Legal 500
Country Comparative Guides 2024

France
Merger Control

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This country-specific Q&A provides an overview of merger control laws and regulations applicable in France.

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France: Merger Control

1. Overview

Transactions which meet the applicable turnover thresholds in France, while remaining below the thresholds triggering the European Commission's jurisdiction, are subject to mandatory notification and cannot be closed until clearance is granted.

The independent administrative authority in charge of merger control in France is the Competition Authority ("FCA"). It has jurisdiction to receive and review the notifications and then to issue a decision in order to clear (with or without remedies) or prohibit the proposed concentration.

However, the French Minister of Economy holds residual powers in specific circumstances to overturn the decisions rendered by the FCA.

2. Is notification compulsory or voluntary?

Pursuant to Article L.430-3 of the French Commercial Code, notification is compulsory if the conditions for a notification to the FCA are met i.e. if the relevant turnover thresholds are met.

Filing is mandatory and no exceptions are provided for by the law.

3. Is there a prohibition on completion or closing prior to clearance by the relevant authority? Are there possibilities for derogation or carve out?

Completion or closing of a transaction subject to French merger control requirements prior to the issuance of a clearance decision by the FCA is prohibited. The notification is mandatory and entails a stand-still obligation pending the merger control review.

French legislation provides that a derogation may be requested before the FCA (either before or after the submission of the notification form) by the notifying partie(s) in order to proceed with the completion of all or part of the transaction before clearance (Article L. 430-4 §2 and 3 of the French Commercial Code). However, such derogations, which have to be necessary and duly justified, are generally granted by the FCA only in exceptional and limited circumstances, essentially in cases where the target is subject to insolvency proceedings or financial distress.

This exemption from the stand-still obligation may be granted subject to conditions and is void if a complete notification form has not been filled with the FCA within three months from the date of the transaction's closing or completion. The granting of a derogation is without prejudice to the power of the FCA to adopt a prohibition decision or a clearance decision with commitments. In 2020, the Authority notably granted a derogation in the *Mobilux / Conforama* case. the FCA then opened a Phase II investigation in 2021 and ultimately cleared the transaction without remedies in 2022, after applying for the first time the failing firm exception.

This derogation mechanism has been widely used in 2020/2021 in the context of the Covid-19 crisis. As an example, in 2020 alone, the FCA granted 27 derogations, 7 of which concerned the clothing and footwear sector.

However, the FCA is now considering to tighten even more the conditions for granting exemptions, notably by following the practice of the European Commission to require the appointment of a trustee during the entire review process of the transaction. The FCA could also require that voting rights are not exercised until the final authorization decision has been adopted.

The possibility of a carve out (distinct local completion of a merger to avoid delaying global completion of a transaction) is not provided for by the French legislation.

4. What types of transaction are notifiable or reviewable and what is the test for control?

Pursuant to Article L.430-1 of the French Commercial Code, the French merger control regime applies to "concentrations", i.e. situations where either:

- two or more formerly independent undertakings merge; or
- one or several persons or undertakings acquire, directly or indirectly, control of all or part of one or several other undertakings, whether by (i) the acquisition of securities or assets, (ii) a contract or (iii) any other means.

Joint ventures are also subject to French merger control

(see question 9).

The concept of "control" under French legislation is consistent with the definition set out in the EU Merger Regulation ("EUMR"): control arises from rights, contracts or any other means that grant one (sole control) or several persons or undertakings (joint control) the ability to exert a decisive influence over the conduct of another undertaking on a lasting basis.

5. In which circumstances is an acquisition of a minority interest notifiable or reviewable?

An acquisition of a minority interest is notifiable as long as it qualifies as a "merger", i.e. if it leads to a change of control (see question 4 above) over the considered undertaking, provided that the French thresholds are met.

Acquisitions of non-controlling minority interests are not subject to merger control.

6. What are the jurisdictional thresholds (turnover, assets, market share and/or local presence)? Are there different thresholds that apply to particular sectors?

The French merger control regime provides three alternative sets of turnover-based thresholds: in addition to general turnover thresholds, lower thresholds apply specifically (i) to transactions in the retail sector in France and (ii) to transactions in the French overseas territories.

General thresholds (Article L.430-2 I of the French Commercial Code) applying to all transactions

Firstly, a concentration must be notified to the FCA if the following cumulative thresholds are met:

- the combined worldwide turnover of all the undertakings concerned exceeds €150 million; and
- the turnover achieved in France by each of at least two of the undertakings concerned exceeds €50 million; and
- the operation is not caught by the thresholds of the EUMR.

Specific thresholds for transactions in the retail sector (Article L.430-2 II of the French Commercial Code)

Secondly, a concentration involving at least two undertakings operating retail premises in France must be notified to the FCA if the following cumulative thresholds are met:

- the combined worldwide turnover of all the undertakings concerned exceeds €75 million; and
- the turnover achieved in the retail trade sector in France by each of at least two of the undertakings concerned exceeds €15 million; and
- the operation is not caught by the thresholds of the EUMR.

Specific thresholds for transactions in the French overseas territories (Article L.430-2 III of the French Commercial Code)

Thirdly, when at least one of the undertakings operates in one or more of the French overseas territories (Guadeloupe, Martinique, French Guiana, la Réunion, Mayotte, Wallis-et-Futuna, Saint-Pierre-et-Miquelon, Saint-Martin and Saint-Barthélemy), the concentration must be notified to the FCA if the following cumulative thresholds are met :

- the combined worldwide turnover of all the undertakings concerned exceeds €75 million; and
- the turnover achieved by each of at least two of the undertakings concerned exceeds €15 million in at least one of the French overseas territories (or €5 million for the retail trade sector), being noted that such threshold does not need to be reached by all the undertakings concerned in the same French overseas territory; and
- the operation is not caught by the thresholds of the EUMR.

7. How are turnover, assets and/or market shares valued or determined for the purposes of jurisdictional thresholds?

Turnover calculations under French law are fully consistent with the principles set forth in the EUMR. The French Commercial Code expressly refers to Article 5 of the EUMR for the determination of the relevant turnover, which corresponds to the pre-tax turnover generated through the sale of goods or provision of services to third parties (intra-group sales are not taken into account) during the last audited financial year.

As far as acquisitions are considered, the relevant parties whose turnovers are to be taken into consideration are the acquirer(s) of exclusive / joint control and the target.

Regarding mergers, the turnovers of the merging entities are relevant.

The turnover of the acquiring or merging entity(ies) is calculated by taking into account the whole group to which the entity(ies) respectively belongs to, i.e. without being limited to the legal entity(ies) directly involved in the transaction or the economic sector(s) relevant to the transaction. With respect to the target, only the turnover generated by the acquired scope is taken into account (the turnover generated by the group divesting the target is thus not relevant).

The geographic allocation of the turnover is determined, as a matter of principle[1], by the location of the customers of products sold and services provided by the undertakings concerned, irrespective of said entities nationality or location, and whether or not they have assets or a structure in France, provided that they generate a turnover therein.

Footnote(s):

[1] For credit and other financial institutions, the turnover is to be geographically allocated to the branch or division which collects this income

8. Is there a particular exchange rate required to be used to convert turnover and asset values?

French merger control rules do not provide for a specific exchange rate.

In practice, it is usually referred to the average rate for the year concerned, published in the Monthly Bulletin of the European Central Bank (ECB).

9. In which circumstances are joint ventures notifiable or reviewable (both new joint ventures and acquisitions of joint control over an existing business)?

Both new joint ventures and acquisitions of joint control over an existing business are notifiable if they result in a change of control over a "full-function" joint venture, i.e. an entity that performs all the functions of an autonomous economic entity on a lasting basis, provided that the thresholds are met.

Indeed, the French Guidelines specify that the "creation" of a joint-venture may result from:

- The creation of a new structure;
- The contribution of assets previously held by the parent companies individually to a pre-existing joint venture, when such contribution enables the joint-venture to become full-function;
- The acquisition by one or several new parent company(ies) of a joint control over a preexisting joint-venture.

The concept of full-functionality is in general consistent with the EU merger control rules and depends on whether the resources of the joint-venture (in staff, budget, tangible or intangible assets, etc.) are sufficient to perform all the functions generally performed by the other companies operating on the market. It is notably crucial in this respect to assess whether the joint-venture may have access to the market (i.e. if it can achieve sales to third parties).

10. Are there any circumstances in which different stages of the same, overall transaction are separately notifiable or reviewable?

Where an overall transaction is carried out in stages through a series of subsequent transactions, the FCA considers, as under Article 5.2 of the EUMR, that two or more transactions taking place within a two-year period between the same parties is to be treated as one and the same concentration.

More generally, the Guidelines provide that multiple transactions constitute a single concentration as long as they are interdependent, in the sense that one transaction would not have been carried out without the other. These "interdependent transactions" must be treated as a single concentration if (i) they are subject to a conditional relationship (i.e. they are linked by a *de jure* or *de facto* condition) and (ii) control is acquired ultimately by the same undertakings.

Should the above mentioned conditions not be met, each transaction must be filed with the FCA separately (if the French merger control thresholds are met).

11. How do the thresholds apply to "foreign-to-foreign" mergers and transactions involving a target /joint venture with no nexus to the jurisdiction?

There are no specific rules related to local nexus. Indeed, any "foreign-to-foreign" merger which meets the applicable turnover thresholds has to be notified to the FCA, even if the transaction has no impact on the French

territory, and it can only be completed after a clearance decision is issued.

12. For voluntary filing regimes (only), are there any factors not related to competition that might influence the decision as to whether or not notify?

N/A

13. What is the substantive test applied by the relevant authority to assess whether or not to clear the merger, or to clear it subject to remedies? Are there different tests that apply to particular sectors?

The FCA examines whether the contemplated transaction significantly lessens competition. In this respect, Article L.430-6 of the French Commercial Code provides that the FCA assesses if a transaction may harm competition, notably :

- by creating or strengthening an individual or collective dominant position; or
- by creating or strengthening a situation of buying power which places suppliers in a situation of economic dependency.

The market shares of the parties (and their competitors) play a predominant role in the competitive assessment of the transaction, but the FCA also takes into consideration other indicators, such as the importance of barriers to entry, market structure and evolution (both of supply and demand), closeness of competing products/services, etc. The FCA also takes into account the results of the market tests launched as the case may be.

Both unilateral and coordinated effects (horizontal, vertical and/or conglomerate) on the various markets impacted by the transaction are assessed by the FCA, as well as the efficiency gains expected thereon.

There are no tests specific to given sectors, but the FCA takes into consideration the specificities of the sectors concerned, especially for regulated sectors such as telecoms, medias or energy, if needed after having consulted other independent administrative authorities.

14. Are factors unrelated to competition relevant?

In principle, factors unrelated to competition are not relevant to the FCA's merger control assessment.

This being said, following a Phase II (in depth-review) decision of the FCA, the Ministry of Economy has a right of higher authority to review the case and issue a decision on the contemplated transaction in consideration of reasons of general interest other than protecting competition, which as the case may be can offset the anticompetitive effects resulting from the transaction (*e.g* safeguarding employment in France, supporting industrial development or strategic interests, supporting or safeguarding competitiveness of a business in a context of international competition).

In the *Financière Cofigeo/groupe Agripole* case from 2018, the Minister of Economy used its review power for the first time and overturned the decision initially rendered by the FCA (clearance subject to divestment commitments) by clearing the transaction without any commitment. There are no other cases since then where the Minister of Economy used this power.

15. Are ancillary restraints covered by the authority's clearance decision?

The FCA's clearance decision may cover ancillary restraints provided that the restrictions are both necessary and directly related to the completion of the concentration. In this respect, while the notifying parties are not required to disclose such ancillary restraints to the FCA, they may bring them to the FCA's attention if they have concerns as to the compliance of such restraints with competition law.

16. For mandatory filing regimes, is there a statutory deadline for notification of the transaction?

There is no statutory deadline for the notification of a transaction.

17. What is the earliest time or stage in the transaction at which a notification can be made?

Pursuant to Article L.430-3 of the French Commercial Code, the formal notification may be made at any time once the parties can evidence a sufficiently mature project.

The parties generally proceed to the formal filing after transactional agreements (*e.g.* share purchase agreement) are signed but they may file the notification

even before, as long as they are able to evidence that the transaction is at a sufficiently advanced stage, for instance on the basis of an executed letter of intent, memorandum of understanding, term sheet or put option agreement.

18. Is it usual practice to engage in pre-notification discussions with the authority? If so, how long do these typically take?

It is customary in France to engage in pre-notification discussions with the FCA, generally on the basis of a draft notification form. Such pre-fillings allow the appointed case-handler to ensure that the file is complete, and if needed, to request further information or clarifications from the parties. Such process is recommended to troubleshoot issues that may arise during the formal review process.

Such informal phase, which is strictly confidential, has no binding timetable but in practice it often lasts 3/5 weeks for "simple" cases (i.e. which do not raise competition issues) and up to several months for more complex cases.

Please also note that the 2020 Guidelines invite the notifying party to request the allocation of a case-team prior to the submission of the draft notification form. This procedure is inspired by the "*case team allocation request*" mechanism before the European Commission and allows the FCA to anticipate the forthcoming notification of a transaction.

In June 2024, the FCA announced in a conference with the French association of competition lawyers that pre-notifications would no longer be considered necessary for transactions falling within the scope of the simplified procedure. Such transactions should thus be directly notified to the FCA subject to giving notice of the arrival of the file a few days before its submission.

19. What is the basic timetable for the authority's review?

The basic clearance timetable for the FCA's review is as follows:

Phase I (Article L.430-5 of the French Commercial Code)

Within 25 working days from the date of receipt of a notification form considered complete (as assessed by the FCA[2]), the FCA may:

- Issue a reasoned decision that the transaction does not fall within the scope of French merger control;
- Issue a reasoned decision clearing the transaction, with or without remedies; or
- Initiate an in-depth review of the transaction if serious doubts remain as to the anticompetitive effects thereof.

This period of 25 working days may be extended during Phase I for an additional 15 working days if the notifying parties submit commitments to remedy potential competition issues.

The FCA can also suspend the time limits of the phase I review, in two different cases:

- At the parties' justified request, for a maximum of 15 working days, if needed for instance to finalize their proposed commitments; and/or
- upon its own initiative ("stop-the-clock") if the notifying parties (i) fail to promptly inform the FCA of a new relevant and material fact, or (ii) fail to provide requested information within the allocated deadline. The time limits resume only when the cause for the suspension has been removed.

At the end of Phase I, the French Ministry has five working days to request the opening of a Phase II investigation (in-depth review).

A simplified procedure allows the parties to obtain clearance within a shorter time period (approx. 15 working days) if no competition issues are anticipated (see question 21 below).

Phase II (Articles L.430-6 and L.430-7 of the French Commercial Code)

If, further to the Phase I review, the transaction still raises serious doubts as to potential anticompetitive effects, the FCA can initiate an in-depth review of the concentration.

Within 65 working days from the opening of the Phase II, the FCA may:

- Authorize the concentration, with or without remedies; or
- Prohibit the concentration.

Phase II can also be extended by 20 working days by the FCA if the parties submit or modify commitments fewer than 20 working days from the expiry of the 65-working-day deadline.

As is the case in Phase I, the FCA can also suspend the

time limits of the Phase II review, in the same two cases. However, the maximum suspension period at the parties' request is then 20 working days.

Once a Phase II decision is issued, the Ministry of Economy has 25 working days to exert his power to review the case and issue a decision on the contemplated transaction.

Footnote(s):

[2] Should the notification form be deemed incomplete, the FCA may refuse to acknowledge the completeness of the notification file, and as a consequence the time period for the review of the case would not begin to run.

20. Under what circumstances may the basic timetable be extended, reset or frozen?

See question 19.

21. Are there any circumstances in which the review timetable can be shortened?

The French merger control regime does not explicitly provide for any "shorter" review timetable.

However, the FCA has introduced a "simplified" procedure, which allows the parties to obtain the transaction's clearance within a shorter time period (in average, after 15 working days but this shortened timing is not binding on the FCA).

The 2020 Guidelines have significantly broadened the scope of application of the simplified procedure. For example, all transactions where the combined market share of the undertakings concerned is less than 25% on the relevant markets (or 30% for vertically related markets or connected markets) are now eligible, as well as where the transaction concerns the creation of a full-function joint venture exclusively active outside the national territory.

22. Which party is responsible for submitting the filing?

The party(ies) acquiring or retaining control of all or part of an undertaking is (are) responsible for submitting the notification form.

In the case of a joint venture, each controlling parent company is a notifying party.

23. What information is required in the filing form?

The list of the information required in the notification form is provided by Article R.430-2 of the French Commercial Code[3]. The content of this notification form notably includes:

- A presentation of the transaction (notably legal and financial aspects thereof);
- A presentation of the undertakings concerned and the groups which they belong to (corporate structure, business activities,…);
- A reasoned description of the relevant concerned and/or affected markets[4] (extensive information is required regarding affected markets), the parties' business therein (market shares in value and volume) and information on their main competitors ; and
- A declaration of the completeness and accuracy of the notification.

Footnote(s):

[3] A standard filing form is available on the Competition Authority's website, see http://www.autoritedelaconcurrence.fr/doc/formulaire_notification_concentration.pdf.

[4] A market is deemed "affected" when two or more of the parties to the concentration are engaged in business activities in the same relevant market and where their combined market share post transaction reaches at least 25 % or when one or more parties to the concentration are engaged in business activities in a market which is upstream, downstream or connected to a relevant market in which any other party to the concentration is engaged, and any of their individual or combined market shares reaches at least 30 %.

24. Which supporting documents, if any, must be filed with the authority?

In addition to the filing form, the FCA requires the notifying parties to provide the contractual documentation which materialize the change of control (such as the SPA, the shareholders agreement, etc.) and the minutes of board meetings pertaining to the transaction, a power of attorney, copies of the most recent annual reports and accounts, as well as a summary table of financial figures for the last three audited financial years[5].

Supporting documents must be provided in French, or

along with their French translation. The FCA may nevertheless accept, upon request, that only the translation of relevant excerpts of supporting documents be provided.

Footnote(s):

[5] The list of financial information to be provided is likely to be downsized pursuant to the FCA's wish to simplify the merger control process

25. Is there a filing fee?

There is no filing fee required.

26. Is there a public announcement that a notification has been filed?

Pursuant to Article L.430-4 of the French Commercial Code, the FCA is required to publish a public summary of the notification within five working days after the formal notification is filed.

This public announcement is published on the FCA's website[6] and includes the identity of the parties, the nature of the merger, the economic sector concerned, the deadline within which third parties are invited to submit observations, and a non-confidential summary of the operation provided by the parties.

Footnote(s):

[6] Concerning mergers currently under review, see http://www.autoritedelaconcurrence.fr/user/dccencours.php

27. Does the authority seek or invite the views of third parties?

Yes, the FCA invites third parties to intervene in the review process in several ways:

- Further to the public announcement of the transaction (see question 26), third parties are invited to submit comments and observations within a given timeframe;
- By answering the "market test" that may be carried out during either the pre-notification phase, Phase I or II of the merger control review[7];
- By submitting comments concerning the remedies proposed as the case may be by the notifying parties.

Footnote(s):

[5] The notifying party(ies) are required, in relation or affected markets, to provide the names and contact details of the undertakings concerned's main customers and suppliers

28. What information may be published by the authority or made available to third parties?

Except for the public announcement made after the receipt of the formal notification (see question 26), the FCA does not publish the notification form nor its supporting documents, which remain strictly confidential.

Market tests (on the transaction or remedies submitted by the parties) are performed on the basis of non-confidential information or documents.

The FCA releases the outcome of the merger review on its website, but the decision itself is published only in a non-confidential version after the notifying party(ies) has been given the opportunity to identify and request that confidential information therein be redacted.

29. Does the authority cooperate with antitrust authorities in other jurisdictions?

The FCA is a member of the International Competition Network (ICN), the European Competition Network (ECN) and the European Competition Authorities Association (ECA).

Within this framework, there is a regular flow of information between competition authorities concerning pending merger cases.

30. What kind of remedies are acceptable to the authority?

The notifying parties may propose two types of remedies:

- Structural remedies, which include the divestiture of assets or business activities, the transfer of equity holdings, the transfer of contracts, etc.
- Behavioral remedies, such as transparent and non-discriminatory access to infrastructures, the termination or amendment of an exclusivity agreement, the modification of the conditions of supply or distribution of a product, etc.

The FCA tends to favor structural remedies over behavioral remedies (such tendency is expected to increase in the near future).

31. What procedure applies in the event that remedies are required in order to secure clearance?

The notifying party(ies) may submit remedies both during Phase I and Phase II of the merger control investigation (see question 19), which trigger specific extensions of the time limits governing the FCA's review allowing the latter to review and assess whether such remedies are appropriate and submit them to a market test as the case may be.

Pursuant to a Phase II investigation, if the notifying party(ies) does not propose remedies or such remedies are deemed insufficient, the FCA may impose in its clearance decision "injunctions" requiring the parties concerned to take all appropriate measures to maintain competition or guarantee adequate efficiencies (Article l.430-7 III of the French Commercial Code). There are only a few cases where the FCA has ordered injunctions.

32. What are the penalties for failure to notify, late notification and breaches of a prohibition on closing?

The French Commercial Code provides several sanctions for failure to notify (Article L.430-8-I of the Code) or breaches of the standstill obligation (Article 430-8-II of the Code).

Penalties for failure to notify

If a notifiable concentration is completed or closed without having been notified, the FCA may:

- compel the parties to notify the transaction, subject to a daily penalty payment of a maximum of 5% of their worldwide average daily turnover, unless they return to the situation which existed prior to the concentration; and/or
- impose on the parties responsible for the notification a fine of up to 5% of their pre-tax turnover achieved in France during the last financial year (increased, where applicable, by the turnover achieved in France by the target during the same period). For natural persons, the fine is up to €1.5 million.

There are various examples of sanctions by the FCA for failure to notify a transaction. As an example, the FCA imposed a fine of €4 million to Castel Group for default of notification (the fine was then reduced by the French supreme administrative court (*Conseil d'Etat*) in 2016 to €3 million).

Penalties for anticipated implementation (gun-jumping)

The implementation of a concentration, not benefiting from a derogation, prior to its clearance triggers the same sanctions and fines as those incurred in cases of failure to notify (see above).

In its 2020 Guidelines, the FCA provided further guidance on the criteria to be taken into account in the assessment of a gun-jumping practice. In order to assess whether the "red line" has been crossed, the FCA will focus on the acquisition of a decisive influence, *de jure* or *de facto*, over the target.

In its decision dated 8 November 2016 (case n°16-D-24, *Altice Group*), the FCA had imposed for the first time a fine (of €80 million) for anticipated implementation of two transactions under on-going merger control review.

In its decision n°22-D-10 dated 12 April 2022 (*Cofepp* case), the FCA sanctioned for the first time a company both for failure to notify and for gun-jumping.

33. What are the penalties for incomplete or misleading information in the notification or in response to the authority's questions?

Pursuant to Article L.430-8 III of the French Commercial Code, the penalties incurred by the notifying party(ies) for omitting information or providing inaccurate or misleading information are the same as those incurred in case of a failure to notify (see question 32). In addition to this fine, the FCA may also withdraw the clearance decision, in which case the parties are required to re-file a notification form within one month from the withdrawal of the clearance decision, unless they revert to the state which existed prior to the concentration.

34. Can the authority's decision be appealed to a court?

Yes, decisions of the FCA may be appealed by the notifying parties (or by interested third parties) before the French supreme administrative court (*Conseil d'Etat*) on grounds of misuse of authority or for breach of a procedural rule.

Appeals do not suspend the enforcement of the decisions. However, the notifying parties (or interested third parties) may request, pursuant to a specific interim proceeding before the *Conseil d'Etat* , the suspension of the decision (the "*référé suspension*"). Such request can be granted subject to the claimant being able to evidence an urgent situation and a serious doubt as to the legality of the decision.

If a clearance decision issued by the FCA is reversed by the *Conseil d'Etat*, the parties concerned have to re-notify an updated version of the proposed concentration to the FCA.

35. What are the recent trends in the approach of the relevant authority to enforcement, procedure and substantive assessment

In terms of enforcement, the FCA has publicly announced that it will pay an even greater attention in the coming years to breaches of the obligation to notify reportable transaction and of the stand-still obligation. The decision n°22-D-10 dated 12 April 2022 mentioned above (€7 million fine) confirms this trend.

In terms of substantive assessment and remedies, it is observed that the FCA is increasingly reluctant towards behavioral remedies.

It should also be mentioned that the FCA has recently issued its two first ever prohibition decisions:

- On 28 October 2020, the FCA issued its first merger prohibition decision (n° 20-DCC-116), relating to the joint control of a food-dominated retail business located in Troyes by the company Soditroy together with the Association des Centres Distributeurs E. Leclerc. This decision was confirmed by the French supreme administrative court on 14 October 2022.

- On 12 May 2021, the FCA issued its second merger prohibition decision (n°21-DCC-79), as it considered that Ardian's proposed acquisition of sole control over pipeline company Société du Pipeline Méditerrannée-Rhône ("SPRM") raised serious competition concerns. The decision follows the withdrawal of the *Pisto / Trapil* transaction in July 2020, in which the FCA had also identified competition concerns in the refined petroleum product transport and storage markets following a Phase II review.

In 2022, further to a Phase II investigation during which the FCA had expressed serious concerns regarding the contemplated *TF1/M6* merger in the media sector (in spite of the commitments offered), the notifying party decided to withdraw its notification and abandoned the contemplated merger.

Last but not least, in the abovementioned *Mobilux / Conforama* case (n° 22-DCC-78), the FCA applied in 2022 for the first time the failing firm exception to clear without remedy the transaction further to a Phase II investigation.

36. Are there any future developments or planned reforms of the merger control regime in your jurisdiction?

On 24 April 2024, the French Minister of Economy presented a draft bill aiming to increase the current general merger regime thresholds and the specific thresholds for transactions in the retail sector (respectively Articles L. 430-2 I and L. 430-2 II of the French Commercial Code).

According to the draft bill, a transaction shall need to be notified to the FCA if (i) the combined worldwide turnover of all the undertakings concerned exceeds €250 million (instead of currently €150 million), (ii) the turnover achieved in France by each of at least two of the undertakings concerned exceeds €80 million (instead of currently €50 million) and (iii) the operation is not caught by the thresholds of the EUMR (condition remained unchanged).

Furthermore, a concentration involving at least two undertakings operating retail premises in France shall need to be notified to the FCA if (i) the combined worldwide turnover of all the undertakings concerned exceeds €100 million (instead of currently €75 million) and (ii) the turnover achieved in the retail trade sector in France by each of at least two of the undertakings concerned exceeds €20 million (instead of currently €15 million).

Due to the dissolution of the French National Assembly on 9 June 2024, all legislative discussion were suspended. As such, it is uncertain whether and/or to what extent the draft bill will be adopted.

Finally, further to the ruling issued by the ECJ on 3 September 2024 in the *Illumina / Grail* case, it cannot be excluded that the FCA will promote a reassessment of the

merger control rules in order to be able to review mergers falling under the current thresholds.

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