



Europe, Middle East and Africa Antitrust Review

2026

**France: streamlined review process
and increased thresholds to transform
merger control framework**

Europe, Middle East and Africa Antitrust Review

2026


The 2026 edition of the Europe, Middle East and Africa Antitrust Review is part of the GCR Insight series, which also covers the other key regions of the Americas and Asia-Pacific. Each review delivers specialist intelligence, research and analysis designed to help readers – general counsel, government agencies and private practitioners – successfully navigate the world's increasingly complex competition regimes.

GCR works exclusively with leading competition experts in each region. It is their wealth of experience and knowledge – enabling them not only to explain law and policy but also put it into context – that makes this review particularly valuable to anyone doing business in Europe, the Middle East and Africa today.

Generated: August 28, 2025

The information contained in this report is indicative only. Law Business Research is not responsible for any actions (or lack thereof) taken as a result of relying on or in any way using information contained in this report and in no event shall be liable for any damages resulting from reliance on or use of this information. Copyright 2006 - 2025 Law Business Research



Explore on [GCR](#) 

France: streamlined review process and increased thresholds to transform merger control framework

Romain Maulin and **Charline Schober**

Maulin Avocats

Summary

IN SUMMARY

DISCUSSION POINTS

REFERENCED IN THIS ARTICLE

KEY TAKEAWAYS FROM FCA'S MERGER CONTROL ACTIVITY IN 2024

SIGNIFICANT INCREASE OF MERGER CONTROL THRESHOLDS IN TERMS OF BOTH ACQUIRER AND TARGET THRESHOLDS

ONGOING PUBLIC CONSULTATION BY FCA ON THE POTENTIAL EX POST REVIEW OF CERTAIN BELOW-THRESHOLD TRANSACTIONS

NEW FAST-TRACK MERGER CONTROL PROTOCOL FOR SIMPLE TRANSACTIONS

IN THE FUTURE, PROBLEMATIC MERGERS COULD BE CLEARED UNDER THE 'ECONOMIC PROGRESS' PROVISION

ENDNOTES

IN SUMMARY

During the past two years, the French merger control landscape has experienced significant changes. A key focus has been enhancing the efficiency of the review process for simple transactions while trying to reduce the administrative burden on the French Competition Authority (FCA) for Phase I, simple transactions that do not raise competitive concerns. At the same time, there is growing attention to capturing below-threshold mergers that may still harm competition: 'killer acquisitions'. These changes unfold within a context of both market and regulatory uncertainties, making it even more essential for businesses and their counsels to become familiar with this evolving landscape to better navigate potential challenges and opportunities.

DISCUSSION POINTS

- Notification thresholds increase: a bill is about to be passed by French Parliament to significantly increase merger review thresholds to reduce the number of reportable transactions
 - Simplified process for simple transactions: the FCA's recent Confidence Pact procedural implications for 'simple transactions'
 - Addressing certain below-threshold mergers: the FCA is currently exploring new methods to review certain below-threshold mergers that may harm competition
 - Possibility of clearance under the 'economic progress' provision: the FCA publicly announced that, in the face of new market realities, it may be more open to authorising certain mergers, leading to significant addition of market shares under the economic progress provision.
-

REFERENCED IN THIS ARTICLE

- FCA, Press Release, 'A historic year for the Autorité de la Concurrence: €1.4 billion in fines imposed and a record 295 mergers examined', 15 January 2025
- FCA, Decision No. 24-D-05, 2 May 2024
- French Parliament, Draft Law to Simplify Economic Life
- FCA, 'Public consultation on the introduction of a merger control framework for addressing below-threshold mergers', 14 January 2025 and 10 April 2025
- Court of Justice of the European Union, *Illumina/Grail*, Cases No. C-611/22 P and No. C-625/22 P, Judgment, 3 September 2024
- European Commission, Mario Draghi, 'The future of European competitiveness', 9 September 2024
- European Commission, 'Ex-post evaluation, EU competition enforcement and acquisitions of innovative competitors in the pharma sector leading to the discontinuation of overlapping drug research and development projects', 28 November 2024
-

Concurrences, Romain Maulin and Coline Diodonnat, 'Predatory acquisition: The European Commission finally publishes its study on potential "predatory acquisitions" in the pharmaceutical sector', 28 November 2024

- FCA, 'Confidence Pact', 5 July 2024
- Articles L 430-2 and L 430-6 of the French Commercial Code

KEY TAKEAWAYS FROM FCA'S MERGER CONTROL ACTIVITY IN 2024

According to the French Competition Authority (FCA),^[1] the FCA achieved a 'historic year' in 2024 by reviewing and clearing a record 295 merger transactions, representing a 10 per cent increase compared with 2023 and a 25 per cent increase compared with 2019.

However, of the 295 merger transactions reviewed and cleared by the FCA in 2024, 97 per cent were cleared unconditionally, while eight were authorised subject to conditions and none were prohibited. This is part of an ongoing pattern: illustratively, in 2023, the FCA adopted 266 clearance decisions, 98.5 per cent of which resulted in Phase I unconditional clearance,^[2] with an average approval period of 19 days. In this context, there have been ongoing discussions on how to reduce the number of transactions being reviewed by the FCA, in particular for those not raising any competition concerns, most recently illustrated by the request from the FCA (and which is about to be passed into law) to raise the relevant merger control thresholds (see below).

Furthermore, in Decision No. 24-D-05 dated 2 May 2024, the FCA applied for the first time the *Towercast* judgment of the Court of Justice of the European Union (CJEU),^[3] assessing transactions below the national notification thresholds under article 101 of the Treaty on the Functioning of the European Union (TFEU). As such, this matter was not subject to any *ex ante* review before either the FCA or any other national competition authority. In this case, following a five-year investigation, the FCA found that there were no grounds for action, as the agreements did not have an anticompetitive object, and there was not sufficient evidence of potential adverse effects resulting from the transaction. This implies that, under certain circumstances, mergers could be subject to FCA review even after their implementation (knowing that in the above-mentioned case, the FCA investigation started years after completion of the transaction), even if they do not meet the national notification thresholds, on the grounds of potential abuse of dominant position or anticompetitive agreements. This means that, from now on, companies contemplating a transaction must make an up-front competitive assessment of such a transaction not only from a merger control perspective but also under articles 101 and 102 of the TFEU.

SIGNIFICANT INCREASE OF MERGER CONTROL THRESHOLDS IN TERMS OF BOTH ACQUIRER AND TARGET THRESHOLDS

A bill aimed at simplifying the economy in France is about to be enacted. Having been approved by the French Senate in October 2024, it is now being examined by the French National Assembly.^[4] From a merger control standpoint, the aim of this bill is to increase the merger review thresholds set out in article L 430-2 of the French Commercial Code, knowing that they have remained unchanged for over 20 years. According to article 8 of the bill, mergers would be subject to *ex ante* control by the FCA only if the following conditions are met:

-

Acquirers threshold: total worldwide turnover of all the undertakings or groups of individuals or legal entities involved in the merger exceeds €250 million (previously €150 million).

- Target threshold: total turnover in France of at least two of the companies or groups of companies or individuals concerned exceeds €80 million (previously €50 million).

This bill also aims to increase the financial thresholds applicable to transactions in the retail sector. Accordingly, where at least two of the parties to a transaction operate one or more retail stores, the transaction is reportable where the total worldwide turnover of all the companies involved in the merger exceeds €100 million (previously €75 million) and the total retail turnover in France of at least two of the companies involved is over €20 million (previously €15 million).

Interestingly, the French National Assembly rejected one of the amendments (namely, amendment CS744), which was submitted by the text's *rapporteur*, Christophe Naegelen. This amendment aimed to tackle killer acquisitions below the thresholds. It consisted of the introduction of a derogation under which the FCA would have been able to review, under provisions of articles L 430-3 to L 430-10 of the French Commercial Code, any merger likely to affect normal competitive conditions in strategic and innovative sectors, regardless of the turnover of the parties to the transaction. During the debates, the Minister for Trade indicated that the proposed mechanism did not constitute a simplification measure (knowing the bill aims at 'simplifying economic life') and that, in any case, it was safer to await the conclusions of the ongoing public consultation launched by the FCA on this issue (see below).

Killer acquisitions have been a growing concern in particular in the pharmaceutical and digital sectors, where innovation is a key parameter of competition and targets where, for example, promising drug pipelines can have high valuations and significant competitive potential, even if they do not generate any turnover at the time of the transaction and therefore fall below the relevant merger control thresholds. According to the Organisation for Economic Co-operation and Development, in 2018, 'authors estimated that between 5.3% and 7.4% of acquisitions in their sample from the pharmaceutical industry were carried out with the sole purpose of discontinuing the targets' drug projects'.^[5] In the digital sector, it is estimated that fewer than 1 per cent of transactions can be regarded as potential killer acquisitions.^[6]

In the digital sector, the acquisitions of start-ups or their key employees ('acqui-hire') by large companies has also been under scrutiny by regulators. In this respect, the Digital Markets Act (DMA),^[7] adopted on 12 October 2022, aiming to prevent abuses by major online platforms designated as 'gatekeepers', requires them to inform the European Commission of any acquisitions they intend to carry out – even those falling below notification thresholds – as long as the transaction enables the collection of data. Moreover, in its opinion issued on 28 June 2024, the FCA specifically warned about the recruitment, by digital giants, of entire teams (as illustrated by Microsoft hiring a large proportion of the 70 employees from the start-up Inflection) or of key strategic employees from model developers (such as Microsoft's brief hiring of the OpenAI founder following his dismissal). According to the FCA, such behaviours could amount to an abuse of dominant position.^[8] Finally, the European Commission published a report on killer acquisitions in the pharmaceutical sector on 28 November 2024,^[9] further highlighting the ongoing debate and current regulatory and legal uncertainties surrounding this issue. However, one may consider that only a limited number of acquisitions fall within the scope of that provision.

ONGOING PUBLIC CONSULTATION BY FCA ON THE POTENTIAL EX POST REVIEW OF CERTAIN BELOW-THRESHOLD TRANSACTIONS

In the wake of the CJEU's landmark *Illumina/Grail* judgment of 3 September 2024,^[10] the FCA, like many national competition authorities, launched a public consultation in January 2025 on the introduction of a merger control framework for addressing below-threshold mergers likely to harm competition.^[11]

On 10 April 2025,^[12] the FCA published its preliminary conclusions regarding potential tools to address this issue. The FCA presented three alternative options. According to the FCA, the current preferred one is the introduction of a call-in power, based on a combination of quantitative and qualitative criteria yet to be determined. Other options include (1) the creation of a new mandatory notification threshold based on the existence of certain prior decisions of the FCA or the European Commission or (2) the leveraging of the existing provisions related to anticompetitive practices.

The consultation of the FCA proved very successful, garnering responses from 26 contributors,^[13] including law firms, companies (notably Amazon, IBM, Nestlé and Orange), academic experts, professional associations, consumer advocacy groups and non-governmental organisations. This underscores the ongoing tension and diverging views surrounding this controversial issue, highlighting the need for a common ground solution that would be widely accepted by different stakeholders.

In that regard, several contributors raised converging concerns about the risks in terms of legal uncertainty for businesses. Others stressed that any new mechanism should, at a minimum, align with the bill currently about to be adopted and raising the levels of merger control thresholds – a reform explicitly advocated by the FCA – and that these prospective thresholds should serve as the baseline for designing any additional review criteria.

Therefore, it is important to closely monitor any forthcoming developments, as they may indicate that even below-threshold transactions could be subject to FCA *ex post* review in the near future. The FCA indicated that it will define the outlines of this new framework in the coming months and 'aims at submitting a proposal to French public authorities in the course of 2025'.^[14]

In that regard, regardless of the option ultimately chosen, the legislator will need to reconcile two objectives: (1) ensuring legal certainty for businesses across all sectors, particularly those driven by innovation or already holding strong market positions; and (2) providing the FCA with the ability to review certain below-threshold mergers that are nonetheless likely to significantly harm competition.

NEW FAST-TRACK MERGER CONTROL PROTOCOL FOR SIMPLE TRANSACTIONS

Acknowledging that both the number of transactions reviewed to the FCA and the length of merger control proceedings (even for the simplest transactions) have significantly increased in the past five years. Jérôme Vidal, who became the Head of the Mergers Unit of the FCA in June 2024, proposed a significant procedural reform as soon as he was appointed. Based in particular on the observation that, on a yearly basis, approximately 96 per cent of the FCA's merger control decisions are adopted through the simplified procedure, indicating that only 4 per cent of transactions are likely to raise potential competition concerns, Jérôme Vidal proposed a new merger control protocol to antitrust counsels, called the Confidence Pact, on 5 July 2024.

This new approach implies that prenotification contacts and the review phase for simple transactions become more optional than previously. Specifically, when reviewing a transaction under the simplified procedure, it entails that:

- prenotification (which can range from 25 to 60 working days even for the simplest transactions) will no longer be regarded by the FCA as a mandatory preliminary phase;
- the notification form will be immediately considered complete and to contain accurate information; and
- questions will not be raised during the investigation, except in cases of misunderstanding, inconsistencies or other specific exceptions.

Therefore, the FCA encourages companies and their counsels to directly notify transactions under the simplified procedure, notifying the FCA a few days before submission via email, setting out a very concise overview of the transaction. These cases are now being handled directly by the Head of the Service, with occasional assistance from some of his deputies, while case handlers (*rappoteurs*) are to be appointed only for more complex cases.

Nearly a year after the reform, Jérôme Vidal provided a comprehensive assessment of this new mechanism, commenting on both its impact and its effectiveness.^[15] He said that, in Phase I, review periods have been shortened by 25 per cent (ie, 15 working days) compared with previous years. He nonetheless recalled that no decision could be issued before the expiry of the third-party comment period, which generally lasts two weeks as of the date of formal submission of the notification form.

The counterpart for reducing the level of formality for the simplest transactions seems to be that all 'other transactions will be subject to *particular scrutiny*' by the FCA.^[16] Therefore, parties involved in merger proceedings can reasonably expect:

- a (much?) more thorough review by the FCA of transactions likely to raise potential competition issues or significant market share additions; and
- greater consideration given to objections raised by third parties during the market test phase.

Another consequence of this new fast-track process – and of the fact that pre-notification is no longer regarded as a systematically necessary preliminary phase – is that the FCA is expected to take a much stricter stance in prosecuting notifying parties should they have concealed relevant information or provided inaccurate statements in order to benefit from this simplified procedure.^[17]

Furthermore, Jérôme Vidal encourages lawyers to approach the FCA informally in cases of doubt about the application of the simplified procedure.

According to Jérôme Vidal, the Confidence Pact could ultimately be formally codified in the FCA's forthcoming merger guidelines, which can be expected before the end of his term in 2028, but not before the European Commission's revision of its guidelines on horizontal and vertical mergers, anticipated for the end of 2027.^[18]

Finally, it is noteworthy that Jérôme Vidal indicated that, in the future, and to further reduce the number of transactions without competitive concerns that are reviewed by the FCA, he 'do[es] not rule out, in the face of an excessive workload, following the example of our German colleagues [the German Competition Authority] and considering issuing *tacit decisions*'.^[19]

He explained that this would mean that if the FCA does not issue a decision within five weeks of acknowledging receipt of a complete file, the transaction would be deemed authorised. While this remains purely theoretical for now, any change in the FCA's approach in this regard should be closely monitored.

IN THE FUTURE, PROBLEMATIC MERGERS COULD BE CLEARED UNDER THE 'ECONOMIC PROGRESS' PROVISION

On 2 April 2025, the chairman of the FCA made a groundbreaking announcement. Benoît Cœuré revealed that, in light of the current geopolitical landscape, high-stakes Phase II mergers could potentially be cleared by the FCA under the 'economic progress' provision.

Under this provision, the FCA can clear mergers if their contribution to economic progress outweighs the competitive harm they cause. Under article L 430-6 of the French Commercial Code, even in the case of the strengthening of a dominant position, the FCA has to assess 'whether the merger makes a sufficient contribution to economic progress to offset the competitive harm'.^[20]

In that context, and depending on the evidence adduced in that regard by notifying parties, positive economic spillovers for the community, enhanced innovation and research and development capacity, and improved international competitiveness may all be regarded as 'sufficient contribution to economic progress'.

This change of approach is very much in line with the Mario Draghi Report,^[21] which emphasised the need to revise Europe's merger control guidelines to better integrate innovation into merger assessments. In this regard, the Report suggested allowing merging parties to demonstrate their innovation capacity through an 'innovation defence' strategy,^[22] with the caveat that this 'defence' cannot be used to justify further concentration by already dominant companies or in cases in which the concentration raises a significant risk of entrenching a dominant position.

Benoît Cœuré clarified that exploring this possibility further would require it to be framed within 'a very objective, strict, and fair framework'.^[23] We consider that this framework could potentially be reflected in the forthcoming revision to the FCA's merger guidelines.

This could pave the way for the clearance of transactions that, while possibly hindering competition to a large extent, nonetheless make a significant contribution to economic progress. In particular, this development may open up new prospects in sectors where contemplated transactions previously appeared impossible due to significant addition of market shares or the creation or strengthening of oligopolistic positions.

It underscores, if needed, the growing importance of involving antitrust experts as early as possible to reassess, in light of this new approach, the feasibility of transactions that may have once seemed likely to be blocked by antitrust watchdogs.

Endnotes

- 1 FCA, 2024, 'A historic year for the Autorité de la concurrence: €1.4 billion in fines imposed and a record 295 mergers examined,' 15 January 2025. [^ Back to section](#)
- 2 2023 Annual Report of the French Competition Authority, 15 July 2024. [^ Back to section](#)

- 3 Court of Justice of the European Union (CJEU), *Towercast*, Case No. C-449/21, Judgement, 16 March 2023. [^ Back to section](#)
- 4 This bill was initially presented to the French Council of Ministers on 24 April 2024, by the French Minister for the Economy, Finance and Industrial and Digital Sovereignty. Although the Senate completed its review of the bill in June 2024, it was unable to vote on it due to the suspension of its activities following the dissolution of the French National Assembly on 9 June 2024. At the time of writing, it was still under debate in the French National Assembly. [^ Back to section](#)
- 5 Organisation for Economic Co-operation and Development, 'Start-ups, killer acquisitions and merger control' – Note by the European Union, 11 June 2020, §2. [^ Back to section](#)
- 6 Information Economics and Policy, vol. 54, issue C, Gautier et Lamesch, 'Mergers in the digital economy', March 2021. [^ Back to section](#)
- 7 Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), article 14.1. [^ Back to section](#)
- 8 FCA, 'Opinion on the competitive functioning of the generative artificial intelligence sector', 28 June 2024, §274. [^ Back to section](#)
- 9 European Commission, 'Ex-post evaluation, EU competition enforcement and acquisitions of innovative competitors in the pharma sector leading to the discontinuation of overlapping drug research and development projects', 28 November 2024. For an in-depth analysis of this report, see for instance Romain Maulin and Coline Diodonnat, 'Predatory acquisition: The European Commission finally publishes its study on potential "Predatory Acquisitions" in the pharmaceutical sector', *Concurrences*, 28 November 2024, available at <https://www.concurrences.com/en/review/issues/no-3-2025/chroniques/genera/ predatory-acquisition-the-european-commission-finally-publishes-its-study-on>. [^ Back to section](#)
- 10 CJEU, *Illumina/Grail*, Cases No. C-611/22 P and No. C-625/22 P, Judgment, 3 September 2024. [^ Back to section](#)
- 11 FCA, 'Public consultation on the introduction of a merger control framework for addressing below-threshold mergers', 14 January 2025. [^ Back to section](#)
- 12 FCA, 'Mergers below the control thresholds: Following the public consultation, the Autorité is continuing its work to propose a reform ensuring effective control', 10 April 2025. [^ Back to section](#)

- 13** These contributions are all publicly available (in French) at https://www.autoritedelaconurrence.fr/sites/default/files/Contributions_Seuils%20de%20notification%20-%20ADLC%20ALL%20_compressed.pdf. [^ Back to section](#)
- 14** FCA, 'Mergers below the control thresholds: following the public consultation, the Autorité is continuing its work to propose a reform ensuring effective control', 10 April 2025. [^ Back to section](#)
- 15** Lamy Review of Competition, No. 148, 'Le pacte de confiance: davantage de simplification au bénéfice des entreprises mais aussi du service des concentrations - Bilan de neuf mois d'application' ['The Confidence Pact: More Simplification for the Benefit of Companies and the Merger Control Service – Nine-Month Implementation Review'], 1 April 2025. [^ Back to section](#)
- 16** *ibid.*, (translated from the original) (emphasis added). [^ Back to section](#)
- 17** *ibid.*: (translated from the original) '[I]f it is ever discovered that there has been concealment in order to obtain the benefit of the simplified procedure, companies will be sanctioned. And within this new framework, I can assure you that I will be uncompromising in prosecuting any such case.' [^ Back to section](#)
- 18** European Commission, Merger Guidelines – Review, available at ">. [^ Back to section](#)
- 19** Décideurs Magazine, 'Jérôme Vidal : "Se pose la question de nos systèmes fondés uniquement sur les chiffres d'affaires des entreprises"' ['Jérôme Vidal: "The question arises of our systems based solely on company turnover figures"'], 17 December 2024 (emphasis added). [^ Back to section](#)
- 20** French Commercial Code, article L 430-6 (translation). [^ Back to section](#)
- 21** European Commission, Mario Draghi, 'The future of European competitiveness', 9 September 2024. [^ Back to section](#)
- 22** European Commission, Mario Draghi, 'The future of European competitiveness, Part B', 9 September 2024, p. 299. [^ Back to section](#)
- 23** The Capitol Forum, Vol. 13 No. 347, 30 April 2025. [^ Back to section](#)



Romain Maulin
Charline Schober

romain.maulin@maulin-avocats.com
Charline.SCHOBERT@maulin-avocats.com

55, rue de Châteaudun, Paris 75009

Tel: +1 84 13 55 77

<https://www.maulin-avocats.com/>

[Read more from this firm on GCR](#)