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French Competition Law Newsletter

Highlights

- The French Competition Authority fines the National Union of French Ski Instructors €3.4 million for imposing an exclusivity obligation on its member instructors
- The French Competition Authority Issues its Opinion on Competition in the Sector of Online Video Content Creation

The French Competition Authority fines the National Union of French Ski Instructors €3.4 million for imposing an exclusivity obligation on its member instructors

On March 17, 2026, the French Competition Authority (“**FCA**”) fined the National Union of French Ski Instructors (*Syndicat national des moniteurs du ski français*, “**SNMSF**”) €3.4 million for imposing an exclusivity obligation on its member instructors.¹ The FCA found that the SNMSF had implemented an exclusivity obligation prohibiting its ski instructors from teaching at competing ski schools or developing their own clientele outside the French Ski School (*Ecole de Ski Française*, “**ESF**”) network. The decision confirms the FCA’s continued scrutiny of labor markets and reaffirms that sports activities are subject to competition law. It also marks the first time the FCA has applied Article L. 464-2 of the French

Commercial Code, allowing it to seek financial contributions from professional association members (in this case, the SNMSF’s members).

Background

The ESF operates as the network of ski instructors affiliated with the SNMSF, bringing together more than 16,000 members, representing more than 80% of all active ski instructors in France.²

In 2006, the SNMSF amended its standard agreement and introduced an exclusivity obligation prohibiting ESF instructors from teaching in a competing structure and from

¹ FCA Decision No. 26-D-03 of March 17, 2026 regarding practices in the alpine ski instruction sector (the “Decision”).

² See **Decision**, para. 22.

developing their personal clientele.³ The clause was particularly broad in so far as it applied to all categories of instructors (permanent, non-permanent, and trainees), all disciplines (including for example, snowboarding and telemark), and all lesson formats (group and individual) on a year-round basis.⁴ The breach of this exclusivity obligation was subject to graduated sanctions, ranging from warnings to temporary or permanent exclusion.⁵

In 2013, the SNMSF further reinforced the restrictive nature of the exclusivity obligation by (i) introducing an automatic exclusion from the SNMSF for teaching in a competing structure, (ii) prohibiting instructors from joining any ski instructors' union other than the SNMSF and (iii) introducing a specific suspension sanction for instructors who failed to channel all teaching revenues through the ESF's collective revenue-sharing system.⁶

Restriction by object

The FCA found that the exclusivity obligation amounted to a restriction of competition by object, which arose from a horizontal agreement between competing ski instructors acting through the SNMSF on the national market for ski instruction.⁷ The FCA considered that the clause was designed to restrict the SNMSF members' commercial freedom and their ability to work for competing structures.⁸ It further considered that the obligation was backed by sufficiently deterrent sanctions, capable of discouraging both parallel activity with competing schools and transitions to rival structures.⁹ The FCA also found that, in a market where qualified instructors constitute a key competitive input on which the ESF enjoys

a preeminent position, the exclusivity obligation contributed to the foreclosure of competing ski schools by restricting their access to instructors.¹⁰ The FCA found that the exclusivity obligation, by its very nature, resulted in a sufficient degree of harm to competition, thereby constituting a restriction by object under Article 101(1) TFEU and Article L. 420-1 of the French Commercial Code.¹¹

The first application of Article L. 464-2 VI of the French Commercial Code

Following the transposition of the ECN+ Directive in 2021,¹² Article L. 464-2 of the French Commercial Code increased the exposure of associations of undertakings and their members to antitrust fines. Prior to 2021, fines imposed on trade associations were capped by reference to the association's own resources. Following the transposition of the ECN+ Directive, where an infringement committed by an association relates to the activities of its members, the maximum fine may now reach 10% of the aggregate worldwide turnover of the members active on the affected market.

The reform also introduced a dedicated recovery mechanism for associations of undertakings. Where an association is unable to pay a fine, the FCA may require it to seek contributions from its members and may pursue certain members directly for any shortfall. As a result, anticompetitive conduct committed through an association now exposes both the association and its members to significant financial liability.

This Decision marks the FCA's first application of these provisions. Although the €3.4 million fine

³ See Decision, paras 73 and 75.

⁴ See Decision, paras 202-205.

⁵ See Decision, paras 66-67.

⁶ See Decision, paras 87-100.

⁷ See Decision, paras 198 and 250.

⁸ See Decision, paras 199-200, 228 and 243.

⁹ See Decision, paras 207-208.

¹⁰ See Decision, paras 227, 229.

¹¹ See Decision, paras 224, 248-250.

¹² Directive (EU) 2019/1 of the European Parliament and of the Council of December 11, 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market ("ECN+ directive"), transposed into French law by Decree No. 2021-568 of May 10, 2021 and Order No. 2021-649 of May 26, 2021.

imposed on the SNMSF remained well below the statutory cap, the FCA ordered the association to seek contributions from its members should it prove unable to pay the fine with its own resources.¹³

Conclusion

First, the Decision highlights the FCA's continued focus on labor-market restrictions, extending its scrutiny from no-poach arrangements¹⁴ to broad

exclusivity obligations imposed on workers, including independent contractors. Second, it confirms that sports federations, professional bodies and other associations of undertakings remain subject to competition law when their rules restrict members' ability to compete. Third, the Decision illustrates the growing antitrust liability risks for association members, who may now be held financially liable where an association is unable to pay a fine.¹⁵

The French Competition Authority Issues its Opinion on Competition in the Sector of Online Video Content Creation

On February 18, 2026, following an *ex officio* investigation launched in July 2024,¹⁶ the French Competition Authority (the “**FCA**”) issued its Opinion No. 26-A-02 (the “**Opinion**”) on competition in the online video content creation sector in France.¹⁷ The Opinion identifies several areas of concern in the sector, including creators' dependence on a small number of platforms, algorithmic opacity, bargaining-power imbalances with commercial partners, and the competitive implications of generative AI. It calls on platforms to ensure fair and transparent revenue-sharing conditions, provide greater transparency on recommendation algorithms and content moderation measures, and make available dedicated contact points for creators.

Background

The FCA describes the online video content sector as a multi-sided market connecting online video creators, audiences, and advertisers through online platforms.¹⁸ These groups are inherently interdependent: platforms need attractive content to draw audiences and advertising revenue; creators rely on platforms for hosting, audience reach, and monetization; and advertisers depend on the audiences attracted by content on those platforms to place their advertisements.¹⁹

¹³ See Decision, paras 304-309.

¹⁴ See FCA Decision No. 25-D-03 of June 11, 2025 regarding practices implemented in the engineering and technology consulting sectors, as well as in the IT services sector. See the Summer 2025 FCLN article [here](#).

¹⁵ In April 2026, the FCA applied the new Article L. 464-2 regime for a second time; see FCA Decision No. 26-D-05 regarding practices implemented in the organic food distribution sector.

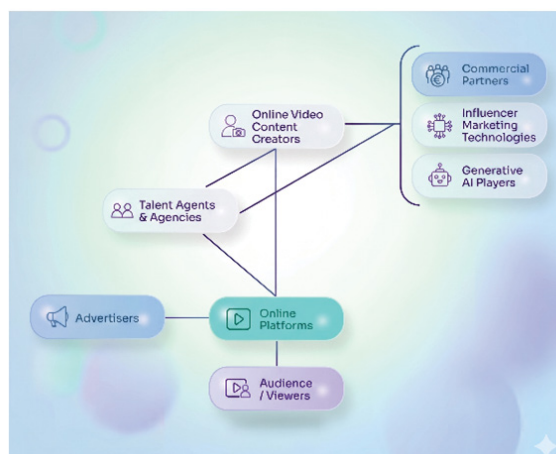
¹⁶ FCA, Press release “*The Autorité starts ex officio inquiry into the online video content creation sector in France and launches a public consultation*”, July 10, 2024, available [here](#).

¹⁷ FCA, Press release “*Avis 26-A-02 du 18 février 2026 relatif au fonctionnement de la concurrence dans le secteur de la création de contenu vidéo en ligne en France*” (in French), February 18, 2026, available [here](#). The full Opinion is available [here](#) (in French).

¹⁸ The Opinion, paras. 185-186.

¹⁹ *Ibid.*

Figure 1: Overview of the Online Video Content Supply Chain



Source: *the Opinion*.²⁰

Over the past 15 years, online video content creation has become as significant part of the French audiovisual industry, generating an estimated EUR 6.8 billion in France in 2025 and projected to reach EUR 31.3 billion by 2032. These figures relate to the content creation ecosystem as a whole, encompassing for example, revenue generated by commercial partners, and are not specific to video content creation.²¹ The sector's rapid growth has been driven by exceptionally low barriers to entry, with smartphones and accessible production tools making it possible for almost anyone to become a creator, and through the development of monetization mechanisms, including platform revenue-sharing and brand partnerships.²² This monetization has intensified competition among creators, enabling some to generate revenues significant enough to bring them within the scope of competition law as

economic undertakings.²³

The sector is also subject to an increasingly dense regulatory framework, including the Digital Markets Act (the “**DMA**”)²⁴ and the Digital Services Act (the “**DSA**”)²⁵ on the platform side, and France's influencers Law (*Loi influenceurs*)²⁶ on the content-supply side.

Competition between online video creators on two levels

The FCA finds that competition among creators on online platforms plays out on two levels: (i) competition for audiences and (ii) competition for commercial partnerships.

— **Competition for audiences.**²⁷ Online video creators compete to capture and retain viewers' attention. As most online content is offered free of charge, competition is driven primarily by non-price parameters such as production quality, editorial identity, publication frequency, community engagement, and multichannel presence.²⁸ In practice, however, visibility heavily depends on recommendation algorithms, which approximately 90% of surveyed content creators consider decisive for a video's success.²⁹ The inner workings of these algorithms remain opaque, creating uncertainty for creators over the factors that determine their reach and competitive position.³⁰ Moreover, established creators may benefit from network effects – a so-called “*audience spiral*” – whereby greater algorithmic visibility allows them to generate higher revenues that they reinvest

²⁰ The Opinion, para. 27.

²¹ The Opinion, para. 28.

²² The Opinion, paras. 12-16.

²³ The Opinion, para. 17.

²⁴ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act).

²⁵ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act).

²⁶ Law No. 2023-451 of June 9, 2023, aimed at regulating commercial influence and combating misconduct by influencers on social networks, available [here](#). The law notably includes transparency obligations, prohibited promotional practices, and contractual protections for content creators.

²⁷ The Opinion, paras. 194-248.

²⁸ The Opinion, para. 197.

²⁹ The Opinion, para. 217.

³⁰ The Opinion, para. 221.

in content production, which in turn further strengthens their visibility and widens the gap with smaller creators.³¹

— **Competition for commercial partnerships.**³² Commercial partnerships not only generate immediate revenue for creators, but also confer reputational capital, as collaborations with coveted brands signal credibility to audiences and advertisers alike.³³ A creator's attractiveness to a brand depends on audience size (reach), audience quality (engagement metrics), and fit between the creator's content and the advertiser's target demographic.³⁴ Price is also a competitive parameter, as smaller creators in particular accept unpaid partnerships, foregoing compensation in exchange for the exposure a brand association provides.³⁵

These two levels of competition are mutually reinforcing. A larger audience makes a creator more attractive to brands, which generates more partnership opportunities. Those partnerships, in turn, enhance the creator's profile and further expand their audience.³⁶ Therefore, in practice, competition for audiences and brand partnerships operate as two sides of the same coin.

Unbalanced bargaining power in favor of commercial partners

With the exception of the most prominent creators, the FCA finds that commercial partners, who sponsor creators in exchange for promotional content, generally enjoy superior bargaining power.³⁷ The Opinion identifies a number of

practices that reflect this imbalance, such as unpaid partnerships presented as exposure opportunities, non-negotiable rate cards, uncompensated transfers of intellectual property rights, exclusivity and non-compete clauses, and protracted payment terms.³⁸ This imbalance is compounded by an information asymmetry as many online video creators, particularly those less experienced, lack a clear understanding of the legal framework governing their contracts, leaving them ill-equipped to push back against unfavorable terms.³⁹

Unbalanced bargaining power in favor of online platforms

Platforms supply a triple service of hosting, audience access and monetization that creators cannot replicate, making recourse to a platform unavoidable.⁴⁰ This dependency is reinforced by the concentration of the sector around a small number of major platforms (YouTube, TikTok, Instagram, and, to a lesser extent, Twitch), that are not easily substitutable as migrating to a competing platform typically means rebuilding an audience from scratch, a prospect that even prominent creators find prohibitively costly.⁴¹ The Opinion indicates that the result is a structural dependence and a profound imbalance of bargaining power in favor of the platforms.

The Opinion explains that structural dependence of online video creators on online platforms primarily arises in two ways:

— **Unilateral pricing power (revenue conditions).**⁴² Platforms set monetization rules

³¹ The Opinion, para. 244. This term was already used by the FCA in the free-to-air television sector in its decision of January 2010 regarding the acquisition of NT1 and Monte-Carlo Participations (AB Group) by TF1 Group. Decision No. 10-DCC-11 of January 26, 2010, concerning the acquisition of sole control by the TF1 group over NT1 and Monte-Carlo Participations (AB Group), para. 559.

³² The Opinion, paras. 249-270.

³³ The Opinion, para. 250.

³⁴ The Opinion, para. 251.

³⁵ The Opinion, para. 252.

³⁶ The Opinion, paras. 193, 250, and 255.

³⁷ The Opinion, paras. 260-262.

³⁸ The Opinion, para. 263.

³⁹ The Opinion, para. 264.

⁴⁰ The Opinion, para. 326.

⁴¹ The Opinion, paras. 328, 346-349, and 376-379.

⁴² The Opinion, paras. 400-412.

determining both whether a revenue-sharing mechanism exists and the applicable rates.⁴³ The FCA notes that at Twitch, TikTok, and YouTube in particular, remuneration policies are applied with little or no room for individual negotiation, even for the most high-profile creators.⁴⁴ Access to monetization is conditional on meeting audience and activity thresholds set by the platforms at their sole discretion.⁴⁵

- **Unilateral algorithmic power (visibility conditions).**⁴⁶ Perhaps even more consequential is the platforms' unilateral control over the algorithmic parameters that determine which content is recommended, surfaced, or buried.⁴⁷ Algorithm changes may significantly affect a creator's reach, yet creators often have limited visibility over the reasons for such changes and limited ability to challenge them.⁴⁸ This results in an environment where a creator's competitive position depends less on the quality of their content than on opaque algorithmic decisions whose parameters may change abruptly.⁴⁹
- This opacity gives rise to serious risks of self-preferencing and discrimination by major platforms, as it obscures whether recommendation or moderation rules are applied on neutral and equitable terms.⁵⁰ In particular, platforms could use algorithms to favor content created with the platform's integrated tools – including generative AI tools – or to promote more popular, and therefore more lucrative content, thereby reducing the

diversity of content available to consumers.⁵¹ They could also de-prioritize content involving brand partnerships in order to steer creators to purchase advertising space directly.⁵²

The FCAs Recommendations

The Opinion sets out several recommendations aimed at reducing the competitive risks identified in the online video content creation sector.⁵³

The recommendations are directed primarily at platforms, which the FCA calls upon to ensure fair and transparent revenue-sharing conditions, provide greater transparency on recommendation algorithms and content moderation measures, and make available dedicated contact points to help creators understand drops in visibility or moderation decisions.⁵⁴ The FCA further encourages creators to make full use of their existing rights and urges professional organizations, such as the UMICC (*Union des Métiers de l'Influence et des Créateurs de Contenu*), to step up their training and support efforts.⁵⁵

Moreover, the FCA emphasizes that the growing use of generative AI in online video content production could fundamentally alter market dynamics in the sector. By lowering production costs and enabling the mass production of online video content, generative AI may lower the barriers to entry that will enable smaller creators to compete with rivals that have significantly greater investment capacity.⁵⁶ The FCA therefore stresses the need to ensure clear and reliable identification of AI-generated content.⁵⁷

⁴³ The Opinion, paras. 400-401.

⁴⁴ The Opinion, paras. 403-408.

⁴⁵ The Opinion, paras. 407-408.

⁴⁶ The Opinion, paras. 413-425.

⁴⁷ The Opinion, paras. 413-414.

⁴⁸ The Opinion, paras. 415-416.

⁴⁹ The Opinion, paras. 413-417.

⁵⁰ The Opinion, paras. 420-421.

⁵¹ The Opinion, paras. 421-424.

⁵² The Opinion, para. 425.

⁵³ The Opinion, para. 429.

⁵⁴ The Opinion, paras. 430-433.

⁵⁵ The Opinion, para. 264.

⁵⁶ The Opinion, paras. 297-298 and 303-304.

⁵⁷ The Opinion, paras. 313-314.

Conclusion

The Opinion highlights the FCA's continued focus on digital markets and signals that, going forward, it will closely monitor the role of algorithms, platform monetization rules, and generative AI in shaping competition in this sector. Notably, it highlights that existing *ex ante* regulations, including the DMA, the DSA or France's influencers Law, do not adequately address the bargaining power imbalances and competitive risks that currently exist online video content creation sector, suggesting that further regulatory scrutiny in this area should be expected.

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