

# Public Opinion on Cartels and Competition Policy in France: Analysis and Implications

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*In this article, we analyse the foundations, methodology, results and implications of a survey conducted by the French Competition Authority on the perception of cartels and competition policy by general public in France. The results show that French people consider these practices to be harmful and are in favour of dissuasive sanctions. In addition, while not in favour of imposing a prison sentence on individuals, public opinion favours the implementation of criminal sanctions, in particular in the form of disqualification. The results also suggest that cartels are considered to be as serious or more serious breach of the law than other types of fraud. Moreover, French people agree to denounce this practice, but on ethical grounds more than in exchange for a monetary reward. Finally, the French Competition Authority enjoys a certain notoriety, unlike the cartel cases it deals with and despite the amount of sanctions imposed. These empirical results can help to better guide competition policy and enhance its effectiveness.*

## 1 INTRODUCTION

In Europe as in France, the fight against cartels is now a priority for competition authorities. For example, the European Commission imposed fines of nearly EUR 10 billion on cartels between 2013 and 2018. During the same period, the French Competition Authority imposed more than EUR 3.2 billion euros of fines against cartels. This strengthening of sanctions is in line with the economic analysis, which has highlighted the harmful nature of these practices and has contributed to assess the effectiveness of the sanctions imposed, both at European and French levels.<sup>1</sup>

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<sup>1</sup> On this subject, see for instance J. Connor & R. Lande, *Cartels as Rational Business Strategy: Crime Pays*, 24 *Cardozo L. Rev.* 455, 462 (2012); A. Hutin & C. Monnier, *Les cartels en France*:

However, the debate on the fight against cartels has remained essentially a debate of competition law experts, without the perception of the general public being truly integrated. However, its role can be decisive in the long term, in particular to better legitimize the repressive action of competition authorities. Indeed, in general, the fight against illegal practices is more effective if based on strong public support. Therefore, it is useful to examine the perception of cartels and the extent of their disapproval in the public opinion, in particular by asking what types of sanctions and procedures are most popular.

While there are some empirical studies on the perception of cartels and competition policy in Australia and the United States, no study has been available to date in France on this topic.<sup>2</sup> In order to remedy this shortcoming, together with the French competition authority, we have conducted a survey on the perception of cartels and competition policy, which has implied to develop a methodological framework, elaborate the questions asked and analyse the results. This article presents the economic foundations of the study, its methodology and results, comparing them with those obtained in other countries. Their analysis leads us to make several recommendations to improve the effectiveness of antitrust policy.

## 2 BASIS AND METHODOLOGY OF THE STUDY

### 2.1 FOUNDATIONS OF THE STUDY

#### 2.1[a] *Adherence to Rules, Social Disapproval and Respect for the Law*

Beyond moral considerations (does economic policy respond to citizens' aspirations and values?), public support contributes to a more effective implementation of the rules of law: studies show that the rule of law is more respected when individuals adhere to it, particularly in criminal matters. Thus, a better match between the requirements imposed by the law and the convictions of public opinion contributes to a better effectiveness of the rules of law, whether in encouraging compliance or in supporting law enforcement.

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*analyse économique de leurs caractéristiques et de leurs sanctions*, 2 *Concurrences* 45, 61 (2016); M. L. Allain, M. Boyer, R. Kotchoni & J. P. Ponsard, *Are Cartel Fines Optimal ? Theory and Evidence from the European Union*, 42 *Int'l Rev. L. & Econ.* 38, 47 (2015).

<sup>2</sup> In 2003, the French Competition Authority conducted a survey on competition in general and in certain sectors of the economy. But this survey did not deal with anti-competitive practices or competition policy. On the other hand, a question was asked about the Authority's reputation, which will allow us to measure possible developments in this area.

Regarding cartels, economic analysis has recently highlighted the crucial role played by managers in the implementation of this illegal practice within a company.<sup>3</sup> For the individual, the costs and benefits associated with participation in a cartel are influenced by various factors, including their company's adherence to competition rules. A stronger adherence to competition rules is associated with a more effective antitrust policy.<sup>4</sup> For example, compliance programs are more effective when the company and its managers share the values and standards embodied in the legislative framework. More generally, the presence of a compliance program within the company is a credible signal of commitment if it goes beyond a simple formal framework.

Conversely, social disapproval and individuals' perception of the illicit and harmful nature of cartel practices contribute to better deterring their formation.<sup>5</sup> While the psychological cost of breaking the law and inflicting harm on others may be difficult to assess, it appears to be an essential determinant of individual choice. Similarly, the social stigmatization of cartel behaviour and the risks involved influence managers' behaviour. However, compared to offences that target identified persons (such as theft, for example), the damages inflicted by cartels are not always visible and are often diffuse, as cartels develop in intermediate product industries and affect a large number of customers. It is therefore not certain consumers are aware that they are paying too much for their products as a result of these practices, and that the perpetrators of these infringements realize that they are causing harm to customers.

Hence, it is useful to assess the extent to which French public opinion perceives the unjustifiable and unlawful nature of cartels and apprehends their degree of seriousness, compared to other offences, such as theft.

#### 2.1[b] *Public Opinion and the Direction of Competition Policy*

A better knowledge of public support towards cartel sanctions could help public authorities' choices.

First, with regard to compensation claims, since 2014 the European Commission has been encouraging the development of civil actions in

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<sup>3</sup> In general, the decision to form or join a cartel is made by the top management and the implementation of the cartel involves the middle management levels (see E. Combe et C. Monnier, *Cartels et comportements des managers: analyse et implications pour les politiques publiques*, 67 R. éco. 95, 109 (2016)); and M. Stucke, *Am I a Price-Fixer? A Behavioral Economics Analysis of Cartels*, in *Criminalizing Cartels: A Critical Interdisciplinary Study of an International Regulatory Movement* (C. Beaton-Wells & A. Ezrachi (dir.), Oxford, Hart Publishing 2011).

<sup>4</sup> See Combe & Monnier, *supra* n. 3.

<sup>5</sup> See *supra* n. 4.

Europe against anti-competitive practices<sup>6</sup> and has adopted to this end the Directive 2014/104/EU.<sup>7</sup> Its transposition in France<sup>8</sup> in 2017 should promote the development of these procedures and at the same time, strengthen the deterrence of anti-competitive practices. However, its effectiveness will be greater if public opinion becomes more aware of the damage caused by cartels: final consumers will be encouraged to seek compensation in civil courts if they are first aware that they have been harmed.

Secondly, a possible strengthening of sanctions against individuals who have participated in cartel practices, which has been done in other jurisdictions, is a topic that regularly comes up in public debates.<sup>9</sup> However, this new approach will only be possible if it receives some public support. Until now, apart from the North American case, the use of the criminal solution in the form of prison sentences remains very low.<sup>10</sup> This weak use of prison is partly explained by the lack of legitimacy of this type of sanction in public opinion. For instance, Stephan<sup>11</sup> shows that in the English case, cartels' criminalization with prison sentences, initiated after 2002, remains unlikely to be credible as it breaks with a tradition of relative indulgence towards these practices. It is therefore necessary to consider whether other types of sanctions against individuals, such as personal fines or temporary disqualification of managers, could receive some public support. Nevertheless, public support is necessary but not always sufficient. Muraca<sup>12</sup> provides as case study of the Chilean experience and observe that when the policy decision is highly politicized, even if the decision making is driven by domestic pressures, a regulatory populism might overcome balancing policy considerations, which risks to jeopardize the results' effectiveness.

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<sup>6</sup> For a history of private enforcement in European competition law and its interaction with public enforcement, see W. Wils, *Efficiency and Justice in European Antitrust Enforcement* (Oxford and Portland Oregon, Hart Publishing 2008).

<sup>7</sup> <http://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=CELEX:32014L0104&from=FR> (accessed 5 Jul. 2019).

<sup>8</sup> By Ordinance No. 2017-303 of 9 Mar. 2017 and Decree No. 2017-305. Book IV of the French Commercial Code was supplemented by a Title VIII containing the main provisions relating to damages actions relating to anti-competitive practices.

<sup>9</sup> In the United States, the choice was made to strengthen criminal sanctions in the form of prison (see F. Wagner-Von Papp, D. Viros, D. Zimmer, W. Kovacic & A. Stephan, *Individual Sanctions for Competitive Infringements: Pros, Cons and Challenges*, 2 *Concurrences* 14, 44 (2016)). Several other countries have also adopted a criminal law arsenal to fight against cartel practices, such as Ireland (1996), the United Kingdom (2002), or Australia (2009).

<sup>10</sup> See Papp et al., *supra* n. 9.

<sup>11</sup> A. Stephan, *Survey of Public Attitudes to Price-Fixing and Cartel Enforcement in Britain*, 07–12 CCP W.P 31 (2012).

<sup>12</sup> C. Muraca, *Cultural and Political Forces in the Criminalization of Cartels: A Case Study on the Chilean Experience*, 41 *World Compet.* 579, 602 (2018).

Finally, the role of whistle-blowers within companies and their possible remuneration and/or protection is on the agenda of several countries. With regard to cartel denunciations, whistleblowing programs against remuneration have been launched in South Korea since 2011, where they have improved the detection of these practices<sup>13</sup> and more recently in the United Kingdom (2017). Would the French be prepared to denounce cartel practices implemented by their company in exchange or not for remuneration? What main motivation – ethical or monetary – would guide their action, if any?

In addition, understanding public's perception of cartels could strengthen the effectiveness of competition authorities' communication and advocacy policy. Indeed, social norms aimed at respecting the rules of law are gradually being built up through the dissemination of knowledge, thanks to the media coverage of cartel cases. However, given the small number of cartel cases sanctioned each year (less than ten cases in France or Europe), public opinion may be the victim of a classic 'availability' bias: since sanctions decisions are rare, individuals tend to consider that they do not exist, especially since media coverage is often limited in time.<sup>14</sup>

#### 2.1[c] *An Empirical and Comparative Approach*

In public opinion, it is common to rely on statements, based on assumptions, that have never been truly supported by empirical studies. For instance, it is often stated that the French would not be in favour of imposing sanctions on individuals or that any policy of leniency would be doomed to failure, being assimilated for historical reasons (collaboration with the enemy during the Second World War) to a form of denouncement. But what is really going on?

Studies on public perception of criminal behaviour have shown that public opinion is more complex and nuanced than usually assumptions would suggest.<sup>15</sup> It is therefore useful to know the opinion of the French on cartel practices, on the basis of a representative survey.

From a comparative point of view, it is also instructive to put into perspective the results obtained in France with those of neighbouring countries, but also with the United States and Australia, two countries with quite different competition policy traditions.

<sup>13</sup> D. Sokol, *Cartels, Corporate Compliance and What Practitioners Really Think About Enforcement*, 78 *Antitrust L.J.* 201, 240 (2012).

<sup>14</sup> Sokol, *supra* n. 13, shows that, during the period 1994–2008, cartel decisions gave rise to few press articles in the United States. Stephan, *supra* n. 11, makes the same observation in the United Kingdom.

<sup>15</sup> See C. Beaton-Wells & C. Platania-Phung, *Anti-Cartel Advocacy – How Has the ACCC Fared?*, Sydney L. Rev. 735, 770 (2011) for a synthesis and Green, *Public Opinion Versus Public Judgment About Crime: Correcting the 'Comedy of Errors'*, 46 *Br. J. Criminology* 131, 154 (2006).

## 2.2 STUDY METHODOLOGY

2.2[a] *General Methodology*

The survey questionnaire was prepared by the authors of this article, in close collaboration with the French Competition Authority, which financed its implementation by a polling firm (IFOP). The questions were first tested with economic researchers at the Sorbonne University (Paris 1). The pilot tests were extended to doctoral candidates and students, and finally to individuals with no specific knowledge of competition policy. Competition policy specialists, academic and/or attached to the Competition Authority, and the study officers at the IFOP were able to comment and give their opinion on the content of the questionnaire, the order of the questions and items, their rotation, and the vocabulary used. Finally, the questionnaire was tested through interviews: respondents were asked about their feelings and understanding of concepts and questions. It was then programmed in an electronic format. Once established, the questionnaire was preliminarily launched to validate the survey response time and verify its performance. It was necessary to simplify the terminologies and make them accessible to a representative sample of the French population. In order not to generate fatigue, it was decided to narrow the scope of the study to cartels (with the exception of a final question about abuses of dominant position), and to limit the number of questions to 11.

More specifically, the first part of the questionnaire deals with the perception of cartel infringements and the principle of cartels prohibition (first five questions). Then, the next five questions deal with sanctions and leniency, the notoriety of certain cartel cases and of the Competition Authority. Finally, the last question specifically concerns the abuse of dominant position (Table 1).

*Table 1 Main Types of Questions Asked in the Survey*

<i>Question</i>	<i>Purpose</i>	<i>Type</i>
Question 1	Price agreement	Scenario of agreement on prices between ski equipment rental companies; three possible answers
Question 2	Collective boycott	Scenario of agreement between local businesses to block the entry of a new competitor
Question 3	Unlawful nature of cartel	Binary question on the harmfulness of cartels

<i>Question</i>	<i>Purpose</i>	<i>Type</i>
Question 4	Reasons for sanctioning cartels	List of five different reasons to sanction cartels
Question 5	Degree of seriousness of cartel practices	Comparison of cartel practices with seven other illicit practices
Question 6	Type of sanctions against firms	List of five types of sanctions
Question 7	Type of sanctions against individuals	List of five types of sanctions
Question 8	Legitimacy of the leniency policy	Binary question on the acceptability of this type of instrument (with two sub-cases)
Question 9	Conduct in case of cartel discovery within the company	Binary question on the possibility of denunciation (with sub-cases on the reasons for the choice)
Question 10	Knowledge of competition policy in France	Question on the knowledge of the Competition Authority and of specific cartel cases
Question 11	Opinion on the abuse of a dominant position	Scenario of a company attempting to block entry through exclusivity clauses; three possible answers

The majority of the questions propose an alternative between two opinions, most often opposed, on which the respondents can, for each of them, agree completely, rather agree or agree with none of them. Other questions present a list of possible sanctions to be selected. It is then specified that several answers are possible. In most cases, the order of responses was presented randomly, in order to reduce its influence on the choice of individuals. The question on the reasons for sanctioning cartels was only asked to individuals who considered that these practices should be sanctioned.

It was voluntarily decided to provide little information in the questionnaire on the lawfulness of the practices and on the competition policy in force in France (types, nature and extent of the sanctions actually imposed on cartels). The first two questions in Part I of the questionnaire do not provide any information on the unlawful nature of cartels. The rest of the questionnaire does not provide any

information on the sanctions available in France. The objective is to limit respondents' preconceptions in order to identify what they really think about these practices and according to them, how cartels should be sanctioned, if they feel they should be. This methodology also revealed public support for sanctions or detection mechanisms that do not yet exist in France in the field of competition law, such as disqualification or whistleblowing (see analysis of the results).

## 2.2[b] *Study Protocol*

The survey was conducted among a sample of 2510 people, representative of the French population aged eighteen and over. The representativeness of the sample was ensured by the quota method (sex, age, profession of the head of the family) after stratification by region and category of agglomeration. The interviews were conducted by Computer Assisted Web Interviewing from 13 to 19 June 2017.

For the conduct of its online surveys in France among consumer targets, IFOP used an access panel: the Bilendi Internet user base, IFOP's partner, which has a pool of approximately 700,000 individuals who have previously given their consent to be contacted in order to complete online surveys (this is the largest access panel available in France, and it answers the '26 ESOMAR questions' on online panel management).<sup>16</sup> This broad base ensures a diversity of recruited panelists<sup>17</sup> and is constantly renewed.<sup>18</sup> This regular turnover makes it possible to fight against the professionalization of registrants.

There are more than three hundred criteria for qualifying profiles: in addition to the usual identifying information of database members, they were also asked, when they registered, to provide a certain amount of information that makes it possible to target the sending of invitations. Panelists are encouraged to complete their profiles and update them every twelve months. Finally, a participation incentive system has been set up: points are accumulated in a single account and can be exchanged for gifts.

Despite the implementation of the quota method, the response rate for each target is not systematically representative. Some targets may marginally be over-represented and others under-represented (lower response rate). IFOP then makes a recovery which

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<sup>16</sup> The use of this database does not exempt IFOP from ensuring that the respondents actually correspond to the desired population profile. To constitute its samples, IFOP requires the Internet users contacted to specify their profile for all the criteria used to constitute its samples.

<sup>17</sup> The panelists' collection is multi-sourced: 100 partners recruit 16,000 new panelists each month. The partnerships set up for this recruitment concern non-commercial sites (information and association sites), and commercial sites, particularly in the travel and hotel industry, beauty and cosmetics, high-tech, clothing, ticketing and leisure sectors, etc. Additional recruitment is provided through sponsorships (e.g. cooptation between members), competitions (sponsored links) and database exchanges.

<sup>18</sup> As of 1 May 2017, 48% of active panelists have registered in the last twelve months, 20% have been present for 1 to 3 years and 32% have previously joined.



consists in rebalancing the population segments according to their real size, in order to ensure the representativeness of the sample. At the end of the data collection, a correction is applied in order to give each of the main criteria of the survey back their actual weight. This reprocessing has made it possible to reduce a slight over-representation of women, young people (which is often the case with an online survey), intermediate professions and people living in the Paris area.

### 2.2[c] *Comparative Approach*

The methodology used in the others studies is quite similar to the one presented here, with the exception of the Australian sample, which is smaller.

The Australian study (2011) was conducted on a random and representative sample of the population by an online statistical research organization. It covered 1334 participants (for 13,913 invitations issued, for a response rate of 9.3%). This survey included vignettes explaining three different forms of cartels: price cartel, market allocation and restrictive production quota allocations. All the questions asked concern each of these practices. Open text boxes were proposed at the end of each question (optional comment). As in the French survey, this study assessed the general Australian public's perception of cartels (particularly in terms of seriousness), as well as the sanctions and tools that should be used to fight against these practices.

Another study was carried out online in June 2014 by a survey agency in the United Kingdom, Germany and the United States, and in cooperation with another agency in Italy.<sup>19</sup> The samples were selected from online panels representative of the population in each of the four countries, based on a list of demographic characteristics. Panel members were mostly recruited through non-political sites or recruitment agencies to contact specific groups, in order to ensure broad representation. Respondents received a modest incentive to complete the questionnaire. The sample size is 2509 in the United Kingdom, 2658 in Germany, 2521 in Italy and 2913 in the United States. The majority of the questions presented two alternatives on which respondents could agree or disagree. Out of about twenty questions, nine were submitted only to respondents who considered the cartel to be a harmful practice that should be punished.

More recently, the British Competition and Markets Authority (CMA) has commissioned an empirical research with a sample of 12,000 companies to measure understanding awareness of competition law, particularly in relation to cartel practices.<sup>20</sup>

<sup>19</sup> See A. Stephan, *Survey of Public Attitudes to Price-Fixing and Cartel Enforcement in Britain Survey of Public Attitudes to Price Fixing in the UK, Germany, Italy and the USA*, CCP W.P. 15, 8 (2015).

<sup>20</sup> ICM, *Competition Law Research 2018: A Report by ICM on Behalf of the Competition and Markets Authority* 61 (2018).

The results of the study in France will be compared with those other foreign studies.

### 3 RESULTS AND IMPLICATIONS OF THE SURVEY

#### 3.1 PERCEPTION OF ANTI-COMPETITIVE PRACTICES

##### 3.1[a] *An Aversion to Price Agreements and Collective Boycotts*

The results of the survey<sup>21</sup> show that the majority of French people are averse to price fixing and collective boycott. Indeed, 59% of respondents agree that the practice of firms (in the proposed example, winter sports equipment rental companies) which consists in agreeing to set prices, is harmful to consumers and leads to prices higher than the competitive price. In foreign studies, the results are close to those obtained in France, even if the disapproval of these practices seems more pronounced.<sup>22</sup> In its empirical study of a sample of 1200 companies, the UK Competition Authority found a similar result: 59% of respondents considered that it can be illegal to attend a meeting where competitors agree on pricing.

While 59% of respondents consider cartel price to be damaging, 69% believe that preventing the entry of a new competitor into the market through a collective boycott is harmful to consumers. This greater severity may be explained by the fact that collective boycott not only leads to higher prices (by reducing competitive intensity), but also deprives consumers' choice. Indeed, some theoretical studies show that consumers have a preference for variety. This result on collective boycott should invite competition authorities to place greater emphasis on the restriction of choices resulting from cartel practices, beyond the mere price increase.<sup>23</sup> Moreover, if this result is put in perspective with question 11, related to an abuse of a dominant position (consisting in preventing the entry into the market of a new competitor), the aversion of the French to blocking a competitor appears even more marked. Indeed, 80% of respondents consider the practice of entry deterrence via exclusivity clauses to be reprehensible.

<sup>21</sup> All the results are available at the following address, [http://www.autoritedelaconcurrence.fr/doc/sondage\\_ifop\\_presentation\\_jan18.pdf](http://www.autoritedelaconcurrence.fr/doc/sondage_ifop_presentation_jan18.pdf) (accessed 5 Jul. 2019).

<sup>22</sup> In the United States, 64% of respondents consider that this practice is harmful, 68% in Italy, and this rate rises to 74% in Great Britain and 72% in Germany. The lower rate in France could be explained by the difference in the terms used. In France, this is the first question and it is deliberately very neutral (in one of the items, the agreement is even portrayed in a positive light as a way of 'saving the trouble of looking for the lowest price'). In foreign studies, more general questions about business ethics preceded the question about pricing arrangements, which may have influenced respondents.

<sup>23</sup> Most researchers have long agreed that consumers prefer more varieties when faced with choice (see W. E. Baumol & A. Ide, *Variety in Retailing*, 3 *Mgmt. Sci.* 93, 101 (1956)).

### 3.1[b] *Cartels: A Harmful and Reprehensible Practice*

Seventy-three per cent of respondents think that cartel is harmful to consumers, that each company must set its price independently of its competitor, and that cartels must be punished.

In that respect, the French results are very similar to those obtained in other European countries. Thus, it appears that in England, 79% of respondents consider that cartels are harmful to consumers and that they should be punished, 78% in Germany and 73% in Italy and Australia, which corresponds exactly to the French results. This rate falls to 66% in the case of the United States. There is therefore a majority of public opinion in the six countries mentioned to acknowledge the harmfulness of cartels.

Respondents who considered that cartels were harmful and should be punished were asked about the reasons for punishing them. Five (potentially cumulative) reasons have been proposed: the practice is hidden from consumers; it harms competition and the proper functioning of the market; the practice is dishonest; punishing cartels will deter other companies from adopting this practice in the future; consumers will pay more for their products.

Our results show that 97% of people agree that cartels should be punished because they are hidden from consumers (67% strongly agree). The same proportion considers that this practice should be condemned because it harms the market and it is dishonest (97% and 96% respectively), and 94% believe that punishing cartels will deter other companies from doing the same. The lowest proportion of conviction is related to price increase induced by cartels. This hierarchy is consistent with the principle of infringement 'by object', regardless the price increase caused by the practice. The cartels' principle, its secrecy and harming goal, justify their repression according to survey respondents. French public opinion seems to have internalized this basis of competition policy. However, these results can also be interpreted in a less positive way: individuals are not fully aware of the negative effects of cartels on product prices, and underestimate them, as the damage caused is often diffuse and not always easy to identify.

On this subject, France does not differ from other jurisdictions. In Great Britain, the fact that the practice is hidden appear also to be the first reason for condemning cartels. In Italy, and in the United States, it is the dishonest or immoral nature that justifies their sanctions. In Germany, it is both its dishonest and hidden character.

### 3.1[c] *Cartel Is as Serious as Theft or Fraud*

The rest of the questionnaire compares cartels with other illegal practices. Indeed, it is not uncommon for authorities to use terms that describe cartels as a form of fraud or theft, so that the public becomes aware of their harmful nature and can more concretely figure out their effects.

Predictably, respondents believe that a cartel is not as serious as a physical assault. However, almost half of the respondents consider cartels to be more serious than frauds or scams, and more than half of the respondents consider cartels to be as serious or more serious than thefts (50% and 6% respectively). Misleading the consumer about the quality of the products sold, concealing his income so as not to pay taxes, committing insider trading, are considered as serious (respectively at 56%, 55%, and 58%) as the cartel. On the contrary, only 38% of respondents think that illegal downloading of music and movies is as serious as price fixing. This offence is the practice considered the least serious compared to a cartel.

These results show that the French are acutely aware of the gravity of cartel practices. On average in other countries, the cartel is never considered as serious as a theft. In the United States, the United Kingdom and Germany, however, more than 50% of respondents consider the cartel to be equivalent to a fraud. Moreover, unlike France, very few respondents consider that a cartel is as serious as misleading the consumer about the quality of the products sold, concealing income so as not to pay taxes, or insider trading (with the exception of the United Kingdom, where almost half of the individuals surveyed consider insider trading to be as serious as the cartel). Only illegal downloading is systematically considered less serious than price-fixing in all jurisdictions. French public opinion thus appears to be more severe when it comes to assessing the relative gravity of cartels.

### 3.1[d] *Differences in Results According to the Categories of Respondents*

If we look at the structure of results by respondent category, some differences can be noted. In general, higher education graduates are more severe against cartel practices than non-graduates. Thus, among female university graduates, 71% believe that agreeing on prices is harmful, compared to 43% among non-university graduates. In addition, 77% of university graduates consider that blocking entry of a competitor with a collective boycott is harmful (against only 52% of non-graduates); 84% have an unfavourable opinion on cartels and consider that they should be punished, against 48% of individuals without diplomas (less than half).

In addition, women are less likely to consider that cartels are harmful or should be penalized. In the example of sports equipment rental companies that agree on their prices, 51% of women consider that this practice is damaging because it leads to price increases, compared to 69% for men.<sup>24</sup> When the cartel practice is explained and designated as 'illicit', the difference becomes less marked:

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<sup>24</sup> The difference in the level of qualifications between men and women does not explain alone this difference regarding cartels practices (among those surveyed, 51% of higher education graduates are men and 49% are women).

69% of women consider that a cartel is harmful and that it should be punished, against 79% for men.

Finally, in terms of political opinions, right and left are balanced with regard to the condemnation of these practices. Only individuals who declare themselves close to the National Front (far-right party) or without political affiliation, consider that these practices are less harmful (67%) compared to respondents from the right, left and centre (79% on average).<sup>25</sup>

The distribution of cartel sanctions grounds differs little according to diploma, gender and political orientation, because some of the uneducated, women and FN sympathizers or without political affiliation, have been excluded from this question (insofar as it has been restricted to individuals who have considered that cartels should be sanctioned).

The distribution of opinion regarding the gravity of cartel practices (compared to other types of fraud) is fairly uniform, whether in terms of gender, political proximity or degree level. However, it should be noted that women are more likely to consider cartels to be less serious than other types of illicit practices than men. With regard to differences in diploma level, higher education graduates consider more frequently that physical assault, scams, theft and lying about product quality, are more serious than cartels, compared to individuals without diplomas. On the other hand, they believe more frequently that concealing their income to avoid paying taxes, insider trading and illegal downloading are less serious than cartels (compared to non-graduates). Finally, non-graduates more often consider that none of the proposed sanctions (prison sentence, disqualification, fine) should be imposed on the individual who forms a cartel.

### 3.2 THE PERCEPTION OF SANCTIONS AND COMPETITION POLICY IN FRANCE

#### 3.2[a] *A Strong Support for Dissuasive Fines*

A majority of respondents consider that it is appropriate to sanction cartels by imposing a monetary sanction that is truly dissuasive: 60% consider that companies should be fined more than the illicit gain, and only 22% consider that the fine should be equivalent to this gain (Graph 1).

In other jurisdictions, the question on sanctions indicated only a possibility of a fine 'at least equal to the unlawful gain' which was widely approved (76% in

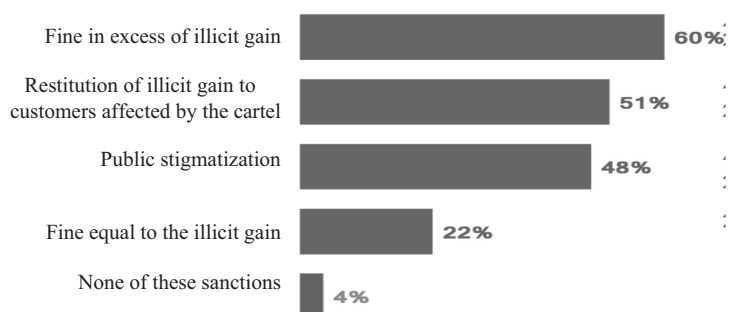
<sup>25</sup> This result is not surprising, however, since among higher education graduates, only 24% say they are close to the FN or without political affiliation (of which 4% are close to the FN and 20% without partisan sympathy). Among the non-graduates, 58% say they are close to the FN or without political affiliations (including 20% close to the FN and 38% without political affiliation).

Great Britain, 61% in Germany 55% in Italy, and 65% in the United States). In France, this percentage is equal to 72%, which is in the high range.

A small majority of respondents also defend the implicit objective of actions for compensation, since 51% of respondents consider that illicit gains should be returned to penalized customers, which is similar to the results obtained in Italy and Germany (respectively 52% and 48%), but is lower than those obtained in the United Kingdom and the United States (respectively 72% and 68%). This gap with the Anglo-Saxon countries can be explained by the more efficient and widespread civil systems in the latter two countries, compared to continental Europe (in particular because of the existence of punitive damages in the United States).

In addition, in Anglo-Saxon countries, there is a higher proportion of respondents who support the stigmatization and public designation of companies that have participated in cartels. In the United Kingdom and the United States respectively 65% and 78% of respondents consider that the stigmatization and public designation of companies that have formed a cartel is an appropriate sanction, compared to 48% in France.

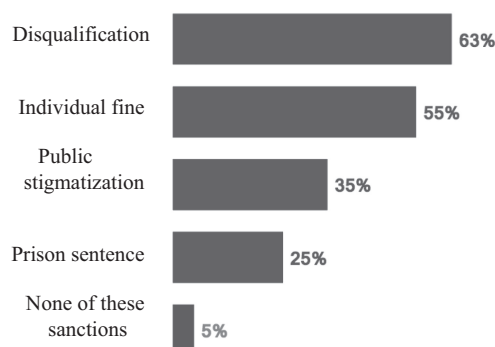
*Graph 1 Survey on the Type of Sanctions to be Imposed on Companies That Have Engaged in Cartel Activity (France, 2017)*



### 3.2[b] *In Terms of Individual Sanctions, Disqualification Is Popular but Not Prison*

Regarding sanctions inflicted on individuals, the French consider that disqualification, although yet non-existent in the field of competition law, is the most appropriate tool: 63% of respondents are in favour of this sanction and 55% in favour of individual fine. On the other hand, only 35% of respondents believe that people who have taken part in these practices should be punished by public stigmatization, and 25% that they should be sentenced to prison (Graph 2).

Graph 2 Survey on the Type of Sanctions to Be Imposed on Individuals Who Have Taken Part in a Cartel (France, 2017)



Similar results are obtained in Italy, United Kingdom and Germany (respectively 26%, 27%, 28%). In contrast, in the United States, prison sentence enjoys greater public support,<sup>26</sup> which is explained by a higher level of conviction of white-collar offences in that country, and in particular cartels.<sup>27</sup> This sanction is considered appropriate by more than a third of respondents in the United States (36%), compared to 25% to 27% in other European countries, and less than 20% in Australia.<sup>28</sup>

The question of criminal sanctions is thus more subtle than it seems. While the French are, as might be expected, reluctant to impose prison sentences on individuals for cartel activity, they are very much in favour of disqualification.

### 3.2[c] Moderate Support for Leniency but a Broader Support for Individual Denunciation

Leniency policy has been adopted in many jurisdictions since the 2000s and is now an essential tool for cartel detection. It is also a mechanism to deter cartels formation as it increases their internal instability. Its benefit is generally considered to be greater than its cost in terms of fines reduction.<sup>29</sup> In Europe, a very large number of cartels have been and are detected in this way (Broos et al. 2016). It is therefore useful to estimate the degree of public support for this procedure.

<sup>26</sup> The term used in foreign surveys ('imprisonment') may seem more severe than those used in the French questionnaire ('peine de prison'), insofar as the former implies incarceration. With such a harsh term, the percentage of favourable opinion in France could have been even lower than it already is.

<sup>27</sup> See Papp et al., *supra* n. 9.

<sup>28</sup> In Australia, the public favours first and foremost an individual fine (72%), followed by disqualification (66.5%) and stigmatization (66.3%). Prison sentences received only 17.3% of the votes.

<sup>29</sup> See Wils, *supra* n. 6.

The study surveyed French public opinion on leniency policy, but only the case of full immunity from sanction was tested. Respondents are divided on this procedure: a small majority (52%) is in favour, and an overwhelming majority of them in a moderate way (43% are 'rather favourable' to it and only 9% are 'completely' favourable). The supporters of the centre (La République en Marche ! and Modem) are more favourable to this tool (58% and 60%), as well as those of the FN (58%), than others.

In other countries, public opinion also seems quite divided on whether it is legitimate to grant full immunity from fines to a company that reveals the existence of a cartel that could not have been detected without this tool. In the United Kingdom, the general public is mostly in favour, at 53%. In Germany and Italy, 46% are in favour and 51% in the United States. The French results therefore do not differ from those of other European countries in this respect.<sup>30</sup>

Surprisingly, however, French respondents are overwhelmingly in favour of whistleblowing of these illegal practices (more than two thirds of them), and almost unanimously, without any reward system. Thus, 76% of individuals believe that they would report a cartel practice if they were employed in a large company that participated in this practice, and very few of them are motivated by the prospect of a monetary reward. Thus, only 6% of respondents would denounce the practice if they were granted a reward. On the other hand, 45% of respondents would only report if they could remain anonymous and 25% would report (unconditionally) because the practice is illegal. Only 16% would not denounce the practice, the vast majority of them because they would be afraid of losing their jobs.

Therefore, the French are in favour of denouncing cartel practices on moral grounds (intrinsic motivation) but they do not wish to denounce them in exchange for money (extrinsic motivation). However, they denounce especially when they can remain anonymous (probably to avoid retaliation within their company). It should be noted that graduates of higher education have a higher propensity to report the practice if they can remain anonymous and a lower propensity to do so in exchange for a monetary reward (only 4% of respondents who have graduated from higher education would report in exchange for a reward against 17% for those who have not graduated).

Similarly, in other countries, the fear of dismissal seems moderate, with only 12% (United Kingdom and Germany), 14% (Italy) and 8% (United States) of individuals stating that they would not denounce a cartel practice because they fear to lose their job. The other answers are not directly comparable to the French study. In particular, it was proposed that respondents should first refer the matter

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<sup>30</sup> In the Australian study, 49.6% of respondents were not in favour of this system. Only 25.9% are in favour and the rest are neutral (they neither agree nor disagree with this mechanism).



internally, before denouncing the cartel to competition authorities. This was the first response chosen in all countries (between 41% and 48% of respondents chose this option). However, in European countries, a significant part of respondents (between a quarter and a third of them) say that they would immediately denounce the practice (without conditions), which corresponds to the 25% in France. In the United States, only 8% of people say they agree to make such an immediate and unsecured denunciation. The French results are thus close to those obtained in other European countries.

3.2[d] *A Good Recognition of the French Competition Authority, but a Lesser Awareness of Its Cartel Decisions*

The French were surveyed on their perception of the Competition Authority and their knowledge of cartel agreements (in general), and then on a number of specific French and European cartel decisions in particular.

The majority of French people are familiar with the Competition Authority and cartels: 58% of respondents had already heard of cartels and/or illegal agreements before the survey and 60% of the Competition Authority. This rate of awareness is satisfactory and rising sharply: indeed, in a study on French and competition conducted in 2011 by the French Competition Authority, it appeared that only 39% of French people had heard of this institution. In Australia, more than two thirds of respondents had prior knowledge of the Australian competition authority but only 28.7% of cartel practices in general (these questions were not asked in other jurisdictions). In contrast, the recent survey conducted by the British Competition Authority (CMA) shows that it is still little known: 64% of respondents report that they do not know who enforces competition policy in the UK. This surprising result is partly explained by the fact that the CMA was created in 2014 and took over from the Office of Fair Trading (OFT), which existed for over forty years (from 1973 to 2014): indeed, when prompted, the OFT is the most commonly cited body responsible for enforcing competition law (49%).

In France, we can notice that recognition of the Competition Authority is higher among men (72% compared to 48% for women) and among those aged thirty-five and over (64% compared to 48% for those under thirty-five). Higher education graduates are also more likely to know it (72%) compared to individuals without a diploma (44%). Finally, centrist supporters are those who know the Authority best (71%) and those of the FN and without political sympathy who know it least (54% and 44% respectively).

On the other hand, respondents do not have a good knowledge of cartel decisions adopted at national or European level by competition authorities. It may

be noted, however, that 45% of them say they have heard of the cartel in dairy products, which was condemned in France in 2015 by the French Competition Authority. This cartel, well known in the newspaper as the ‘Yogurt cartel’,<sup>31</sup> had received extensive media coverage, which may explain this result. Furthermore, these products are intended directly for final consumers and considered as commodities. The media impact was therefore greater than in the case of the truck manufacturers’ cartel (an European cartel, which affected many companies), which is known by only 17% of respondents (although it was the most recent cartel to have been mentioned).

#### 4 CONCLUSION

The study on the perception of cartels by public opinion in France highlights a number of interesting results that could legitimize and improve the fight against cartels.

First, in France, cartels appear to most individuals to be harmful, particularly because they are hidden and that it is a dishonest practice. The majority of French people also consider this practice to be as serious as theft. This survey reinforces the legitimacy of the Competition Authority’s repressive action. In France, all the offences presented appear to be mostly as serious as the cartel, with the exception of illegal downloading (considered less serious than the cartel) and physical assault (considered more serious).<sup>32</sup>

However, the results also show that the damage imposed by cartels seems to be underestimated by the general public. Indeed, the price increase induced by cartels appears to be the least shared ground for condemnation, probably because the damage caused by these practices is not well perceived by individuals. If public authorities wish to encourage the development of civil proceedings against cartels, it would be useful to better inform public opinion about the price increases and damages resulting from cartels.

Secondly, with regard to sanctions and detection, while in other jurisdictions there is a broad support for the imposition of fines, at least equal to the illicit gain, a majority of French people consider that the fine must be higher than this amount. There is thus a broad public support in France for sanctions exceeding the amount of illegal gains captured by the cartel.

In addition, the survey shows that public authorities could consider imposing individual sanctions, in addition to their action against firms; the idea that French

<sup>31</sup> See e.g. the article in *Le Monde*: [http://www.lemonde.fr/economie/article/2015/03/12/lourde-amende-pour-le-cartel-des-yaourts-laurence-girard-embargo-10h30\\_4591892\\_3234.html](http://www.lemonde.fr/economie/article/2015/03/12/lourde-amende-pour-le-cartel-des-yaourts-laurence-girard-embargo-10h30_4591892_3234.html) (accessed 5 Jul. 2019).

<sup>32</sup> The terms used in foreign studies (price-fixing) may be more neutral than the term cartel, which may partly explain the differences obtained.

public opinion is hostile to it is not empirically verified. In particular, the disqualification of managers is welcomed; it has the advantage (compared to a fine) of not being transferable (by the company wishing to assume the sanction in place of its manager).

Regarding other procedures, public opinion in France appears to be quite divided on leniency. On the other hand, the possibility for an individual to denounce a cartel practice within his company, without compensation but anonymously, enjoys strong support. The results of the study could therefore invite the implementation of mechanisms for denouncing cartel practices within the company, guaranteeing their anonymous nature and without compensation. Including this parameter would also enhance the effectiveness of internal compliance programs.

#### 4.1 AN EDUCATIONAL, POLITICAL AND MEDIA ISSUE

Finally, the study highlights the educational and media implications of fighting against cartels. It appears that the degree level influences the opinion on cartels. Less qualified individuals appear to be less severe towards price-fixing practices. Probably, these people do not have the notions or knowledge of economics that would allow them to understand the harmful nature of these conducts, unlike higher education graduates. Public authorities could thus encourage economic culture before access to higher education.<sup>33</sup>

Beyond education, the results highlight the effectiveness of cartel media coverage (e.g. yoghurt cartel) when it comes to the daily lives of citizens. The aim is to promote more generally the spread of a competitive culture among the general population, such as television and poster campaigns against drink-driving. This dissemination could be based on vectors such as social medias. In addition to communicating decisions on cartel convictions, policy makers can also play a role in the fight against cartels by placing this subject on their political agenda, as in the Australian case.<sup>34</sup> Finally, the stigmatization of collusion behaviour, the spread of pro-competitive norms and antitrust rules will be easier if cartel practices are regularly condemned.

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<sup>33</sup> However, there is a corollary to this observation: managers are rather qualified, which implies that those who engage in these practices are aware that they are taking harmful action.

<sup>34</sup> See C. Beaton-Wells & F. Haines, *The Australian Conversion: How the Case for Cartel Criminalization Was Made*, 14 New J. Eur. Crim. Law. 499, 521 (2010).

