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French Competition Law Newsletter

Highlights

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Below-Threshold Merger Found Abusive and Sanctioned for the First Time by the French Competition Authority Under Article 102 TFEU

On November 6, 2025, the French Competition Authority ("**FCA**") fined French healthtech company Doctolib EUR 4,665,000 for having abused its dominant position on the markets for online medical appointment booking services and remote medical consultation technology solutions (the "**Decision**").[1] The FCA found that Doctolib had imposed exclusivity and tying clauses, on the one hand, and abusively acquired its main competitor MonDocteur back in 2018, on the other hand, sanctioning a non-notifiable 'killer acquisition' for the first time on the basis of the European Court of Justice's ("**ECJ**") *Towercast* ruling.[2]

In a press release, Doctolib already announced that it would appeal the Decision.[3]

Background

Since the adoption of European merger regulation in 1989, competition law enforcement has rested on a clear distinction between *ex post* antitrust control (Articles 101 and 102 of the Treaty on the Functioning of the European Union ("**TFEU**")) and *ex ante* merger review, traditionally viewed as alternative– not cumulative – frameworks.

[1] FCA Decision No. 25-D-06 of November 6, 2025, regarding practices implemented in the online medical appointment booking and remote medical consultation solutions sector. The full text of the decision has not been published yet but the FCA's press release is available at: https://www.autoritedelaconcurrence.fr/en/press-release/autorite-fines-doctolib-eu4665000-abusing-its-dominant-position-online-medical.

[2] *Towercast v Autorité de la concurrence* (Case C-449/21), ECLI:EU:C:2023:207. Other national competition authorities have also started exploring the application of the Towercast jurisprudence. For instance, the Belgian competition authority examined the Proximus and Dossche Mills cases under Articles 102 and 101 TFEU respectively, but both cases were closed. On November 12, 2025, it opened an investigation on the below-threshold acquisition of music festival Pukkelpop by Live Nation, see https://www.rtbf.be/article/concurrence-ouverture-d-une-instruction-sur-la-reprise-du-pukkelpop-par-live-nation-11630970.

[3] Doctolib's Press Release, *"Doctolib va faire appel de la décision de l'Autorité de la concurrence"*, November 6, 2025, available at : https://about.doctolib.fr/news/decision-de-lautorite-de-la-concurrence/.

The emergence of a perceived "enforcement gap"[4] for killer acquisitions – where dominant firms acquire smaller rivals to neutralize potential competition –particularly in the digital and pharmaceutical sectors has however led to changes in the merger enforcement landscape.

In the *Towercast* judgment, the ECJ affirmed that certain mergers may be subject to *ex post* scrutiny under antitrust rules (specifically Article 102 TFEU and equivalent national provisions) when they were not initially reviewed under EU or national merger control due to falling below notification thresholds.[5]

The ECJ therefore opened an *ex post* alternative to the traditional *ex ante* enforcement through the merger regulation, although one that is limited to acquirers that hold a dominant market position.

The Decision marks the first sanction imposed by the FCA based on the application of abuse of dominance rules to a transaction, as envisaged in the *Towercast* ruling. Although the FCA had already carried out an *ex post* review of a merger in the meat-cutting sector based on antitrust regulation, it had relied on Article 101 rather than Article 102 of the TFEU, and had ultimately dismissed the case due to a lack of evidence.[6]

The ECJ's *Illumina/Grail* decision[7] further elevated the importance of *ex post* antitrust control of mergers as a new instrument in competition authorities' toolbox. The ruling put a stop to the European Commission's new interpretation of Article 22 of the European Union Merger Regulation and clarified that the European Commission lacks jurisdiction to review mergers falling below EU and national merger thresholds.

Separately, the FCA is also reflecting on its *ex ante* merger control thresholds. Following a public consultation, the FCA announced its intention to submit a proposal to introduce call-in powers before the end of 2025 in its 2025–2026 Roadmap.[8] However, given the current political landscape in France, the legislative introduction of call-in powers seems unlikely in the short-term.

Against this background, the Decision clearly illustrates the FCA's commitment to leverage antitrust rules, both abuse of dominance and anti-collusion rules, in order to allow the review of non-reportable transactions.

The Decision

While the Decision has not yet been published, the press release already discloses some key elements of the case.

The FCA's investigation began following a complaint by a competitor, Cegedim Santé, leading to unannounced inspections in 2021.

Doctolib was found to have a dominant position in two distinct markets, namely the markets for online medical appointment booking services and remote medical consultation technology solutions.

The FCA held that Doctolib abused its dominant positions on these markets by (i) including exclusivity clauses in its subscription contracts and forcing healthcare professionals to use its own remote medical consultation technology in order to access its online medical appointment booking services; and (ii) acquiring its main rival MonDocteur in 2018, which was then its only emerging competitor in the market for medical appointment booking services.

4 *Austria Asphalt v Bundeskartellanwalt*, (Case C-248/16), opinion of Advocate General Kokott, EU:C:2017:322.

5 See Towercast: *EU Court of Justice Endorses Post-Closing Review of Concentrations*, Cleary Gottlieb Alert Memorandum, April 11, 2023.

6 FCA Decision No. 24-D-05 of May 2, 2024 regarding practices implemented in the meat-cutting sector. See *First Move by the French Competition Authority to Analyze Non-Reportable Mergers under Article 101*, Cleary Gottlieb Alert Memorandum, May 21, 2024.

7 *Illumina and GRAIL v Commission* (joined Cases C-622/11 and C-625/22), EU:C:2023:227. See *Illumina/GRAIL: ECJ Rules European Commission Lacks Jurisdiction to Review Merger Falling Below EU and National Merger Thresholds,* Cleary Gottlieb Alert Memorandum, September 5, 2024.

8 FCA, Roadmap 2025-2026, page 8, available at: https://www.autoritedelaconcurrence.fr/sites/default/files/2025-07/feuille%20de%20route%202025%3A26-EN.pdf.

As the 2018 MonDocteur acquisition did not meet any merger notification thresholds, it had not been reviewed by either the FCA or the European Commission.

Most of the fine was imposed for the foreclosure practices (EUR 4,615,000). As regards the predatory acquisition, the FCA decided to impose a lump-sum, more modest sanction (EUR 50,000), acknowledging the legal uncertainty that existed at the time as the acquisition predated the *Towercast* judgment.

Key take-aways

The Decision provides a clear example of the new era of heightened complexity and uncertainty of M&A regulatory review that the Towercast judgment ushered in. Some of the key take-aways include:

— **The FCA's commitment to capture problematic below-threshold transactions.**

After the *Illumina/Grail* decision, the FCA stated that it "*remains committed to tackle mergers that may harm competition in innovative sectors*",[9] and the Decision clearly implements this commitment and illustrates the FCA's determination to use all available tools to ensure that even non-notifiable mergers can be apprehended.

Similarly, in the FCA's recent opinion concerning the veterinary sector in France, the antitrust watchdog flagged that it may consider reviewing closed veterinary clinic acquisitions that raise competition concerns.[10]

Notably, the Decision sanctions a transaction that was completed more than seven years ago. Although it did not attempt to "unscramble the eggs" but instead, prioritized deterrence through a fine, the low level of the penalty reflects the specific circumstances of the case, taking into account the legal uncertainty at the time before the *Towercast* ruling. Even if the EUR 50,000 fine is a low-cost warning for Doctolib, it is often the case with "firsts" and it would not be surprising if more significant sanctions were imposed in the future, in particular regarding post-*Towercast* acquisitions (subject to the outcome of Doctolib's announced appeal).

— **As ever, the importance of internal documents.** In a post-*Towercast* world, companies must now consider the risk of ex post antitrust scrutiny even for transactions falling below notification thresholds, adding significant unpredictability to deal assessments.

In its press release, the FCA highlighted that it obtained internal documents from Doctolib showing its intent to "*kill the [competing] product.*" The company described the MonDocteur acquisition as valuable precisely because it would lead to the disappearance of its rival and allow Doctolib to "*operate without any competition in France.*"

The Decision underscores the need for companies (in particular dominant firms) to carefully prepare and review internal strategic documents relating to acquisitions, even when notification is not required. This is especially important in France, where communications from in-house counsel are not covered by legal privilege, as underscored in the FCA's press release, citing advice from Doctolib's in-house lawyers.

— **The Towercast legal standard under Article 102 TFEU.** In *Towercast*, the ECJ established that when national competition authorities assess transactions under Article 102 TFEU "*the mere finding that an undertaking's position had been strengthened is not sufficient for a finding of abuse, since it must be established that the degree of dominance thus reached would substantially impede competition, that is to say, that only undertakings whose*

[9] FCA Press release, "*The Autorité de la concurrence takes note of the Illumina / Grail judgment by the Court of Justice of the European Union*", September, 3, 2024, available at :https://www.autoritedelaconcurrence.fr/en/press-release/autorite-de-la-concurrence-takes-note-illumina-grail-judgment-court-justice-european

[10] FCA Press Release, "*The Autorité de la concurrence publishes its opinion on pricing conditions for veterinary medicines and changes in the cost of veterinary care*", October 24, 2025, available at: https://www.autoritedelaconcurrence.fr/en/press-release/autorite-de-la-concurrence-publishes-its-opinion-pricing-conditions-veterinary.

behavior depends on the dominant undertaking would remain in the market" [11].

How the FCA interpreted this legal standard will likely be clarified once the decision is published but for now the press release shows that the FCA relied on at least three elements: (i) an intention to eliminate competition reflected in internal documents; (ii) new clients and significantly increased market shares post-transaction; and (iii) several increases in prices following the transaction without any corresponding loss of customers.

Regulating Self-Preferencing in Cloud Services: The French Competition Authority's Report to Parliament and the Government

On November 21, 2025, the French Competition Authority (the "**FCA**") published a report on self-preferencing practices in the cloud computing sector.[12] The report follows the enactment of Law No. 2024-449 on "*securing and regulating the digital space*" (the "**SREN law**") in 2024 and the subsequent 2025 public consultation launched by the FCA in this regard.

Background

Overall, the SREN law seeks to remove commercial and technical barriers to data portability and service interoperability in the cloud sector and to address unfair commercial practices.

Article 26 of the SREN law, codified as Article L.442-12 of the French Commercial Code, explicitly addresses self-preferencing practices by vertically integrated cloud service providers. Self-preferencing is defined as: "*The act, by a cloud service provider who also supplies software, of providing software to a customer through the services of a third-party cloud service provider under pricing and functional terms and conditions that materially differ from those under which the provider supplies the same software through its own cloud service, when such differences in pricing and functionality are not justified.*"[13]

Findings of the FCA Report

In its report, the FCA clarified the scope of Article L.442-12 of the French Commercial Code, emphasizing that it does not prohibit self-preferencing practices *per se*, but applies to practices that are characterized as anticompetitive practices under French law.

In its report, the FCA takes stock on past decisions in the cloud sector. In its Opinion No. 23-A-08 of June 29, 2023,[14] the FCA had identified (i) several competitive risks common to the main digital players in cloud ecosystems—such as the absence of contract negotiation, cloud computing credits, and outbound data transfer fees—and (ii) specific risks associated with cloud service and software providers where they restrict the use of their software on competing cloud services through pricing, commercial, or technical measures.

The FCA report also emphasizes the complementary nature of its actions with those of other competition authorities, collaborating through the European Competition Network and the European Commission (the "**Commission**").

[11] *Towercast v Autorité de la concurrence*, para. 52 (emphasis added).

[12] *See* FCA's report, "*Rapport de l'Autorité de la concurrence au titre de la pratique d'autopréférence définie à l'article L. 442-12 du code de commerce,*" November 21, 2025, available here.

[13] Article 26 of the SREN law, codified in Article L. 442-12 of the French Commercial Code.

[14] *See* FCA's Opinion 23-A-08 of June 29, 2023, on competition in the cloud sector, available here.

Interestingly, the FCA notes that, since the entry into force of the SREN law, it has not received any formal complaint under Article L.442-12 of the French Commercial Code. In contrast, several proceedings have been initiated before the Commission.[15]

This prompted the FCA to launch a public consultation in June 2025, seeking input from industry stakeholders, legal experts, and other interested parties on (i) self-preferencing practices[16] and (ii) potential procedural or legislative preventive measures.[17]

Based on submissions from approximately ten stakeholders active in France, the FCA report identified potentially anticompetitive self-preferencing practices by major cloud providers. Two main practices were highlighted: the first involves vertically integrated cloud services providers offering their software or services on significantly less favorable financial or functional terms when distributed via third-party cloud providers. The second concerns third-party software providers favoring hyperscalers with which they maintain existing partnerships.

The FCA further identified stakeholder concerns regarding: (i) AI tools accessible exclusively through hyperscalers' cloud infrastructure; (ii) the mandatory use of hyperscaler infrastructure to access their marketplaces; and (iii) the strategic bundling of unrelated products with existing software suites.

Key Takeaways

Although article L.442-12 of the French Commercial Code introduced by the SREN law does not define a new standalone competition infringement and applies to self-preferencing in the cloud computing sector only when it constitutes anticompetitive conduct, it nevertheless highlights France's commitment to tackle harmful self-preferencing practices by digital players.

The FCA considers that traditional competition law tools remain adequate to prevent both the emergence and consolidation of dominant positions and anticompetitive agreements in the cloud sector. It also notes that abuse of economic dependence is also a relevant framework to analyze self-preferencing practices.

To date, no referrals or formal proceedings have been initiated under Article L.442-12 of the French Commercial Code with respect to self-preferencing practices in the cloud computing sector. Paragraph V of the article allows the FCA to act either on its own initiative or at the request of the Minister for Digital Affairs or any concerned legal entity. In such cases, the FCA has the same investigative and sanctioning powers as in standard anticompetitive proceedings. The FCA is currently evaluating whether further investigations into the practices of major cloud service providers are warranted. Continued close monitoring of the sector can be expected.

[15] *See, e.g.*, Wall Street Journal, "*Microsoft Faces Antitrust Complaint in Europe About Its Cloud Services - France's OVHcloud has filed a complaint that Microsoft is abusing its position to hurt competition," March 16, 2022, available here; Google Cloud Blog, "Google Cloud files complaint with European Commission regarding Microsoft's anti-competitive licensing practices,*" September 25, 2024, available here.

[16] The public consultation framed the questions as: "*Have you observed or are you aware of any self-preferencing practices as defined in Article L. 442-12 of the French Commercial Code (Code de commerce)? If that is the case, please provide details and, if applicable, any document you may find relevant.*" (*see* FCA's website, "*The Autorité launches a public consultation on self-preferencing in connection with the SREN law*," June 6, 2025, available here).

[17] The specific question in this regard is: "*Would you like to bring to our attention any procedural or legislative improvements in the cloud computing sector and, more specifically, to combat self-preferencing?*" (*see* FCA's website, "*The Autorité launches a public consultation on self-preferencing in connection with the SREN law,*" June 6, 2025, available here).

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