

Kluwer Competition Law Blog

Main Developments in Competition Law and Policy 2024 – France

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2024 marked the 15th anniversary of the *Autorité de la concurrence* – previously the *Conseil de la concurrence* – (**Press release, 12 November 2024**), a record anniversary. Indeed, the French competition authority (“FCA”) has had a “historic year” with “€1.4 billion in fines imposed and a record 295 mergers examined” (**Press Release, 15 January 2025**). As the European Court of Justice (“ECJ”) has set aside the judgment of the General Court of the European Union of 13th July 2022 in the *Illumina/Grail* case (*Illumina/Grail (C 611/22 P and C 625/22 P)*) regarding the control of concentrations below thresholds, national competition authorities must step up efforts to effectively enforce merger control, which has thus been the case for the FCA, with a particularly active year in this regard, as well as in the fight against cartels.

Furthermore, the 2024-2025 roadmap (**2024-2025 Roadmap**) has laid out the main themes that will be at the heart of the FCA’s concerns for the upcoming years. Just like the Commission’s new Communication on the definition of relevant markets (**Communication, 8 February 2024, C/2024/1645**), digital markets and sustainability are increasingly present topics that need to be addressed. Although it has already started to be the case for the past few years, 2024 did not miss the mark, with the release of numerous decisions and opinions.

A record year in merger control

The number of mergers examined by the FCA has been rising steadily in recent years, with a record total of 295 mergers in 2024. Most of these operations, nevertheless, did not raise substantial difficulties, as of these decisions, 97% led to authorizations without commitments (**Press Release, 15 January 2025**).

One sector though has been under close observation, the food retail sector, notably with the acquisition of Casino stores by Intermarché (**FCA, dec. n° 24-DCC-02, 11 January 2024; FCA, dec. n° 24-DCC-255, 28 November 2024**). Indeed, Casino was facing aggravated economic difficulties, and Intermarché thus notified the FCA of its plan to acquire 200 stores on 8 February 2024.

The FCA granted “a derogation from the suspensive effect of merger control” (**Press Release, 19 March 2024; Press Release, 28 November 2024**) to take account of these difficulties, enabling

Intermarché to complete the transaction immediately, while waiting for the final decision. After examining the transaction, the FCA has finally cleared the acquisition but subjected to the divesting of 11 stores to competitors to ensure sufficient alternatives for consumers (**FCA, dec. n° 24-DCC-255, 28 November 2024**).

Other examples (for a full list, e.g.: **Press Release, 15 January 2025**) of transactions authorized but subject to commitments include Canal Plus' takeover of OCS and Orange Studio in the television sector (**FCA, dec. n° 24-DCC-04, 12 January 2024**), the takeover of Ludendo (la Grande Récré) assets by JouéClub in retail for toys (**FCA, dec. n° 24-DCC-129, 19 June 2024**).

An active fight against anticompetitive practices – cartels

“For the fourth time in its history, the *Autorité de la concurrence* topped the symbolic threshold of €1 billion in cumulative fines in a single year. With a total of €1.4 billion, 2024 is the second-highest year in terms of fines imposed, demonstrating the determined and resolute commitment of the *Autorité* to fighting anticompetitive practices” (**Press Release, 15 January 2025**), such as price-fixing agreements, allocation of markets or exchanges of sensitive information between competitors, all of these practices having been sanctioned in 2024. Indeed, most of the decisions aimed cartels, for anticompetitive agreements in diverse sectors: chocolate distribution (**FCA, dec. n° 24-D-02, 6 February 2024**), pre-cast concrete products (**FCA, dec. n° 24-D-06, 21 May 2024**), wine (**FCA, dec. n° 24-D-07, 17 July 2024**), inter-island passenger air transport sector (**FCA, dec. n° 24-D-10, 4 December 2024**), etc. (for a full list, e.g.: **Press Release, 15 January 2025**).

However, possible appeals will have to be looked out for, as the Paris Court of Appeal significantly reduced the 93 million euros fine imposed in 2020 in the cold meat products cartel (**FCA, dec. n° 20-D-09, 16 July 2020**) to 39 million euros, in a 7 March 2024 ruling (n° 20/13093), from 93 million to 39 million euros. Some of the documents produced were declared inadmissible, and the court took account of the economic difficulties of certain companies in its assessment of the fine. It is not the first time that a substantial reduction of fines has taken place these past few years, as it had already been the case in the Apple case in 2022 (**Main Developments in Competition Law and Policy 2022 – France**) for, notably, non-compliance with principles of proportionality and necessity. FCA is hence warned that it needs to closely assess the fines imposed and motivate them, carefully taking into consideration the facts of each case that is presented to them.

Addressing the challenges of digital economy

A fourth decision in the Google press case

Yet another decision in the press case against Google – the fourth in four years. As a reminder, the FCA made enforceable a wide range of commitments on June 21st, 2022, so that publishers and agencies would be treated fairly and in good faith (**Main Developments in Competition Law and Policy 2022 – France; FCA, dec. n° 22-D-13, 21 June 2022**), after having previously imposed interim measures (**FCA, dec. n° 20-MC-01, 9 April 2020**) and sanctioned the non-compliance with these measures (**FCA, dec. n° 21-D-17, 12 July 2021**). Their aim was to restore the balance of power between these actors and Google, by establishing a binding negotiation framework

tailored to the specificities of the press sector.

These commitments were binding for a five-year period, but Google did not comply with them and was thus imposed a €250 million fine on the 15th of March 2024 (**FCA, dec. n° 24-D-03, 15th March 2024**).

Firstly, Google did not comply with its obligation to cooperate with the appointed representative, by failing to provide him with all the information necessary to enable him to carry out his task of monitoring the commitments.

Secondly, Google did not comply with its obligation to negotiate a remuneration offer to publishers and agencies according to transparent, objective and non-discriminatory criteria and to provide for the approved framework by not giving out the necessary information to them. Indeed, Google maintained an informational asymmetry by giving incomplete and opaque notes. Furthermore, it has reduced the remuneration base for publishers and press agencies by underestimating the indirect revenues resulting from the attractiveness of Google's services through the display of protected press content and by excluding any form of remuneration for the display of press articles.

Lastly, Google failed to comply with the commitments regarding the launch of its Artificial Intelligence ("AI") service, Bard (ex-Gemini). As a matter of fact, Google did not respect the transparency obligation, by keeping their co-contractors in the dark regarding the use of their content by Bard and did not propose any solution for them to oppose this use (the "opt-out" solution). Hence, Google has failed to comply with the commitment regarding the obligation to ensure the neutrality of negotiations, risks posed by AI being increasingly under scrutiny, as highlighted by an FCA opinion from June 28, 2024 (**FCA, opinion 24-A-05, 28 June 2024**).

Measuring Artificial Intelligence's competitive risks: the FCA opinion

On 28 June 2024, the ADLC issued its opinion on the competitive functioning of the generative artificial intelligence ("GAI") sector (**FCA, opinion 24-A-05, 28 June 2024**). When it comes to modelling GAI, there are two essential phases: training, which refers to the process of initially learning the model, and inference, which corresponds to using the trained model to create content (e.g. ChatGPT). The report first identifies the several players that have different roles in the AI value chain.

The first group includes the major digital players (Big Tech and Nvidia; **E.g., para. 44-67**) as well as developers (Anthropic, Mistral AI, Open AI; **E.g., para. 68-70**) who have links and/or partnerships with Big Tech (Google with Anthropic and Microsoft with Open AI; **E.g., para. 71-74**). Second upstream are suppliers of computer components (Nvidia; **E.g., para. 76-80**) or providers of digital cloud services (Amazon, Microsoft; **E.g., para. 81-83**). Lastly, the last downstream companies use GAI to market new services (ChatGPT) or incorporate it into their existing services (Microsoft with Bing; **E.g., para. 90-94**).

The FCA identifies two major advantages for companies induced by using AI: the implementation of barriers to market entry and the position of certain players on other markets in connection with AI (**E.g., para. 122& f.**). These advantages may lead to eight competitive risks, for which the FCA puts forward proposals.

The first risk consists of abuse of computer components requiring the use of specialised processors (**E.g., para. 241-244**). To remedy this, the FCA recommends democratising the supercomputer sector through investment (Proposal n° 5; **E.g., para. 352**) and opening up and using public supercomputer resources in a non-discriminatory way to businesses in return for payment, while retaining priority for research, particularly academic research (Proposal n° 6; **E.g., para 353**). Finally, with regard to GAI models trained on public supercomputers, criteria for openness should be set in this area, while maintaining a link with the AI Act (Proposal n° 7; **E.g., para. 354**).

The second risk under consideration is the lock-in by major cloud service providers (**E.g., para 245-252**), closely related to data access risks (**E.g., para. 253-264**). The FCA hence recommends that data's economic value should be taken into account by the rights holders (Proposal n° 8; **E.g., para. 359**) and that the data should be made more readily available for training and fine-tuning of IAG models (Proposal n° 9; **E.g., para. 361**).

Other risks are related to access, first to skilled labour (**E.g., para. 265-277**), and second to funding, as open access model requires significant funding (**E.g., para. 278-282**). Indeed, regarding the position of certain players on markets linked to GAI, this can lead several types of risk, and particularly anticompetitive practices. As a matter of fact, there are risks associated with the presence of companies in several distinct markets, stemming from the advantages derived from their vertical and conglomerate integration, as well as from privileged access to inputs (**E.g., para. 283-289**), notably regarding minority shareholdings and partnerships of digital giants (**E.g., para. 292-294**) which can cause risk of collusion between companies in the sector. In this matter, the Commission could request information from gatekeepers on minority shareholdings held in the same sector of activity in accordance with Article 14 of the DMA on the obligation to report concentrations (Proposal n° 10; **E.g., para. 364**).

Lastly, the FCA has put forward three proposals concerning the relationship with other regulations. Under the DMA, the Commission could designate companies providing Model-as-a-Service (“MaaS”) as gatekeepers (Proposal n° 1; **E.g., para. 334**). The DGCCRF – the French administrative authority in charge of monitoring Competition, Consumer Affairs and Fraud Control – should closely monitor the use of assets resulting from the SREN law (**Law n° 2024-449, 21 May 2024**) in the field of AI (Proposal n° 2; **E.g., para. 336**). As for the AI Office and the competent authority in France, they should ensure that the regulation does not act as a brake on the emergence or expansion of smaller operators, and that the largest players in the sector do not misuse the text to their advantage (Proposal n° 3; **E.g., para. 337**). The Authority also recommends that competition law tools be used to monitor and apprehend IAG (Proposal n° 4; **E.g., para. 348**).

In conclusion, “The *Autorité* will [...] continue to explore the use of artificial intelligence to support its own procedures, in cooperation with the sector-specific authorities, administrations, and courts concerned” (**2024-2025 Roadmap**), such as the CNIL. Indeed, the French data protection authority works closely with the FCA, as illustrated by a September 2024 recommendation on mobile applications by the CNIL (**Press Release, 24 September 2024**), inspired by a previous FCA opinion (**FCA, opinion 23-A-20, 4 December 2023**). On another topic, the FCA also worked hand in hand with the French energy regulator (CRE) and the French transport regulator (ART), to promote sustainability.

Promoting sustainability for the future

The FCA has been involved in supporting the ecological transition for the past few years, 2024 marking a big step in that direction, notably with the organisation of a workshop on “The Role of Competition in Supporting Sustainable Development Goals” on the 2^d of July 2024 (**ICN 2024 Workshop on sustainability**).

Moreover, after having launched a public inquiry on the competitive dynamics of the electrical vehicle charging infrastructure sector in 2023 (**Main Developments in Competition Law and Policy 2023 – France; E-mobility : FCA questionnaires**), the FCA finally issued its opinion on 30 May 2024 (**Press Release, 11 June 2024; FCA, opinion 24-A-03, 30 May 2024**), inspired by the 81 answers and the collaboration with the French energy and transports regulators (CRE & ART). The framework laid out by the opinion aims to offer a coherent and balanced approach to the electrical vehicle charging infrastructure sector helping achieve climate neutrality by 2050.

In the opinion, the FCA examined publicly accessible charging infrastructures, highlighting the diversity of stakeholders involved and the evolving business models: charging operators (“CO”), interoperability platforms and mobility service providers (“MSP”) in interaction with the end-users. This diversity sometimes create regional disparities that should be tackled “by creating an inter-ministerial body to ensure coordination between the different owners, and planning and monitoring of deployment at national level” (**Press Release, 11 June 2024**).

Furthermore, the FCA underlined the opacity of prices charges and thus advocates for a greater pricing transparency politic by requiring the adoption of a kilowatt-hour pricing model to help consumers compare costs more easily as well as the display of information transparently, distinguishing on the MSP’ websites or any other commercial medium between the price per kWh, per charging station and any other applicable fees (**Press Release, 11 June 2024**).

Regarding interoperability, it is advised to ensure compatibility between collective charging infrastructures and individual charging solutions to prevent user captivity and promote fair competition. The FCA also emphasized the need to monitor the Distribution Network Operator’s or the CO’s involvement in the sector, particularly regarding the promotion of its own solutions and potential misuse of privileged information and warned against the excessive use of exclusivity clauses.

These potential competitive risks thus require vigilance to maintain competition on the merits and foster innovation, and to help consumers change habits towards a greener energy economy.

On this topic, it is also worth noting that the FCA issued a first informal guidance on sustainability in the animal nutrition sector following the request of two professional organisations (**Press Release, 2 July 2024 ; FCA, Informal guidance 24-DD-01, 14 June 2024**), a second one having been issued this February on the creation of a system for the collective financing of the additional costs and risks associated with the agro-ecological transition (**Press Release, 5 February 2025; FCA, Informal guidance 25-DD-01, 25 January 2025**).

Conclusion

As the 2024-2025 Roadmap points out, “the French and European economies face a number of challenges: consolidating growth, reindustrialising, achieving the energy transition, and asserting

sovereignty in an increasingly fragmented world. These challenges are made all the more urgent by the fact the solutions are long term” (**2024-2025 Roadmap**). The FCA continues to act accordingly, using both its repressive powers with the sanction of cartels, the non-compliance of commitments and other anticompetitive practices, its surveillance tools and the control of acquisitions, as well as its educational and investigative role, with the issuance of multiples opinions and informal guidance to move in the right direction in 2025 and the following years.

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A graphic for a survey report. It features a dark background with a glowing blue and red digital circuit pattern. In the center is a gavel resting on a stack of coins, with a glowing padlock icon above it. The text is white and blue. The title is "2024 Future Ready Lawyer Survey Report". Below it is the main headline "Legal innovation: Seizing the future or falling behind?". A blue button with white text says "Download your free copy →". The Wolters Kluwer logo is at the bottom left. The Future Ready logo and the word "LAWYER" are in a white box at the bottom right.

2024 Future Ready Lawyer Survey Report

Legal innovation: Seizing the future or falling behind?

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