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French Competition Law Newsletter

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The French *Cour de Cassation* Rejects Appeal Due to Procedural Non-Compliance

On May 28, 2025, the French *Cour de Cassation* issued a ruling dismissing an appeal from Ambulances Sannac, a French company providing private ambulance services ("**Sannac**") against a decision of the French Competition Authority ("**FCA**") finding it had entered into anticompetitive agreements in the sector of inter-communal hospital medical transport. The appeal was dismissed entirely due to a procedural oversight[1].

Background

In February 2022, the FCA imposed a €32,600 fine on Sannac for having entered into an anticompetitive agreement with its competitors to submit a joint bid to a tender offer[2]. The other parties settled.

On March 18, 2022, Sannac lodged an appeal with the Paris Court of Appeal. On March 25, 2022, seven days later, Sannac notified the FCA of its appeal. However, according to Article R. 464-13 of the Commercial Code, Sannac was required to notify the FCA within five days of filing the appeal, such that the appeal became void. On March 9, 2023, the ruling by the Paris Court of Appeal confirmed that Sannac's appeal was void[3].

The Judgment of the *Cour de Cassation*

The *Cour de Cassation* rejected Sannac's arguments that: i) the five-day notification requirement, and the penalty of automatic nullification of the appeal, was a disproportionate

[1] *Cour de Cassation*, Appeal n° 23-14.180, May 28, 2025, available here.

[2] FCA Decision 22-D-04 of February 2, 2022, regarding practices implemented in the sector of inter-communal hospital medical transport in the Val d'Ariège and the Pays d'Olmes, available here.

[3] Paris Court of Appeal n° 22/04851, March 9, 2025, available here.

limitation on the right to a fair trial, in violation of Article 6(1) of the European Convention of Human Rights; ii) the five-day period should start running from when the registry assigns a registration number to the appeal, not from the date when the file was physically submitted.

The *Cour de Cassation* found that: i) the notification obligation is clear and its consequences are perfectly predictable, and it does not restrict access to the Court of Appeal in a manner that would affect the substance of the right itself; ii) the obligation serves the legitimate goal of good administration of justice by allowing the FCA to be quickly informed of appeals and to transmit case files to the Court of Appeal; iii) there is a reasonable and proportional link between the sanction and the intended purpose of the notification obligation.

As Sannac had a duty to act diligently and failed to invoke any exceptional circumstances beyond its control that would have prevented timely notification, the *Cour de Cassation* rejected the appeal in its entirety. Additionally, it required Sannac to pay the court costs and €3,000 in legal fees to the FCA.

This ruling serves as a reminder that, absent any exceptional circumstances, procedural requirements designed to ensure efficient case management will be strictly enforced.

Regulating Self-Preferencing in Cloud Services: France's Competition Authority Launches Public Consultation

On June 4, 2025, the FCA launched a public consultation on the topic of self-preferencing in the cloud computing sector. This follows the recent enactment of Law No. 2024-449 on the security and regulation of the digital space ("**SREN Law**"). This consultation reflects growing scrutiny of vertically integrated cloud providers that may favor their own services and software at the expense of competitors.

Background

On May 22, 2024, France enacted the SREN Law, a comprehensive legislative package designed to enhance competition in the cloud computing sector and bolster the security of digital services for users. A key element of the law is Title III, which targets unfair commercial practices within the cloud ecosystem. At the heart of these provisions is Article 26, now codified as Article L. 442-12 of the French Commercial Code, which explicitly addresses self-preferencing practices by vertically integrated cloud service providers.

The law defines self-preferencing 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 underpricing and functional conditions that differ significantly 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.*"[4]

By prohibiting self-preferencing, the law aims to curb anticompetitive conduct that undermines fair access and interoperability in the cloud sector.

Under this new framework, the FCA is empowered to investigate, address, and sanction instances of self-preferencing—either on its own initiative or following a referral from the Minister for Digital Affairs or any interested party.

Public consultation

The FCA is required to submit a report to Parliament and the Government by November 22,

[4] Article 26 of the SREN Law.

2025, outlining its enforcement efforts against self-preferencing and recommending any procedural or legislative adjustments to strengthen the regime. In this context, the FCA has launched a public consultation, seeking input from industry stakeholders, legal experts, and interested parties on self-preferencing practices,[5] as well as on possible procedural or legislative measures to prevent them.[6]

This initiative follows the FCA's Opinion No. 23-A-08 of June 29, 2023,[7] which identified both commercial and technical barriers in the cloud market – particularly the risks of customer lock-in and restrictions curtailing the growth of competing providers. Stakeholders are now encouraged to share relevant observations or practical experiences concerning self-preferencing, and to propose reforms that could effectively address these concerns.

Takeaways

This consultation reflects the increasing convergence between competition enforcement and digital regulation, in line with broader EU-level initiatives such as the Digital Markets Act.[8] France's proactive stance underscores the importance of addressing vertical concerns and the strategic use of software to consolidate market power in the cloud infrastructure sector.

French Competition Authority issues its first-ever decision sanctioning no-poach agreements

On June 11, 2025, the FCA issued its first-ever decision[9] sanctioning no-poach agreements as stand-alone infringements.[10] Fines totaling EUR 29.5 million were imposed on three companies operating in the engineering, technology consulting, and IT services sectors.

Background

In April 2018, Ausy (now Randstad Digital) filed a leniency application disclosing to the FCA the existence of several agreements designed to reduce staff turnover between competitors in the engineering, technology consulting, and IT services sectors.

Following this application, the FCA opened an ex officio investigation in July 2018 and carried out dawn raids in the premises of several companies active in the engineering, technology consulting, and IT services sectors in November 2018. In June 2023, the FCA divided the investigation into two separate cases, retaining in the case leading to this Decision only the practices related to alleged non-solicitation agreements.

The FCA gave the case significant publicity, notably by announcing and presenting its Decision during a press conference.[11]

[5] The public consultation framed the questions as: "Have you observed or are you currently observing any self-preferencing practices as defined in Article L.442-12 of the French Commercial Code? If so, please provide details in your response and, where applicable, share any relevant supporting documents."

[6] The specific question in this regard is: "Would you like to bring to our attention any potential procedural or legislative improvements in the cloud computing sector, and more specifically to combat self-preferencing?"

[7] Available here

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

[9] FCA Decision No. 25-D-03 of June 11, 2025 regarding no-poach practices in the engineering, technology consulting and IT services sectors, available at: https://www.autoritedelaconcurrence.fr/sites/default/files/integral_texts/2025-07/25d03_version_publique_0.pdf (the "**Decision**").

[10] In earlier cases, such as Decision No. 17-D-20 or Decision No. 24-D-06, the FCA referred to no-poach provisions only as elements within broader restrictive agreements.

[11] FCA presentation of June 11, 2025, No-poach practices: the Autorité de la concurrence fines four companies in the engineering, technology consulting and IT services sectors, (presentation material), https://www.autoritedelaconcurrence.fr/sites/default/files/2025-06/SSII%20diapoEN2.pdf

The case also reflects a broader European trend of enforcement against no-poach agreements, confirming that labor markets are now a clear enforcement priority for EU and national competition authorities.

The no-poach "gentlemen's agreements" sanctioned

On the basis of the information provided by the leniency applicant and the documents gathered during the dawn raids, the FCA found that four companies had entered into two informal anticompetitive "gentlemen's agreements"[12] under which they mutually agreed to refrain from both poaching (direct solicitation) and hiring (following spontaneous application) each other's employees:

— A first agreement allegedly prohibiting the poaching and hiring of business managers between Ausy and Alten. The FCA considered that Ausy's submissions along with certain seized emails between Ausy and Alten were sufficient to prove the existence of this agreement between 2007 and 2016. The FCA notably dismissed the claims that the agreement was simply a one-sided commitment by former Alten managers who joined Ausy, meant only to avoid unfair competition by not recruiting Alten's business managers.

— A second agreement between Bertrandt and Expleo allegedly prohibiting poaching and hiring each other's employees in the automotive sector, extending even to unsolicited job applications. The FCA's findings mainly relied on evidence collected during the dawn raids, such as internal and inter-company emails implementing the agreement.

After a cursory analysis, the FCA considered that the alleged agreements amounted to restrictions of competition "by object" under Article 101(1)(c) TFEU and Article L. 420-1(4°) of the French Commercial Code, which prohibit the allocation of markets or sources of supply.

The Decision asserted that, by agreeing not to compete for employees, the parties abstained from competing on human resources, described as one of the most strategic parameters of their business activity. The FCA did not examine the specificities of the roles actually covered by the agreement, but instead generalized its reasoning to human resources as a whole.

The FCA also considered that alternative means – both legal and in terms of human resources policy – were available to protect against unfair large-scale employee poaching, and dismissed claims that the practices were a way to combat unfair competition. The FCA argued that the pursuit of a legitimate objective does not prevent practices from being characterized as having an anti-competitive object.

By classifying the agreements as restrictions "by object," the FCA effectively avoided any assessment of the actual or even potential anti-competitive effects of the practices.

Dismissal of the accusations concerning non-solicitation clauses in partnership contracts

The FCA took a more nuanced approach towards non-solicitation clauses embedded in partnership agreements – such as consortia or subcontracting arrangements – between Bertrandt and Expleo and between Atos and Ausy.

After reviewing their content, purpose, and economic and legal context, the FCA found that these non-solicitation clauses did not constitute restrictions of competition by object because they were limited in scope, applied only to certain employees, related to specific projects, and of limited duration. It considered that these clauses sought to ensure the stability of a small number of employees assigned to a specific project within the framework of a partnership between companies, thereby guaranteeing proper project execution.

[12] Gentlemen's agreements are general agreements, often informal and open-ended in duration and with a very large scope, either because they concern a sector, all the customers of the companies concerned or all the employees, etc. Source: FCA presentation of June 11, 2025, No-poach practices: the Autorité de la concurrence fines four companies in the engineering, technology consulting and IT services sectors, (presentation material), https://www.autoritedelaconcurrence.fr/sites/default/files/2025-06/SSII%20diapoEN2.pdf

The FCA also found there was insufficient evidence to establish that these clauses had anti-competitive effects.

However, it stressed that the Decision does not create a "safe harbor" for non-solicitation clauses and noted that the legality of non-solicitation clauses must be assessed on a case by case basis, depending on proportionality to the legitimate objectives pursued. Broader or disproportionate clauses could therefore still be deemed anti-competitive by object.[13]

Fine calculation methodology

The FCA applied its 2021 Fining Guidelines,[14] dismissing the Parties' claims that applying them to practices that took place before 2021 breached the principle of non-retroactivity of criminal law. Similarly, the Decision asserted that the fact that these practices were implemented in isolation, rather than as part of a broader cartel, neither made them novel nor justified disregarding the Guidelines or reducing fines.

With respect to the value of sales, the fine for the Ausy-Alten agreement – limited to business managers – was calculated on the basis of personnel expenses for that specific role. By contrast, the Bertrandt-Expleo agreement allegedly encompassed all employees in the automotive sector, leading the FCA to take into account the companies' total personnel expenses in that sector.

Alleging that horizontal agreements allocating sources of supply are particularly serious, the FCA applied a 16% rate to the sales value, before applying a duration coefficient to each of the concerned agreements.

On this basis, the FCA imposed fines of EUR 24 million on Alten, EUR 3.6 million on Bertrandt, and EUR 1.9 million on Expleo. Ausy, the leniency applicant, received full immunity. Additionally, the sanctioned companies were ordered to publish a summary of the Decision on LinkedIn and in the newspaper *Le Monde Informatique*.

Key takeaways

The Decision reflects the FCA's view that no-poach agreements constitute serious violations under Article 101(1)(c) of the TFEU and Article L. 420-1(4°) of the French Commercial Code, as interpreted by the Court of Justice of the European Union.[15] While the FCA had previously addressed no-poach practices as part of broader anti-competitive agreements,[16] this Decision is the first in which it found such agreements, alone, could constitute restrictions by object subject to stand-alone enforcement.

The FCA's approach goes further than any previous European enforcement, imposing the highest fine ever for an alleged stand-alone no-poach infringement. By contrast, the European Commission imposed a EUR 329 million fine against Delivery Hero and Glovo on June 2, 2025[17] for a broader set of practices, including market sharing, exchange of commercially sensitive information and no-poach.

The FCA emphasized its continued vigilance regarding human resources agreements, particularly in the digital sector, where skilled talent is both scarce and vital for competition.

[13] FCA Press release, "No-poach practices: the Autorité de la concurrence fines four companies in the engineering, technology consulting and IT services sectors", June 11, 2025, available at: https://www.autoritedelaconcurrence.fr/en/press-release/no-poach-practices-autorite-de-la-concurrence-fines-four-companies-engineering.

[14] FCA Procedural notice on the method for determining fines of July 30, 2021 available at: https://www.autoritedelaconcurrence.fr/sites/default/files/Communique_sanction.pdf

[15] Toshiba Corporation e.a./Commission (Case C-373/14), January 20, 2016, para. 28; and FIFA (Case C-650/22), October 4, 2024, para. 129.

[16] See FCA Decision No. 24-D-06 of May 21, 2024 regarding practices implemented in the pre-cast concrete products sector, available at: https://www.autoritedelaconcurrence.fr/fr/decision/relative-des-pratiques-mises-en-oeuvre-dans-le-secteur-des-produits-prefabriques-en-beton.

[17] See Commission Decision No. C(2025) 3304 final of June 2, 2025 in Case AT.40795 – Food Delivery Service, available at: https://ec.europa.eu/competition/antitrust/cases1/202530/AT_40795_1262.pdf.

The French Authority Publishes its 2025-2026 Roadmap and 2024 Report

On July 10, 2025, the FCA published both its 2024 Annual Report,[18] and its 2025-2026 Roadmap,[19] which outlines its priorities for the year ahead.

2024 was a record year for the FCA: it imposed fines totalling €1.4 billion—10% higher than the previous record set in 2021—, and reviewed a record 295 mergers and acquisitions. Looking forward, the FCA set out three priority areas for its action in 2025-2026: (i) digital markets; (ii) sustainability; and (iii) improving consumers' and SME's purchasing power. The 2025-2026 Roadmap reveals a clear interest in AI and 'green-washing' issues in particular. The FCA also indicated that it would, by the end of 2025, publish its proposal for a call-in power allowing it to review below-threshold mergers.

A continued focus on antitrust issues in digital markets, and AI

The 2025-2026 Roadmap confirms that digital markets remain a key priority of the FCA,[20] and places a particular emphasis on artificial intelligence issues. Recalling its June 2024 Generative AI market study[21], the FCA noted it stands "ready to act" in the AI field. Indeed, previous FCA market studies have led to investigations, for instance in the graphics card sector.[22]

Substantively, the FCA announced it will supplement its AI market study with an analysis on access to energy for players in the sector. This is consistent with the FCA's interest in inputs in the AI sector: its previous market studies examined practices linked to cloud infrastructure, computing power, access to data and talent. It also announced that the FCA would adopt its first roadmap on its own use of AI in 2025, which it intends to update every three years. The FCA's intent appears to be to start using AI to streamline its internal processes, and potentially to help detect anti-competitive behaviour.[23]

With respect to other digital markets, the FCA noted it would also publish a market study on online video creation, which could also lead to investigations in the sector.

Procedurally speaking, the FCA referred to its novel investigating powers contained in the "SREN" law,[24] which, among other things, defines the FCA's role in the implementation of the DMA.[25] In addition, the law prohibits certain practices in the cloud sector, namely self-preferencing;[26] the granting of cloud commercial credits for (i) an unlimited period of time, or (ii) subject to an exclusivity obligation; and finally, unfairly making a contract for the supply of products or services conditional on the conclusion of a contract for cloud computing services. The SREN law empowers the FCA to investigate and sanction

[18] FCA, *Annual Report, 2024,* available at (in French): https://www.autoritedelaconcurrence.fr/sites/default/files/2025-07/Rapport-annuel-2024-final

[19] FCA, *Roadmap 2025-2026*, available at: https://www.autoritedelaconcurrence.fr/sites/default/files/2025-07

[20] The FCA recalled its ongoing investigation and interim measures concerning Meta's alleged abuse of dominance in the online advertising sector and mentioned it is currently reviewing an application for interim measures in the search engine sector.

[21] FCA, Opinion 24-A-05 of June 28, 2024 on the competitive functioning of the generative artificial intelligence sector, available at: https://www.autoritedelaconcurrence.fr/en/press-release/generative-artificial-intelligence.

[22] FCA, *Annual Report, 2024,* p.4-5.

[23] FCA, *Annual Report, 2024,* p.5, see also *Roadmap 2025-2026*, p.4.

[24] French law 2024-449 of May 21, 2024 to Secure and Regulate the Digital Space, available at (in French): https://www.legifrance.gouv.fr/dossierlegislatif/JORFDOLE000047533100/

[25] SREN law, Article 53 confirms that the FCA (and DGCCRF) are the national competent authorities under the DMA. As such, for instance, they may still investigate practices which could be covered under the DMA if these also constitute a breach of competition law, and may be informed of potential breaches of competition law by third parties. The FCA (and DGCCRF) must provide the European Commission with this information if it considers that there may be a breach of the DMA.

[26] Defined as the practice by (i) a company both active in providing cloud services and software, of (ii) providing its software through third party cloud services in significantly different conditions (with respect to price and functionality) than through its own cloud services, where there is no justification for the difference in conditions.

such "cloud" self-preferencing practices; it also requires the Authority to release a report on its "cloud" self-preferencing decisional practice in November 2025.[27]

Pursuing sustainability within competition policy

The 2025-2026 Roadmap highlights the FCA's action in providing informal guidance on sustainability cooperation between competitors, following its 2024 notice.[28] Indeed, the FCA has so far published two letters providing informal guidelines, on the standardisation of carbon footprints in animal nutrition marketing and a collective financing for costs linked to the agro-ecological transition.[29] There is a clear appetite from the FCA to pursue this practice, which may be an attractive option for companies seeking legal certainty.

However, the FCA also noted that it is determined to sanction practices which prevent consumers from making an informed decision on the sustainability characteristics of products and services, drawing from its market study on environmental rating systems. Importantly, it also implied that the FCA will also use the European Commission's horizontal agreement guidelines, specifically its sustainability chapter, in its own practice.

Finally, with respect to abuses of dominant position and mergers, the Roadmap indicates some tentative openness to sustainability arguments, noting that the FCA will "give further consideration to how to take sustainability into account."[30]

Supporting consumers' purchasing power

The final key priority of the FCA is sanctioning anticompetitive practices and carefully reviewing mergers which may weigh on households and SME's budgets. The FCA mentions the transport and energy sectors as calling for particular attention, as well as "business services."[31] The FCA also specifically noted it would ensure the restructuring of the food retail sector—the subject of many mergers reviewed by the FCA in 2024 and 2025—does not lead to higher prices or lower quality. The FCA also mentioned it would continue its enforcement in French overseas territories and would publish an opinion on reforms regarding the establishment of fees for regulated legal professions.

The FCA finally noted that a record 15 companies had requested leniency (11 full applications, and 4 summary applications) in 2024, and highlighted its continued ex-officio enforcement, consisting of four dawn raids in 2024 and one in 2025.[32]

Conclusion

Overall, this year's Roadmap is in line with the FCA's previous priorities, with a clearer focus on artificial intelligence issues, in particular. It remains to be seen how the FCA's investigations in that sector will take shape.

[27] SREN law, Article 26.

[28] Notice on informal guidance from the FCA in the area of sustainability, available at https://www.autoritedelaconcurrence.fr/en/press-release/autorite-publishes-its-notice

[29] Respectively, Informal Guidance 24-DD-01, June 14, 2024, available at: https://www.autoritedelaconcurrence.fr/en/press-release/autorite-publishes-its-notice-provision-informal-guidance-companies-questions, and Informal Guidance 25-DD-01, January 29, 2025, available at: https://www.autoritedelaconcurrence.fr/en/press-release/sustainability-autorite-de-la-concurrence-publishes-informal-guidance-creation-system.

[30] *Roadmap 2025-2026*, p.5.

[31] *Roadmap 2025-2026*, p.7.

[32] Ibid.

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