

French Competition Authority Imposes First-Ever Fine for a Non-Reportable Merger Under Cartel Rules

October 29, 2026

On October 22, 2026, the French Competition Authority (FCA) adopted Decision 26-D-10 (the Decision) fining for the first time the parties to a merger below the mandatory notification thresholds, on the grounds that the merger infringed Article L.420-1 of the French Commercial Code (the FCC), which prohibits anticompetitive agreements.¹

In 2020, Drapkoc acquired sole control over Point Net. This transaction was not reportable to the FCA. It nevertheless created a monopoly in the medical waste treatment market in La Réunion and also resulted in the merged entity holding a market share exceeding 80% in the related collection and transport market. The FCA found that the share purchase agreement (the SPA) itself was an anticompetitive agreement infringing Article L.420-1 of the FCC and imposed a symbolic fine of €1 on each of the buyer and the seller.

While the FCA does not have formal *call-in* powers, despite its continued calls for a reform in this area, the Decision confirms its willingness to use existing antitrust tools to assess below-threshold transactions it considers problematic.

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¹ FCA, Decision [26-D-10](#) of October 22, 2026 regarding practices implemented in the sector for the treatment and disposal of potentially infectious medical waste in La Réunion. To date, only the FCA's press release has been published (available [here](#)) and the full text of the Decision will be made public in the coming weeks.



Background

Articles L.420-1 and L.420-2 of the FCC, which are the French equivalents of Articles 101 and 102 TFEU, are antitrust tools used to sanction undertakings that have entered into anticompetitive agreements (Article 101 TFEU and Article L.420-1 of the FCC) or abused their dominant position (102 TFEU and L.420-2 FCC). In parallel, French merger control rules provide for an *ex ante* review of transactions meeting the applicable thresholds, before they are implemented.

In March 2023, building on the *Continental Can* precedent,² the European Court of Justice (the ECJ) held in the *Towercast* case that a concentration falling below national merger control thresholds and not referred to the Commission, may be examined *ex post* under the prohibition of abuse of dominance.³ In a first application of the *Towercast* ruling, the FCA recently fined Doctolib €50,000 – a reduced fine reflecting the pre-*Towercast* legal uncertainty – for abusing its pre-existing dominant position through its 2018 acquisition of its main competitor, MonDocteur.⁴

In May 2024, in a decision concerning the meat-cutting sector, the FCA took a first step beyond *Towercast*, holding that below-threshold transactions could also be reviewed under the prohibition of anticompetitive agreements – although in that case the FCA ultimately dismissed the proceedings for lack of sufficient evidence.⁵

In the Decision, the FCA has, for the first time, imposed a sanction on a below-threshold merger on the basis of the prohibition of anticompetitive agreements.

The FCA Decision

On November 8, 2019, the Nicollin group and Drapkoc entered into an SPA providing for the sale to Drapkoc of 100% of the shares in Point Net. At the time of signing, Point Net and Ecolys (a subsidiary of Drapkoc) were the only two undertakings active in the treatment of medical waste in La Réunion, holding, around 80% and 20% of that market, respectively. The transaction closed in 2020 and the two companies were merged in 2021, giving rise to the combined entity Ecostrill, now the sole operator in medical waste treatment on the island and the leading operator (with a market share of more than 80%) in the related medical waste collection and transport activities.

The transaction was not reviewed by any competition authority, as it fell below the mandatory notification thresholds at both EU and French levels. After closing, the FCA opened a case under Article L.420-1 of the FCC on its own initiative.

Applicability of the prohibition of anticompetitive agreements. The FCA first indicated that where a transaction does not meet the mandatory notification thresholds, there is no conflict between the French merger control rules and Articles L.420-1 and L.420-2 of the FCC. Therefore, as merger control cannot be applied, the prohibition of anticompetitive agreements is applicable.

On that basis, the FCA considered the SPA of November 8, 2019 as direct and sufficient evidence of a meeting of minds between the parties, giving rise to an anticompetitive agreement within the meaning of Article L.420-1.

Analysis of the anticompetitive effects of the transaction. The FCA conducted a counterfactual analysis, comparing the post-merger market with the

² ECJ, February 21, 1973, *Europemballage Corporation and Continental Can Company Inc. v Commission* (Case [C-6/72](#)). Note that this judgment was handed down when there was no EU Merger Regulation, unlike the *Towercast* judgement cited below, which revived the review of transactions under the prohibition of abuse of a dominant position (*i.e.* the *Continental Can* precedent) where they had escaped initial merger control review because they fell below the relevant regulatory thresholds.

³ ECJ, March 16, 2023, *Towercast v Autorité de la concurrence* (Case [C-449/21](#)).

⁴ FCA, Decision [25-D-06](#) of November 6, 2025 regarding practices implemented in the online medical appointment booking and remote medical consultation solutions sector.

⁵ FCA, Decision [24-D-05](#) of May 2, 2024 regarding practices implemented in the meat-cutting sector.

situation that would have prevailed absent the SPA. It expressly drew on the analytical framework used for in-depth merger control reviews (Phase II), as developed in its merger control guidelines, considering that those guidelines provide useful guidance for assessing below-threshold transactions.

The FCA found that the transaction had anticompetitive effects on the medical waste treatment market, eliminating all forms of competition in that market and giving Ecostrill a monopoly position. The FCA considered that customers of the new entity (hospitals, collectors, and transporters) were too fragmented to exert any significant countervailing power. Additionally, it considered that the resulting monopoly was likely to persist due to strong regulatory barriers to entry (administrative authorization, access to suitable facilities, and traceability obligations) and that the island setting aggravated the harm, as no alternative medical waste disposal solutions are available.

The FCA further found that the transaction had, at least, potential anticompetitive effects on the medical waste collection and transport market in La Réunion, where Ecostrill now holds more than 80% of the market. Because Ecostrill offers both medical waste treatment and medical waste collection and transport, the FCA identified a risk of vertical foreclosure. It found that competing collectors have no option but to entrust the treatment of the waste they collect to their main rival, while treatment accounts for a very high proportion of their costs and their relative weight in the upstream market is limited.

A symbolic fine. The FCA described the infringement as exceptional. In fact, the SPA eliminated all competition in the treatment market, and certain features of the case, such as the public health stakes, the regulatory barriers to entry, and the island context made the distortion of competition particularly significant. The FCA also noted that the parties must have known that the transaction would create a monopoly, yet took no measures to mitigate the consequences. Notwithstanding these aggravating features, the FCA limited the fine

imposed on each of the buyer and the seller to a symbolic €1, as the Decision is the first to apply the rules on anticompetitive agreements to a merger.

Key Takeaways

The Decision confirms that *ex post* antitrust scrutiny of below-threshold mergers by the FCA is here to stay, increasing complexity and legal uncertainty for parties to the transactions. In particular:

- **Below-threshold M&A transactions are not immune.** In the words of FCA President Benoît Cœuré, the Decision sends a clear message to companies that a merger that is not subject to notification but has anticompetitive effects falls under competition rules. Parties to transactions capable of creating or strengthening very strong market positions should assess this exposure during due diligence, even where no merger filing is required. This is all the more important because the recent increase in the French notification thresholds will leave a greater number of deals outside *ex ante* merger review, and thus exposed to this risk.⁶
- **Both the buyer and the seller are exposed.** *Towercast* and *Doctolib* were both brought under the prohibition of abuse of dominance, which applies only to the dominant buyer. By contrast, when a decision relies on Article L.420-1 and treats the SPA itself as the anticompetitive agreement, both parties to the transaction can be fined.
- **Merger control tools set the standard of harm.** The FCA applied the significant impediment to effective competition test, relying on a counterfactual analysis and its Phase II merger guidelines as the framework. Parties can therefore expect the substantive assessment of below-threshold transactions to mirror an in-depth merger review.
- **Mitigation measures.** The FCA expressly criticized the parties for taking no measures

⁶ The new notification thresholds are set out in Article [L.430-2](#) of the FCC. These thresholds apply to transactions notified on or after September 1, 2026.

to mitigate the effects of a transaction they knew would create a monopoly. Where a below-threshold transaction raises obvious concerns, the parties should proactively consider voluntary remedies or engage with the authority to reduce the risk of enforcement.

- **The symbolic fine is not indicative of future sanctions.** The €1 fine reflects the novelty of the approach. Now that it has been established, future cases may attract fines calculated under the ordinary methodology (up to 10% of worldwide turnover).

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