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# French Competition Law Newsletter

## Highlights

- France Set to Increase Merger Control Notification Thresholds
- French Competition Authority Fines Apple €150 Million for Abusive Implementation of Privacy Framework
- The French Competition Authority conditionally clears Auchan's acquisition of 98 food retail Casino stores

## France Set to Increase Merger Control Notification Thresholds

The French Assemblée Nationale (the “**National Assembly**”) is currently examining a legislative proposal to increase the French merger control notification thresholds, as part of a broader bill on the simplification of economic life (the “**Simplification Bill**”). The draft Simplification Bill, already adopted by the French Senate<sup>1</sup> and reviewed by a special commission within the National Assembly, is being discussed in plenary session under the accelerated legislative procedure.<sup>2</sup> If adopted, the new merger control thresholds could be implemented by early 2026 and would significantly decrease the number of transactions reviewed by the French Competition Authority (the “**FCA**”).

### Increase of Merger Control Notification Thresholds

Article 8 of the draft Simplification Bill proposes to increase the current merger control thresholds that trigger a mandatory notification to the FCA. According to the draft legislation approved by the Senate and the special commission of the National Assembly, the new thresholds would be:

- General threshold:
  - combined worldwide turnover of more than €250 million (up from €150 million);
  - An individual turnover in France of more than €80 million for at least two parties to the transaction (up from €50 million).

<sup>1</sup> On 22 October 2024, see the Senate webpage [here](#).

<sup>2</sup> Assemblée Nationale, Projet de loi de la simplification de la vie économique, available [here](#). In the French legislative process, an accelerated procedure allows a bill to be adopted after only one reading in each of the two chambers of the French Parliament, i.e. the Senate and the National Assembly.

— Specific threshold for transactions in the retail sector:

- A combined worldwide turnover of more than €100 million (up from €75 million);
- An individual turnover in France of more than €20 million for at least two parties to the transaction (up from €15 million).

The new thresholds would enter into force on the first day of the fourth month following the law's publication, and would only apply to transactions notified to the FCA from that date onwards.

## Next Steps in the Legislative Process

The review of the draft bill by the National Assembly was delayed several times, with debates scheduled to resume on 13 and 14 June and a final vote on 17 June. As the version of the Simplification Bill currently under discussion at the National Assembly differs from the one adopted by the Senate,<sup>3</sup> a joint committee (*Commission Mixte Paritaire*) of seven senators and seven members of the National Assembly will be convened following the National Assembly's final vote to seek a compromise. In the event of disagreement following the joint committee, the government can ask the National Assembly to vote on the bill (final reading after a new reading in each chamber).

Given the politically sensitive nature of the bill, a referral to the French Constitutional Court (*Conseil Constitutionnel*) appears likely. It is to be seen whether the article regarding the increase of merger control thresholds will be included in such referral.

Assuming the draft Simplification Bill is voted by both chambers quickly, cleared by the Constitutional Court and enacted by the end of 2025, the new merger control thresholds would enter into force in early 2026. As such, all transactions formally notified to the FCA from early 2026 would be subject to the new thresholds. However, this timeline remains uncertain.

## A Long-Awaited and Widely Supported Reform

The proposed merger control thresholds increase is expected to significantly reduce the number of transactions subject to notification. According to the explanatory statement to the Simplification Bill, *"the increase of the notification thresholds would exempt from notification a significant number of transactions (estimated at between 20% and 30% of the transactions that are currently notified), which are unproblematic from a competition point of view"*.<sup>4</sup>

The reform is supported by industry stakeholders as the general notification thresholds have remained unchanged since 2004 and do not reflect the evolution of France's GDP and inflation. In 2024, the FCA reviewed a record 295 transactions, representing an increase of 10% on the previous 2021 record.<sup>5</sup> The President of the FCA, Benoît Coeuré considers that the reform would allow the FCA to *"devote more time on complex transactions"*.<sup>6</sup> Similarly, Jérôme Vidal, the recently appointed Head of the FCA's merger control services,<sup>7</sup> sees the legislative reform as *"part of the response"* to the FCA's limited resources which are *"heavily involved on cases that may take several months"*.<sup>8</sup> He considers that the increased thresholds would decrease the number of merger control notifications by around 75 per year.<sup>9</sup>

<sup>3</sup> Approx. 2800 amendments were or are about to be discussed by the National Assembly, available [here](#).

<sup>4</sup> Exposé des motifs, Simplification de la vie économique, Texte n° 550 (2023-2024) de M. Bruno LE MAIRE, ministre de l'économie, des finances et de la souveraineté industrielle et numérique, déposé au Sénat le 24 avril 2024, available [here](#).

<sup>5</sup> FCA, 2024, a historic year for the Autorité de la concurrence: €1.4 billion in fines imposed and a record 295 mergers examined, 15 January 2025, available [here](#).

<sup>6</sup> PaRR, "Proposed increase of French merger notification thresholds hinges on new government – Coeuré", 15 July 2024.

<sup>7</sup> See Cleary Antitrust Watch, "Jérôme Vidal is the new head of the Mergers Unit at the French Competition Authority", 17 June 2024, available [here](#).

<sup>8</sup> Decideurs Juridiques, "Jérôme Vidal : Se pose la question de nos systèmes fondés uniquement sur les chiffres d'affaires des entreprises", 17 December 2024, available [here](#).

<sup>9</sup> *Ibid.*

The new notification thresholds will be voted in parallel to the FCA public consultation on the introduction of call-in powers for transactions that fall below the turnover notification thresholds.<sup>10</sup> After processing the responses

to the public consultation, the FCA “*will put forward a proposal for a new call-in power under [French] national law*”.<sup>11</sup> The FCA is aiming to submit the proposal to the French public authorities by the end of 2025.<sup>12</sup>

## French Competition Authority Fines Apple €150 Million for Abusive Implementation of Privacy Framework

The French Competition Authority (“**FCA**”) imposed a €150 million fine on Apple for abusing its dominant position between 2021 and 2023 as a distributor of mobile applications on iOS and iPadOS devices through the implementation of “artificially complex” requirements relating to privacy protection.<sup>13</sup>

The FCA found that Apple’s App Tracking Transparency (“**ATT**”) design imposed disproportionate constraints on third-party app publishers and favoured its own advertising ecosystem. While privacy protection objectives themselves are legitimate, the FCA concluded that Apple’s requirements with respect to privacy protection by third-party apps created unfair asymmetry and harmed competition, particularly for smaller publishers.

### Background On The ATT Framework

Introduced in 2021 (with iOS 14.5), Apple’s ATT framework requires third-party apps to obtain explicit user consent via a standardized pop-up

before tracking activity across apps or websites for advertising purposes.<sup>14</sup>

While Apple presented the ATT as a privacy-centric innovation, advertisers and third-party app developers argued it distorted competition by subjecting third-party apps to multiple consent prompts, when Apple’s own apps faced fewer restrictions.<sup>15</sup>

The FCA’s investigation stemmed from a complaint by French advertising associations Interactive Advertising Bureau (IAB) France, Mobile Marketing Association (MMA) France, Union Des Entreprises de Conseil et Achat Media (UDECAM), and Syndicat des Régies Internet (SRI), which alleged ATT’s design unfairly advantaged Apple’s ecosystem.<sup>16</sup>

The complainants noted that Apple failed to apply equivalent data collection standards to its own services, such as its App Store search ads. ATT system makes opt-ins less likely, with studies suggesting up to 80% of users declined tracking.<sup>17</sup>

<sup>10</sup> See Cleary Antitrust Watch, “The French Competition Authority is Contemplating Introducing Call-In Powers to Review Below-Threshold Mergers”, 25 April 2025, available [here](#).

<sup>11</sup> GCR, “A Q&A with Benoît Cœuré”, 30 April 2025, available [here](#).

<sup>12</sup> FCA, “Mergers below the control thresholds : Following the public consultation, the Autorité is continuing its work to propose a reform ensuring effective control”, 10 April 2025, available [here](#).

<sup>13</sup> French Competition Authority, Decision No 25-D-02 of 28 March 2025 (“FCA, Decision No 25-D-02”), available at: [https://www.autoritedelaconurrence.fr/sites/default/files/25d02\\_version\\_publique.pdf](https://www.autoritedelaconurrence.fr/sites/default/files/25d02_version_publique.pdf).

<sup>14</sup> Apple, Press Release, “Upcoming AppTrackingTransparency requirements”, 20 April 2021, available at: <https://developer.apple.com/news/?id=ecvrtztz>.

<sup>15</sup> Financial Times, “Apple’s privacy changes create windfall for its own advertising business”, 17 October 2021, available at: <https://www.ft.com/content/074b881f-a931-4986-888e-2ac53e286b9d>.

<sup>16</sup> FCA, Decision No 25-D-02, para. 1. See also L’Usine Digitale, “L’Autorité de la concurrence refuse de suspendre la nouvelle politique de tracking publicitaire d’Apple”, 12 April 2023, available at: <https://www.usine-digitale.fr/article/l-autorite-de-la-concurrence-serait-prete-a-ouvrir-une-enquete-visant-les-regles-de-tracking-publicitaire-d-apple.N2120591>.

<sup>17</sup> Lennart Kraft, Bernd Skiera, Tim Koschella, “Economic Impact of Opt-in versus Opt-out Requirements for Personal Data Usage: The Case of Apple’s App Tracking Transparency (ATT)”, 7 October 2023, available at: [https://www.ftc.gov/system/files/ftc\\_gov/pdf/3-Skiera-Economic-Impact-of-Opt-in-versus-Opt-out-Requirements-for-Personal-Data-Usage.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/3-Skiera-Economic-Impact-of-Opt-in-versus-Opt-out-Requirements-for-Personal-Data-Usage.pdf).

In 2021, the FCA rejected a request for interim measures ahead of Apple's implementation of the ATT policies but decided to pursue the investigation on the merits.<sup>18</sup>

## The FCA Found That Apple Abused Its Dominant Position In iOS/iPadOS App Distribution

The FCA confirmed Apple holds a dominant position in iOS/iPadOS app distribution.<sup>19</sup> It ruled that Apple's ATT implementation between April 2021 and July 2023 violated Article 102 of the TFEU and Article L. 420-2 of the French Commercial Code on several grounds:

— **Artificially Complex Framework Penalizing Third-Party Application Publishers.** The FCA found that the ATT imposes unnecessary complexity on publishers of third-party applications within the iOS ecosystem. Consent mechanism under ATT fails to meet the consent requirements of applicable laws, in particular the French Data Protection Act.<sup>20</sup> Publishers must therefore deploy their own consent management mechanism, in addition to ATT.<sup>21</sup> This results in users facing multiple consent pop-ups, thereby making the use of third-party applications excessively complex.

— **Operating Rules Undermining Framework Neutrality.** The FCA noted that the operational rules governing ATT compromise its neutrality. While users can decline advertising tracking with a single refusal, they are required to confirm their consent twice when opting in. The FCA considered that “*given the particular responsibility that applies to Apple due to its dominant position, it is incumbent upon Apple to ensure the neutrality of its system, so as not to unjustifiably penalize one method of obtaining consent over another.*”<sup>22</sup>

— **Asymmetry In Treatment Between Apple and Publishers.** The FCA also identified an asymmetry in Apple's treatment of its own services compared to third-party publishers.<sup>23</sup> Third-party publishers are required to obtain double consent (via two successive pop-ups) from users for tracking across external sites and applications, while Apple did not seek user consent for its own applications until iOS 15 was introduced.<sup>24</sup> Despite subsequent changes, this asymmetry persists. Apple now uses a single “Personalized Advertising” pop-up to collect user consent for its own apps while continuing to mandate double consent for third-party publishers.<sup>25</sup>

The FCA found that Apple's practice caused “clear economic harm” to application publishers and advertising service providers.<sup>26</sup> The FCA noted that it specifically penalised smaller publishers as they depend on third-party data collection to a much larger extent than integrated platforms.<sup>27</sup>

<sup>18</sup> French Competition Authority, Decision No 21-D-07 of 17 March 2021, available at: <https://www.autoritedelaconurrence.fr/sites/default/files/2025-03/21d07.pdf>.

<sup>19</sup> FCA, Decision No 25-D-02, para. 482: “*In light of the criteria established by decisional practice and case law, and based on the elements presented above, it should be concluded that Apple holds a dominant position on both sides of the distribution of mobile applications on iOS devices (publisher and consumer sides)*” (translated from French). See also, para. 512: “*It is precisely because Apple held a monopoly position in the market for the distribution of mobile applications on iOS devices that it was able to impose access rules to its App Store, including the mandatory implementation of the ATT policy*” (translated from French).

<sup>20</sup> French Data Protection Act (loi n° 78-17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés, or “Loi Informatique et Libertés”), Art. 82.

<sup>21</sup> FCA, Decision No 25-D-02, paras 520–521. In its Opinion of 17 December 2020, CNIL considered that, based on the information available to it, the system proposed by Apple would allow application publishers to obtain informed consent, in accordance with the applicable regulations, provided that the legally required information is included. The FCA noted that Apple failed to comply with these recommendations.

<sup>22</sup> FCA, Decision No 25-D-02, para. 527 (translated from French).

<sup>23</sup> FCA, Decision No 25-D-02, para. 534.

<sup>24</sup> FCA, Decision No 25-D-02, para. 535. In 2022, CNIL fined Apple €8 million for infringing Art. 82 of the French Data Protection Act, which transposes the ePrivacy Directive.

<sup>25</sup> FCA, Decision No 25-D-02, para. 536.

<sup>26</sup> FCA, Decision No 25-D-02, para. 566: “[t]he ATT framework has penalized the marketing of mobile applications to the detriment of publishers and consumers.”

<sup>27</sup> FCA, Decision No 25-D-02, paras 554 and 591. Meta, Snapchat, Twitter and YouTube reportedly lost approx. \$10 billion collectively post-ATT rollout. See Financial Times, “Snap, Facebook, Twitter and YouTube lose nearly \$10bn after iPhone privacy changes”, 31 October 2021, available at: <https://www.ft.com/content/4c19e387-ee1a-41d8-8dd2-bc6c302ee58e>.

## Striking The Right Balance Between Privacy And Competition

The FCA recalled that enacting consumer protection rules “*does not exempt [a dominant undertaking] from its special responsibility to implement this policy under conditions compatible with Article 102 of the TFEU.*”<sup>28</sup>

In this respect, France’s data protection authority (CNIL) advised that limited adjustments—such as reducing redundant consent steps—could have preserved ATT’s privacy benefits without generating anti-competitive effects.<sup>29</sup>

The FCA has chosen not to impose remedies, but noted that Apple would need to adopt “*changes necessary to avoid the drawbacks resulting from the limitations of the system in its current form, if necessary in consultation with the competent authorities*”.<sup>30</sup> The President of the FCA explained that the FCA is “*letting Apple decide on how they want to comply*” and that “*Apple will certainly have to [...] call our data collection authority [CNIL] and also discuss it with them*”.<sup>31</sup>

Apple has filed an appeal against the FCA decision.<sup>32</sup>

## Broader Implications

The FCA decision reflects a calibrated approach to balancing innovation, privacy, and fair competition. By penalizing Apple’s implementation—not the concept of ATT itself—the ruling preserves room for privacy-enhancing tools while cautioning against anticompetitive misuse.

While companies can leverage privacy as a competitive differentiator, design choices must be objectively justified when they are implemented by dominant undertakings. Overly restrictive measures risk antitrust liability if they disproportionately harm rivals.

The case underscores deepening collaboration between competition and data protection authorities. The CNIL’s advisory role signals a trend toward cross-regulatory enforcement, where legal issues relating to privacy are assessed alongside market harm. It is also an example of FCA’s cooperation with other European competition authorities, as confirmed by Benoit Coeuré.<sup>33</sup> Similar cases are pending in Germany,<sup>34</sup> Italy,<sup>35</sup> Romania,<sup>36</sup> and Poland.<sup>37</sup>

Apple’s differential treatment of third-party services echoes broader EU concerns about gatekeepers under the Digital Markets Act. The decision may embolden national authorities to take action against anti-steering provisions (i.e., contractual or technical restrictions imposed by a dominant platform that prevent or limit business from directing or encouraging customers to use alternative options outside the platform) and asymmetric data protection requirements by gatekeepers.

<sup>28</sup> FCA, Decision No 25-D-02, para. 501.

<sup>29</sup> FCA, Decision No 25-D-02, para. 660 : “*The CNIL, first of all, in its opinion of December 17, 2020, noted that the ATT would only allow for fully informed consent if Apple supplemented the request with adjustments, which the company committed to do but did not carry out*” (translated from French).

<sup>30</sup> FCA, Decision No 25-D-02, para. 619.

<sup>31</sup> Mlex, “*Apple given choice how to remedy app-tracking abuse, France’s Coeuré says*”, 2 April 2025.

<sup>32</sup> FCA, Decision No 25-D-02, available at: <https://www.autoritedelaconcurrence.fr/fr/decision/relative-des-pratiques-mises-en-oeuvre-dans-le-secteur-de-la-publicite-sur-applications>.

<sup>33</sup> PaRR, “*French Autorité coordinated with other European regulators in Apple ATT case*”, 31 March 2025: “*Coeuré said the Autorité has had “regular exchanges on the advancement of this antitrust probe with other national regulators and the European Commission (EC).”*”

<sup>34</sup> German Competition Authority, press release of 13 February 2025, available at: [https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2025/02\\_13\\_2025\\_ATTf.html](https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2025/02_13_2025_ATTf.html).

<sup>35</sup> Italian Competition Authority, Case A561-A561B, press release of 11 May 2023, available at: <https://en.agcm.it/en/media/press-releases/2023/5/A561-A561B>.

<sup>36</sup> Romanian Competition Authority, press release of October 2023, available at: <https://www.consiliulconcurentei.ro/wp-content/uploads/2023/10/Inv-App-oct-2023.pdf>.

<sup>37</sup> Polish Competition Authority, press release of 13 December 2025, available at: [https://archiwum.uokik.gov.pl/aktualnosci.php?news\\_id=18092](https://archiwum.uokik.gov.pl/aktualnosci.php?news_id=18092).

# The French Competition Authority conditionally clears Auchan's acquisition of 98 food retail Casino stores

On March 21, 2025, the French Competition Authority (“**FCA**”) conditionally cleared the acquisition of 98 former Casino food retail stores by Auchan.<sup>38</sup> The FCA decision is conditional on (i) the divestment of one supermarket, and (ii) sharing the sales area of one hypermarket with two competitors.

## Background

On February 27, 2024, Auchan notified the FCA of its intention to acquire 98 former Casino food retail stores. The acquisition takes place in the context of the divestment of Casino's supermarkets and hypermarkets to Intermarché,<sup>39</sup> Carrefour,<sup>40</sup> and Auchan. Due to important financial difficulties of the Casino group, the FCA granted Intermarché, Carrefour, and Auchan a derogation from the suspensive effect of merger control, enabling them to complete the transaction without having to wait for clearance.<sup>41</sup>

## The FCA Decision

The FCA considered that the transaction is unlikely to raise competition concerns except for local areas around two target stores. The FCA considered that in these areas “*there was serious concern about Auchan strengthening its market power, without there being any credible or sufficient alternatives to regulate its competitive behaviour*”.<sup>42</sup> To remedy the identified risks, Auchan committed to (i) divest either the target store or another store within its group located in Aubagne, and (ii) share the sales area (c. 14.000m<sup>2</sup>) of the target hypermarket in Marseille with two competitors through sublease agreements, allowing one of them to create a new hypermarket of at least 2.500m<sup>2</sup>, and the other one to propose a specialized food retail offer.

While the sale of a store is a standard measure to waive the FCA's competition concerns in markets involving retail stores, the sharing of sales area is an unprecedented remedy. However, the FCA considered that such a commitment was sufficient to rule out any risk of harm to competition in this case.

<sup>38</sup> FCA press release, acquisition of 98 stores formerly operated under Casino banner by Auchan, March 21, 2025, available [here](#). The FCA decision has not yet been published.

<sup>39</sup> FCA Decision No. 24-DCC-02 of January 11, 2024, on the acquisition of sole control of 61 stores formerly operated under the Casino banner by ITM Enterprises, available [here](#), and FCA Decision No. 24-DCC-255 of November 28, 2024, on the acquisition of sole control of 200 stores formerly operated under the Casino banner by ITM Enterprises, available [here](#). See Cleary Antitrust Watch, “The FCA Conditionally Clears Intermarché's Acquisition of 200 Casino Stores After Having Granted a Derogation From The Suspensive Effect of Merger Control”, November 28, 2024, available [here](#).

<sup>40</sup> FCA Decision No. 24-DCC-288 of December 13, 2024, on the acquisition of sole control of 25 stores formerly operated under the Casino banner by Carrefour, available [here](#).

<sup>41</sup> FCA press release, “Takeover of Casino stores by Intermarché, Auchan and Carrefour: the FCA grants derogations from the suspensive effect of merger control, March 19, 2024”, available [here](#).

<sup>42</sup> Op. cit. 1, “Risks to competition to the detriment of consumers identified in two local areas”.



## CONTACTS



**Séverine Schrameck**  
+33 1 40 74 68 00  
[sschrameck@cgsh.com](mailto:sschrameck@cgsh.com)



**François-Charles Laprêvote**  
+32 2 287 2184  
[fclaprevote@cgsh.com](mailto:fclaprevote@cgsh.com)



**Anita Magraner Oliver**  
+32 2 287 2133  
[amagraneroliver@cgsh.com](mailto:amagraneroliver@cgsh.com)



**Frédéric de Bure**  
+33 1 40 74 68 00  
[fdebure@cgsh.com](mailto:fdebure@cgsh.com)



**Antoine Winckler**  
+32 2 287 2018  
[awinckler@cgsh.com](mailto:awinckler@cgsh.com)



**Stéphanie Patureau**  
+33 1 40 74 68 00  
[spatureau@cgsh.com](mailto:spatureau@cgsh.com)



**François Six**  
+33 1 40 74 69 43  
[fsix@cgsh.com](mailto:fsix@cgsh.com)



**Hugo Gilli**  
+33 1 40 74 68 00  
[hgilli@cgsh.com](mailto:hgilli@cgsh.com)



**Elena Chutrova**  
+32 2 287 2028  
[echutrova@cgsh.com](mailto:echutrova@cgsh.com)



**Pauline Heingle**  
+32 2 287 2077  
[pheingle@cgsh.com](mailto:pheingle@cgsh.com)



**Maud Lesaffre**  
+32 2 287 2025  
[mlesaffre@cgsh.com](mailto:mlesaffre@cgsh.com)



**Taieb Otmani**  
+33 1 40 74 68 00  
[totmani@cgsh.com](mailto:totmani@cgsh.com)



**Thomas Verheyden**  
+32 2 287 2063  
[tverheyden@cgsh.com](mailto:tverheyden@cgsh.com)



**Ségolène Allègre**  
+32 2 287 2171  
[sallegre@cgsh.com](mailto:sallegre@cgsh.com)



**Chloé Delay**  
+33 1 40 74 68 00  
[cdelay@cgsh.com](mailto:cdelay@cgsh.com)



**Thomas Harbor**  
+32 2 287 2204  
[tharbor@cgsh.com](mailto:tharbor@cgsh.com)



**Clarisse Ouakrat**  
+33 1 40 74 69 93  
[couakrat@cgsh.com](mailto:couakrat@cgsh.com)



**Paulina Espinoza**  
+33 1 40 74 68 00  
[pespinoza@cgsh.com](mailto:pespinoza@cgsh.com)



**Louis Amory**  
+32 2 287 2275  
[lamory@cgsh.com](mailto:lamory@cgsh.com)



**Manon Oiknine**  
+33 1 40 74 68 00  
[moiknine@cgsh.com](mailto:moiknine@cgsh.com)



**Agne Vaitkeviciute**  
+32 2 287 2120  
[avaitkeviciute@cgsh.com](mailto:avaitkeviciute@cgsh.com)



**Tristan Favaletto**  
+32 2 287 2031  
[tfavaletto@cgsh.com](mailto:tfavaletto@cgsh.com)



**Elinor du Parc**  
+32 2 287 2167  
[eduparc@cgsh.com](mailto:eduparc@cgsh.com)



**Louise Caffrey**  
+33 1 40 74 68 87  
[lcaffrey@cgsh.com](mailto:lcaffrey@cgsh.com)



**Camilla Cozzani**  
+32 2 287 2035  
[ccozzani@cgsh.com](mailto:ccozzani@cgsh.com)



**Kimia Vaye**  
+32 2 287 2168  
[kvaye@cgsh.com](mailto:kvaye@cgsh.com)



**Solenn Dietrich-Urien**  
+32 2 287 2365  
[sdietrichurien@cgsh.com](mailto:sdietrichurien@cgsh.com)



**Ariane Lonmon**  
+32 2 287 2308  
[alonmon@cgsh.com](mailto:alonmon@cgsh.com)



**Liam Rowley**  
+32 2 287 2356  
[lrowley@cgsh.com](mailto:lrowley@cgsh.com)



**Solène Robin**  
+33 1 40 74 68 00  
[srobin@cgsh.com](mailto:srobin@cgsh.com)



**Ambroise Simon**  
+32 2 287 2042  
[amsimon@cgsh.com](mailto:amsimon@cgsh.com)



**Aleksandra Wierzbicka**  
+32 2 287 2224  
[awierzbicka@cgsh.com](mailto:awierzbicka@cgsh.com)



**Benjamin Grimm**  
+32 2 287 2011  
[bgrimm@cgsh.com](mailto:bgrimm@cgsh.com)



**Jean Pettiaux**  
+32 2 287 2180  
[jpettiaux@cgsh.com](mailto:jpettiaux@cgsh.com)