

Insights

PARTICIPATION IN AN ANTI-COMPETITIVE CARTEL AND DISMISSAL FOR SERIOUS MISCONDUCT

THE PARTICIPATION OF AN EMPLOYEE AWARE OF COMPETITION LAW IN AN ANTI-COMPETITIVE CARTEL WITHOUT THE KNOWLEDGE OF HIS SUPERIORS JUSTIFIES HIS DISMISSAL FOR SERIOUS MISCONDUCT

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On 27 February 2024, the Nîmes Court of Appeal confirmed that an employee may be dismissed for serious misconduct for participating in an anti-competitive cartel.

While the risk of companies being penalised for anti-competitive practices is well known, this decision is a reminder that employees are also exposed to disciplinary sanctions if they take part in an anti-competitive cartel, to which criminal proceedings may also be added.

It also underlines the importance for companies to implement competition law compliance programmes to limit the risk of participating in anti-competitive practices.

The context of the dismissal for serious misconduct

In this case, an employee had taken part in an anti-competitive cartel involving his employer and three of its competitors.

The employee's participation in the cartel began when he was employed by one of his employer's competitors involved in the cartel, and continued after he was hired by his new employer as head of the works department.

Following dawn raids carried out by the French Competition Authority (which followed two leniency applications), the employer launched an internal investigation that revealed the company's involvement in an anti-competitive cartel through the employee.

The employee was eventually dismissed for serious misconduct, after admitting his participation in the cartel and acknowledging that he was the author of several exchanges of emails and text messages that characterised the infringement.

The dismissal for serious misconduct is justified by the fact that the employee, who was aware of the prohibition of anti-competitive practices, had participated in a cartel without the knowledge of his superiors

In labour law, the assessment of the seriousness of an employee's misconduct requires taking into account the context, the nature and repeated nature of the misconduct, the position held by the employee, his or her seniority, any previous misconduct and the consequences of this misconduct for the employer.

Taking these factors into consideration, the Nîmes Court of Appeal characterised the seriousness of the employee's misconduct after having found that (i) the employee had participated in an anti-competitive agreement without the knowledge of his superiors and that (ii) the evidence of the employee's misconduct with regard to his contractual obligations had been provided by his employer at the time of his dismissal.

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