article 1382 of the French Civil Code.

France is still lagging behind the UK, the Netherlands and Germany in terms of private antitrust damages actions, where they are much more developed. However, this situation is rapidly changing. Undertakings that have suffered harm in France due to antitrust practices are increasingly inclined to seek compensation before courts. Moreover, the introduction of the class action into French law by the Consumer Protection Law No. 2014-344 (Hamon Law) of 17 March 2014 will encourage consumers to seek compensation where at the present time they are reluctant to do so due to the costs incurred by judicial proceedings. The future Directive on Actions for Damages under National Law[5] (the Proposed Directive) will also be an incentive in France as elsewhere in the European Union when it is implemented.

Which courts have jurisdiction?

Pursuant to article L.420-7 of the French Commercial Code,[6] damage claims may only be brought before one of the 16 courts specialised in competition matters, including eight civil courts of first instance (CFI) and eight commercial courts. Such rulings may only be appealed before the Paris Court of Appeal as was confirmed on 21 February 2012 by the French Supreme Court in civil and commercial matters.[7] Specialised courts have jurisdiction not only over actions brought to ensure implementation of antitrust law, but also over antitrust damages claims. On 15 November 2012, the CFI of Saint-Malo[8] decided thus to transfer a damage claim to the CFI of Rennes, specialised in antitrust matters. Based on the principle of proper administration of justice, this judgment also duly refers to the debates on the law which created these specialised courts, noting that such specialisation in order to efficiently tackle complex cases related to the enforcement of competition law, either public or private, clearly reflects the legislator's intention.

In the event that the infringer is a public law entity (eg, a 100 per cent state-owned company placed under the control of the state, such as SNCF, the French national railway company), damage claim actions must be brought before French administrative courts.[9] For instance, the Paris Court of Appeal ruled that it was up to these courts to rule on the damages caused by EDF's refusal to conclude an administrative contract which constituted an abuse of dominant position.[10]

In addition, in France, a civil claim for damages resulting from a criminal offence may be brought before criminal courts. This applies when damages are claimed in criminal proceedings based on article L.420-6 of the French Commercial Code against a person having intentionally taken a personal and determining part in an infringement of antitrust law.[11] Penalties incurred are four years of imprisonment and a fine of €75,000 (€375,000 for legal persons). Still, those who have infringed this provision are very rarely prosecuted before criminal courts. In addition, offenders are rarely convicted except where they are convicted of committing at the same time acts of corruption.[12]

In the course of discussions on the Hamon Law in Parliament, a debate took place to determine whether class actions should be brought in first instance before specialised courts. The solution which was adopted is that class actions may be brought before all CFIs. Under this provision, in our view this does not exclude the application of specific provisions conferring special jurisdiction to the eight specialised CFI for class actions based on competition law infringements.

As for territorial jurisdiction, the specialised courts having jurisdiction to rule on claims for damages caused by a breach of competition rules are:

- the court of the place of residence of the defendant;
- the place where the harmful event occurred; or
- the place where the damage was suffered.

However, when the practices have occurred in several EU member states or have produced their effects within such states, it is referred to Regulation Brussels I on jurisdiction.[13] The French Supreme Court, applying Brussels I in a case involving multiple defendants, ruled on 26 February 2013 that it only requires from the judge to appreciate if there is a risk of irreconcilable judgments in case they were to be ruled separately.[14] In case of conflict of laws, Regulation Rome II on applicable law applies.[15]

Who can go to court to seek redress?

The right of action is available to all those who have a legitimate interest in the success or dismissal of a claim which courts enjoy a broad discretion to appreciate. Such interest is interpreted depending on the profit, or any other advantage which may result from the action. Victims of anti-competitive practices may be the clients of

the infringer, the clients of the direct victim who has suffered harm due to the antitrust practices (eg, the clients of an undertaking whose products are partially made thanks to services provided at an excessive rate by the member of a cartel) or even an infringer's competitor.[16]

The notion of protected interests is closely linked to the notion of damages. This means that the damage claimed must actually exist at the time the action is introduced and be personal in the sense that it must be directly linked to the plaintiff. Protected interests may be individual or collective. Labour unions and professional associations have long been legitimate to go to courts to defend their own collective interests. Under the French Labour Code, unions 'can, in all courts, exercise all the rights of the plaintiff whenever direct or indirect harm has been caused to the collective interests of the profession they represent'. The French Commercial Code extends this right to all 'professional organisations'. Consequently an organisation's claim is not admissible if it only invokes the harm suffered by one or several of its members.[17] Collective interests may in particular derive from the necessity to solve a question of principle related to the status or the activities of the profession concerned.[18]

Labour unions may bring actions in the interest of individual employees that are in specifically listed situations. But this derogation to the principle 'No one shall plead by proxy' is limited insofar as they have to get the consent of the employees whose interests are at stake in the action they want to bring on their behalf. The French Constitutional Court twice annulled provisions that allowed unions to go to courts without such consent in violation of 'employees' personal freedom'.[19] In its decision on the Hamon Law dated 13 March 2014, the Court rejected the objection of MPs[20] who had alleged that the consumers whose right to redress was to be defended through a class action were not able to be fully informed in order to consent to join the action. The Court referred to the procedure set out in the Law, which states that it is up to the judge, once called upon by the consumers' association, to inform consumers to enable them to choose whether or not they intend to seek redress for their harm in accordance with the first judgment issued on the liability of the infringer;[21] thus clearly establishing an opt-in regime.

France is a unique example where class actions can only be brought to courts by certified consumer rights associations recognised as being representative at a national level. Pursuant to the consumer code modified by the Hamon Law, a class action is reserved for consumers 'in an identical or similar situation', who have suffered damages 'the common cause of which was a breach by one business or by the same businesses of their legal or contractual obligations' either in relation to the sale of goods or provision of services or where this harm results from certain anti-competitive practices. Consumers can only be individuals and not businesses and professionals. Such restriction, which deprives small and medium-sized companies of the advantages of a class action, may be deemed regrettable.

How is fault-based civil liability proven in 'follow-on' actions?

To undertake a claim for damages, the victim bears, in principle, the burden of proof of the fault, the damage and the causal link between both. Since a civil fault may result from a breach of competition law, obtaining the required evidence is easier when the wrongdoings have already been sanctioned by a competition authority or a court (follow-on action), rather than when the action is engaged before any conviction or investigation by an authority or a court (stand-alone action). The main question is to know whether the decision of a competition authority or of a court to condemn violations of competition law have a binding effect on courts that have to rule on damage claims. French courts make a difference depending on who has decided on the case. Whenever the condemnation has been pronounced by the EU Commission, they abide by article 16 of Regulation No. 1/2003,[22] which prohibits national courts to 'take decisions running counter to the decision adopted by the Commission', based on the principle of loyalty.[23] Consequently, in French case law, a breach of competition law condemned by the Commission – ultimately confirmed or not by the CJEU – is deemed a civil fault within the meaning of tort law.[24]

By contrast, where the conviction of the infringer was decided by the French Competition Authority (FCA), courts hearing a damage claim do not consider themselves bound by that decision, as was confirmed in 2001 by the French Supreme Court.[25] However this ruling dates back 13 years and, at present, civil courts take better account of the decisions rendered by the national competition authority (NCA). However 'taking account' does not mean considering that an NCA decision is in all respects binding. In a judgment of 25 March 2014, the French Supreme Court recalls that it rests with civil courts to identify, on a case-by-case basis, the precise facts among those mentioned in the competition authorities' decisions – the EU Commission and the NCAs' – that are likely to engage the infringer's civil liability.[26] The Proposed Directive deals with the issue in stating that final decisions adopted either by an NCA or a review court condemning an infringement of EU or national competition law 'is deemed to be irrefutably established for the purposes of an action for damages brought before […] national courts'. It also stipulates that a final decision of an NCA of another member state 'may be presented before […] national courts as at least prima facie evidence that an infringement of competition law has occurred and, as appropriate, may be assessed along with any other material brought by the parties'.

These provisions seem in line with the Hamon Law which only allows follow-on class actions brought after the ruling issued by national or European authorities or courts is no longer subject to appeal[27] with regard to the establishment of the breaches so condemned: in such cases, these breaches 'are deemed to have been established irrefutably'.

The class action is mainly aimed at alleviating the burden of proof borne by consumers and preventing them from engaging in costly proceedings without being sure to be able to present evidence of the alleged misconduct to the judge. To avoid this, the Law establishes a three-stage procedure:

- the first one enables a certified consumer protection association to take action invoking an undertaking's liability based on breaches of competition law (to take this example) before a CFI which issues a 'declaratory judgment' confirming (or not) the undertaking's liability, the damages eligible for compensation, the criteria governing membership of the group and the period – within two to six months – fixed to join the action and the way this judgment will be made public;
- the second stage begins with the provision of notice to consumers to obtain their consent to join the action and accept compensation in the framework of the declaratory judgment; and
- in the final phase, the CFI rules on compensation claims by consumers who joined the action.

The Law provides for a simplified procedure insofar as 'the identity and number of consumers harmed are known and consumers have suffered harm in the same or identical amount'. In such cases, after ruling on the liability of the undertaking, the court 'may order the

latter to pay direct compensation individually within such a time limit and according to such arrangements as it may specify'.[28]

What about the burden of proof borne by victims in case of stand-alone actions?

The claimant who seeks redress for the harm suffered because of practices not yet condemned by a competition authority or a court naturally faces more difficulties to bring evidence of the existence of the practices and of the reasons why they must be deemed a civil fault in the sense of article 1382 of the French Civil Code. To help overcome these difficulties at national level, the French Commercial Code enables plaintiffs to ask the court to seek the opinion of the FCA as *amicus curiae*.[29] But this is not a right. In a judgment of 30 June 2011, the Paris Court of Appeal rejected such a request in a case where the FCA used the commitment procedure and where the plaintiffs decided to withdraw their request sent to the Authority asking it to verify whether the defendants has abused their dominant position.[30] In a preliminary judgment of 16 November 2011, the same Court asked the FCA to provide advice on the anti-competitive nature of a clause in a contract between the firm Carrefour and one of its franchisees.[31] The FCA may also decide to give its opinion on a case on its own initiative, as the French minister of economy may also do. The latter may file pleadings, produce inquiry reports and official records before all civil or criminal courts, and intervene orally before these courts.

If the stand-alone claim is based on alleged breaches of articles 101 or 102 of the TFEU, the court may in any event refer to the CJEU for a preliminary ruling. Once again, courts have broad discretion to decide if it is needed when requested by the claimant. For example, in the context of a damage claim following a conviction decision in the *Lysine* cartel,[32] the Paris Court of Appeal did not deem it appropriate to grant the plaintiff's request to ask the CJEU if requiring the victim to prove the passing on defence does not lead to an excessive burden of proof being borne by such victims of antitrust practices.[33]

Under article 15 of Regulation 1/2003, French courts, as any other national courts in the EU, may ask the Commission to give 'its opinion on questions concerning the application of Union competition rules' and the Commission may intervene on its own initiative before a national court. For instance, it submitted *amicus curiae* observations on the interpretation of the notion of 'appreciable effect on trade between Member States' of anti-competitive practices to the French Supreme Court in the context of a case related to infringements of competition law on the market for mobile telephony in French overseas territories[34] and the Supreme Court followed the interpretation put forward by the Commission in its *amicus curiae* observations.[35]

How may victims' access to file alleviate the burden of proof?

French Law ignores discovery (US) as well as disclosure (UK) procedures, and evidence is thus collected under the scrutiny of the seized judge. Before the trial, a claimant may refer to a civil judge to obtain the documents he or she needs to bring the case to court. According to article 145 of the French Code of Civil Procedure, the judge may collect evidence based on a procedure which is not contradictory and where business secrecy cannot in principle be opposed by the requested party,[36] to preserve the integrity of evidence.

Once the proceedings are initiated, the plaintiff may request, under article 138 and following of the French Code of Civil Procedure, the communication of documents held by third parties (including the FCA) or by parties in the proceedings, which may be refused only in case of a 'legitimate impediment'.

The file held by the FCA is protected by the secrecy of proceedings pursuant to the French Commercial Code which provides that 'the disclosure by one of the parties of information regarding another party or a third party which he/she could only have known as a result of the notifications or consultations which have occurred' is a criminal offence. In spite of this prohibition, the French Supreme Court, in the *Semaven* ruling of 19 January 2010,[37] ruled that disclosure of documents may be allowed if necessary to the exercise of the rights of defence. Similarly, on 24 August 2011, the Paris Commercial Court ordered the FCA – in the *Ma Liste de Courses* case – to disclose documents related to the settlement of an antitrust investigation on the request of the claimant in the damages action.[38] The Paris Court of Appeal, on 20 November 2013,[39] overturned this decision because the requesting parties already held the documents claimed. However, the Court confirms that access to file might be granted by the FCA if the parties prove that the documents requested are necessary to exercise their rights of defence. By and large, French case law is in line with *Pfleiderer*[40] and *Donau Chemie*,[41] in which the CJEU ruled, based on their procedural autonomy, that national courts should weigh up the interest involved on a case-by-case basis: confidentiality on the one hand; rights of defence on the other.

A provision, introduced by the Overseas Law of 20 November 2012[42] in the French Commercial Code, states that in the course of private enforcement proceedings the FCA may disclose all documents held on the anti-competitive practices at stake except those linked to leniency programmes.[43] The same code restricts disclosure to non-confidential versions of the competition files. This is in line with the recent proposal for Directive on Trade Secrets, which allows courts to order the communication of confidential documents in a restrictive way insofar as they concern business secrecy.[44]

How are damages assessed?

Based on the principle of full compensation, French law – as with EU law – prohibits punitive damages as well as unjust enrichment. The compensation for damages must be 'without loss or profit for any of the parties'.[45] Such concept is in line with CJEU case law.[46] In line with this concept, French courts accept the passing on defence as evidenced by the judgment of 15 June 2010[47] of the French Supreme Court in a case related to the *Lysine* cartel. However, the burden of proof is on the victim, as confirmed by the Paris Court of Appeal in the above-mentioned 27 February 2014 judgment.[48] Such case law will have to change since the Proposed Directive places the burden of proving that the overcharge was passed on with the defendant and no longer the claimant.

Damages, which may cover pecuniary loss as well as moral harm and mental anguish, must be direct and certain, not hypothetical and evaluated at the date of the judgment. Courts enjoy considerable discretion to assess their amount on a case by case basis. Damages may include increased costs and loss of market share, revenue or sales, as well as loss of opportunity. For example, the Paris Court of Appeal, in a judgment of 21 December 2012,[49] ordered France Telecom to repair the damage suffered by an alternative operator on the ADSL market that had lost the ability to obtain funds to continue its business because of France Telecom's fraudulent tactics to discourage investors. With regard to class actions, the Hamon Law only provides for the redress of pecuniary loss resulting from material damages.

Note that, in line with the intention to give better protection for victims, the Proposed Directive introduces a simple presumption of harm where the action for damages is based on a cartel infringement. Such presumption will not exempt the victim from the duty

to evaluate damages. In that respect, French law does not allow the application of lump sum methods of evaluation as is the case in some member states where a cartel is automatically assumed to have led, for example, to an additional illegitimate cost of 10 per cent of the market price. In France, assessment of damages may be quite different from one court to another. The Paris Commercial Court, in a judgment of 31 January 2012,[50] granted one of Google's competitors on the market for online mapping the exact compensation he had asked for for damage caused by 'predatory pricing' exercised by Google by providing such services for free. But most of the time the judge orders an expert report, or even several reports, as illustrated by a ruling of 26 June 2013[51] of the Paris Court of Appeal. In addition, defendants increasingly produce reports that they have had drafted by experts. To facilitate quantification of harm, the Proposed Directive states that NCAs must be empowered to estimate the amount of harm in case the claimant is unable to do it 'on the basis of the available evidence'. In this line, the Paris Court of Appeal, in the judgment of 27 February 2014[52] qualified the findings of the Commission's decision as 'indisputable data'.

In any event, the claimant may claim a security for costs. Interim measures can be ordered provided he or she demonstrates the imminence of the damage or the danger of irreversible damage and the seriousness of the action.

Which rules apply to the limitation period?

Claims for compensation shall be barred upon expiry of a five-year period. The limitation period runs 'from the date when the holder of a right knew or should have known the facts necessary to exercise this right' – this provision complies with the Proposed Directive. In order to protect victims, the Hamon Law regarding class and individual actions provides that the limitation period is suspended by the opening of proceedings before the FCA, another NCA or the EU Commission. Such provision is timely since too many victims, because of the length of proceedings, have been faced with the limitation period where their interests were legitimate. For instance, in its above-mentioned judgment of 26 June 2013,[53] the Paris Court of Appeal held that proceedings before the EU judge 'whose purpose is to determine infringement to [EU] law, to punish and not to repair the harm that may result from the commission of such offences, cannot suspend the limitation period'. The Paris CFI, in a decision of 17 December 2013,[54] also denied suspensive effect to a claim brought before the FCA. Such unjust case laws will hopefully be overturned by virtue of the provisions introduced into the Commercial Code which are reflected in the Proposed Directive.

What about alternative methods to avoid litigation?

Settlement procedures are not entrenched in French legal tradition as they are in common law countries. It may happen that, in France, in the context of a breach of competition law, the victims settle unofficially with the infringer undertaking. However, the French Code of Civil Procedure provides for alternative dispute mechanisms such as conciliation or mediation, and the Hamon Law focuses especially on mediation in the context of class actions.

Conclusion

In France, the general trend is to give priority to the victims to obtain redress by facilitating the burden of proof borne by them. However, French law is still protecting the rights of defence of supposed infringers to prevent any excess and abuse which may unduly affect undertakings.

Notes

1 Decision, No. 82-144 DC, 22 October 1982; Decision, No. 2010-2, on a preliminary ruling on constitutionality, 11 June 2010.
2 CJEU, 20 September 2001, *Courage and Crehan* (C-453/99) and 13 July 2006, *Manfredi* (C-295/04 to C-298/04).
3 Article 1147 of French Civil Code: 'A debtor shall be ordered to pay damages, if there is occasion, either by reason of the non-performance of the obligation, or by reason of delay in performing, whenever he does not prove that the non-performance comes from an external cause which may not be ascribed to him, although there is no bad faith on his part.'
4 Article L. 420-1 prohibits common actions, agreements, express or tacit undertakings or coalitions 'when they have the aim or may have the effect of preventing, restricting or distorting the free play of competition in a market" while article L. 420-2 prohibits abuses of dominant position and of economic dependence.
5 Directive (2013/0185 (COD)) as agreed between the EU Parliament and the Council, adopted by the EU Parliament on 17 April 2014 and sent to the EU Council of Ministers for final approval.
6 Law No. 2001-420 of 15 May 2001 and decree No. 2005-1756 of 30 December 2005.
7 French Supreme Court, commercial, 21 February 2012, *Toyota France v Valence Automobiles*, No. 11-13276. Note that the French Supreme Court has also jurisdiction to rule on criminal matters.
8 Saint-Malo CFI, 15 November 2012, *FRSEA Bretagne v CFPR*, No. 12/00401.
9 Conseil d'Etat, 19 March 2008, *Société Dumez*, No. 269134: redress for the loss suffered by SNCF because of fraudulent tactics in the context of public procurement.
10 Paris Court of Appeal, 2 July 2002, SNPIET v EDF, No. 2000/16142.
11 Article 113-2 of the French criminal code provides that 'French Criminal law is applicable to all offences committed within the territory of the French Republic. An offence is deemed to have been committed within the territory of the French Republic where one of its constituent elements was committed within that territory.' Article 113-6 states that 'French criminal law is applicable to any felony committed by a French national outside the territory of the French Republic; it is applicable to misdemeanours committed by French nationals outside the territory of the French Republic if the conduct is punishable under the legislation of the country in which it was committed' andarticle 113-7 provides that 'French Criminal law is applicable to any felony, as well as to any misdemeanour punished by imprisonment, committed by a French or foreign national outside the territory of the French Republic, where the victim is a French national at the time the offence took place.'
12 French Supreme Court, criminal, 20 February 2008, *Mr. X*, No. 02-82676.
13 Council Regulation (EC) No. 44/2001 of 22 December 2000.
14 French Supreme Court, commercial, 26 February 2013, *H&M v Pucci*, No. 11-27139.
15 EU Parliament and Council Regulation (EC) No. 864/2007 of 11 July 2007.
16 Interestingly, in a judgment dated 5 June 2014, *Kone AG and Others*, C-557/12, the CJEU ruled that 'the victim of an umbrella pricing may obtain compensation for the loss caused by the members of a cartel, even if it did not have contractual links with them, where it is established that the cartel at issue was, in the circumstances of the case and, in particular, the specific aspects of the relevant market, liable to have the effect of umbrella pricing being applied by third parties acting independently, and that those circumstances and specific aspects could not be ignored by the members of that cartel (point 34). In our view, such reasoning could well be adopted by a French court.

17 French Supreme Court, commercial, 24 November 2009, *Syndicat des détaillants spécialisés du disque v Auchan France*, No. 08-13052.
18 French Supreme Court, social, 5 October 1994, *Fédération Nationale CGT des personnels des secteurs financiers v Banque l'Union européenne*, No. 92-16632.
19 Decision No. 89-257 DC, 25 July 1989, points 23 to 26; Decision No. 2007-556 DC, 16 August 2007, point 13.
20 Pursuant to the French Constitution, 60 MPs or 60 Senators may refer to the Constitutional Court to review the constitutionality of an Act before its promulgation.
21 Decision No. 2014-690 DC, 13 March 2014, point 16.
22 Council Regulation (EC) No. 1/2003 of 16 December 2002.
23 Article 4 (3) of the Treaty on EU.
24 Paris Court of Appeal, 26 June 2013, *JCB Sales LTD v SA Central Parts*, No. 12/04441.
25 French Supreme Court, commercial, 17 July 2001, *Société Toulousaine Entretien Automobile v Société Accessoires et fournitures électriques pour auto*, No. 99-17251.
26 French Supreme Court, commercial, 25 March 2014, *France Telecom v Cowes*, No. 13-13839.
27 In its judgment on the Hamon Law, the French Constitutional Court underlined that if the law does not preclude the possibility to initiate a class action 'even though proceedings before the court or authority competent in the area of competition law have not been definitively concluded... the court seized under such circumstances cannot itself assess the breaches alleged and must defer judgement until the ruling no the breaches is no longer subject to appeal'.
28 Even though the liability of business may be established where the undertakings concerned do not even know the identity and number of consumers who may wish to join the action, the French Constitutional Court did not consider that the rights of defence of the defendants were insufficiently guaranteed. See above-mentioned Decision of 13 March 2014, points 17, 18 and 19.
29 *Amicus curiae* differ from witnesses and experts: they give their opinion to the court on a general topic that may apply to several cases and that often relates to a quite debated subject.
30 Paris Court of Appeal, 30 June 2011, *SARL Socplast and SARL Balnora v SA Valorplast and SA Eco-Emballages*, No. 09/10289.
31 Paris Court of Appeal, 16 November 2011, *SAS Carrefour Proximité France and SAS Champion Supermarché France CSF v Société Etablissement Ségurel*, No. 09/16817.
32 EU Commission, 7 June 2000 relating to a proceeding pursuant to article 81 of the EC Treaty and article 53 of the EEA Agreement (Case COMP/36.545/F3 *Amino Acids*).
33 Paris Court of Appeal, 27 February 2014, *SNC Doux Aliments Bretagne and others v Ajinomoto Eurolysine and SA CEVA Santé Animale*, No. 10/18285.
34 Opinion of the EU Commission of 13 October 2011, joint cases V 1025772, Y 1025775, Q 1025882.
35 French Supreme Court, commercial, 31 January 2012, *Orange Caraïbe*, No. 10-25772, 10-25775, 10-25882.
36 French Supreme Court, commercial, 19 March 2013, *Square v Pemaco*, No. 12-13880.
37 French Supreme Court, commercial, 19 January 2010, *Semavem v JVC France*, No. 08-19761.
38 Commercial Court of Paris, 24 August 2011, *SAS Ma liste de courses v Highco*, No. 2011014911.
39 Paris Court of Appeal, 20 November 2013, *Monsieur le Président de l'Autorité de la concurrence v SAS Ma Liste de Courses*, No. 12/05813.
40 CJEU, 14 June 2011, *Pfleiderer AG v Bundeskartellamt*, C-360/09.
41 CJEU, 6 June 2013, *Bundeswettbewerbsbehörde v Donau Chemie AG and Others*, C-536/11.
42 Law No. 2012-1270 of 20 November 2012.
43 In addition the French Freedom of information Act of 17 July 1978 was modified to introduce in this Act a provision to deny to citizens access to 'documents elaborated or held by the FCA within the framework of the exercise of its powers of investigation, instruction and decision'.
44 Article 8 of this proposed Directive lodged by the Commission on 28 November 2013 (No. 2013/0402 COD) deals with the question of 'the preservation of confidentiality of trade secrets in the course of legal proceedings' and in the same vein, a new text concerning the protection of business secret is in preparation in France.
45 French Supreme Court, criminal, 1 March 2011, *Mr. X*, No. 10-85965.
46 CJEU, 13 July 2006, *Manfredi*, C-295/04 to C-298/04.
47 French Supreme Court, commercial, 15 June 2010, *Ajinomoto Eurolysine v SNC Doux Aliments Bretagne and others*, No. 09-15816; also French Supreme Court, commercial, 15 May 2012, *Coopérative Le Gouessant and Sofral v Ajinomoto Eurolysine*, No. 11-18495.
48 Paris Court of Appeal, 27 February 2014, No. 10/18285, above quoted.
49 Paris Court of Appeal, 21 December 2012, *COWES v France Telecom*, No. 11/03000 (please note that this judgment has been overturned by the French Supreme Court on 25 March 2014, No. 13-13839, above quoted, but only on the notion of civil fault).
50 Paris Commercial Court, 31 January 2012, *Bottin Cartographes SAS v Google France SARL and Google Inc*, No. 2009061231
51 Paris Court of Appeal, 26 June 2013, No. 12/04441, quoted above.
52 Paris Court of Appeal, 27 February 2014, No. 10/18285, quoted above.
53 Paris Court of Appeal, 26 June 2013, No. 12/04441, quoted above.
54 Paris CFI, 17 December 2013, *Région Ile de France v M Léon Nautin*, No. 10/03480.

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Kramer Levin is a full-service law firm with extensive capabilities and substantial experience. From our offices in New York, Silicon Valley and Paris, we represent clients from Global 1000 companies to emerging growth entities across a wide range of industries. Our Paris office advises clients on a broad range of matters involving European competition and trade law, including:

- antitrust: cartels and abuse of dominant position – representing claimants and defendants in all stages of proceedings before French and EU-level competition authorities and judicial courts, and also assist clients in leniency programmes;
- merger control – with broad experience dealing with mergers, takeovers and joint venture transactions;
- horizontal cooperation – advising French and multi-national businesses on, among other things, cooperation agreements and joint ventures;
- distribution – covering various aspects of the distribution of goods and services, including the negotiation of contracts between suppliers and distributors, the drafting of general terms of sale and purchase, assistance in the termination of long-term commercial relationships, and commercial litigation;
- state aid and EU subsidies – with specific expertise in various public aid schemes, in particular aids to airports, the automobile and aerospace industries, and for research;
- internal market – providing legal assistance on issues relating to the free circulation of goods, services and capital, freedom of establishment and secondary EU legislation, regarding regulatory matters and litigation; and
- consumer protection and advertising – with particular skills in consumer protection law, the introduction of products on the market, the preparation of general terms and conditions of sale, canvassing, remote sale and e-commerce, in both the commercial and financial services sectors.

Mélanie Truffier
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Mélanie Truffier is a competition and EU law associate in the firm's Paris office.

Her practice focuses primarily on French and EU competition, distribution and consumer protection matters.

She advises clients in relation with antitrust and merger control issues, both at the national and European Union levels, and has developed a practice in internal market and State aid matters.

Mélanie speaks French and English. She is admitted to the Paris Bar.


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THE EUROPEAN ANTITRUST REVIEW 2015 ISSN 1466-6065