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French Competition Law Newsletter

Highlights

- The French Competition Authority imposes a EUR 7.6 million fine on the group Parfait for failure to comply with commitments
- The Paris Court of Appeal orders Sanofi to pay €150.7 million in damages to the CNAM in the Plavix follow-on action, nearly four times the amount of the antitrust fine previously imposed on Sanofi

The French Competition Authority imposes a EUR 7.6 million fine on the group Parfait for failure to comply with commitments

On November 3, 2025, the French Competition Authority (the “**FCA**”) imposed a EUR 7.6 million fine on the Parfait group for failing to comply with commitments entered into in the context of its acquisition of a hypermarket and shopping center in Martinique (the “**Decision**”),¹ illustrating the FCA’s continued vigilance regarding effective implementation of merger remedies. The Parfait group has appealed the Decision.

Background

In December 2022, the FCA cleared the acquisition by the Parfait group of the La Batelière shopping center in Martinique, subject to the divestment of the hypermarket located in that shopping center (the FCA concluding that the transaction was likely to harm competition in the local food retail market, since it would have reduced the number of hypermarket operators from three to two).² The clearance was also subject to a set of behavioral commitments supporting the structural divestment, including

¹ FCA Decision No. 25-D-05 of November 3, 2025, available in French at: https://www.autoritedelaconurrence.fr/sites/default/files/integral_texts/2025-12/25d05_version_publique.pdf.

² FCA Decision No. 22-DCC-25 of December 22, 2022 (the “**Remedies decision**”). This decision follows a lengthy procedure initiated by the hypermarket being placed under insolvency proceedings in early 2020, the Parfait group’s submission of a takeover bid, and the granting of a derogation from the suspensive effect of merger control by the FCA in April 2020 (the “**Derogation Decision**”). The transaction was initially notified as an acquisition of joint control with ACDLec (Leclerc). However, after the FCA opened an in-depth investigation (“**Phase II**”) and indicated in its report that the transaction would be prohibited unless the hypermarket was divested, ACDLec withdrew its notification and renounced any right to exercise decisive influence over the target assets. As a result, the Parfait group re-notified the transaction as a sole control acquisition in September 2021.

an obligation to preserve the value of the hypermarket to be divested and an obligation to cooperate with the Monitoring Trustee.

After several failed negotiations with potential buyers, the Parfait group eventually concluded a divestiture agreement with the Sainte Claire group on 9 September 2025, nearly two years after the deadline for divestment set out in the commitments.

The Decision

The FCA sanctioned the Parfait group for failing to comply with its commitments for a total amount of EUR 7.6 million, on three separate grounds:

- Breach of the divestiture commitment (EUR 4.5 million);
- Failure to preserve the value of the divestment (EUR 2.5 million);
- Failure to cooperate with the monitoring trustee (EUR 600,000).

Breach of the divestiture commitment.

The FCA found that by failing to divest the hypermarket acquired in spring 2020 (thanks to the derogation granted) within the required timeframe, the Parfait group had committed a serious breach of its obligations, delaying Martinique consumers' access to a new local food retailer.

The Parfait group claimed it had acted diligently, but that the failure to divest the hypermarket within the required timeline was caused by factors outside its control, particularly the behavior of potential acquirers.

The FCA rejected those arguments. First, it considered that the Parfait group should have anticipated implementation delays and requested an extension of the deadline from the FCA, which it did not. Second, the FCA considered that the

Parfait group's failure to comply could not be justified by implementation difficulties, even if those were outside its control. The FCA noted that merger control commitments, as opposed to injunctions, are proactively offered by the notifying parties and that it is their responsibility to guarantee their feasibility. As a result, although the existence of new implementation difficulties can be raised as arguments *a priori* in order to obtain a revision of the commitments' timeline, they cannot validly be raised *a posteriori* to justify a failure to comply.

The FCA considered, in any event, that several difficulties which slowed down the divestiture process were attributable to the Parfait group, such as its failure to provide the latest certified accounts, which were necessary for the Sainte Claire's financing to be granted.

Third, the FCA noted that the appointment of a Monitoring Trustee does not relieve the committed undertaking from its commitments, and that the Parfait group remained solely responsible for implementing the divestment.

Failure to preserve the value of the divestment.

The FCA also considered that the merged entity had let the hypermarket and the shopping center deteriorate.

The FCA considered that the value preservation commitment constituted a separate commitment from the divestiture commitment with a distinct objective, i.e., guaranteeing that the buyer would be able to operate the hypermarket rapidly after the divestment.

This approach follows the case law of the Conseil d'État (Altice/SFR), which confirmed that a value preservation commitment could be considered an autonomous commitment whose breach could be sanctioned separately, even though it was linked to a divestiture commitment.³

³ Conseil d'Etat decision of March 31, 2017, No.401059. The Conseil d'Etat decision followed the FCA Decision No. 16-D-07, April 19, 2016 - EUR 15 million fine (mobile telecom business). The FCA had authorised the Altice/Numericable group's acquisition of SFR subject to the divestment of their mobile telephony activities in La Réunion and Mayotte. The FCA found that by increasing subscription prices in La Réunion and Mayotte, the Altice/Numericable had failed to comply with its obligation to maintain the viability, market value and competitiveness of this business.

Failure to cooperate with the Monitoring

Trustee. The FCA also considered that the Parfait group had impeded the work of the trustee, both during the monitoring of its compliance with commitments and in the divestiture of the La Batelière hypermarket business.

The Monitoring Trustee was appointed almost three months after the Remedies Decision, which could be considered late though no specific timeline was required by the commitments. The FCA considered that the trustee had had to repeat document requests, that the Parfait group had failed to provide some key information, sent large amounts of unsorted documents making review difficult, or chose not to follow some of the Monitoring Trustee's recommendations to facilitate negotiations with the Sainte Claire group. The FCA stressed that Parfait could not blame the trustee for failing to meet its commitments, as there was no evidence the trustee failed in its duties.

This is the first time that the FCA has found a failure to comply with the obligation to cooperate with the Monitoring Trustee in the merger context. The FCA had previously sanctioned Google for breaching its obligation to cooperate with a Monitoring Trustee in the context of an antitrust investigation.⁴

The sanction. Unlike for anti-competitive practices, the FCA has no obligation to follow any guidelines or explain its methodology when determining the level of fines for breach of merger control remedies.⁵ However, fines must be proportionate.⁶ In this case, the FCA considered that:

- non-compliance with merger control remedies was particularly serious, and failing to implement remedies proposed by the parties themselves undermines the effectiveness of merger control.

- the breach was even more concerning since it had granted an exceptional derogation, allowing the acquisition of the hypermarket to take place before the conditional approval.
- failure of previous negotiations with other potential buyers (including some which were approved by the FCA) was predominantly the fault of the Parfait group, which had failed to provide all relevant information to potential buyers in a timely manner. Further, the FCA also took into account the Parfait group's failure to apply for an extension of the implementation deadline.

Takeaways

- ***Proposed remedies must be achievable within the agreed timeframe.*** A conditional clearance is not the end of the road, and notifying parties need to make sure that proposed remedies can indeed be implemented in the agreed timing.

As of 2015,⁷ the FCA has the power to impose injunctions to force divestments when the initial remedies have not been implemented in time. While not necessary in this case (given that the Parfait group eventually found a suitable buyer), notifying parties should bear in mind that failing to comply with remedies might result in alternative parts of the business having to be divested.

- ***Cooperation with the Monitoring Trustee.*** Although the Monitoring Trustee is paid by the committing undertaking, it is responsible for monitoring commitments, and its role should not be taken lightly, as failure to cooperate with them might lead to financial sanctions. This case is also a reminder that the appointment of a Monitoring Trustee does not relieve the parties of their duty to comply with their commitments, even in a situation where a Monitoring Trustee

⁴ FCA Decision No. 24-D-03 of March 15, 2024, paragraphs 291 to 302. Google was fined a total of EUR 250 million but the precise amount of the fine which related to the non-cooperation ground was not specified by the FCA.

⁵ Conseil d'Etat decision of November 7, 2019, No.424702.

⁶ *Ibid.*

⁷ Article L.430-8, IV of the French Commercial Code as modified by the law No. 2015-990 of August 6, 2015.

fails to diligently fulfill its missions. The Decision also echoes the FCA's consultation on the status, role and resources of monitoring trustees.⁸

— **Implementation difficulties need to be raised in advance.** In the event of execution difficulties, notifying parties should reach out to the FCA sufficiently ahead of the end of the

divestiture period to find an alternative solution acceptable to the FCA.

For reference, the FCA previously considered that a request for an extension submitted around three weeks before the deadline was too short notice.⁹

The Paris Court of Appeal orders Sanofi to pay €150.7 million in damages to the CNAM in the Plavix follow-on action, nearly four times the amount of the antitrust fine previously imposed on Sanofi

The Paris Court of Appeal (“**Court of Appeals**”) has issued its ruling on damages in the Plavix follow-on action brought by France's national health insurance fund (the “**CNAM**”) against Sanofi.¹⁰ More than a decade after the French Competition Authority (“**FCA**”) found that Sanofi had engaged in disparagement practices constituting an abuse of dominant position, the Court awarded the CNAM €150.7 million, reflecting the long-term impact of Sanofi's conduct. The judgment highlights the magnitude of potential damages in follow-on actions and illustrates how French courts evaluate long-lasting effects and the full-compensation principle.

Background

On May 14, 2013, the FCA imposed a €40.6 million fine on Sanofi-Aventis (“**Sanofi**”) for abusing its dominant position in the French market for clopidogrel sold in retail pharmacies.¹¹ Clopidogrel is an active ingredient used in

antiplatelet medication to prevent recurring cardiovascular diseases. It was marketed for the first time by Sanofi under the brand name Plavix.

In 2008, Plavix accounted for the CNAM's largest reimbursement expenditure, totaling €635 million.¹² The patent protecting Plavix in Europe expired in July 2008, and the first Plavix generics were placed on the market in early October 2009, including by Sanofi itself.¹³

The FCA found that, between September 2009 and January 2010, Sanofi had implemented a 5-month-long communication campaign disparaging generic drugs other than its own.¹⁴

Sanofi circulated briefing materials to its medical representatives and pharmaceutical sales teams setting out the differences between Plavix and its generic counterparts. The FCA found that these materials cast doubt on the generics' bioequivalence. Among other things, the materials

⁸ FCA Press Release, “*Launch of a public consultation on the status, role and resources of monitoring trustees*”, March 14, 2025, available at: <https://www.autoritedelaconurrence.fr/en/press-release/launch-public-consultation-status-role-and-resources-monitoring-trustees>.

⁹ FCA Decision No. 18-D-16 of July 27, 2018 – EUR 20 million euros fine (Fnac's acquisition of Darty). The extension request was submitted on July 11, 2017 and the deadline for the divestiture was July 31, 2017.

¹⁰ Paris Court of Appeal, September 24, 2025, RG n°19/19969, CNAM v. Sanofi.

¹¹ FCA Decision n° 13-D-11 of May 14, 2013, regarding practices implemented in the pharmaceutical sector, available [here](#).

¹² FCA Decision n° 13-D-11 of May 14, 2013, paragraph 47.

¹³ Paris Court of Appeal, September 24, 2025, RG n°19/19969, CNAM v. Sanofi, paragraph 3.

¹⁴ FCA Decision n° 13-D-11 of May 14, 2013, paragraph 584.

noted (i) that the generics used a different salt form and (ii) that their marketing authorizations did not include the treatment of acute coronary syndromes in combination with aspirin.¹⁵

According to the FCA, these two points were presented in a connected and ambiguous manner. The FCA considered that, as a result, healthcare professionals were liable to understand that the absence of the acute coronary syndrome indication reflected a medical or safety concern linked to the different salt form. In fact, however, that absence was explained solely by the existence of a still-valid patent protecting the relevant therapeutic indication.¹⁶

The FCA concluded that Sanofi had engaged in disparagement both (i) at the prescription stage, by encouraging doctors to write “non-substitutable” on prescriptions, and (ii) at the substitution stage, by encouraging pharmacists to dispense Sanofi’s generic in place of competing generics.¹⁷

The FCA’s decision was confirmed by the Court of Appeals on December 18, 2014,¹⁸ and Sanofi’s subsequent appeal before the French Court of Cassation was rejected.¹⁹

In September 2017, the CNAM initiated damages proceedings before the Paris Commercial Court, seeking compensation for the harm allegedly caused by Sanofi’s conduct. The CNAM’s claim, initially dismissed as time-barred, was reinstated on appeal, and the Court of Appeals held that Sanofi’s practices constituted faults and adversely affected the CNAM.²⁰

The Court of Appeals, however, reserved its decision on the quantification of damages and ordered an expert report to assess (i) the robustness of the counterfactual scenario produced by the CNAM, (ii) the duration of the

conduct’s effects on the CNAM, and (iii) the financial impact on the CNAM in terms of patient reimbursements and pharmacists’ remuneration.

The court-appointed expert filed its report on March 5, 2024 and the Court of Appeals issued its ruling on September 24, 2025.

The Ruling

The court-appointed expert validated nearly all aspects of the CNAM’s analysis concerning the three categories of harm.

Reimbursement of insured persons. The CNAM claimed that it had incurred a loss linked to the reimbursement of insured persons, since the price of originator drugs is higher than that of generics. This loss corresponds to the difference between (i) the amount the CNAM actually spent reimbursing clopidogrel and (ii) the amount it would have spent had clopidogrel followed a normal trajectory of generic entry and penetration.

The expert accepted the CNAM’s position that, although Sanofi’s anticompetitive practices lasted only five months, their effects were long-lasting and could be measured until around September 2021.

This conclusion was based on a comparison between the observed generic penetration rate and a counterfactual penetration rate, defined as the level of generic substitution that would have been expected in the absence of the unlawful conduct. That counterfactual rate was estimated by reference to comparable pharmaceutical molecules unaffected by the practices. The effects were considered to persist for as long as a measurable gap remained between these two trajectories, which converged only at the end of the period analyzed.

¹⁵ FCA Decision n° 13-D-11 of May 14, 2013, paragraph 118.

¹⁶ Paris Court of Appeal, September 24, 2025, RG n°19/19969, *CNAM v. Sanofi*, paragraph 33.

¹⁷ Paris Court of Appeal, September 24, 2025, RG n°19/19969, *CNAM v. Sanofi*, paragraph 30.

¹⁸ Paris Court of Appeal, December 18, 2014, RG n°2013/12370, *Sanofi v. FCA and Teva Santé*.

¹⁹ French Cour de cassation, October 18, 2016, Appeal n°15-10.384, *Sanofi v. FCA and Teva Santé*.

²⁰ Paris Court of Appeal, February 19, 2022, RG n°19/19969, *CNAM v. Sanofi*.

On this basis, the CNAM sought €111.6 million in compensation for excess reimbursement expenditures.²¹

Sanofi challenged this assessment, notably by arguing that the expert had failed to consider that the CNAM allegedly also benefited from the anticompetitive practices. Sanofi relied on the principle of full compensation, which states that damages awarded to a party must fully repair the loss suffered without resulting in either a gain or a loss for that party.²²

Sanofi argued that three price reductions imposed on Plavix by the public authorities should have been taken into account in the assessment of damages. Sanofi claimed those reductions were triggered by the unusually low rate of substitution of Plavix by generics, as part of the regulatory price-setting mechanism applicable to reimbursable medicines in France. Because these imposed price cuts reduced the reimbursement amounts borne by the CNAM, Sanofi contended that they constituted a financial benefit for the CNAM and should therefore be deducted from the CNAM's alleged loss.²³

The Court of Appeals however held that Sanofi had not demonstrated that these price reductions were directly and solely linked to an insufficient substitution rate and rejected the argument.²⁴

The Court of Appeals, dismissing all of Sanofi's arguments, validated the expert's assessment that the CNAM's report — which estimated the loss related to excess reimbursement of insured persons at €111.6 million — was methodologically robust.²⁵

Pharmacist remuneration. The CNAM further argued that it had incurred additional costs linked to the remuneration of pharmacists.

Under a remuneration scheme introduced in 2012, pharmacists received performance-based payments calculated by reference to their progress in dispensing generic medicines over time, including clopidogrel.

Because Sanofi's practices delayed the penetration of generic Plavix, the initial level of generic dispensing was artificially low when the scheme entered into force. As a result, subsequent increases in generic dispensing generated larger measured 'progress' and, mechanically, higher performance-related payments by the CNAM than would have occurred under normal competitive conditions.²⁶

As a result, the Court of Appeals found that Sanofi's practices directly increased CNAM's remuneration costs and upheld the expert's assessment that the CNAM's report — which estimated the loss related to the excess remuneration of pharmacists at €14.5 million — was robust.²⁷

Statutory interest. Finally, the CNAM sought statutory interest to compensate for the financial harm arising from the delayed recovery of the sums owed. The Court of Appeals accepted the CNAM's methodology and awarded compensatory interest for the period from January 1, 2010 to June 30, 2025, amounting to €21 million for excess reimbursement costs and €2.5 million for excess pharmacist remuneration.²⁸

Total compensation. In total, the Court of Appeals ordered Sanofi to pay the CNAM €150.7 million in damages. This amount will accrue legal interest from the date of the ruling pursuant to Article 1231-7 of the French Civil Code.²⁹

This ruling may be subject to appeal before the French *Cour de cassation*.

²¹ Paris Court of Appeal, September 24, 2025, RG n°19/19969, *CNAM v. Sanofi*, para. 235.

²² Paris Court of Appeal, September 24, 2025, RG n°19/19969, *CNAM v. Sanofi*, para. 172.

²³ Paris Court of Appeal, September 24, 2025, RG n°19/19969, *CNAM v. Sanofi*, para. 173.

²⁴ Paris Court of Appeal, September 24, 2025, RG n°19/19969, *CNAM v. Sanofi*, para. 225.

²⁵ Paris Court of Appeal, September 24, 2025, RG n°19/19969, *CNAM v. Sanofi*, para. 239.

²⁶ Paris Court of Appeal, September 24, 2025, RG n°19/19969, *CNAM v. Sanofi*, para. 244.

²⁷ Paris Court of Appeal, September 24, 2025, RG n°19/19969, *CNAM v. Sanofi*, para. 247.

²⁸ Paris Court of Appeal, September 24, 2025, RG n°19/19969, *CNAM v. Sanofi*, paras 267.

²⁹ Paris Court of Appeal, September 24, 2025, RG n°19/19969, *CNAM v. Sanofi*, paras 268.

Takeaways

- **High damages exposure.** The Court of Appeals awarded the CNAM 150.7 million euros, more than four times the FCA fine, underscoring that follow-on damages actions can generate liability far exceeding the initial antitrust fine. Companies should anticipate that private damages — particularly in markets with high volumes and sustained effects — may represent the most significant financial risk of anticompetitive practices.

- **Long-term impact of short-lived conduct.** The ruling illustrates that even brief anticompetitive practices can produce long-lasting market distortions, meaning that short episodes of anticompetitive behavior can translate into multi-year damages exposure. Similar to the Plavix case, in *Orange v. Digicel*, the Court of Appeals found that exclusionary practices implemented over a limited period continued to affect competition well beyond their cessation.³⁰ In that case, the damages awarded to Digicel also significantly exceeded the fine imposed by the French Competition Authority.

- **Full-compensation principle may reduce claims.** Under the full-compensation principle, French courts may consider whether a claimant also benefited — directly or indirectly — from the conduct at issue, potentially reducing the recoverable harm. Parties should therefore expect arguments on claimant benefits to feature in follow-on litigation and to be assessed through detailed economic analysis.

³⁰ Paris Court of Appeal, June 17, 2020, RG n°17/23041, *Orange and Orange Caraïbe v. Digicel Antilles Françaises Guyane*, upheld on this point by the French *Cour de cassation*, March 1, 2023, Appeal n°20-18.356 and 20-20.416 (joined).

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