Kluwer Competition Law Blog

Main Developments in Competition Law and Policy 2022 – France

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For the French Competition Authority, 2022 was a year of renewal as illustrated by the nomination of Benoit Coeuré as President of the Competition Authority to replace Isabelle De Silva and of Thibaud Vergé as Vice-President to replace Emmanuel Combe. On June 2nd, the first published speech of the President was held at the CNIL, the French data protection office, in which the auditors and readers would find it hard to miss the economics vocabulary. Unprecedented, our new President is an economist, after a monopolization of the function by lawyers since the creation of the Conseil de la concurrence in 1953.

It could also be acknowledged that digital markets are more than ever a priority for the French Competition Authority ("FCA"). The President set his priorities for action in a video shortly published after his nomination. Indeed, on July 6th, 2022, a roadmap for 2022/2023 was published, summing up the priorities, and distinguishing them between long-term and short-term challenges. On a long-term basis, the digitalization of economics and climate change are crucial. On a short-term basis, the Covid-19 crisis, the Ukrainian crisis, the increase in inflation, the purchasing power crisis and the high public debt need to be addressed. The roadmap also includes the President's will that the Autorité should take advantage of all the new tools granted by the legislator, among which, the transposition of the ECN+ Directive in May 2021 and the DDADUE law of December 2020.

In an ever-faster economy, with Big Data defined by the four V's (volume, velocity, variety and veracity), it is important to find flexible tools to adapt and process cases more quickly, hence the importance of negotiated procedures: the leniency program, settlements, and commitments. In this perspective, the FCA has made enforceable commitments from Meta on June 16th, 2022 (Decision n° 22-D-12, Autorité de la Concurrence, "ADLC") in the digital advertisement sector and from Google on June 21st, 2022 (Decision n° 22-D-13), following earlier decisions in the press sector (see 2020 main developments in France here).

However, the negotiated procedure might sometimes not be enough. A sanction can be necessary to repress anticompetitive practices and to deter further analogous actions. Furthermore, their benefit is limited to cartel and abuse of dominance cases only and does not concern restrictive practices. In this regard, the Paris Commercial Court condemned Google on March 28th, 2022 (Chamber 15, n° 20/18017655) for having created a significant imbalance in its contracts with developers concerning Google Play.

Nevertheless, judiciary control remains on the FCA decisions and their sufficient motivations or the proportionality of these sanctions. This is illustrated by the two-thirds reduction of the fine imposed by the FCA in 2020 on Apple, Ingram, and Tech Data, by the Paris Court of Appeal on October 6th, 2022 (Pole 5, Chamber 7, Decision n° 20/08582).

Meta, commitments in the online advertising sector

On September 10th, 2019, Criteo, a French advertisement intermediation services company referred to the FCA as an alleged abuse of dominance undertaken by Meta in the online advertising sector.

Indeed, as a social media platform, Meta extracts and collects data from its users that is used to offer personalized advertising. The company developed different services for advertisers such as Ads manager or Application Programming Interfaces ("API") that enable interoperability between different software. In 2015, to help navigate between these different solutions, Meta created Facebook Marketing Partners (now Meta Business Partners, "MBP") that give significant advantages to advertisers but are submitted to strict obligations and selection criteria. This program is now used by hundreds of online advertising businesses, some being direct competitors of Meta, such as Criteo who offer campaigns on social media and in the Open Display.

From 2012 to 2015, until its interruption, Criteo used Facebook Ad Exchange. It then had access, from 2016 to 2018, to Meta's API marketing as well as two specifics API for a few months in 2018, ULB and OLR, thanks to its MBP status. However, this status was revoked by Meta in July 2018 because the company could not reach MPB's quality standards.

It was this removal of this status and the conditions in which it was pronounced that was referred to the FCA. The fulfilment of new criteria in the MPB status ("Optimal DR") was in practice, impossible, despite Criteo's best efforts to be reintegrated into the program. Additionally, after cutting access to its APIs – thus reducing Criteo's ability to provide value-added services – Meta directly solicited Criteo's clients, for its own benefit, while making negative statements at the same time about their rival.

The FCA thus sent preliminary competition concerns to Meta, closed by the agreement to commitments on June 16th, 2022.

The FCA decision

After having observed the crucial importance of online advertising in the Digital Economy –its revenues reached 7.678 billion in 2021 in France, with an increase of 29% over 2 years – the FCA in its preliminary report examined the relevant markets and the alleged anticompetitive practices.

As for relevant markets, the FCA reminded us that Digital economy features must be considered. In fact, its Notice n° 18-A-03 on the use of data in the online advertising sector recalled that "*the markets and the positions of the players must be analyzed by taking into account possible connections between markets or the multi-sided nature of these markets*". In this light, two different markets, but connected, were observed in the end: the social media market and non-

research-related online advertisement.

The preliminary report observed that Meta has significant market power in the social media market, Facebook being a key player, and thus has a dominant position on this relevant market, as well as on the French market for non-research-related online advertisement. Even if a more restrained market would ultimately be chosen, online advertising on social media, this dominant position would be even more distinguishable.

Finally, it was concluded that the conditions of access to APIs were neither transparent nor objective, creating a lack of security and predictability for MBPs. In addition, Meta implemented denigrating behaviours and treated differently MBPs that offered intermediation services competing with its own services. These practices prevented direct competitors of Meta from making optimal use of their technology and predictive bidding. The FCA thus ruled in the preliminary report that they were likely to have had the effect of weakening the competitive pressure from an intermediary that plays a unique role in driving competition.

To answer these competition concerns, Meta submitted different commitments. The Decision n° 22-D-12 accepted three, considered sufficient to reinstall fair conditions of competition, as they were substantial and likely to remove the competition concerns that were identified.

First, a program Meta Business Partner for advertising technology companies ("MBP AdTech"), which includes two different levels of partnership, should be created for five years. The Status ("Statut") partnership should give access to documents, online training, and operational support. The Badge partnership includes technical support and referencing as Meta's partner.

Second, Meta will provide compliance training to its sales team, for five years, regarding their communications, especially towards advertisers.

Thirdly, a new API for advertising service providers, free of charge, "*Recommendation Functionality*", should be developed in the next three years, with objective and transparent criteria. It will allow companies to submit individualized requests for product recommendations on social networks controlled by Meta, or to submit individualized bid adjustments.

A failure to apply any of these commitments, even temporary, during the three- or five-years period, may be sanctioned by a fine of up to 10% of Meta's annual turnover (Article L. 464-3 French Commercial Code, "FCC"). A representative will monitor their implementation. The same path has been followed to close the Google case in the press sector.

Google, yet another busy year

The closure of the press case by the implementation of commitments

On April 9th, 2020, Decision n° 20-MC-01, the FCA issued injunctions "*after having established Google's dominant position on the French Market for general services, [considering] that Google [was] likely to have imposed unfair transaction conditions on publishers and agencies*".

These injunctions were mostly based on the requirement to negotiate in good faith with publishers and agencies, within three months of any request to open negotiations, and based on transparent,

objective, and non-discriminatory criteria. Yet, Google was able to subvert these obligations. First, it automatically offered a global license agreement (Showcase) which deprived publishers and agencies of their ability to negotiate remuneration for current uses of their protected content during the negotiation. Second, Google excluded the remuneration for press content whose titles do not have a "*Political and General Information*" certification and denied press agencies the benefit of remuneration for their content taken over by press publishers.

Finally, the company had an excessively restrictive conception of the notion of "*revenues derived from the display of press content*" as it retained only the advertising revenues of the Google Search pages on which protected content is displayed. The failure to implement these injunctions was hence sanctioned by a 500 million euro fine on July 12th, 2021, in a Decision n° 21-D-17, and an obligation to comply with these interim measures, a decision that was initially filed for appeal by Google.

In parallel with these interim measures, the FCA addressed Google with a preliminary report regarding those practices. In return, Google offered a wide range of different commitments on December 9th, 2021. The FCA made them enforceable in a Decision n° 22-D-13, on June 21st, 2022, putting an end to the press case for the moment, as one of the commitments is to abandon the appeal filed against the 12th of July 2021 decision and the others are considered as likely to remove the competition concerns.

Google committed to extending the benefits of the measures to all agencies and publishers regardless of the "*Political and General Information*" certification or the integration of content to third-party publishers. The company renewed its vow to negotiate in good faith whether it concerns the Showcase service or any other use of protected content. To this end, the transmission of relevant information, a list given by Article L. 218-4 of the French Intellectual Property Code, will be assured by Google, while respecting its business confidentiality. The necessity to transmit an offer in the three months following the opening of negotiations will also be respected. If the parties do not find an agreement, they will be provided with the possibility to go in front of an arbitration court.

In this case, publishers and agencies will have the opportunity to require Google to take care of the arbitrator's fees. Besides, the negotiations should not, in any case, impact the indexation, the ranking, or the presentation of the content on the search pages, nor affect the relations between Google and the publishers or agencies. Finally, any party that has already signed a contract or started negotiating should be able to benefit from these commitments via an amendment to the contract or termination without fees.

Those commitments are binding for a five-year period, renewable by the FCA, based on a motivated decision, for another five years. The implementation will be closely followed and monitored by a representative. A failure to apply any of these obligations may be sanctioned by a fine of up to 10% of the annual turnover as well.

Those two decisions are symptomatic of the importance of negotiated procedures that have been used increasingly since their creation in French and European competition law in the early 2000s.

Nevertheless, competition law is not limited to abuse of dominance and cartel prohibitions. Google was sanctioned by Paris commercial court in 2022 for infringing the French prohibition of

significant imbalance laid down by ex-Article L. 442-6 I 2° FCC (now Article L. 442-1 I 2°).

The sanction of the significant imbalance between Google and developers' rights and obligations

French competition law has numerous prohibitions regarding restrictive business practices between economic partners, Article L. 442-1 I 2° FCC being one. It provides that "*subjecting or attempting to subject the other party to obligations that create a significant imbalance in the rights and obligations of the parties*" will engage the liability of the author of the contract, who will have to compensate for the damage caused.

However, the co-contracting party might sometimes be dependent on the execution of the contract and on the other party. It may be the case in relations between suppliers and central purchasing bodies. In such instances, the victim of the restrictive practice will not ask for compensation. Hence, an autonomous action of the French Minister of Economy was created (Article L. 442-4 FCC), which aims to put an end to these practices. Its constitutionality was declared by a priority preliminary ruling on constitutionality on May 13th, 2011 (Decision n° 2011-126 QPC, Constitutional Council).

The ruling issued by Paris Commercial Court, n° 2018017655, on March 28th, 2022, is the result of the introduction of such an action by the Minister of Economy in the matter of Google Play and the contracts between Google and developers. Indeed, Google is in a position of power, as an unavoidable partner for developers, and uses a standard form agreement. Any attempt to negotiate is "*doomed to failure*", which characterizes the submission of the developers.

Even though the choice of a standard form agreement is not in itself prohibited, the fact that any negotiation is excluded must have as a corollary the absence of clauses creating a significant imbalance between the rights and obligations of the parties. Such is not the case in the contracts between Google and the developers. Indeed, the Minister of Economy pointed out six different sections that created significant imbalance by notably giving Google the right to unilaterally modify the agreement (Section 14.1 of the contract), to unilaterally suspend a developer's application (Section 7.2), to freely use all information provided by developers (Section 5) or to use their trademarks without granting the same right to developers (Section 6), while excluding Google from any liability (Articles 3.6, 4.6, 11 and 12). The absence of reciprocity between Google's rights and those of the developers was confirmed by the ruling.

Consequently, the Paris Commercial Court ordered Google to modify the stipulations of the agreement, to end the significant imbalance, in a period of three months. Additionally, the Court noted the seriousness of the damage caused to the economy, Google being an indispensable partner of application developers who were deprived of any possibility of negotiation, undermining the fairness of their commercial relations. Thus, Google was sanctioned with a civil fine of 2 million euros, in respect of the mandatory principle of proportionality, which was not observed by the FCA in the Apple case, leading to an important reduction of the fine.

The judiciary control: the reduction of the fine in the Apple case

In quite a lengthy decision (216 pages…) the Paris Court of Appeal significantly reduced the fine imposed against Apple, Ingram Micro, and Tech Data by the FCA on March 16th, 2020, in the Decision n° 20-D-04 for the allocation of products and clients, resale price maintenance and abuse of economic dependence in Apple's distribution network. At the time Apple was fined 1.1 billion euros, and "*Tech Data and Ingram Micro were fined €76.1 million and €62.9 million respectively*".

After the Decision n° 20/08582 issued on October 6th, 2022, Apple's fine now amounts to around 371 million euros, Tech Data 24.8 million and Ingram Micro 19.5 million. Three main points can be found to explain this two-thirds reduction.

First, according to the FCA, the practices between Apple and its wholesalers regarding the allocation of products, infringing Article L. 420-1 FCC and Article 101 TFEU took place between 2005 and 2013. Anyhow, the document used by the FCA to prove the starting point of these practices evokes the "*impossibility to allocate products to the accounts*". The Paris Court of Appeal remarked that even if it refers to a second-level allocation, this statement contradicts in any case the fact that the cartel in question began on that date (point 371). There was thus insufficient proof of the beginning of the cartel in 2005. After having examined the elements of proof, the Court concluded that the cartel had *in fine* started on November 25th, 2009. Since the length of the practice is considered when calculating sanctions, as an aggravating or mitigating factor, a cartel that lasted 4 years should logically be less punished than a cartel that lasted 8 years.

Second, the characterization of resale price maintenance was based on circumstantial evidence. Even though it is possible, such evidence needs to be strong enough to prove undeniably the reality of the practice. Yet, the Paris Court of Appeal noted that the body of evidence on which the Authority had based itself did not make it possible to establish unequivocally the existence of a price recommendation of a mandatory nature, Apple's communication being mere invitations and not mandatory recommendations (point 490). Consequently, Article 3 of the FCA 2020 Decision was reversed as it found that resale price maintenance practices were characterized on the market for the retail distribution of computer and consumer electronics products, from October 2012 to April 2017.

Thirdly, sanctions need to obey the principle of proportionality. They must be proportional to the length, gravity, and effects of the practice, accordingly to Article L. 464-2, paragraph 3 FCC. By applying overhead rates of 90% to Apple, 60% to Ingram Micro and 50% to Tech Data, the FCA did not respect this principle. The Court of Appeal retained that an overhead rate of 50%, 10% and 8% would've been sufficient to ensure that the sanctions imposed met the objectives of enforcement and deterrence (points 779, 782 and 785).

As a result, what was called a "*record fine*" at the time by the general press, being the highest pecuniary sanction ever pronounced by the FCA, is hence not such a record anymore… Nevertheless, Apple, unsatisfied by this rather consequent reduction, filed for appeal for the decision to be brought to the French Supreme Court (the "*Cour de cassation*") so the case is not entirely yet done.

This setback, as another decision issued on the same day n° 20/01494 by the Paris Court of Appeal – reducing a sanction pronounced by the FCA from 58 million euros to 31 million for a cartel on the stewed fruits market – is a reminder that, as much as engaging into anticompetitive practices is forbidden for companies, condemning on an insufficient basis or too strongly in spite of the proportionality principle is not authorized as well for the authority.

Anticompetitive practices and control of mergers and acquisition

The fight against anticompetitive practices remains one of the main priorities of the FCA (as the Google and Meta cases are symptomatic) with frequent decisions regarding the prohibition of abuse of dominance or the prohibition of cartels. Nonetheless, one of the focus points this year, with media and political attention, was the merger project between TF1 and M6, two prominent French TV channels, which was finally abandoned much to the surprise of some.

The prohibition of abuse of dominance

France did not bring back the 2022 World Cup home, nor beIn Sports and the Canal + Group won the broadcasting rights of the French football championship, the "*Ligue 1*" for the 2021-2022 and 2023-2024 championships. They referred to the FCA for an alleged abuse of dominance by the "*Professional Football League*" ("LFP") for a differentiated treatment in the attribution of broadcasting rights. LFP sells packages including different games of the season. Mediapro bought packages 1, 2 and 4, while beInSports and Canal + Group bought package 3 in 2018, for the next four years. However, after Mediapro's failure to honour its contract, LFP reallocated rights to Amazon for an amount of 250 million euros per season. According to the plaintiffs, this resulted in a differential treatment since they were paying 332 million euros per season, resulting in an infringement of Article L. 420-2 FCC and Article 102 TFEU.

Even though the LFP does have a dominant position in the market for the purchase of broadcasting rights for League 1 games, it had no obligation to change the terms of the contract with beIn Sports and Canal + Group. The Decision n° 22-D-22, on November 30, 2022, clearly draws this conclusion, the FCA dismissing the referral in its entirety. Indeed, contracts are short-term and regularly renewed by competitive bidding mechanisms. Furthermore, beIn Sports and Canal + were able to submit a joint bid for the acquisitions of the packages, after Mediapro's failure under the same conditions as the other candidates. LFP had no obligation to give preference to their offer. Since there was no discrimination, no abusive practice has been implemented, and thus there was no abuse of dominance.

EDF, on the other hand, relied on anticompetitive practices to develop its marketing of market offers for gas and energy services from 2004 to 2021. The historical company was sanctioned by the FCA, in a Decision n° 22-D-06, on February 22nd, 2022. Under the benefits of the settlement procedure, it was imposed a penalty of 300 million euros, for having abused the means at its disposal in its capacity as an electricity supplier offering regulated electricity tariffs ("TRV"). It used this position to exploit data and commercial infrastructures dedicated to the management of TRV contracts to personalize its services and to convert a large part of its clientele at the end of those contracts. The goal was to maintain its market share in the electricity supply sector and to strengthen its position in related markets, gas, and energy services, creating unfair conditions of competition in those markets.

The prohibition of anticompetitive agreements

No French territory – though how climate appealing it might be – and no sector, regulated or not, can escape the scrutiny of the FCA when it comes to anticompetitive agreements.

On January 13th, 2022, the authority issued two decisions, sanctioning the Court bailiffs' office and some of its members for anticompetitive agreements. The creation of such offices was reformed with the Macron law of 2015 which provides that a map should identify the sectors where it would appear useful to establish bailiffs' offices to strengthen the proximity or the offer of services.

The map should be revised every two years by the Minister of Justice and the Minister of Economy, on the proposal of the FCA. Before the Macron law, as the decision recalls, "*the creation of offices remained marginal*" (§18). The FCA sanctioned the "*Bureau de signification de Paris*" ("BSP") and "*Société civile de moyens des études et groupement des huissiers de justice de Seine-Saint-Denis*" ("SCM 93"), and some of the members of the BSP, as well as all of the members of the SCM 93 and all holding office as Court bailiffs in Paris (75), for adopting non-transparent and discriminatory memberships requirements. The Court bailiffs' offices were demanding the payment of a prohibitive entry free from candidates to memberships, ranging from 100,000 to 300,000€. SCM 93 was also sanctioned by the FCA for a customer allocation clause, inserted in their internal rules of procedure.

The French overseas territories are also under scrutiny. On November 16th, 2022, the FCA fined the "*Association réunionnaise interprofessionnelle de la pêche et de l'aquaculture*" ("ARIPA"), in the fisheries and aquaculture sector. The ARIPA is a professional association representing all business entities, associations, or employer's unions of the entire fish industry value chain in the island "*La Réunion*". The professional association was set up in 2010 and is also in charge of managing the European subsidies dedicated to the fisheries and aquaculture sector in La Réunion, and to redistribute the funds to its members. Formed in 2010, the ARIPA set up price orientation grids in 2011, which were supposed to ensure price stability. The grids set up minimum prices per species and presentation, of which, the non-compliance by its members could lead to sanctions, up to the exclusion of the public aid managed by the association. The ARIPA did not contest having organized an anticompetitive agreement between its members which aimed to fix selling prices and control of production and outlets and benefited from a settlement procedure. The association paid a 60,000€ sanction.

Control of mergers and acquisitions

From a merger perspective, the awaited M6/TF1 deal was a hot topic of debate from the moment Bouygues notified his intention to merge on the 17th of February 2022 to when the request to merge was removed on the 16th of September 2022. [1]

The merger was debated by academics, and practitioners but also in the traditional media, with the intervention of members of the French government. In the context of the digitalization of the economy, with a recent failed attempt to create a European industrial champion with Alstom/Siemens, the public debate was the following: should we allow a media giant in France to counter dominant platforms like Amazon and Netflix in the video streaming market?

While there were competitive risks identified in the television advertising and television service

distribution markets, the answer to our question was in the market definition. Indeed, the merger would have resulted in an ultra-dominant player in the television advertising market, from which, online advertising is differentiated. The television advertising market and the online advertising market (including platforms such as Amazon and Netflix) were found not to belong in a single market as they are not "*sufficiently substitutable from the point of view of the advertisers*".

On September 5th and 6th, the FCA board met in a plenary session, to hear the merging parties and market players, and to exchange on the proposed commitments to overcome the risks of unilateral effects. Following the withdrawal of the merger notification, the President of the FCA was auditioned at the Senate. Senator Lafont introduced the session stressing that the remedies proposed were considered an "*implicit refusal*" for the merging parties.

The politics at stake led the FCA to conduct an "*analysis of unparalleled scope*" which included thousands of pages of responses to questionnaires addressed to the market players affected by the transactions. It also transcribed more than twenty hearings, several economic studies, and two opinions issued by the ARCOM (French regulator for media communication and digital) and by the ARCEP (French regulator for electronic communications, postal services and press distribution), exchanges with both the CNIL, the CNC (National Center for Cinema and the Moving images), the Ministry of Culture and European competition authorities.

The remedies were also at the core of the fine imposed on Altice/SFR in September 2022. The merger was cleared in October 2014, subject to behavioural and structural remedies to overcome the anticompetitive risks identified. Among these, the new entity had to honour a contract with Bouygues Telecom in 2010, which had the aim to deploy the "*fibre*" optic network in 22 municipalities.

In March 2017, the FCA fined the new entity for the amount of 40 M€. In fact, Altice did not commit to honouring the contract with Bouygues Telecom, resulting in a slowdown of the connections after the merger and a deterioration of the maintenance network solutions. The FCA also handed out a new implementation schedule, of which the stages of completion were coupled with progressive penalties. This decision was confirmed by the "*Conseil d'Etat*" on September 28th of the same year. On September 29th, 2022, the FCA fined Altice once again, for an amount of 75 M€ for not properly executing the injunctions. Altice requested the benefit of a settlement procedure and was fined for the clearance of penalty payment and the financial penalty imposed for non-compliance with certain injunctions. At Altice's request, the FCA lifted the subject of the injunction to penalty payments.

Private enforcement

Jump on the bandwagon, or rather, come on board of the trucks? As a reminder, in 2016 the European Commission found that MAN, Volvo/Renault, Daimler, Iveco and DAF, colluded from 1997 to 2011, covering the entire European Economic Area, on truck pricing and on passing on the costs of compliance with stricter emission rules. The European Commission imposed a record fine of 2,93 billion euros.

In Germany, Deutsche Bahn introduced in 2017 a class action against the trucks cartel, joined by

the Armed forces and more than 40 companies. In the Netherlands, in April 2022, the District Court of Amsterdam confirmed the possibility of bundling damages claims by specialized claims entities in one action but also to apply uniformly Dutch law to all those claims. The judgment is a great step forward in damages recovery in both confirming the model of the leading plaintiff, CDC, and in providing practical solutions when facing extended damages in time covering all the EEA. In Spain, we would refer to the paper by Francisco Marcos, covering a thousand judgments issued by Spanish Appeal Courts.

In France, in April 2022, a judgment from the Paris Court of Appeal brought clarity on the access to evidence for the victims in a follow-on cartel trucks case. The plaintiffs required the disclosure of extracts of the confidential version of the Commission's decision. The Paris Commercial Court upheld the claims, which were then overturned in appeal, on the grounds that the plaintiffs, should have justified the use of disclosing an extract of the confidential version of the decision for the evaluation of the damage, though recognizing that the claim was legitimate (for an analysis on the ruling, see here).

In October 2022, a second private enforcement judgement was issued following the cartel trucks case (for the outset of the ruling, see here). Companies in a group active in the construction and public works sectors bought cartelized trucks during the infringement period. The Lyon Commercial Court dismissed the plaintiff, on the ground that the existence nor the quantum of the damage was demonstrated, as well as the causality. The Court recognized the difficulty for the plaintiffs to obtain precise information in order to determine the quantum of the damage which would have justified an investigative measure if the causality would have been demonstrated.

However, on the causal link, the judges were not convinced of the existence of an automatic correlation between gross and net prices on the truck market that was alleged by the plaintiffs. If there is a presumption of negative effects on the market (page 35 of the judgment), the claimants should have still demonstrated the effects of the cartel where the Commission sanctioned a by-object infringement, on gross prices. The judgement relies on the complexity of the truck market and the role of distributors to justify this reasoning. The claims were dismissed and the plaintiffs were condemned to pay the entire costs of proceedings as well as the litigation fees of the defendants (Article 700 of the French Civil Procedure Code) for a total of 200,000€.

Time to wrap up! The priorities set on the roadmap for 2022/2023 are off to a great start. In the digital markets, the Competition Authority continued to scrutiny anticompetitive conduct at the instigation of Isabelle de Silva. With the aim to increase the understanding of the functioning of digital markets, the conclusions on the sector inquiry launched on the cloud market are expected in early 2023.

The Competition Authority also decided to use the tool of sector inquiries in the environment market, set as a priority. The conclusions of the sector inquiry on the circular economy were published in December 2022. Making full use of the toolbox, in October 2022 the Authority rejected for the first time, due to lack of priority, a referral procedure from Culture Presse against Laposte in the sector of the resale of postage stamps for franking. The rejection of the complaint, in a 6-page decision, is the first in the frame of the ECN+ Directive that was transposed into French law with the Ordinance ("*Ordonnance*") 2021-649 on May 26th, 2021. On the private enforcement side, the sky is grey when it comes to follow-on damages actions in the truck cartel case. We hope

that 2023 will bring better days – and mostly better incentives – for the private parties.

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[1] The project to merge was announced in the media by M6 in May 2021.

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