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# French Competition Law Newsletter

## Highlights

- Paris Court of Appeal Confirms Narrow Scope of Exemption for Exclusive Import Agreements
- The French Competition Authority publishes its first study on the competition implications of AI's energy and environmental footprint

## Paris Court of Appeal Confirms Narrow Scope of Exemption for Exclusive Import Agreements

On December 18, 2025,<sup>1</sup> the Paris Court of Appeal (the “**Court of Appeal**”) partially upheld a decision of the New Caledonian Competition Authority (“**ACNC**”) fining Médi-Services, an importer-wholesaler of medical devices in New Caledonia, for having implemented exclusive importation arrangements. While confirming a strict interpretation of the exemption regime applicable to such agreements, the Court of Appeal rejected the ACNC’s approach of effectively imposing a minimum fine on Médi-Services for having contested the statement of objections when other parties did not, and reduced the fine accordingly.

### Background

On August 29, 2022, the ACNC held that several manufacturers of medical devices (*i.e.*, Medline, Thermo Fisher Diagnostics, Medicrea, Sebia, and

Baxter) together with their local distributor, Médi-Services, had entered into exclusive importation arrangements covering the New Caledonian territory. Under these agreements, Médi-Services was granted exclusive rights to import and distribute the suppliers’ products locally.

The ACNC characterized these infringements as *per se* violations under Article Lp. 421-2-1 of the New Caledonian Commercial Code,<sup>2</sup> which prohibits agreements or concerted practices conferring exclusive import rights, irrespective of whether concrete anticompetitive effects are demonstrated.

The five suppliers opted for a simplified procedure: they did not dispute the objections, proposed commitments, and benefited from reduced penalties. Médi-Services, on the other hand, challenged the findings. In particular, it argued

<sup>1</sup> Paris Court of Appeal, December 18, 2025, RG n°22/16187, available [here](#).

<sup>2</sup> See, Article Lp. 421-2-1 of the Commercial Code applicable in New Caledonia, “*Agreements or concerted practices whose purpose or effect is to grant exclusive import rights to a company or group of companies are prohibited*”.

that the arrangements should benefit from the efficiency exemption provided for under Article Lp. 421-4 of the Commercial Code, notably in light of the technical nature and critical importance of certain medical devices.

The ACNC rejected this defense, concluding that Médi-Services had not shown that exclusivity was necessary to generate efficiencies, nor that any resulting benefits were passed on to users. While acknowledging that exclusive importation is less severe than cartel conduct or abuse of dominance, the Authority nevertheless considered the infringement serious given its impact on the healthcare sector and public finances. It also found that the arrangements had caused limited, but genuine, harm to the economy.

The ACNC imposed fines on all parties, including a sanction of approximately 47.4 million CFP francs (around 400,000 euros) on Médi-Services, representing 2.5% of its turnover. All companies were also ordered to publish a summary of the decision on their respective websites.

On September 29, 2022, Médi-Services appealed the decision before the Paris Court of Appeal, seeking annulment or reform of the decision.

### **The Court of Appeal's ruling: strict interpretation of the exception to the *per se* prohibition**

The Court of Appeal confirmed that exclusive importation agreements fall within the scope of the *per se* prohibition laid down in Article Lp. 421-2-1, unless the undertaking concerned is able to satisfy all the cumulative conditions set out in Article Lp. 421-4. These conditions require, in particular, proof of economic progress, a fair share of benefits for users, the indispensability of the restrictions, and the preservation of a sufficient degree of competition.

Emphasizing that this exemption operates as an exception to a general prohibition, the Court of Appeal stressed that it must be construed narrowly.

### ***No partial exemption: the agreement must be assessed as a whole***

A key point of contention was whether the exemption could apply selectively to certain categories of products, such as highly technical or critical medical devices, as Médi-Services claimed. The Court of Appeal rejected this line of argument. It held that given that Médi-Services had entered into uniform exclusivity arrangements and had not challenged the ACNC's market definition encompassing all medical devices, it could not seek to isolate specific product segments to benefit from a partial exemption. Indeed, in this context, the relevant "practice" is the agreement or concerted practice as a whole, and not as it relates to individual products.

### ***Value-added services do not make exclusivity indispensable***

The Court of Appeal accepted that Médi-Services performed a range of services that were valued by healthcare institutions, including storage, technical support, maintenance, spare parts management, and financial facilitation. Taken together, these services explained the role of an intermediated distribution model alongside direct purchasing options.

However, the Court of Appeal distinguished the usefulness of these services from the need for exclusivity to deliver them. It found no evidence that the services resulted from the exclusive nature of the arrangements, or that they could not have been provided under less restrictive contractual frameworks. The Court of Appeal also noted that Médi-Services itself had indicated during the investigation that exclusivity was not a defining feature of its business model.

On that basis, the Court of Appeal concluded that the exclusive import clauses were not indispensable to achieving efficiencies and could not be regarded, in themselves, as contributing to economic progress within the meaning of Article Lp. 421-4. Since the exemption conditions set by this provision are cumulative, this finding was sufficient to dismiss the exemption claim without further analysis.

***Fines: limits on using non-cooperation as an aggravating factor***

While largely endorsing the ACNC's fining methodology, the Court of Appeal nonetheless drew clear limits on the extent to which an undertaking's procedural conduct may justify an increased sanction.

First, the Court of Appeal held that an undertaking cannot be subjected to a de facto minimum fine solely because it chose to contest the statement of objections, whereas other parties did not. Treating the absence of cooperation as an aggravating factor in this way would risk undermining the effective exercise of the rights of defense and could lead to disproportionate penalties.

Second, as regards the intrinsic seriousness of the infringement, the Court of Appeal confirmed that exclusive importation practices are, in principle, less serious than hardcore cartels or abuses of dominance. It nevertheless considered that the infringement was serious given its impact on the healthcare sector, where inflated product prices ultimately weigh on public budgets.

Third, the Court of Appeal addressed the duration of the infringement, rejecting Médi-Services' attempt to limit the period relating to conduct involving Baxter. It found that, despite corporate restructuring within the Baxter group, the exclusivity clause continued to be applied in practice and that the commercial relationship remained unchanged.

Fourth, the Court of Appeal upheld the finding of economic harm, emphasizing that the exclusive importation arrangements restricted intrabrand competition and raised barriers to entry for alternative importers.

Finally, the Court of Appeal dismissed arguments based on Médi-Services' alleged financial fragility or mono-product profile, observing that the ACNC is not required to take into account such considerations.

Overtuning the ACNC's decision insofar as it had considered Médi-Service's refusal to enter into a settlement agreement as an aggravating factor, and taking all other relevant factors together, the Court of Appeal concluded that a fine set at around 70% of the statutory maximum was excessive and reduced it to approximately 52%.

**Takeaways**

This judgment underscores the limited room for maneuver available to companies operating under regimes that treat certain restrictions as per se infringements. Where exclusivity is prohibited as such, efficiency arguments and the absence of demonstrable anticompetitive effects offer little protection. Exemptions are interpreted narrowly and assessed at the level of the agreement as a whole, and efficiencies must be clearly demonstrated and shown to depend on the restrictive clauses themselves. The mere provision of value-added services, or attempts to isolate specific products within a broader exclusivity arrangement, will not suffice.

This judgment also confirms heightened sensitivity where practices affect regulated or socially critical sectors such as healthcare, where even limited harm may be taken seriously and qualitative evidence from market participants can play a decisive role.

Finally, it is a welcomed reminder that undertakings cannot be penalized for exercising their rights of defense, and that the refusal to enter into specific cooperation proceedings cannot justify the imposition of a de facto minimum fine.

# The French Competition Authority publishes its first study on the competition implications of AI's energy and environmental footprint

On December 17, 2025, the French Competition Authority (“**FCA**”) published its first study examining the energy and environmental impact of artificial intelligence (“**AI**”) (the “**Study**”).<sup>3</sup> As AI deployment accelerates, the Study underscores the increasing strain of AI on electricity systems, carbon emissions, and other key resources, and assesses the competition issues that this may entail at the intersection of digital and energy markets.

## The energy and environmental footprint of AI

The Study provides a structured assessment of the energy and environmental impact of AI development and deployment, starting with the resource intensity of AI related infrastructure.

The FCA notes that AI relies on highly energy intensive data centers, whose electricity demand is expected to increase sharply in the coming years, at a time when public authorities are actively seeking to attract new data center investments. This rapid growth has already led major digital players to secure long term electricity supply arrangements, with potential implications for grid utilization and access to energy for other market participants.

Beyond electricity consumption, the Study examines AI's wider environmental footprint across the value chain, including water use, land occupation and raw material inputs, as well as indirect effects linked to electricity generation. The FCA also highlights the growing carbon footprint associated with AI operations in France, driven primarily by the increase in data center energy consumption.

While acknowledging that AI may generate efficiency gains and resource optimization in other sectors of the economy, the FCA concludes that AI's overall environmental footprint remains significant and is likely to intensify. This assessment provides the factual basis for the Study's analysis of competition issues arising from AI's increasing demand for energy and other key resources.

## Competition implications in digital and energy markets

The Study shows that AI's resource intensity is no longer a peripheral concern, but a factor capable of influencing market structure, entry conditions, and competitive strategies across digital and energy markets.

The FCA first focuses on access to electricity infrastructure and the predictability of energy costs as potential sources of competitive distortion. Electricity represents a significant share of data center operating costs, and uncertainty relating to grid access, price volatility, and overall price competitiveness can materially affect competitive conditions. Difficulties in securing timely grid connections or stable, competitively priced electricity may therefore raise barriers to entry for smaller or less well capitalized players. By contrast, larger operators are often better placed to secure long term supply contracts, benefit from preferential conditions, or develop their own energy or storage solutions to reduce exposure to volatility. While the Study notes that measures have been adopted to limit grid saturation and accelerate connections for energy intensive users, the FCA stresses the need for continued vigilance to ensure fair and non-discriminatory access to energy.

<sup>3</sup> FCA, Study on the Competitive issues relating to the energy and environmental impact of Artificial Intelligence of December 17, 2025, available [here](#).

The Study then turns to environmental performance as an emerging parameter of competition in AI markets, introducing the concept of “frugal AI”. Frugality aims to reduce resource consumption and environmental impact, for example through smaller or more specialized models or more efficient use of computing resources. As public and private purchasers increasingly factor energy efficiency and environmental performance into procurement decisions, frugality may allow smaller or more innovative players to compete more effectively with established incumbents, notably on price, quality and innovation. At the same time, the FCA cautions that misleading or unsubstantiated environmental claims could distort competition and confer unjustified advantages.

Finally, the FCA identifies the standardization of environmental footprint measurement as a potential enabler of effective competition. Harmonized and transparent metrics would allow meaningful comparison between AI solutions and reinforce frugality as a competitive parameter. The Study nevertheless warns that standard setting processes must be carefully designed to avoid anticompetitive risks, including the exchange of commercially sensitive information, coordination of market behavior or self-preferential outcomes within standardization bodies.

## Takeaways

The FCA’s Study reflects an evolution in competition analysis of AI-related markets, treating energy and environmental constraints as structural features rather than external considerations. By grounding its assessment in the rising energy intensity of data centers and the increasing pressure on electricity systems, the FCA highlights access to electricity infrastructure and price predictability as elements capable of shaping market structure and entry conditions. Control over energy supply and limited cost exposure may indeed translate into durable competitive advantages, with potential

competition concerns arising not only within digital markets, but also at their intersection with energy infrastructure. Tackling these risks requires making conscious public policy choices.

At the same time, the Study signals that environmental performance is becoming a meaningful parameter of competition in AI markets. Frugal AI may enable differentiated competitive strategies, particularly for smaller or more innovative players, as customers increasingly integrate energy efficiency into procurement decisions. The FCA’s emphasis on the risks of greenwashing and poorly governed standardization further suggests that sustainability claims and environmental metrics themselves may become a focus of competition scrutiny. The European Commission has similarly identified competition concerns in generative AI<sup>4</sup> and, since November 2024, has been investigating potential cartel practices in the data center construction sector, confirming that AI’s energy footprint is emerging as a new frontier for competition enforcement.<sup>5</sup>

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<sup>4</sup> See Commission Policy Brief, “Competition in Generative AI and Virtual Worlds”, September 2024, available [here](#).

<sup>5</sup> See Commission Press Release, “Commission carries out unannounced antitrust inspections in the data centre construction sector”, November 18, 2024, available [here](#).

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