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Insights

MERGER CONTROL AND COMPETITION LAW: NOVEMBER 2025 UPDATES

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The French Competition Authority ("FCA") has just published two particularly interesting decisions:

- **The "Doctolib" decision of 6 November 2025, in which (i) it sanctions for the first time, based on an abuse of dominant position, a "*killer acquisition*" undertaken in 2018, and (ii) it relies on analyses drafted by the legal department when assessing an exclusivity clause.**
- **The "Groupe Parfait" decision of 3 November 2025, which imposed a fine for failure to comply with the commitments made in the context of an acquisition authorised in 2022, including failure to cooperate with the trustee responsible for monitoring the commitments**.

Our Antitrust, Distribution & Foreign Investments team highlights the main takeaways of these two decisions.

DOCTOLIB CASE : EX-POST REVIEW OF A BELOW-THRESHOLD ACQUISITION AND ANALYSIS OF IN-HOUSE LEGAL ASSESSMENTS

The FCA confirmed that Doctolib had a **dominant position** in (i) the market for online medical appointment booking services and (ii) the market for remote medical consultation technology solutions.

The FCA then found several abuses and imposed a total fine of €4.6 million on Doctolib:

(i) Exclusivity: The FCA sanctioned Doctolib for imposing an exclusivity clause in its subscription contracts with healthcare professionals, which prohibited or discouraged them from using competing services. According to the FCA, this exclusivity limited the choice of healthcare professionals and prevented the development of competing operators.

In this regard, the FCA relies on internal documents from the management declaring that Doctolib should become "*an essential, strategic interface between doctor and patient, in order to lock in both parties*" and to leave "*no medical practice to competition*".

Most importantly, **it draws on exchanges with the legal department, which had flagged the risks involved**: "*this clause must be removed as it 1) weakens the entire contract (it is illegal under competition law*)". According to the FCA, Doctolib was therefore "*aware of the legal risk associated with the exclusivity clause* [...] *However, not only was this clause maintained [...] at the express request of its management, but* [...] *it was amplified with the addition of the anti-allotment clause*[1], *in order to reinforce the deterrent effect*."

Using such incriminating evidence raises concerns and reopens the discussion on whether legal privilege should be extended to in-house lawyers. With companies facing extensive compliance obligations, how can legal departments fulfil their role if they cannot flag potential risks to the management?

(ii) Tying practices: The FCA sanctioned tying practices, requiring Doctolib Teleconsultation subscribers to have a prior subscription to Doctolib Patient (for making appointments).

The FCA considers that this tying practice prevented the use of competing solutions and thus strengthened Doctolib's dominant position in the market for online medical appointment booking services.

(iii) Predatory acquisition: the FCA fined Doctolib for acquiring its "main competitor", MonDocteur, in July 2018. This is the first time an acquisition below thresholds has been sanctioned *ex post* based on an abuse of dominant position. In March 2023, the CJEU issued a landmark decision in the Towercast/TDF preliminary ruling, holding that a transaction falling below merger control thresholds may nonetheless be assessed by a national competition authority as an anti-competitive practice.

The FCA first applied this case law in its "meat-cutting" decision of 2 May 2024. The practices were assessed under the rules on anti-competitive agreements. However, no infringement was ultimately established due to lack of evidence.

The Doctolib decision therefore constitutes the first *ex post* sanction of a non-notifiable concentration based on an abuse of dominant position. The FCA considered that the purpose of the acquisition of MonDocteur was (i) to evict its main competitor and foreclose the market – the FCA uses in this regard internal documents, instant messaging conversations, and presentations prepared by a consulting firm – and (ii) to enable Doctolib to increase prices. The FCA also found that this acquisition enabled Doctolib to gain 10,000 new healthcare professionals and to significantly and sustainably increase its market share.

The fine imposed – €50,000 – is nevertheless relatively low, as the FCA took into account the fact that the *Towercast* case had been established well after the acquisition of MonDocteur and due to the legal uncertainty that prevailed prior to that decision.

PRACTICAL ADVICE – INCREASED VIGILANCE FOR COMPANIES

The Towercast ruling is a landmark judgement, and, like the FCA, other national authorities have started investigating completed transactions.

The Belgian competition authority has already opened two investigations based on *Towercast* in 2023 and early 2025. As the investigations were conducted before the transactions were completed (unlike the Doctolib case, which was issued seven years after the transaction), the proceedings were closed following the parties' abandonment of the transactions. More recently, on 12 November, the Belgian competition authority opened an investigation into Live Nation's acquisition of the Pukkelpop festival.

Other authorities, such as those in the Netherlands[2] and Sweden[3], have also opened investigations into transactions below thresholds.

Other countries may follow the same path.

In addition, **there has been an increase of *call-in* mechanisms**, allowing authorities to review transactions below thresholds within a certain period after the transaction has been completed. Several Member States have already adopted these mechanisms, and France is currently reviewing a similar initiative.

These new possibilities create legal uncertainty, which companies must take into account when considering acquisitions, both as regards feasibility and timing. Furthermore, while certain sectors (technology, pharmaceuticals, etc.) appear to be particularly targeted, no sector is immune from *ex post* reviews by the authorities. Increased vigilance is therefore essential for all companies.

THE FCA IMPOSED FINES FOR SEVERAL BREACHES OF COMMITMENTS, INCLUDING, FOR THE FIRST TIME, A FAILURE TO COOPERATE WITH THE TRUSTEE RESPONSIBLE FOR MONITORING THE DIVESTITURE COMMITMENT

Background of the decision : On 22 December 2022, the FCA authorised the acquisition by the Parfait group of Géant Casino hypermarket and La Batelière shopping centre in Martinique, subject to several commitments, including the sale of the hypermarket's business. This commitment had to be fulfilled within nine months and was accompanied by an obligation to preserve the value of the assets and to cooperate with the trustee responsible for monitoring and implementing it. This clearance was issued after the Parfait group obtained a derogation from the suspensory effect of merger control in April 2020.

Failure to comply with the commitments: The Parfait group has been imposed a fine of €7.6 million for breaching these commitments. More specifically:

(i) A failure to comply with its divestiture commitment[4], on the grounds that the sale did not take place until 9 September 2025, almost two years after the initial deadline. The Parfait group had failed to request an extension of the deadline, even though several buyers had been approved by

the FCA, including within the initial nine-month deadline. The FCA also found that the Parfait group had breached its obligation to inform potential buyers by delaying or even failing to provide them with "*essential information and documents*" (such as information concerning the loss of the commercial operating licence for the target hypermarket).

In this regard, the FCA rejected the justifications put forward by the Parfait group, based in particular on the difficulty of finding a buyer, considering that in any event "*the parties cannot, at the stage of monitoring the implementation of the commitments made to the Authority, rely on the impossibility or difficulty of complying with their own commitments*".

(ii) A failure to preserve the value of the business, in particular due to the fact that (**i**) the commercial operating licence expired in 2023 after three consecutive years of non-use, (**ii**) several physical assets (trolleys, sinks, cash registers) had disappeared or could not be used, (**iii**) human resources had been significantly reduced, (**iv**) the commercial characteristics of the asset had declined (loss of the ability to offer certain services (fishmonger, caterer) and deterioration in cleaning and security services) and (**v**) deterioration in the physical condition of the asset, resulting, according to the FCA, from a lack of investment by the Parfait group from 2021 onwards.

This raised the question of whether compliance with the obligation to preserve the value of the business imposed on the Parfait group should be assessed by reference to (**i**) its condition on the date the commitments were entered into (December 2022), or (**ii**) its condition on the date on which the derogation from the suspensive effect was obtained (April 2020). The FCA held that the obligation to preserve the assets must relate, to preserve the commitment's objective, to their state "as *they were at the time of their takeover by the Parfait group on 30 April 2020*".

(iii) A breach of the commitment to cooperate with the trustee, both in relation to its role during the commitment monitoring phase and in its mandate to sell the assets. In this regard, it notes several breaches by the Parfait group, including (**i**) a late appointment (2 months and 22 days), (**ii**) a lack of cooperation and responsiveness in dealing with the trustee's requests, illustrated by the latter's need to repeat numerous requests for documents, (**iii**) the failure to communicate information regarding the issue of commercial operating authorisation, *"which was likely to directly affect the sale of the business*", (**iv**) the communication of numerous unsorted items, "*making their analysis long and tedious*", and (**v**) the exclusion of the agent from negotiations concerning the real estate component, which was not included in the scope of the commitments but which, according to the FCA, was "*essential*" for the trustee to effectively carry out its mission (since the purchasers had made the takeover of the target hypermarket conditional on the takeover of the real estate).

Finally, in response to the Parfait group's argument that the trustee himself had failed to fulfil its commitments, the FCA replied that (**i**) the criticisms made were unfounded but, above all, that (**ii**) "*the agent's shortcomings, even if proven* [...] *have no effect on the responsibility of the Parfait group, which was solely responsible for implementing the commitments and which was required to contact the Authority to report any difficulties identified in their monitoring*".

The FCA thus imposed **three separate fines** for each commitment, considering that each of them could be regarded as separate and pursuing different objectives: (**i**) €4.5 million for breach of the divestiture commitment, (**ii**) €2.5 million for failure to preserve the value of the hypermarket and shopping centre, and (**iii**) €600,000 for failure to cooperate with the trustee. It emphasised the particularly serious nature of this type of infringement, especially since the group had benefited from a derogation from the suspensive effect of merger control.

This decision is a reminder of the strict approach adopted by the FCA in monitoring commitments, regardless of any complications that may arise in their implementation.

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[1] The FCA states that the term "allotment" refers to a situation in which a customer uses both a Doctolib service and a service provided by another operator at the same time.

[2] In March 2025, the Dutch competition authority opened an investigation into the cash-in-transit sector , on the basis of provisions concerning abuse of a dominant position.

[3] In August 2024, the Swedish competition authority also opened an investigation on the basis of provisions concerning abuse of a dominant position in the media monitoring sector, but this investigation was abandoned in November 2025.

[4] This is the second fine imposed by the FCA for this type of infringement, the first having been imposed when Fnac acquired sole control of Darty, decision 18-D-16 of 27 July 2018.

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MEET THE TEAM

Julie Catala Marty

Co-Author, Paris

julie.catalamarty@bclplaw.com
+33 (0) 1 44 17 77 95

Rémi Beydon

Co-Author, Paris

remi.beydon@bclplaw.com
+33 (0) 1 44 17 77 21

Anne-Elisabeth Herrada

Co-Author, Paris

anneelisabeth.herrada@bclplaw.com
+33 (0) 1 44 17 77 49