October 2025

French Competition Law Newsletter

Highlights

— The French *Cour de cassation* confirms the FCA's independence in settlement-referral procedures and classifies information exchanges between tenderers, including when exploring subcontracting, as a restriction by object

— The French *Cour de cassation* confirms the French Competition Authority's fine on a trade union for collective boycott practices

The French *Cour de cassation* confirms the FCA's independence in settlement-referral procedures and classifies information exchanges between tenderers, including when exploring subcontracting, as a restriction by object[1]

On September 24, 2025, the French *Cour de cassation* upheld the sanction imposed by the French Competition Authority ("**FCA**") on Vinci group entities active in construction and technical services, and on their subsidiary Santerne Nord Tertiaire ("**Santerne**"), for unlawful exchanges of confidential information during a public tender procedure.

The ruling provides two important clarifications. First, it confirms that when a case is referred to the FCA following a refusal to settle, the FCA is not bound by the Minister's legal characterization or choice of addressees. Second, it confirms that the exchange of confidential information between competing tenderers, including when exploring subcontracting, constitutes a restriction of competition by object.

Background

On April 11, 2014, the Urban Community of Lille launched a tender procedure for maintenance and transformation work on technical installations, allowing partial subcontracting. The incumbent operator, Neu Automation ("**Neu**"), a building management company, submitted a new bid. Santerne, one of Neu's competitors, filed two offers: one proposing to replace Neu's proprietary software with an open-source alternative, and

[1] French *Cour de cassation*, Appeal 23-13.733 and 23-14.293, September 24, 2025, available here.

another retaining Neu's system with Neu acting as subcontractor.

In 2017, the Directorate General for Competition, Consumer Affairs and Fraud Control ("**DGCCRF**") investigated the building-maintenance sector in Lille. It found that Neu had exchanged confidential information with two other bidders, STTN Energie and Santerne, prior to their bid submission. Neu and STTN Energie accepted settlements and were fined €19,400 and €14,850 respectively. Santerne refused to settle, and the DGCCRF referred the case to the FCA.[2]

On March 4, 2021, the FCA fined Santerne and its parent companies, Vinci Energies France and Vinci,[3] a total of €435,000 for exchanging sensitive pricing and technical information used to prepare Santerne's bid.[4] While acknowledging that undertakings may seek external expertise, the FCA stressed that sharing such detailed information between competitors is inherently anticompetitive because it undermines the independence of bids. It further held that the submission of two ostensibly separate bids misled the contracting authority regarding the level of competition.

On March 9, 2023, the Paris Court of Appeal upheld the FCA's decision.[5] It held that the information exchanged between Neu and Santerne, who had initially considered a subcontracting relationship before submitting separate bids, compromised the independence of their bids and thus constituted an anticompetitive practice.

In its appeal before the French *Cour de Cassation*, the Vinci group challenged both the legal qualification of the conduct and the FCA's jurisdiction. It argued, first, that the FCA had exceeded the scope of the DGCCRF referral and the Minister's initial legal qualification, and second, that the Minister should not have used the settlement procedure at all because the undertaking's turnover exceeded the statutory threshold set out in Article L. 464-9 of the French Commercial Code. They further claimed that, in any event, the conduct did not restrict competition in the context of the tender.

Procedural issues: the FCA's independence in settlement-referral procedures

The French *Cour de cassation* first confirmed that when a company refuses the settlement proposed by the Minister under Article L. 464-9 of the French Commercial Code, the matter is referred to the FCA *in rem* —that is, with respect to the facts themselves, not to the Minister's legal framing of those facts. As a result, the FCA is not bound by the Minister's legal assessment, legal qualification, or choice of addressees. It remains fully autonomous in requalifying the conduct and determining which undertakings should be held liable, including parent companies that were not targeted during the ministerial stage.

The French *Cour de cassation* then examined whether the Minister's alleged lack of jurisdiction, arising from the fact that the undertaking's turnover exceeded the thresholds for using Article L. 464-9 of the French Commercial Code's settlement procedure, could make the referral invalid. It held that it could not. Even if the Minister should not have proposed a settlement to an undertaking above the statutory turnover thresholds, this does not affect the validity of the referral. By opting to use Article L. 464-9 of the French Commercial Code, the Minister initiates a process that leads to an FCA referral if the company refuses to settle. This follows from the Minister's separate power to refer cases under

[2] *See* DGCCRF's report from 2019, available here. Article L. 464-9 of the French Commercial Code provides that the DGCCRF can (i) order undertakings to put an end to anticompetitive practices and (ii) propose a settlement no higher than €150,000 and 5% of the undertaking's turnover in France. If the undertaking refuses to settle, the DGCCRF brings the case to the FCA.

[3] Santerne's parent companies argued that Santerne acted autonomously and that they should not be held liable. The FCA rejected this argument, finding no evidence sufficient to rebut the presumption of decisive influence, particularly given multiple references to the parent companies in Santerne's tender documents.

[4] FCA Decision, No 21-D-05 of March 4, 2021 regarding practices implemented in the building management systems sector for the city of Lille (Lille métropole communauté urbaine), available here. For further details, *see* the blog post from March 4, 2021, "The French Competition Authority Fines Vinci Group for Bid Rigging in a Public Tender for Building Maintenance in the City of Lille", available here.

[5] Paris Court of Appeal, March 9, 2023, RG n° 21/06028, available here

Article L. 462-5 I of the French Commercial Code, which does not depend on the validity of the prior settlement attempt.

Taken together, the judgment confirms the clear institutional separation between the Minister's settlement procedure and the FCA's enforcement role. The FCA's jurisdiction and analytical freedom remain intact, regardless of how the Minister framed the initial case.

Substantive issue: Information exchanges between tenderers, including when exploring subcontracting, constitute a restriction by object

On substance, the French *Cour de cassation* upheld the finding that the information exchanges between Neu and Santerne constituted a restriction of competition by object.

Referring to established case law from the European Court of Justice ("**ECJ**"),[6] the French *Cour de cassation* noted that undertakings must determine their market conduct independently. Any exchange of sensitive information capable of influencing a competitor's conduct may amount to a concerted practice when it alters normal competitive conditions.

The French *Cour de cassation* endorsed the Paris Court of Appeal's findings that Neu had provided Santerne with significant parts of its financial and technical bid before both submitted their offers. Around 47% of Neu's financial proposal (24% of the full bid) and a substantial portion of its technical memorandum were shared and subsequently used by Santerne.

The French *Cour de cassation* also noted Santerne's ambiguous use of Neu's logo, which implied potential subcontracting but failed to clearly set out the nature of their cooperation. In these circumstances, the submission of two ostensibly independent bids (*i.e.*, when one had been prepared using the other's confidential information) necessarily distorted competition and misled the contracting authority.

The French *Cour de cassation* reiterated that cooperation, including subcontracting, can be lawful and even pro-competitive. However, such cooperation must not compromise the independence of competing bids. Exchanges must be limited to what is strictly necessary. Here, the information exchanged went well beyond what subcontracting would require.

The French *Cour de cassation* therefore confirmed that the conduct amounted to a restriction of competition by object, with no need to prove actual anticompetitive effects.

Key Takeaways

Procedural. Refusing a settlement under Article L. 464-9 of the French Commercial Code automatically triggers a full referral to the FCA, which is free to requalify the conduct, broaden liability, and include parent companies. Companies should assess ministerial settlement proposals strategically, given the heightened exposure following refusal.

Public procurement. Subcontracting is permissible, but information exchanges must be strictly limited to what is necessary for that cooperation. Sharing detailed pricing or substantial technical elements while submitting parallel bids will almost always be treated as a restriction by object. Companies should determine early whether another operator is a competitor or a subcontractor, ring-fence bid teams, avoid dual roles, and ensure that any subcontracting arrangement is disclosed clearly and transparently to the contracting authority. Vague references or shared logos are insufficient and may be considered misleading.

[6] *See e.g.*, ECJ, judgment of January 23, 2018, C-179/16, *F. Hoffmann-La Roche*; ECJ, judgment of December 21, 2023, C-333/21, *European Superleague Company*; and ECJ, judgment of July 2024, C-298/22, *Banco BPN/BIC Português*.

The French *Cour de cassation* confirms the French Competition Authority's fine on a trade union for collective boycott practices

On October 15, 2025, the French *Cour de cassation* ("**Court**") confirmed a €680,000 fine on the trade union *Les Chirurgiens-Dentistes de France* ("**CDF**") ("**Decision**").[7] The Court held that the CDF's call for a boycott of certain dental care networks constituted a restriction of competition by object within the meaning of Article 101 TFEU and Article L. 420-1 of the French Commercial Code.[8]

This case highlights that professional organizations, including trade unions, are not exempt from competition law, and claims that they acted in the public interest will be carefully scrutinized.

Background

In France, dental care networks are set up through agreements entered into between complementary health insurers ("*organismes complémentaires d'assurance maladie*" or "*OCAM*") and dentists. These networks provide recommendations to patients on treatments, implement third-party payment systems, and cap and monitor treatment costs, at levels that are typically lower than those of non-affiliated dentists.[9]

The *Ordre National des Chirurgiens-Dentistes* ("**Order**") regulates access to the dental profession and oversees compliance with professional rules. Trade unions and federations, such as the *Fédération des Syndicats Dentaires Libéraux* ("**FSDL**") and the CDF, negotiate with the national healthcare system, notably on rates and treatments.[10] At the time of the case, the CDF represented around one-third of French self-employed dentists.[11]

According to the evidence cited by the Decision, the Order, FSDL and CDF feared non-affiliated dentists were unable to match dental care networks' lower fees and active patient solicitation[12] and that such networks jeopardized the quality and diversity of treatments available to patients and, as a result, patients' freedom of choice, as well as the dental profession's independence.[13]

Following a complaint filed in 2014 by the dental care network Santéclair, the FCA carried out dawn raids at the premises of the Order's national council and certain departmental councils, the FSDL, and the dental practice of the FSDL's president. In 2020, the FCA found that the CDF, alongside the Order and FSDL, had coordinated actions to boycott certain networks, discourage patients from using network-affiliated dentists, and pressure insurers to delay new networks, constituting a restriction of competition by object within the meaning of Article 101 TFEU and Article L. 420-1 of the French Commercial Code for which the parties were fined a total of €4,000,000.

The FCA found this conduct to be particularly serious, as it was carried out by professional bodies responsible for compliance and the

[7] FCA, November 12, 2020, decision no. 20-D-17 ("**Decision**"), available here. The CDF was formerly known as the *Confédération nationale des syndicats dentaires* ("**CNSD**").

[8] French *Cour de cassation*, Commercial Chamber, October 15, 2025, no. 23-21.370 ("**Ruling**"), available here.

[9] Decision, para. 42.

[10] As set out in article L.162-9 of the French Social Security Code. *See* for example the *2023-2028 National Convention of Dental Surgeons* negotiated by the CDF and the FSDL, available here.

[11] Decision, para. 92

[12] *Ibid*., see for example paras. 208, 288 and 389.

[13] *Ibid*., see for example para. 48.

sector's two main unions,[14] and hindered the development of networks designed to improve access to affordable care by reducing patients' out-of-pocket expenses.[15] The FCA held that the practices reduced patients' freedom of choice[16] by limiting their access to a variety of cheaper network-affiliated dentists in a sector already marked by high treatment costs[17] and inherent low switching (as patients tend to remain with their current dentist).[18] The severity of the infringement was further compounded by the Order's prior sanctions for similar conduct in 2005, 2009, and 2014, meaning all parties were aware of the associated competition law risks.[19]

On December 17, 2020, the Order, the FSDL, and the CDF lodged an appeal against the FCA's Decision. The Paris Court of Appeals dismissed the appeal on September 14, 2023,[20] finding in particular that the CDF's conduct exceeded legitimate trade union advocacy and that it encouraged members to adopt a common market position, thereby constituting a restriction of competition by object.[21] Highlighting that the networks targeted by the CDF were lawfully established and regulated,[22] the Court of Appeals rejected the CDF's claim that it was merely acting in defense of the dental profession, pursuant to its mandate and in response to its members' complaints against Santéclair,[23] finding instead that the CDF's conduct stemmed from a broader opposition to networks formed without union involvement.[24] Following this dismissal, the CDF lodged an appeal with the French *Cour de cassation*.

Ruling of the French *Cour de cassation*

The key legal issue brought before the French *Cour de cassation* was whether a professional organization may invoke freedom of association and expression to avoid the characterization of anticompetitive agreement when calling for a boycott of economic operators. In support of its appeal, the CDF argued that its actions merely reflected the exercise of these fundamental freedoms and pursued the defense of patients' interests, therefore serving a legitimate public-interest objective.[25]

The Court first recalled that a professional organization constitutes an association of undertakings under Article 101 TFEU when it seeks to secure from its members a particular course of conduct in the exercise of their economic activity.[26] In this context, the Court emphasized that the pursuit of public-interest objectives cannot justify conduct that, "*far from merely having the inherent effect of potentially restricting competition by limiting the freedom of certain undertakings, exhibits a degree of harm to competition sufficient to consider that its very object is to prevent, restrict, or distort competition*."[27] The Court also recalled that the freedoms of association and expression are not absolute and may be subject to legal restrictions pursuing legitimate and necessary objectives in a democratic society, including the enforcement of competition law.[28] On this basis, the Court dismissed the CDF's claims in this regard.

[14] *Ibid*., paras. 834, 885.

[15] *Ibid*., para. 835, 885.

[16] *Ibid*., paras. 852.

[17] *Ibid*., para. 42.

[18] *Ibid*, para. 852.

[19] *Ibid*., paras. 876-880.

[20] Paris Court of Appeals, Commercial Chamber, September 14, 2023, no. 20/17860, available here.

[21] *Ibid*., para. 334-335.

[22] *Ibid*., para. 335.

[23] *Ibid*., para. 328.

[24] *Ibid*., para. 307.

[25] *Ibid*., para. 6.

[26] *Ibid*., para. 7, citing the European Court of Justice's ruling of February 19, 2002, *Wouters et al.* (C-309/99), para. 64.

[27] Ruling, para. 8. Free translation.

[28] *Ibid*., paras. 9-10, citing articles 10(2) and 11(2) of the European Convention on Human Rights.

Furthermore, the Court endorsed the Court of Appeals' analysis of the networks' legality, recalling that they had been validated both legislatively[29] and constitutionally,[30] and that nothing indicated that the agreements between dentists and the targeted networks breached professional conduct rules.[31] Additionally, the Court noted that the French *Conseil d'État* had already held that joining dental care networks and, upon request, informing patients of fees charged by network-affiliated dentists did not constitute a breach of professional independence, unlawful advertising, or patient poaching.[32]

Finally, the Court upheld the Court of Appeals' assessment of the facts, noting that, while the CDF supported network agreements negotiated with dentists unions, it opposed arrangements – such as Santéclair's – concluded directly between insurers and dentists without union involvement. The Court further observed that complaints from dentists about patient poaching by dental care networks did not justify anticompetitive conduct, and that no evidence existed of any such systematic patient poaching.[33]

In light of the above, the Court confirmed the Court of Appeals' finding that the CDF's conduct constituted a restriction of competition by object.[34]

Key takeaways

This Ruling reaffirms the applicability of competition law to trade union and professional-body activity. The French *Cour de cassation* made clear that professional bodies are not exempt from the scope of Article 101 TFEU when they seek to influence the market behavior of their members. The Ruling also confirmed that reliance on public-interest objectives cannot justify collective actions – such as calls for a boycott – that amount to a restriction of competition by object.

[29] French Law no. 2014-57 of January 27, 2014.

[30] French Constitutional Council, January 23, 2014, no. 2013-686 DC.

[31] Ruling, para. 14.

[32] *Ibid*., paras. 15-16, citing the French *Conseil d'État*'s ruling no. 189657 of May 4, 2000.

[33] *Ibid*., para. 17.

[34] *Ibid*., para. 18.

CONTACTS

Séverine Schrameck
+33 1 40 74 68 00
sschrameck@cgsh.com

François-Charles Laprévote
+32 2 287 2184
fclaprevote@cgsh.com

Antoine Winckler
+32 2 287 2018
awinckler@cgsh.com

Frédéric de Bure
+33 1 40 74 68 00
fdebure@cgsh.com

Anita Magraner Oliver
+32 2 287 2133
amagraneroliver@cgsh.com

Stéphanie Patureau
+33 1 40 74 68 00
spatureau@cgsh.com

Pauline Heingle
+32 2 287 2077
pheingle@cgsh.com

Louise Caffrey
+33 1 40 74 68 87
lcaffrey@cgsh.com

Hugo Gilli
+33 1 40 74 68 00
hgilli@cgsh.com

Tristan Favaletto
+32 2 287 2031
tfavaletto@cgsh.com

Agne Vaitkeviciute
+32 2 287 2120
avaitkeviciute@cgsh.com

Martha Smyth
+44 20 7614 2341
msmyth@cgsh.com

Taieb Otmani
+33 1 40 74 68 00
totmani@cgsh.com

Elinor du Parc
+32 2 287 2167
eduparc@cgsh.com

Maud Lesaffre
+32 2 287 2025
mlesaffre@cgsh.com

Louis Amory
+32 2 287 2275
lamory@cgsh.com

Solène Robin
+33 1 40 74 68 00
srobin@cgsh.com

Thomas Verheyden
+32 2 287 2063
tverheyden@cgsh.com

Jean Pettiaux
+32 2 287 2180
jpettiaux@cgsh.com

Enzo Saragos
+33 1 40 74 69 74
esaragosa@cgsh.com

Ségolène Allègre
+32 2 287 2171
sallegre@cgsh.com

Chloé Delay
+33 1 40 74 68 00
cdelay@cgsh.com

Manon Videau
+32 2 287 2088
mvideau@cgsh.com

Thomas Harbor
+32 2 287 2204
tharbor@cgsh.com

Camilla Cozzani
+32 2 287 2035
ccozzani@cgsh.com

Augustin Bourleaud
+32 2 287 2087
abourleaud@cgsh.com

François Six
+33 1 40 74 69 43
fsix@cgsh.com

Ambroise Simon
+32 2 287 2042
amsimon@cgsh.com

Paulina Espinoza
+33 1 40 74 68 00
pespinoza@cgsh.com

Clarisse Ouakrat
+33 1 40 74 69 93
couakrat@cgsh.com

Liam Rowley
+32 2 287 2356
lrowley@cgsh.com

Manon Oiknine
+33 1 40 74 68 00
moiknine@cgsh.com

Aleksandra Wierzbicka
+32 2 287 2224
awierzbicka@cgsh.com

260209-04_021126