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French Supreme Court confirms Apple's liability for allocation of products and customers and abuse of economic dependence within its distribution network of electronic products

On 13 May 2026, the French Supreme Court delivered a highly significant decision in the Apple distribution practices case (Cass. com., 13 May 2026, no. 22-22.623, FS-B+R), fully upholding the findings of the Paris Court of Appeal's decision of 6 October 2022.

The Paris Court of Appeal partially overturned the decision of the French Competition Authority ('FCA') of 16 March 2020 (decision 20-D-04), which imposed a record fine of 1.24 billion EUR on Apple and its two exclusive wholesalers (Ingram and Tech Data) for practices affecting intra-brand competition.

The FCA sanctioned Apple for engaging in three different anticompetitive practices concerning distribution in France of non-iPhone products (such as iPads).

The Court of Appeal reduced the total fine by approximately two-thirds for each of the companies concerned. Apple, its two wholesalers and the President of the FCA all lodged appeals before the French Supreme Court. These were joined on grounds of connexity and dismissed in their entirety.

Procedural issues: use of evidence at the appeal stage and business secrecy

From a procedural standpoint, the Supreme Court confirmed that, where undertakings challenge the sufficiency of the evidence, the FCA may rely at the appeal stage on documents not expressly discussed during the administrative procedure or cited in the decision, provided that such documents were annexed to the statement of objections or the report and properly submitted to adversarial debate.

As regards documents covered by business secrecy, the Court held that the failure of other undertakings to request disclosure does not prevent the FCA from relying on those documents.

Resale price maintenance (rejected practice)

In its 2020 decision, the FCA found that Apple obliged specialised independent resellers ("Premium" distributors)

to apply the same prices as those used in its stores and website and concluded that this practice constituted resale price maintenance ('RPM'). The Paris Court of Appeals reformed the French Competition Authority's decision on this point.

A particularly noteworthy aspect of the judgment is the confirmation of the rejection of the RPM allegation. The Supreme Court held that the evidence relied upon by the FCA did not unequivocally establish the existence of a price-fixing practice or adherence by Apple Premium Resellers ('APRs'). It noted the absence of contractual provisions imposing minimum resale prices, as well as the lack of evidence of monitoring or retaliation mechanisms. While Apple ensured transparency by publishing its retail prices, the Court found that no direct evidence demonstrated that APRs were instructed to align with those prices. The fact that some distributors perceived these prices as a ceiling was not sufficient to establish an RPM infringement, as such behaviour could result from their own commercial choices or market constraints.

Allocation of products and customers (established practice)

In 2020, the French Competition Authority held that Apple and two of its wholesalers agreed to share the market by allocating products and customers instead of freely deciding on their commercial policy. This practice was considered by the Authority to be the most important of the three, which therefore led to the highest fines.

The Court of Appeals confirmed the existence of the market sharing infringement but reduced the amount of the fines.

On the merits, the Supreme Court confirmed the existence of a vertical agreement between Apple and its wholesalers concerning the allocation of products and customers. It endorsed the Paris Court of Appeal's reliance on a body of serious, precise and consistent evidence combining both direct evidence (including internal emails reflecting the allocation policy) and behavioural evidence.

Importantly, the Court clarified that, where direct evidence exists, it is not necessary to demonstrate that the allocation system was effectively implemented in practice. Economic analyses produced by the parties are relevant only to the assessment of harm, not to the existence of the infringement.

The Court also upheld the reduction of the infringement period by approximately four years. It agreed with the Paris Court of Appeal's interpretation of a 2 December 2005 internal email as relating solely to first-level allocations to direct clients, rather than to the contested second-level allocations. The infringement was therefore established only for the period from 25 November 2009 to March 2013.

The Supreme Court confirmed that the allocation mechanism constituted both a restriction of customers and products within the meaning of Article 4(b) of Regulation (EU) No 330/2010, and a restriction of competition by

object under Article 101(1) TFEU and Article L. 420-1 of the French Commercial Code.

It upheld the finding that the system went beyond mere recommendations on delivery priorities, involving active intervention by Apple in wholesalers' inventory management and, at times, in ongoing orders. This effectively restricted the customer base to which the wholesalers could sell.

The Court emphasised that it is irrelevant whether wholesalers actually lost customers, as the system inherently exposed them to such risk.

As regards the classification as a restriction by object, the Court recalled the established criteria of the Court of Justice of the European Union and confirmed that the Paris Court of Appeal correctly concluded that such arrangements were, by their very nature, particularly harmful to competition.

It further held that the alleged objective of managing supply shortages was not substantiated and, in any event, could not justify the practice, particularly as less restrictive alternatives were available to Apple.

Abuse of Economic Dependence (established practice)

In 2020, the FCA held that Apple abusively exploited the economic dependence of its resellers, imposing unfair and unfavourable commercial conditions regarding its network of official distributors.

The Supreme Court confirmed the existence of a situation of economic dependence of APRs vis-à-vis Apple, notwithstanding the presence of competitors such as Samsung.

It endorsed the finding that alternative suppliers did not offer comparable distribution models or brand attractiveness, and that switching was not feasible under reasonable conditions within a reasonable timeframe.

The Court further upheld the finding of abusive conduct: by applying discriminatory supply conditions, Apple placed APRs at a competitive disadvantage compared to its own retail channels, thereby discrediting them in the eyes of consumers. These practices were held to have significantly affected the functioning and structure of competition, constituting an abuse under Article L. 420-2 of the French Commercial Code.

Commentary

This decision is noteworthy in several respects.

First, it provides important clarification on the use of evidence at the appeal stage, including documents not expressly relied upon in the administrative decision and those protected by business secrecy.

Second, it reaffirms established case law on the proof of vertical agreements, emphasising the decisive role of direct evidence where available.

Third, it constitutes a relatively rare confirmation of the abusive exploitation of economic dependence, offering useful guidance on both the assessment of dependence and the identification of abusive conduct.

Finally, the decision provides valuable insights into RPM analysis. It confirms that the mere publication of retail prices by a supplier does not amount to price imposition, even where it exerts commercial pressure on distributors. However, caution remains warranted, as such transparency could contribute to a finding of RPM where combined with additional factors such as price monitoring, retaliation mechanisms or structurally insufficient margins.

For further background, see our previous DLC article on the Paris Court of Appeals ruling