

this was appropriate in the circumstances, especially in the case of the CISG. In addition, pursuant to a recent Supreme Court of Canada decision on customs valuation, the Tribunal's decisions are not accorded any deference in matters of law not within the Tribunal's particular area of expertise. Therefore, it is entirely possible that a present or future challenge to the Tribunal's decision in *Cherry Stix Ltd.*, would be successful.

Finally, it is not entirely clear that the CIIT's decision necessarily means that the proper value for duty should default to the sale price charged by Cherry Stix Ltd. to Wal-Mart Canada. While Wal-Mart Canada should easily qualify as a "purchaser in Canada", it is not clear that they were a purchaser in a "sale for export to Canada". As a result, rather than transaction value applying to this transaction, it may be that a subsequent method of valuation is applicable.

Non-resident importers who declare their acquisition cost to be the value for duty of their imported goods in reliance on subpara. 2.1(c)(ii) of the *Valuation for Duty Regulations* should carefully review their existing arrangements to determine whether such a practice continues to be appropriate following the CIIT's decision in *Cherry Stix Ltd.*

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## FRANCE

### French Competition Council Imposes Record Fines on Mobile Operators for Unlawful Exchange of Confidential Information and Anti-Competitive Agreements

On November 30, 2005 the French Competition Council imposed record fines on the three main mobile telephone operators in France, Orange, SFR and Bouygues Télécom, for unlawful exchange of confidential information and anti-competitive agreements. These are the highest fines ever imposed in France

and, for two of these operators (Orange and SFR), the highest individual fines ever imposed in the EU for anti-competitive agreements. The fines amount to •256million for Orange, •220million for SFR and •58million for Bouygues Télécom.

The Council considered that the practices at stake were particularly serious infringements of competition law. The three mobile operators were sanctioned for:

- exchanging data on new subscriptions and number of cancellations. For the Council, this type of data was confidential since it gave each operator inside information on the commercial strategy followed by the others. Consequently, the exchange allegedly restricted competition between the three operators by reducing uncertainty on their respective commercial behavior;
- agreeing to 'freeze' their market shares around commonly defined objectives. In particular, the Council found that the operators agreed not to aggressively compete with one another for the acquisition of new clients and rather focus on increasing profits from their respective existing client base.

The Council found that the seriousness of the infringements was aggravated by the fact that they occurred on a market that had the characteristics of a closed oligopoly. The practices were therefore considered to be highly detrimental to consumers.

Orange, SFR and Bouygues Télécom have decided to appeal the decision of the Council. At the same time, UFCQueChosir, a French consumers association, is pushing their members to bring actions for damages against the three operators before the French courts. Actions for damages in this context are not real class actions in the U.S. sense, rather a sort of aggregation of the members' individual actions within the trade association.

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