

COMMERCIAL CODE

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(Legislative Part)

BOOK IV. Pricing freedom and competition ➔

TITLE I: General provisions ➔

Article L410-1

The rules defined in this book shall apply to all production, distribution and service activities, including those which are carried out by public persons, in particular in the context of public service delegation agreements.

Article L410-2

Except in cases where the law specifies otherwise, the prices of goods, products and services falling, prior to 1 January 1987, under Order No 1483 of 30 June 1945 shall be determined by the free play of competition.

However, in sectors or areas where price competition is limited by either monopoly situations or long-lasting supply problems, or by acts or regulations, a Conseil d'Etat decree may regulate the prices after the Council on Competition has been consulted.

The provisions of the first two paragraphs shall not prevent the government from ordering against excessive price increases or reductions, through a Conseil d'Etat decree, temporary

measures motivated by a crisis situation, exceptional circumstances, a public disaster or a clearly abnormal situation in the market in a given sector. The decree shall be adopted following consultation of the National Consumer Council. It shall specify its period of validity which may not exceed six months.

TITLE II: Anti-competitive practices ➡

Article L420-1

(Act No 420 of 15 May 2001, Article 52, Official Gazette of 16 May 2001)

Common actions, agreements, express or tacit undertakings or coalitions, particularly when they are intended to:

- 1° Limit access to the market or the free exercise of competition by other undertakings;
- 2° Prevent price fixing by the free play of the market, by artificially encouraging the increase or reduction of prices;
- 3° Limit or control production, opportunities, investments or technical progress;
- 4° Share out the markets or sources of supply,

shall be prohibited, even through the direct or indirect intermediation of a company in the group established outside France, when they have the aim or may have the effect of preventing, restricting or distorting the free play of competition in a market.

Article L420-2

(Act No 420 of 15 May 2001, Article 66, Official Gazette of 16 May 2001)

The abuse by an undertaking or group of undertakings of a dominant position in the internal market or a substantial part of this shall be prohibited in accordance with the conditions specified by Article L.420-1. These abuses may in particular consist of refusals to sell, linked sales or discriminatory conditions of sale and the severance of established commercial relations solely because the partner refuses to submit to unjustified commercial conditions.

The abuse by an undertaking or group of undertakings of the state of economic dependence in which a client or supplier undertaking finds itself in respect of the above shall also be prohibited when it is likely to affect the operation or structure of competition. These abuses may in particular consist of refusals to sell, linked sales or the discriminatory practices referred to in Article L.442-6.

Article L420-3

Any undertaking, agreement or contractual clause referring to a practice prohibited by Articles L.420-1 and L.420-2 shall be invalid.

Article L420-4

(Act No 420 of 15 May 2001, Article 48, Official Gazette of 16 May 2001)

I.- The following practices are not subject to the provisions of Articles L.420-1 and L.420-2:

1. Those which result from the implementation of an act or regulation adopted in application thereof;
2. Those whose perpetrators can prove that they have the effect of ensuring economic progress, including by creating or maintaining jobs, and that they reserve for users a fair share in the resulting profit, without giving the undertakings involved the opportunity to eliminate competition for a substantial part of the products in question. Those practices which may consist of organising, for agricultural products or products of agricultural origin, under the same brand or trade name, the production volumes and quality and the commercial policy, including by agreeing a common transfer price, may impose restrictions on competition only insofar as these are essential to achieve this aim of progress.

II.- Certain categories of agreement or certain agreements, in particular when they are intended to improve the management of small or medium-sized undertakings, may be recognised as meeting these conditions by a decree adopted following a favourable opinion from the Council on Competition.

Article L420-5

Price offers or sale prices offered to consumers which are excessively low in relation to the production, processing and marketing expenses, where these offers or prices have the aim or may have the effect of eliminating a market or preventing access to a market by an undertaking or one of its products, shall be prohibited.

The marketing expenses shall also necessarily include all the expenses resulting from the statutory and regulatory obligations linked to the safety of products.

These provisions shall not apply in the event of resale in an unaltered state, with the exception of audio recordings reproduced on physical media.

Article L420-6

(Act No 420 of 15 May 2001, Article 67, Official Gazette of 16 May 2001)

If any natural person fraudulently takes a personal and decisive part in the conception, organisation or implementation of the practices referred to in Articles L.420-1 and L.420-2, this shall be punished by a prison sentence of four years and a fine of 500 000 francs.

The court may order that its decision is published in full or in summary in the newspapers which it designates, at the expense of the offender.

Acts interrupting the period of prescription before the Council on Competition pursuant to Article L.462-7 shall also interrupt the period of prescription of the public action.

Article L420-7

(inserted by Act No 420 of 15 May 2001, Article 82, Official Gazette of 16 May 2001)

Without prejudice to Articles L.420-6, L.462-8, L.463-1 to L.463-4, L.463-6, L.463-7 and

L.464-1 to L.464-8, disputes relating to the application of the rules contained in Articles L.420-1 to L.420-5 and those in which these provisions are invoked shall be assigned, as applicable, to the tribunaux de grande instance or tribunaux de commerce, the list of which shall be fixed by decree.

TITLE III: Economic concentration ➔

Article L430-1

(Act No 420 of 15 May 2001, Article 86, Official Gazette of 16 May 2001)

I.- A concentration shall occur:

1. When two or more previously independent undertakings merge;
2. When one or more persons already holding control of at least one undertaking or when one or more undertakings acquire control of all or part of one or more other undertakings, directly or indirectly, whether by the acquisition of a holding in the capital or by purchasing assets, a contract or any other means.

II.- The creation of a common undertaking fulfilling on a long-term basis all the functions of an independent economic entity shall constitute a concentration within the meaning of this article.

III.- For the purposes of applying this title, control shall arise from the rights, contracts or other means conferring, alone or jointly and taking into account the circumstances of fact or law, the possibility of exercising a decisive influence over the activity of an undertaking, and in particular:

- rights of ownership or enjoyment of all or part of the property of an undertaking;
- rights or contracts conferring a decisive influence over the composition, deliberations or decisions of the bodies of an undertaking.

Article L430-2

(Law No 2001-420 of 15 May 2001 Article 87 Official Gazette of 16 May 2001)

(Law No 2003-660 of 21 July 2003 Article 59 Official Gazette of 22 July 2003)

Any merger operation within the meaning of Article L 430-1 is subject to the provisions of Articles L. 430-3 et seq of the present Title when the following three conditions are met:

- the total worldwide turnover of all of the companies or of all of the natural persons or legal entities involved in the merger is greater than 150 million euros;
- the total turnover achieved in France by at least two of the companies or groups of natural persons or legal entities concerned is greater than 15 million euros;
-

the operation does not come within the scope of Council Regulation No. 4064/89 (EEC) of 21 December 1989 relating to control of company merger operations.

However, a merger which comes within the scope of the aforementioned regulation and which has been the subject of a total or partial referral to the national legislation is subject, within the limits of that referral, to the provisions of the present Article

In the overseas departments, when a merger operation within the meaning of Article 430-1 has the effect of taking either the selling space, as defined in Article L. 720-4, above the threshold set in that same Article, or the market share, expressed as turnover, of the companies subject to the provisions of that same Article, above 25%, the minister may, within three months of the operation being effectively concluded, make it subject to the procedure provided for in Articles L. 430-3 et seq. The provisions of Article L. 430-4 are not applicable to such operations, however.

Article L430-3

(Act No 420 of 15 May 2001, Article 88, Official Gazette of 16 May 2001)

The concentration must be notified to the Minister for Economic Affairs. This notification shall occur when the party or parties concerned have irrevocably undertaken, specifically after concluding the instruments resulting in this concentration, the publication of the purchase or exchange offer or the acquisition of a controlling holding. Referral by the Commission of the European Communities shall be valid as notification.

The notification obligation shall be incumbent on the natural or legal persons acquiring control of all or part of an undertaking or, in the event of a merger or creation of a common undertaking, on all the parties concerned which must therefore make the notification jointly. The contents of the notification file shall be fixed by decree.

The receipt of notification of a concentration, or the total or partial referral of a Community-wide concentration, shall be indicated in a communiqué published by the Minister for Economic Affairs according to the terms fixed by decree.

On receipt of the notification file, the minister shall send a copy of this to the Council on Competition.

Article L430-4

(Act No 420 of 15 May 2001, Article 89, Official Gazette of 16 May 2001)

The actual implementation of a concentration may occur only after agreement by the Minister for Economic Affairs and, if applicable, by the minister responsible for the economic sector concerned.

In the event of a particular and duly reasoned need, the notifying parties may ask the Minister for Economic Affairs for an exemption allowing them to actually implement all or part of the concentration without waiting for the decision referred to in the first paragraph and without prejudice to this.

Article L430-5

(Act No 420 of 15 May 2001, Article 90, Official Gazette of 16 May 2001)

I.- The Minister for Economic Affairs shall decide on the concentration within five weeks from the date of receipt of the complete notification.

II.- The parties to the concentration may undertake to adopt measures aimed in particular at remedying, if applicable, the anti-competitive effects of the concentration either on the occasion of the notification of this concentration or at any time before the expiration of the five-week period from the date of receipt of the complete notification, where the decision specified by I has not been made.

If the undertakings are received by the minister more than two weeks after the complete notification of the concentration, the period indicated in I shall expire three weeks after the date of receipt of these undertakings by the Minister for Economic Affairs.

III.- The Minister for Economic Affairs may:

- either find, in a reasoned decision, that the concentration notified thereto does not fall within the scope defined by Articles L.430-1 and L.430-2;
- or authorise the concentration, possibly by subordinating this authorisation, in a reasoned decision, to the actual implementation of the undertakings made by the parties.

However, if the minister considers that the concentration is likely to adversely affect competition and that the undertakings made are not sufficient to remedy this, he shall refer the matter to the Council on Competition for an opinion.

IV.- If the minister does not take any of the three decisions specified by III within the period indicated in I, possibly extended pursuant to II, the concentration shall be deemed to have been authorised.

Article L430-6

(Act No 420 of 15 May 2001, Article 92, Official Gazette of 16 May 2001)

If a concentration is referred to the Council on Competition, pursuant to III of Article L.430-5, this shall examine whether the concentration is likely to adversely affect competition, particularly by creating or reinforcing a dominant position or by creating or reinforcing a purchasing power which places suppliers in a situation of economic dependence. The Council shall assess whether the concentration makes a sufficient contribution to economic progress to compensate for the adverse effects on competition. The Council shall take account of the competitiveness of the undertakings in question with regard to international competition.

The procedure applying to this consultation of the Council on Competition shall be that specified by the second paragraph of Article L.463-2 and in Articles L.463-4, L.463-6 and L.463-7. However, the notifying parties and the government commissioner must produce their observations in reply to the notification of the report within three weeks.

Before ruling, the Council may hear third parties in the absence of the notifying parties. The works councils of the undertakings party to the concentration shall be heard at their request

by the Council in accordance with the same conditions.

The Council shall submit its opinion to the Minister for Economic Affairs within three months.

The Minister for Economic Affairs shall immediately forward this opinion to the notifying parties.

Article L430-7

(Act No 420 of 15 May 2001, Article 92, Official Gazette of 16 May 2001)

I.- When the Council on Competition has been referred to, the concentration shall be decided on within four weeks from the submission of the Council's opinion to the Minister for Economic Affairs.

II.- After having read the Council on Competition's opinion, the parties may propose undertakings likely to remedy the anti-competitive effects of the concentration before the end of a four-week period from the date of submission of the opinion to the minister, unless the concentration has already been decided on as specified by I.

If the undertakings are sent to the minister more than one week after the date of submission of the opinion to the minister, the period referred to in I shall expire three weeks after the date of receipt of these undertakings by the minister.

III.- The Minister for Economic Affairs and, if applicable, the minister responsible for the economic sector concerned may, in a reasoned decision:

- either prohibit the concentration and order the parties, if applicable, to adopt any measures likely to re-establish sufficient competition;
- or authorise the concentration by ordering the parties to adopt any measures likely to ensure sufficient competition or obliging them to observe requirements likely to ensure a sufficient contribution to economic and social progress to compensate for the adverse effects on competition.

The orders and requirements specified by the above two paragraphs shall be imposed whatever the contractual clauses which may be concluded by the parties.

The draft decision shall be sent to the interested parties which shall have a period for presenting their observations.

IV.- If the Minister for Economic Affairs and the minister responsible for the economic sector concerned do not intend to take either of the two decisions specified by III, the Minister for Economic Affairs shall authorise the concentration in a reasoned decision. The authorisation may be subordinated to the actual implementation of the undertakings made by the notifying parties.

V.- If none of the three decisions specified by III and IV has been taken within the period indicated in I, possibly extended pursuant to II, the concentration shall be deemed to have been authorised.

Article L430-8

(inserted by Act No 420 of 15 May 2001, Article 92, Official Gazette of 16 May 2001)

I.- If a concentration has been carried out without being notified, the Minister for Economic Affairs may impose, on the persons on whom the responsibility for notification is incumbent, a financial penalty whose maximum amount shall be, for legal persons, 5% of their pre-tax turnover made in France during the last closed financial year, plus, if applicable, the turnover which the acquired party made in France during the same period, and, for natural persons, 1.5 million euro.

In addition, the minister shall enjoin the parties, subject to a penalty, to notify the concentration, otherwise the situation must returned to its pre-concentration state. The minister may also refer to the Council on Competition without waiting for the notification. The procedure specified by Articles L.430-5 to L.430-7 shall then apply.

II.- If a notified concentration not benefiting from the exemption specified by the second paragraph of Article L.430-4 has been carried out before the decision specified by the first paragraph of the same article has been given, the Minister for Economic Affairs may impose on the notifying persons a financial penalty which may not exceed the amount defined in I.

III.- In the event of an omission or incorrect declaration in a notification, the Minister for Economic Affairs may impose on the notifying persons a financial penalty which may not exceed the amount defined in I.

This penalty may be accompanied by the withdrawal of the decision authorising the concentration. Unless the situation is returned to its pre-concentration state, the parties shall then be required to notify the concentration again, within one month from the withdrawal of the decision, otherwise they will incur the penalties specified by I.

IV.- If it is considered that the parties have not fulfilled an order, requirement or undertaking within the fixed periods, the Minister for Economic Affairs may refer to the Council on Competition for an opinion.

If the Council on Competition's opinion indicates non-fulfilment, the Minister for Economic Affairs and, if applicable, the minister responsible for the economic sector concerned may:

1. Withdraw the decision authorising the concentration. Unless the situation is returned to its pre-concentration state, the parties shall be required to notify the concentration again, within one month from the withdrawal of the decision, otherwise they will incur the penalties specified by I;
2. Enjoin the parties on whom the unfulfilled obligation was incumbent, subject to a penalty, to fulfil, within a period which they shall fix, the orders, requirements or undertakings.

In addition, the Minister for Economic Affairs may impose on the persons on whom the unfulfilled obligation was incumbent a financial penalty which may not exceed the amount defined in I.

Article L430-9

(inserted by Act No 420 of 15 May 2001, Article 91, Official Gazette of 16 May 2001)

The Council on Competition may, in the event of the abuse of a dominant position or a state of economic dependence, ask the Minister for Economic Affairs to order, in a reasoned order, jointly with the minister responsible for the sector, the undertaking or group of undertakings in question to amend, supplement or cancel, within a specified period, all agreements and all acts by which the concentration of economic power allowing the abuse has been carried out, even if these acts have been subject to the procedure specified by this title.

Article L430-10

(inserted by Act No 420 of 15 May 2001, Article 93, Official Gazette of 16 May 2001)

I.- The decisions adopted pursuant to Articles L.430-5 to L.430-8 shall be made public, if applicable accompanied by the Council on Competition's opinion, according to the terms fixed by decree.

II.- When the Minister for Economic Affairs questions third parties on the subject of the concentration, its effects and the undertakings proposed by the parties and makes public his decision in accordance with the conditions specified by I, he shall take account of the legitimate interest of the notifying parties or the persons cited that their business secrets are not disclosed.

TITLE IV: Transparency, restrictive competitive practices and other prohibited practices ➡

Preliminary Chapter: General provisions ➡

Article L440-1

(inserted by Act No 420 of 15 May 2001, Article 51, Official Gazette of 16 May 2001)

A Commission for the Examination of Commercial Practices shall be established. It shall be composed of: a member of the national assembly and a senator appointed by the standing committees of their houses which are competent in respect of commercial relations between suppliers and retailers; members, possibly honorary, of the administrative and ordinary courts; representatives of the production, agricultural and fisheries processing, and industrial and craft sectors, processors, wholesalers, retailers and the administration, and also qualified persons. It shall be chaired by a member of the administrative or ordinary courts. It shall contain an equal number of representatives of producers and retailers.

The members of the Commission shall be bound by professional secrecy with regard to the acts, instruments and information of which they gain knowledge due to their duties.

The Commission shall have the task of giving opinions or making recommendations on the issues, commercial or advertising documents, including invoices and contracts covered by industrial and commercial secrecy, and practices involving commercial relations between producers, suppliers and retailers which are submitted thereto. It shall ensure, under the responsibility of its chairman, the anonymity of the referrals and documents which are submitted thereto, including with regard to its members.

The Commission shall be referred to by the Minister for Economic Affairs, the minister

responsible for the economic sector concerned, the chairman of the Council on Competition, any legal person, in particular professional associations or trade unions, approved consumer associations, consular chambers or chambers of agriculture and by any producer, supplier or retailer believing themselves to be injured by a commercial practice. It may also assume jurisdiction of its own motion. The chairman of the Commission may decide to set up several examination chambers within the Commission.

The opinion given by the Commission shall particularly cover the conformity with the law of the practice or document referred thereto.

The Commission shall hear, at its request, the persons and officials it deems appropriate in order to carry out its task. Its chairman may ask that an inquiry be conducted by the agents authorised to this end by Article L.450-1 of this code or by Article L.215-1 of the Consumer Code, according to the specified procedures. The report on the inquiry shall be provided to the chairman of the Commission who shall ensure that this protects the anonymity of the persons concerned.

The Commission may also decide to adopt a recommendation on the issues referred thereto and all those falling within its competence, particularly those relating to the development of good practices. When this follows a referral pursuant to the third paragraph, this recommendation shall not contain any indication likely to identify the persons concerned. The recommendation shall be notified to the Minister for Economic Affairs and shall be published following a Commission decision.

The Commission shall also carry out a role as a regular monitoring centre of commercial practices, invoices and contracts concluded between producers, suppliers and retailers which are submitted thereto. It shall prepare an annual report which it shall forward to the government and the houses of parliament. This report shall be made public.

A decree shall determine the organisation, means and terms of operation of the Commission and the conditions needed to ensure the anonymity of the economic actors referred to in the opinions and recommendations of the Commission.

Chapter I: Transparency ➡

Article L441-1

The rules on the conditions of sale to the consumer are fixed in Article L.113-3 of the Consumer Code, as reproduced below:

“Art. L.113-3. – All sellers of products and all providers of services shall, by means of marking, labelling, posting or using any other appropriate method, inform the consumer of the prices, any limitations on the contractual liability and the special conditions of sale, according to the terms fixed by orders of the Minister for Economic Affairs, following consultation of the National Consumer Council.”

Article L411-2

(Act No 420 of 15 May 2001, Article 49, Official Gazette of 16 May 2001)

Any publicity aimed at the consumer, broadcast using any medium or visible from outside the place of sale, indicating a price reduction or a promotional price for perishable food products must specify the nature and origin of the product or products on offer and the

period during which the offer made by the advertiser shall be available. The text relating to the origin shall be written in characters of an equal size to that of the price.

Any breach of the provisions of the first paragraph shall be punished by a fine of 100 000 francs.

When such promotional operations are likely, due to their extent or frequency, to disrupt the markets, an interministerial order or, failing this, a prefectural order shall fix, for the products concerned, the frequency and duration of these operations.

The advertisement of prices, in catalogues or by any other promotional medium except for electronic, outside the place of sale, for the sale of a fresh fruit or vegetable, whatever its origin, shall be dependent on the existence of a multi-industry agreement, concluded in accordance with the provisions of Article L.632-1 of the Rural Code. This agreement shall specify the periods when such an advertisement is possible and the terms of this. This multi-industry agreement may be extended in accordance with the provisions of Articles L.632-3 and L.632-4 of the same code.

Any breach of the provisions of the above paragraphs shall be punished by a fine of 100 000 francs.

The cessation of publicity carried out in accordance with conditions not complying with the provisions of this article may be ordered in accordance with the conditions specified by Article L.121-3 of the Consumer Code.

Article L441-3

(Act No 420 of 15 May 2001, Article 53 I, Official Gazette of 16 May 2001)

All purchases of products or all provisions of services for a professional activity must be covered by an invoice.

The seller shall be required to raise the invoice when the sale is made or when the service is provided. The purchaser must demand this. The invoice must be prepared in duplicate. The seller and purchaser shall each keep one original.

The invoice must indicate the names of the parties and their addresses, the date of the sale or service provision, the quantity, precise description and the unit price excluding VAT of the products sold and services provided and also any price reduction applying on the date of the sale or provision of services and directly linked to this sale or service provision, excluding discounts not specified on the invoice.

The invoice shall also indicate the date when payment must be made. It shall specify the discount conditions applying in the event of payment on a date prior to that resulting from the application of the general conditions of sale and the rate of the penalties due from the day after the payment date entered on the invoice. Payment shall be deemed to be made on the date when the funds are made available, by the client, to the beneficiary or the latter's subrogate.

Article L441-4

Any breach of the provisions of Article L.441-3 shall be punished by a fine of 500 000 francs.

The fine may be increased to 50% of the amount invoiced or that which should have been invoiced.

Article L441-5

Legal persons may be declared criminally liable in accordance with the conditions specified by Article 121-2 of the Penal Code for the breach specified by Article L.441-4. The penalties incurred by legal persons shall be:

1° The fine according to the terms specified by Article 131-38 of the Penal Code;

2° The penalty of exclusion from the public markets for a maximum period of five years, pursuant to 5° of Article 131-39 of the same code.

Article L441-6

(Act No 420 of 15 May 2001, Article 53 II, Official Gazette of 16 May 2001)

All producers, service providers, wholesalers and importers shall be required to provide all purchasers of a product or requesters of a service for a professional activity, where these request this, with their price list and conditions of sale. The latter shall include the conditions of payment and, if applicable, the discounts and rebates.

Unless otherwise specified by the conditions of sale or agreed between the parties, the payment time of the sums due shall be fixed at the thirtieth day following the date of receipt of the goods or performance of the service requested.

The conditions of payment must specify the conditions of application and the interest rate of the penalties for late payment due on the day after the date of payment appearing in the invoice where the sums due are paid after this date. Unless otherwise specified, but without a rate lower than one and a half times the legal interest rate being fixed, this rate shall be equal to the interest rate applied by the European Central Bank to its most recent refinancing operation, plus 7 percentage points. The penalties for late payment shall be due without a reminder being necessary.

The information specified by the first paragraph shall be provided by any means complying with the common practices of the profession.

The conditions in accordance with which a distributor or service provider shall be remunerated by its suppliers, in return for specific services, shall be covered by a written contract prepared in duplicate with one original being held by each of the parties.

Any breach of the provisions referred to above shall be punished by a fine of 100 000 francs.

Legal persons may be declared criminally liable in accordance with the conditions specified by Article 121-2 of the Penal Code.

The penalty incurred by legal persons shall be the fine according to the terms specified by Article 131-38 of said code.

Article L441-7

(inserted by Act No 420 of 15 May 2001, Article 53 III, Official Gazette of 16 May 2001)

For products and services intended as staple goods for households, when the payment time agreed between the parties is more than forty-five days, calculated from the date of delivery of the products or provision of the service, the purchaser must provide, at its expense, a bill of exchange or a commercial bill for an amount equal to the sum contractually due to its supplier, if applicable increased by the penalties for late payment. This bill of exchange or commercial bill shall indicate the date of its payment. The bill of exchange or commercial bill shall be sent without any request or step by the debtor being necessary. If the payment time of the bill of exchange leads to the payment time specified by the contract of sale being exceeded, the penalties for late payment specified by the third paragraph of Article L.441-6 shall be automatically applied without any request from the supplier being necessary.

Chapter II: Competitive restrictive practices ➔

Article L442-1

(Law No 2001-1168 of 11 December 2001 Article 13 IV (2) Official Gazette of 12 December 2001)

(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

The rules relating to sales or services with premiums, refusals to sell a product or to provide a service, and supplies effected in batches or imposed quantities are set out in Articles L. 121-35 and L. 122-1 of the Consumer Code reproduced below:

"Article L. 121-35. - Any sale or proposed sale of products or goods and any provision or proposed provision of a service made to consumers which gives entitlement, free of charge, immediately or eventually, to a premium consisting of products, goods or services, is prohibited unless they are identical to those provided.

This provision does not apply to petty items or services of low value or to samples.

For the lending institutions and other institutions referred to in Article L. 518-1 of the Monetary and Financial Code, the rules relating to sales with premiums are set out in subparagraph 2 (I) of Article L. 312-1-2 of that same code."

"Article L. 122-1. - Refusing to sell a product or to provide a service to a consumer without a valid reason, or making the sale of a product conditional upon the purchase of an imposed quantity or the concomitant purchase of another product or a service, or making the provision of a service conditional upon the provision of another service or the purchase of a product is prohibited.

For the lending institutions and other institutions referred to in Article L. 518-1 of the Monetary and Financial Code, the rules relating to conditional sales are set out in subparagraph 1 (I) of Article L. 312-1-2 of that same code."

Article L442-2

If any trader resells or advertises the resale of a product in an unaltered state at a price lower than its actual purchase price, this shall be punished by a fine of 500 000 francs. This fine may be increased to half the publicity expenses where an advertisement, whatever the

medium of this, indicates a price lower than the actual purchase price.

The actual purchase price is the unit price appearing on the invoice, plus turnover taxes, specific taxes relating to this resale and the transport cost.

Article L442-3

Legal persons may be declared criminally liable, in accordance with the conditions specified by Article 121-2 of the Penal Code, for the offence specified by Article L.442-2.

The penalties incurred by legal persons shall be:

1° The fine according to the terms specified by Article 131-38 of the Penal Code;

2° The penalty referred to in 9° of Article 131-39 of the same code.

The cessation of the advertising may be ordered in accordance with the conditions specified by Article L.121-3 of the Consumer Code.

Article L442-4

I.- The provisions of Article L.442-2 shall not apply:

1. To voluntary or forced sales caused by the cessation or change of commercial activity:
 - a. To products whose sale has a marked seasonal nature, during the final period of the sale season and in the interval between two sale seasons;
 - b. To products which no longer respond to the general demand due to the development of fashion or the emergence of technical improvements;
 - c. To products, with identical characteristics, whose restocking has occurred at a lower price, with the actual purchase price then being replaced by the price resulting from the new purchase invoice;
 - d. To food products marketed in a shop with a sale area of less than 300 square metres and to non-food products marketed in a shop with a sale area of less than 1 000 square metres, whose resale price is aligned with the price legally applied to the same products by another trader in the same area of activity;
2. Provided that the reduced price offer is not advertised in any way outside the place of sale, to perishable products from the moment when they are threatened by rapid deterioration.

II.- The exceptions specified by I shall not prevent the application of 2 of Article L.625-5 and 1 of Article L.626-2.

Article L442-5

If any person imposes, directly or indirectly, a minimum on the resale price of a product or good, on the price of a service provision or on a trading margin, this shall be punished by a

fine of 100 000 francs.

Article L442-6

(Law No 2001-420 of 15 May 2001 Article 56 Official Gazette of 16 May 2001)

(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

I. - The following acts committed by any producer, trader, manufacturer or person listed in the trade register render the perpetrator liable and entail the obligation to redress the prejudice caused:

1. Applying to an economic partner, or obtaining from an economic partner, discriminatory prices, terms of payment or terms and conditions of sale or purchase which are not justified by any real quid pro quo, thus creating, for that trading partner, a competitive disadvantage or advantage;
2.
 - a. Obtaining, or seeking to obtain, from a trading partner any advantage unrelated to a commercial service effectively rendered or which is manifestly disproportionate to the value of the service rendered. Such an advantage might consist, inter alia, of participation in the financing of promotional activities, an acquisition or an investment which is not justified by a common interest and does not offer proportionate compensation, particularly in the context of shop renovation or access to outlets or central listing or purchasing facilities;
 - b. Taking unfair advantage of a trading partner's dependence on him or of his own purchasing power or selling capacity by subjecting him to unjustified trading conditions or obligations;
3. Obtaining, or seeking to obtain, an advantage as a precondition for the placing of orders without providing a written undertaking concerning a proportionate volume of purchases and, if appropriate, a service requested by the supplier which is the subject of a written agreement;
4. Obtaining, or seeking to obtain prices, terms of payment, selling arrangements or commercial cooperation conditions which are manifestly different from the general conditions of sale under the threat of a sudden total or partial severing of business relations;
5. Suddenly breaking off an established business relationship, even partially, without prior written notice commensurate with the duration of the business relationship and consistent with the minimum notice period determined by the multi-sector agreements in line with standard commercial practices. When the business relationship involves the supply of products bearing the distributor's brand, the minimum notice period is double that which would apply if the products were not supplied under the distributor's brand. In the absence of such agreements, the decrees issued by the Minister for the Economy may determine a minimum notice period for each product category, taking due account of commercial practices, and may lay down conditions for the severing of business relations, paying due regard to their duration. The foregoing provisions do not affect the right to cancel without notice in the event of the other party failing to discharge its obligations or in the event of force majeure;
- 6.

Direct or indirect involvement in violation of the prohibition on reselling outside the network imposed on a distributor by a selective or exclusive distribution agreement exempted by virtue of the relevant rules of the law on competition;

7. Subjecting a trading partner to terms of payment which are manifestly unfair in the light of good commercial practice, and deviating, with no good reason, from the time limit indicated in the second paragraph of Article L. 441-6.

II. - Clauses or contracts which allow a producer, a trader, a manufacturer or a person listed in the trade register to commit the following acts are null and void:

- a. Benefiting retroactively from discounts, commissions or commercial cooperation agreements;
- b. Obtaining payment to guarantee inclusion in a catalogue or product range before any order is placed;
- c. Prohibiting the other contracting party from transferring the debts it holds against him to a third party.

Cancellation of the clauses relating to payment entails application of the time limit indicated in the second paragraph of Article L. 441-6, unless the court to which the matter is referred can establish an agreement on different terms and conditions which are equitable.

III. - The action is brought before the competent civil or commercial court by any person who can prove an interest, by the Public Prosecutor, by the Minister for the Economy, or by the Chairman of the Council for Competition when he detects a practice referred to in the present Article in the normal performance of his duties.

When that action is heard, the Minister for the Economy and the Public Prosecutor may ask the court to which the matter is referred to order the cessation of the practices referred to in the present Article. They may also have the nullity of the unlawful clauses or contracts declared in respect of all such practices and request reimbursement of the sums improperly paid and the imposition of a civil fine the amount of which shall not exceed 2 million euros. Compensation for the prejudice suffered may also be requested.

IV. - The urgent applications judge may order the cessation of the discriminatory or unfair practices or any other interlocutory measure.

Article L442-7

No associations or cooperatives of undertakings or administrations may normally offer products for sale, sell these or provide services if these activities are not specified by their articles of association.

Article L442-8

It is prohibited for any person to offer products for sale or to propose services by using, in accordance with irregular conditions, the public property of the State, local authorities and their public establishments.

Breaches of the ban specified by the above paragraph shall be investigated and recorded in accordance with the conditions defined by Articles L.450-1 to L.450-3 and L.450-8.

Agents may deposit, in the places which they determine and for a period which may not exceed one month, the products offered for sale and the goods having allowed the sale of the products or the offer of services.

The deposit shall give rise to the immediate establishment of an official record. This shall include an inventory of the goods and commodities deposited and an indication of their value. It shall be notified within five days of its completion to the procureur de la République and to the interested party.

The court may order the confiscation of the products offered for sale and the goods having allowed the sale of the products or the offer of services. The court may order the perpetrator to pay to the Treasury a sum corresponding to the value of the products deposited, in cases where an attachment has not been carried out.

Chapter III: Other prohibited practices ➔

Article L443-1

Subject to a fine of 500 000 francs, the payment time fixed by any producer, retailer or service provider may not exceed:

1° Thirty days after the end of the ten-day period from delivery for purchases of perishable food products and frozen or deep-frozen meat, deep-frozen fish, convenience foods and preserves made from perishable food products, with the exception of purchases of seasonal products made in the context of the "cultivation contracts" referred to in Articles L.326-1 to L.326-3 of the Rural Code;

2° Twenty days after the day of delivery for purchases of live cattle intended for consumption and fresh meat by-products;

3° Thirty days after the end of the month of delivery for purchases of alcoholic drinks subject to the consumer tax specified by Article 403 of the General Tax Code;

4° Failing multi-industry agreements concluded pursuant to Book VI of the Rural Code and made compulsory by regulation for all operators throughout mainland France with regard to payment times, seventy-five days after the day of delivery for purchases of alcoholic drinks subject to the transportation duties specified by Article 438 of the same code.

Article L443-2

I.- If false or slanderous information is broadcast by any means whatsoever, if offers intended to disrupt prices or offers made at the prices requested by sellers are thrown on the market or if any other fraudulent means are used to artificially increase or reduce the price of goods or services or public or private bills, or to attempt this, this shall be punished by a prison sentence of two years and a fine of 200 000 francs.

II.- When the artificial increase or reduction in prices involves food products, the penalty shall be increased to a prison sentence of three years and a fine of 300 000 francs.

III.- Natural persons guilty of the offences specified by this article shall also incur the

following additional penalties:

1. A ban on civic, civil and family rights, according to the terms of Article 131-26 of the Penal Code;
2. The posting on a notice-board or circulation of the decision ordered in accordance with the conditions specified by Article 131-35 of the Penal Code.

Article L443-3

I.- Legal persons may be declared criminally liable, in accordance with the conditions specified by Article 121-2 of the Penal Code, for the offences defined in I and II of Article L.443-2.

II.- The penalties incurred by legal persons shall be:

1. The fine according to the terms specified by Article 131-38 of the Penal Code;
2. The penalties referred to in 2°, 3°, 4°, 5°, 6° and 9° of Article 131-39 of the same code.

III.- The ban referred to in 2° of Article 131-39 of the same code shall involve the activity in the exercise or on the occasion of the exercise of which the offence was committed.

TITLE V: Investigative powers ➡

Article L450-1

(Act No 420 of 15 May 2001, Article 81 I, Official Gazette of 16 May 2001)

Officials authorised for this purpose by the Minister for Economic Affairs may conduct the inquiries needed to apply the provisions of this book.

The rapporteurs of the Council on Competition shall have the same powers with regard to matters referred to the Council.

Category A officials of the Ministry of Economic Affairs, specially authorised for this purpose by the Minister for Justice, following a proposal from the Minister for Economic Affairs, may be delegated powers by the investigating judges.

The authorised officials referred to in this article may exercise the investigative powers which they hold under this article and the following articles throughout the national territory.

Article L450-2

The inquiries shall give rise to the establishment of official records and, if applicable, reports.

The official records shall be sent to the competent authority. A duplicate of these shall be left with the interested parties. These shall be authentic unless otherwise proven.

Article L450-3

(Act No 420 of 15 May 2001, Article 76, Official Gazette of 16 May 2001)

The inquirers may access all premises, land or means of transport for professional use, request the notification of books, invoices and all other professional documents and obtain or take copies of these by any means and on all media and collect information and proof by means of summons or in situ.

They may ask the authority to which they are answerable to appoint an expert to conduct any necessary expert assessment involving all the parties.

Article L450-4

(Act No 420 of 15 May 2001, Article 77, Official Gazette of 16 May 2001)

The inquirers may visit all premises and seize documents and any information medium only in the context of inquiries requested by the Minister for Economic Affairs or the general rapporteur of the Council on Competition following a proposal from the rapporteur and with court authorisation given by an order of the president of the tribunal de grande instance in whose jurisdiction the premises to be visited are situated, or a judge delegated thereby. When these premises are situated in the jurisdiction of several courts and when a simultaneous action must be conducted in each of these, a single order may be issued by one of the competent presidents.

The judge must check that the authorisation request submitted thereto is founded. This request must include all the information in the possession of the requester likely to justify the visit. When the visit aims to allow breaches of the provisions of Book IV of this code which are in the process of being committed to be recorded, the authorisation request may contain only the evidence allowing the existence of the practices for which proof is sought to be presumed, in the case in question.

The visit and seizure shall be carried out under the authority and supervision of the judge who authorised these. The judge shall appoint one or more senior police officers who shall be responsible for assisting these operations and for keeping the judge informed of their progress. When these operations take place outside the jurisdiction of the tribunal de grande instance, the judge shall make a request for this supervision to be carried out to the president of the tribunal de grande instance in whose jurisdiction the visit is to be made.

The judge may go to the premises during the operation. At any time, the judge may decide to suspend or stop the visit.

The order shall be served verbally and in situ at the time of the visit to the occupant of the premises or their representative who shall receive a full copy of this order against receipt or signature in the margin of the official record. In the absence of the occupant of the premises or their representative, the order shall be served after the visit, by registered letter with acknowledgement of receipt. Service shall be deemed to have occurred on the date of receipt appearing on the acknowledgement.

The order referred to in the first paragraph of this article shall be open only to an appeal on points of law according to the rules specified by the Code of Criminal Procedure. This appeal shall not be suspensive.

The visit, which may not start before six o'clock in the morning or after nine o'clock at night, shall be carried out in the presence of the occupant of the premises or their representative. If this is not possible, the senior police officer shall request two witnesses chosen from persons not coming under the latter's authority, under that of the administration of the department for competition, consumer affairs and the prevention of fraud or under that of the Council on Competition.

The inquirers, the occupant of the premises or their representative and the senior police officer may alone read the documents before their seizure.

The inventories shall be prepared and the items placed under seal in accordance with Article 56 of the Code of Criminal Procedure.

The originals of the official record and inventory shall be sent to the judge who ordered the visit.

The documents seized shall be returned to the occupant of the premises within six months of the date when the Council on Competition's decision becomes final. The occupant of the premises shall be sent formal notice, by registered letter with acknowledgement of receipt, to come and collect these within two months. On the expiration of this period and failing any steps by the occupant, the documents shall be returned thereto at the latter's expense.

The development of the visit or seizure operations may be open to an appeal before the judge who authorised these within two months which shall run, for the persons occupying the premises where these operations are carried out, from the service of the order having authorised these and, for other persons implicated subsequently through documents seized during these operations, from the date when they became aware of the existence of these operations and at the latest from the notification of the complaints specified by Article L.463-2. The judge shall rule on this appeal in an order which shall be open only to an appeal on points of law according to the rules specified by the Code of Criminal Procedure. This appeal shall not be suspensive.

Article L450-5

(Act No 420 of 15 May 2001, Article 78, Official Gazette of 16 May 2001)

The general rapporteur of the Council on Competition shall be immediately informed of the start and end of the investigations referred to in Article L.450-4 when these have been carried out on the initiative of the Minister for Economic Affairs and when they relate to acts likely to come under Articles L.420-1 and L.420-2.

The general rapporteur may propose to the Council that it assumes jurisdiction of its own motion.

Article L450-6

(Act No 420 of 15 May 2001, Article 80, Official Gazette of 16 May 2001)

The general rapporteur shall appoint, for the examination of each matter, one or more rapporteurs. At the general rapporteur's request, the authority to which the agents referred to in Article L.450-1 are answerable shall appoint the inquirers and have any inquiry which the rapporteur considers appropriate conducted immediately. The latter shall define the directions of the inquiry and shall be kept informed of its progress.

A decree shall specify the conditions in accordance with which, at the reasoned request of the chairman of the Council on Competition, the authority to which the agents referred to in Article L.450-1 are answerable shall provide, for a specified period, to the general rapporteur of the Council on Competition, the inquirers to conduct certain inquiries, in accordance with the directions defined by the rapporteurs.

Article L450-7

The inquirers may, without professional secrecy being raised against them, access any document or information held by the services and establishments of the State and other public authorities.

Article L450-8

If anyone objects, in any way whatsoever, to the fulfilment of the duties with which the agents appointed by Article L.450-1 and the rapporteurs of the Council on Competition are entrusted pursuant to this book, this shall be punished by a prison sentence of six months and fine of 50 000 francs.

TITLE VI: Council on Competition ➔

Chapter I: Organisation ➔

Article L461-1

I.- The Council on Competition shall consist of seventeen members appointed for a term of six years by a decree adopted following the report of the Minister for Economic Affairs.

II.- It shall be composed of:

1. Eight members or former members of the Conseil d'Etat, Cour de Cassation, Auditor-General's department or other administrative or ordinary courts;
2. Four persons chosen due to their competence in economic affairs or in competition and consumer affairs;
3. Five persons carrying out or having carried out their activities in the sectors of production, distribution, craftwork, services or the professions.

III.- The chairman and three vice-chairmen shall be appointed, with regard to three of them, from among the members or former members of the Conseil d'Etat, Cour de Cassation or Auditor-General's department, and with regard to one of them, from the categories of persons indicated in 2° and 3° of II.

IV.- The four persons specified by 2° of II shall be chosen from a list of eight names submitted by the eight members specified by 1° of II.

V.- Members of the Council on Competition may be reappointed.

Article L461-2

The chairman and vice-chairmen shall fulfil their duties on a full-time basis. They shall be subject to the incompatibility rules specified for public positions.

Any member of the Council who has not participated, without a valid reason, in three consecutive sessions or who has not fulfilled the obligations specified by the two paragraphs below shall be declared by the minister to have automatically resigned. All members of the Council must inform the chairman of the interests which they hold or have just acquired and of the duties which they fulfil in an economic activity.

No Council member may participate in a matter in which they have an interest or in which they represent or have represented one of the interested parties.

The government commissioner to the Council shall be appointed by the Minister for Economic Affairs.

Article L461-3

(Act No 420 of 15 May 2001, Article 65, Official Gazette of 16 May 2001)

The Council may sit in plenary session, in sections or in a standing committee. The standing committee shall be composed of the chairman and the three vice-chairmen.

If the vote is split, the chairman of the session shall have the casting vote.

The general rapporteur, deputy general rapporteur or rapporteurs and permanent rapporteurs shall be appointed on a proposal from the chairman by an order of the Minister for Economic Affairs. The other rapporteurs shall be appointed by the chairman.

The general rapporteur may delegate to one or more deputy general rapporteurs all or part of the powers which the former holds under Book IV of this code.

The appropriations allocated to the Council on Competition for its operation shall be entered in the budget of the Ministry of Economic Affairs.

The chairman shall be entitled to authorise the income and expenditure of the Council.

Chapter II: Powers ➡

Article L462-1

The Council on Competition may be consulted by the parliamentary committees with regard to bills and any issues relating to competition.

It shall give its opinion on any competition issue at the request of the government. It may also give its opinion on the same issues at the request of the territorial authorities, professional associations and trade unions, approved consumer organisations, chambers of agriculture, chambers of trade or chambers of trade and industry, with regard to the interests for which these are responsible.

Article L462-2

The Council must be consulted by the government on any draft regulation establishing a

new system having the direct effect of:

- 1° Subjecting the practice of a profession or the access to a market to quantitative restrictions;
- 2° Establishing exclusive rights in certain areas;
- 3° Imposing uniform practices in terms of prices or conditions of sale.

Article L462-3

The Council may be consulted by the courts on the anti-competitive practices defined in Articles L.420-1, L.420-2 and L.420-5 and identified in the matters referred thereto. It may give an opinion only after a procedure involving all the parties. However, if it has information already gathered during a previous procedure, it may give its opinion without having to implement the procedure specified by this text.

The period of prescription shall be suspended, if applicable, by the consultation of the Council.

The Council's opinion may be published after the termination of the procedure or the judgment.

Article L462-4

The Council may be consulted by the Minister for Economic Affairs on any concentration project or any concentration likely to adversely affect competition in accordance with the conditions specified by Title III above.

Article L462-5

The Council on Competition may be referred to by the Minister for Economic Affairs on any practice mentioned in Articles L.420-1, L.420-2 and L.420-5. It may assume jurisdiction of its own motion or be referred to by undertakings or, for any matter relating to the interests for which they are responsible, by the bodies indicated in the second paragraph of Article L.462-1.

Article L462-6

The Council on Competition shall examine whether the practices referred thereto fall within the scope of Articles L.420-1, L.420-2 or L.420-5 or may be justified pursuant to Article L.420-4. It shall decide, where applicable, on the penalties and orders.

When the facts seem to the Council to justify the application of Article L.420-6, it shall send the file to the procureur de la République. This notification shall interrupt the period of prescription of the public action.

Article L462-7

Facts dating back more than three years may not be referred to the Council if no instrument aimed at investigating, recording or penalising these has been established.

Article L462-8

(Act No 420 of 15 May 2001, Article 74, Official Gazette of 16 May 2001)

The Council on Competition may declare, in a reasoned decision, that the referral is inadmissible due to a lack of interest or capacity to act on the part of the instigator of this, or if the facts are prescribed within the meaning of Article L.462-7 or if it considers that the facts invoked do not fall within the scope of its competence.

It may also reject the referral in a reasoned decision when it considers that the facts invoked are not supported by sufficient weight of evidence.

It shall officially note abandonments in a decision of the chairman of the Council on Competition or a vice-chairman delegated thereby.

Article L462-9

(inserted by Act No 420 of 15 May 2001, Article 83, Official Gazette of 16 May 2001)

The Council on Competition may, according to its powers and after previously informing the Minister for Economic Affairs, notify the information or documents which it holds or gathers, at their request, to the Commission of the European Communities or to the authorities of other States exercising similar powers, subject to reciprocity and provided that the competent foreign authority is subject to professional secrecy with the same guarantees as in France.

The Council on Competition may, in accordance with the same conditions, according to the same procedures and subject to the same penalties as those specified for the fulfilment of its tasks, conduct or ask the Minister for Economic Affairs to conduct inquiries, at the request of foreign authorities exercising similar powers, subject to reciprocity.

The professional secrecy obligation shall not prevent the notification by the competition authorities of the information or documents which they hold or gather, at their request, to the Commission of the European Communities and to the authorities of other States exercising similar powers and subject to the same professional secrecy obligations.

The assistance requested by a foreign authority exercising similar powers for the conduct of inquiries or the notification of information held or gathered by the Council on Competition shall be refused by the latter when the fulfilment of the request is likely to adversely affect French sovereignty, security, essential economic interests or public order or when a criminal procedure has already been initiated in France based on the same facts and against the same persons or when the latter have already been penalised by a final decision with regard to the same facts.

The competition authorities, according to their respective powers, may use information or documents which have been notified thereto in accordance with the same conditions by the Commission of the European Communities or the authorities of other Member States exercising similar powers.

The Council may, in order to implement this article, conclude agreements organising its relations with the authorities of other States exercising similar powers. These agreements shall be approved by the Council in accordance with the conditions specified by Article L.463-7. They shall be published in the Official Gazette.

Chapter III: Procedure ➔

Article L463-1

The preparatory stages and the procedure before the Council on Competition shall fully involve all the parties.

Article L463-2

(Act No 420 of 15 May 2001, Article 68 I and II, Official Gazette of 16 May 2001)

Without prejudice to the measures specified by Article L.464-1, the general rapporteur shall notify the complaints to the interested parties and to the government commissioner who may consult the file and present their observations within two months.

The report shall then be notified to the parties, to the government commissioner and to the interested ministers. It shall be accompanied by the documents which the rapporteur has used as a basis and by the observations made, if applicable, by the interested parties.

The parties shall have two months to present observations in reply which may be consulted within the fifteen days prior to the sitting by the persons referred to in the above paragraph.

When exceptional circumstances justify this, the chairman of the Council may, in a decision not open to appeal, grant an additional period of one month for the parties to consult the file and produce their observations.

Article L463-3

(Act No 420 of 15 May 2001, Article 69, Official Gazette of 16 May 2001)

The chairman of the Council on Competition or a vice-chairman delegated thereby may, after notification of the complaints to the interested parties, decide that the matter shall be decided by the Council without the prior preparation of a report. This decision shall be notified to the parties.

Article L463-4

(Act No 420 of 15 May 2001, Article 70, Official Gazette of 16 May 2001)

The chairman of the Council on Competition or a vice-chairman delegated thereby may refuse to notify documents jeopardising business secrecy, except in cases where the notification or consultation of these documents is necessary for the procedure or for the exercise of the parties' rights. The documents in question shall be removed from the file or some of their text shall be obscured.

Article L463-5

The courts investigating and hearing the case may notify to the Council on Competition, at its request, the inquiry reports or official records having a direct link with the facts referred to the Council.

Article L463-6

The disclosure by one of the parties of information regarding another party or a third party, which it could only have known as a result of the notifications or consultations which have occurred, shall be punished by the penalties specified by Article 226-13 of the Penal Code.

Article L463-7

(Law No 2003-7 of 3 January 2003 Article 50 (II) Official Gazette of 4 January 2003)

The meetings of the Council for Competition are not public. Only the parties and the Government Commissioner can attend them. The parties may ask to be heard by the Council and can arrange to be represented or assisted.

The Council for Competition may hear any person whose evidence it considers to be material to its enquiry.

The general reporter, or the assistant general reporter(s) and the Government Commissioner may present their observations.

The general reporter, or the assistant general reporter(s) and the reporter attend the private sitting, but are entitled to speak and vote only when the council is ruling on practices referred to it pursuant to Article L. 462-5.

Article L463-8

(inserted by Act No 420 of 15 May 2001, Article 71, Official Gazette of 16 May 2001)

The general rapporteur may decide to call experts in the event of a request made at any time in the preparatory stages by the rapporteur or a party. This decision shall not be open to any appeal.

The tasks and time given to the expert shall be specified by the decision appointing the latter. The expert assessment operations shall involve all the parties.

The financing of the expert assessment shall be the responsibility of the party requesting this or the Council where this is ordered at the request of the rapporteur. However, the Council may, in its decision on the merits, allocate the final charge to the party or parties penalised, in the proportions which it determines.

Chapter IV: Decisions and appeals ➔

Article L464-1

(Act No 420 of 15 May 2001, Article 72, Official Gazette of 16 May 2001)

The Council on Competition may, at the request of the Minister for Economic Affairs, the persons indicated in the last paragraph of Article L.462-1 or the undertakings, and after having heard the parties in question and the government commissioner, adopt the precautionary measures which are requested thereof or which seem necessary thereto.

These measures may be applied only if the reported practice seriously and immediately undermines the general economy, the economy of the sector concerned, the interest of consumers or the complainant undertaking.

They may include the suspension of the practice concerned and an order to the parties to return the situation to the prior state. They must be strictly linked to what is necessary to tackle the emergency.

The precautionary measures shall be published in the Official Gazette on Competition, Consumer Affairs and the Prevention of Fraud.

Article L464-2

(Act No 420 of 15 May 2001, Article 73, Official Gazette of 16 May 2001)

I.- The Council on Competition may order the interested parties to end the anti-competitive practices within a specified period or may impose special conditions.

It may impose a financial penalty applicable either immediately or in the event of non-fulfilment of the orders.

The financial penalties shall be proportionate to the gravity of the alleged facts, to the extent of the damage caused to the economy, to the situation of the body or undertaking being penalised or the group to which the undertaking belongs and to any repetition of practices prohibited by this title. They shall be determined individually for each undertaking or body being penalised and in a reasoned manner for each penalty.

If the offender is not an undertaking, the maximum amount of the penalty shall be 3 million euro. The maximum amount of the penalty for an undertaking shall be 10% of the highest global pre-tax turnover made during one of the financial years closed since the financial year prior to that in which the practices were carried out. If the accounts of the undertaking concerned have been consolidated or combined pursuant to the texts applying to its form, the turnover taken into account shall be that appearing in the consolidated or combined accounts of the consolidating or combining undertaking.

The Council on Competition may order the publication, circulation or posting on a notice-board of its decision or a summary thereof according to the terms which it shall specify. It may also order the insertion of the decision or the summary of this in the report prepared on the operations for the financial years by the managers, board of directors or management of the undertaking. The expenses shall be borne by the person concerned.

II.- When a body or undertaking does not dispute the reality of the complaints notified thereto and undertakes to alter its behaviour for the future, the general rapporteur may propose that the Council on Competition, which shall hear the parties and the government commissioner without the prior preparation of a report, orders the financial penalty specified by I, taking into account the absence of any dispute. In this case, the maximum amount of the penalty incurred shall be reduced by half.

III.- A total or partial exoneration from the financial penalties may be granted to an undertaking or body which has, with others, carried out a practice prohibited by the provisions of Article L.420-1 if it has contributed to establishing the reality of the prohibited practice and to identifying its perpetrators, by providing information which the Council or administration did not have previously. Following the steps taken by the undertaking or body, the Council on Competition, at the request of the general rapporteur or Minister for Economic Affairs, shall adopt for this purpose a clemency opinion which shall specify the conditions to which the exoneration envisaged is subject, after the government commissioner and the undertaking or body concerned have presented their observations. This opinion shall be notified to the undertaking or body and to the minister and shall not be

published. When the decision is adopted pursuant to I of this article, the Council may, if the conditions specified by the clemency opinion have been met, grant an exoneration from the financial penalties proportionate to the contribution made to establishing the offence.

It may order the interested parties to end the anti-competitive practices within a specified period or may impose special conditions.

It may impose a financial penalty applicable either immediately or in the event of non-fulfilment of the orders.

The financial penalties shall be proportionate to the gravity of the alleged facts, to the extent of the damage caused to the economy and to the situation of the body or undertaking being penalised. They shall be determined individually for each undertaking or body being penalised and in a reasoned manner for each penalty.

The maximum amount of the penalty for an undertaking shall be 5% of the pre-tax turnover made in France during the last closed financial year. If the offender is not an undertaking, the maximum shall be 10 000 000 francs.

The Council on Competition may order the publication of its decision in the newspapers or publications which it specifies, its posting on notice-boards in the places which it indicates and the insertion of its decision in the report prepared on the operations for the financial year by the managers, board of directors or management of the undertaking. The expenses shall be borne by the person concerned.

Article L464-3

If the measures and orders specified by Articles L.464-1 and L.464-2 are not observed, the Council may order a financial penalty within the limits fixed by Article L.464-2.

Article L464-4

Financial penalties shall be collected as claims of the State not covered by taxation and State property.

Article L464-5

(Act No 420 of 15 May 2001, Article 69, Official Gazette of 16 May 2001)

The Council, when it rules according to the simplified procedure specified by Article L.463-3, may order the measures specified by I of Article L.464-2. However, the financial penalty may not exceed 750 000 euro for each of the perpetrators of prohibited practices.

Article L464-6

(Act No 420 of 15 May 2001, Article 75, Official Gazette of 16 May 2001)

When no practice likely to adversely affect competition in the market is established, the Council on Competition may decide, after the person referring the case and the government commissioner have been able to consult the file and make their observations, that the procedure should not be continued.

Article L464-7

The Council's decision adopted pursuant to Article L.464-1 may be open to an application to set this aside or alter this by the parties in question and the government commissioner before the Paris Cour d'appel at most ten days after its notification. The Court shall rule within one month of the appeal.

The appeal shall not be suspensive. However, the first president of the Paris Cour d'appel may order that the enforcement of the precautionary measures be deferred if these are likely to lead to manifestly excessive consequences or if new facts of exceptional gravity have emerged subsequent to their notification.

Article L464-8

The decisions of the Council on Competition indicated in Articles L.462-8, L.464-1, L.464-2, L.464-3, L.464-5 and L.464-6 shall be notified to the parties in question and to the Minister for Economic Affairs who may, within one month, bring an application to set these aside or alter these before the Paris Cour d'appel.

The decisions shall be published in the Official Gazette on Competition, Consumer Affairs and the Prevention of Fraud. The Minister for Economic Affairs shall oversee their enforcement.

The appeal shall not be suspensive. However, the first president of the Paris Cour d'appel may order that the enforcement of the decision be deferred if this is likely to lead to manifestly excessive consequences or if new facts of exceptional gravity have emerged subsequent to its notification.

The appeal on points of law lodged, if applicable, against the order of the Court shall be brought within one month of the latter's notification.

TITLE VII: Sundry provisions ➡

Article L470-1

The court may order legal persons jointly and severally to pay the fines ordered against their directors pursuant to the provisions of this book and the texts adopted in application thereof.

Article L470-2

In the event of sentencing under Articles L.441-3, L.441-4, L.441-5, L.442-2, L.442-3, L.442-5 and L.443-1, the court may order that its decision be posted on a notice-board or circulated in accordance with the conditions specified by Article 131-10 of the Penal Code.

Article L470-3

When a person having been sentenced less than two years previously for one of the offences defined by Articles L.441-2, L.441-3, L.441-4, L.441-5, L.441-6, L.442-2, L.442-3, L.442-4, L.442-5 and L.443-1 commits the same offence, the maximum fine incurred shall be doubled.

Article L470-4

When a legal person having been sentenced less than two years previously for one of the

offences defined by Articles L.441-3, L.441-4, L.441-5, L.441-6, L.442-2, L.442-3 and L.442-4 commits the same offence, the maximum rate of the fine incurred shall be equal to ten times that applicable to natural persons for this offence.

Article L470-5

In order to apply the provisions of this book, the Minister for Economic Affairs or his representative may, before the civil or criminal jurisdictions, file pleadings and develop these orally in the hearing. The minister may also produce the inquiry reports and official records.

Article L470-6

(Act No 420 of 15 May 2001, Article 84, Official Gazette of 16 May 2001)

In order to apply Articles 81 to 83 of the Treaty establishing the European Community, the Minister for Economic Affairs and the officials appointed or authorised thereby in accordance with the provisions of this book, on one hand, and the Council on Competition on the other shall have the respective powers which are recognised thereto by the articles of this book. The procedural rules specified by these texts shall apply thereto.

In order to apply Articles 87 and 88 of the Treaty establishing the European Community, the Minister for Economic Affairs and the officials appointed or authorised thereby in accordance with the provisions of Article L.450-1 shall have the powers which are recognised thereto by Title V of Book IV.

Article L470-7

Professional associations may bring actions before the civil or tribunal de commerce with regard to facts directly or indirectly harming the collective interest of the profession or sector which they represent or fair competition.

Article L470-8

A Conseil d'Etat decree shall determine the terms for applying this book.