



The French Competition Authority Sanctions the Foreclosure of the Fuel Market in Corsica

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Resume: *The French Competition Authority sanctioned (French Competition Authority, November 17th, 2025, Decision No. 25-D-07) several fuel suppliers for blocking access to the main fuel storage infrastructures in Corsica. By retaining exclusive control over these facilities, they prevented other competitors from entering the market. In an already highly concentrated island market, this exclusion reinforced their market power.*

The Corsican fuel case originated in December 2021, when the French Competition Authority opened an initial contentious investigation, which was reinforced in 2022 following a complaint lodged by the company Ferrandi.

At the heart of the proceedings was an agreement implemented by the main fuel distributors operating on the island. Under a written contract, access to Corsican oil depots was made conditional upon holding shares in the company Dépôts Pétroliers de la Corse (DPLC).

However, these same operators, who controlled the storage infrastructure, were

also competitors in the fuel distribution market. Their dual status as both shareholders and market operators enabled them to lock access to the island's sole storage facility, thereby creating a de facto barrier to entry for any independent distributor.

As a result, non-shareholder operators of the DPLC could not conclude the same depot-use agreement as shareholders. They were therefore forced to purchase their fuel at the depot exit directly from the shareholder distributors.

It was in this context that, by Decision No. 25-D-07 of 17 November 2025¹, the French

¹ FCA, 17 November 2025, Decision No. 25-D-07 (Fuel distribution sector in Corsica) : *Europe*, January 2026, No. 1, comm. 44, obs. L. Idot ; *LEDICO*, Dec.

2025, No. DDC20314, obs. C. Bizet ; *RLC*, January 2026, No. 156, obs. J. Berlemont.

Competition Authority sanctioned an exclusionary agreement whose object and effect were to reserve the use of a facility to a closed circle of shareholder-competitors, to the detriment of non-integrated operators.

The case raises a fundamental question: to what extent can contractual conditions governing access to a facility constitute a prohibited anticompetitive agreement?

The analysis will first demonstrate how the companies implemented an exclusionary agreement based on control of a facility (I). It will then explain why the Authority imposed a particularly severe sanction, in light of European case law on non-discriminatory access to essential facilities (II).

I. An exclusionary agreement built around control of a facility

The analysis must first focus on how the companies implemented an exclusionary agreement based on joint control of an essential facility. This first part examines, on the one hand, the horizontal agreement organizing discretionary access to the Corsican oil depots (A) and, on the other hand, the market-foreclosure effects and the anticompetitive object of the agreement (B).

A. A horizontal agreement organizing discretionary access to oil depots

This subsection analyses the existence of a horizontal agreement between the main fuel distributors aimed at organizing discretionary access to the Corsican oil depots².

It should be recalled that the sanctioned practice primarily resulted from horizontal coordination between the main fuel distributors operating in Corsica. This coordination consisted in making access to the island's oil depots conditional upon the prior acquisition of shares in the company Dépôts Pétroliers de la Corse (DPLC). This condition, incorporated into the membership agreement, stemmed from an explicit and voluntary agreement between competing undertakings, which collectively decided to reserve the use of the island's sole storage facility to a restricted circle of vertically integrated operators.

Such conduct can clearly be characterized as an agreement within the meaning of Article 101 TFEU: the conclusion of a common contract and the concerted intention to organize access to the infrastructure constitute the hallmark elements of the anticompetitive agreement³. Unlike abuse of a dominant position, which concerns unilateral conduct, cartel law more strictly

² FCA, 17 November 2025, Decision No. 25-D-07, p. 2.

³ *Ibid.*, §248.

sanctions practices arising from collective arrangements, whose harmfulness lies precisely in the convergence of intent among competitors.

This is where the essential distinction with the Bronner case law (ECJ, 1998)⁴ emerges. In that case, the Court examined the conditions under which a unilateral refusal to grant access to an essential facility could be sanctioned. The intervention threshold was high, as it involved imposing a supply obligation on a dominant undertaking.

Such is not the situation in the present case. The matter does not concern a unilateral refusal, but a horizontal agreement jointly organizing access conditions. By its very nature, such collective conduct constitutes a more serious restriction of competition. The essential nature of the infrastructure the only oil storage system on the island further reinforces the demonstration of collective market foreclosure, by depriving any external competitor of the material possibility of engaging in fuel distribution.

B. Market-foreclosure effects and the anticompetitive object of the agreement

⁴ ECJ, 26 November 1998, *Bronner*, Case C-7/97.

⁵ FCA, 17 November 2025, Decision No. 25-D-07, §§260-266.

⁶ CJEU, 11 September 2014, *Groupement des cartes bancaires*, C-67/13 P.

⁷ CJEU, 4 June 2009, *T-Mobile Netherlands*, C-8/08.

Once the horizontal agreement organizing access to the depots has been identified, it is necessary to examine its concrete market-foreclosure effects, in light of European case law on restrictions by object and on essential facilities.

The agreement at issue not only had the effect, but also the object, of excluding non-shareholder operators by imposing disadvantageous access conditions on them⁵. A restriction by object is considered harmful where, by its very nature and economic context, it limits or distorts competition, without the need to demonstrate its actual effects (CJEU, *Groupement des cartes bancaires*, 2014⁶, C-67/13 P; CJEU, *T-Mobile Netherlands*, 2009⁷, C-8/08; CJEU, *FSL Holdings*, 2017, C-469/15 P)⁸. This approach is also discussed in national legal doctrine, which highlights the Court of Cassation's gradual recognition of anticompetitive object (*LEDICO*, March 2020, No. 112w6, note by E. Dieny, *Lextenso*)⁹.

The same logic can be found in national practice. In Decision No. 19-D-25 of 17 December 2019, the Authority held that non-

⁸ CJEU, 27 April 2017, *FSL Holdings*, C-469/15 P.

⁹ E. Dieny, « Ententes : la Cour de cassation apporte sa pierre à la reconnaissance d'un objet anticoncurrentiel », *LEDICO*, March 2020, No. 112w6, p. 6.

objective and non-transparent membership rules of the CRT restricted market access for non-members, thereby constituting market foreclosure. Similarly, in Decision No. 01-D-70 of 24 October 2001 concerning the molasses and rum sector in Réunion, the Authority considered that reserving membership of a group to its founders or to companies accepted by them produced the same exclusionary effect.

In the present case, the requirement to hold shares in order to access the oil depots, collectively decided by competitors, constituted market foreclosure¹⁰. Independent distributors were forced to purchase their fuel from shareholder operators, creating margin stacking and direct economic dependence, thus revealing the anticompetitive object of the agreement.

This analysis aligns with the criteria laid down in the Bronner judgment regarding essential facilities (indispensability: the Corsican depots constitute the island's sole storage point, indispensable for fuel importation and distribution; impossibility of duplication: constructing an alternative depot is unrealistic given costs, land constraints, and port limitations specific to Corsica; foreclosure capability: the agreement reserving depot use

to shareholders mechanically prevented the emergence of viable new competitors, creating an insurmountable barrier to entry).

Moreover, the Slovak Telekom judgment (CJEU, 2021)¹¹ provides decisive clarification. The Court held that discriminatory access conditions to an essential facility may, in themselves, constitute a restriction of competition, even in the absence of a total refusal of access. Access may be formally open while being materially impossible due to unfair conditions.

This is precisely what the Authority observed in the Corsican case: access was not completely denied, but was conditional, unequal, and discriminatory, reserved to DPLC shareholders and accompanied by constraints rendering independent entry illusory. This scheme fully falls within the logic of Slovak Telekom¹², reinforcing the qualification of the practice as a serious exclusionary agreement, based not on an outright refusal but on a set of deterrent and discriminatory conditions.

II. An exemplary sanction justified by structural harm to the island market, in light of Slovak Telekom

¹⁰ FCA, 17 November 2025, Decision No. 25-D-07, §269.

¹¹ CJEU, 25 March 2025, *Slovak Telekom*, Case C-165/19 P.

The analysis must then address the justification for the particularly severe sanction imposed by the Authority. This second part examines, on the one hand, how the decision reaffirms the requirement of non-discriminatory access to essential facilities in line with Slovak Telekom (A) and, on the other hand, the firmness of the punitive response deemed necessary to restore competition in a structurally constrained island market (B).

A. Reaffirmation of the requirement of non-discriminatory access to facilities

This subsection shows how the decision reaffirms the requirement of effective and non-discriminatory access to essential facilities, in accordance with European case law.

This case illustrates the need for competition authorities to ensure effective and non-discriminatory access to essential facilities¹³. In Bronner, the Court established a particularly strict framework: compelling a dominant undertaking to grant access required indispensability, impossibility of duplication, and exclusion of any viable alternative competitive activity. This refusal-based approach limited intervention.

¹³ FCA, 17 November 2025, Decision No. 25-D-07, §268.

The Slovak Telekom judgment (CJEU, 2021) relaxed this approach by allowing authorities to sanction not only refusals of access but also degraded access. A practice may restrict competition even where access formally exists, provided that the conditions imposed render it ineffective in practice.

This pragmatic approach of European case law is adopted here by the national authority. Although non-shareholder distributors could theoretically access the oil depots, such access was profoundly unequal. On the one hand, effective use of the depots was reserved to shareholders¹⁴; on the other hand, the conditions imposed on non-shareholders made supply economically disadvantageous, necessarily involving an additional margin for the benefit of shareholders¹⁵.

Thus, in line with Slovak Telekom, the access offered was more symbolic than real, constituting discrimination that prevented any effective competition. The Authority was therefore justified in finding a serious infringement of the competition rules applicable to essential facilities.

While the decision reaffirms the central role of non-discriminatory access to essential facilities, the broader implications of the infringement call for close examination of the severity of the sanction, justified by the

¹⁴ *Ibid.*, §260.

¹⁵ *Ibid.*, §281.

structural vulnerabilities of the Corsican market.

B. A severe punitive response to restore competition in a constrained market

This subsection analyses the severity of the punitive response adopted by the French Competition Authority to restore effective competition in a structurally constrained market.

In response to these practices, the Authority imposed fines totaling €187.49 million. Several factors explain the severity of the sanction.

First, the duration of the practices nearly seven years (2016–2023) revealed a deliberate intention to maintain durable market foreclosure.

Second, the nature of the agreement and its structural impact on the organization of the fuel supply market.

Finally, the impact on pump prices, ultimately borne by consumers, justified a strongly deterrent response.

The Authority also ordered a publication measure in the local press, an important deterrent tool in a small market where transparency is essential. This measure aims to restore trust among economic actors and prevent the recurrence of such practices.

The specific features of an island economy call for heightened vigilance. In the absence of any alternative to the DPLC depots no other storage infrastructure exists in Corsica the slightest access distortion may translate into durable rents for the undertakings party to the agreement. The foreclosure of a facility thus produces amplified effects in an insular environment such as Corsica¹⁶.

In conclusion, this decision clearly illustrates the convergence of antitrust rules. Bronner lays down the criteria of indispensability and impossibility of duplication; Slovak Telekom confirms that discriminatory access already constitutes a restriction of competition. The Corsican case combines both dimensions: the infrastructure is indispensable and access is collectively locked, not by a single dominant undertaking but by a horizontal agreement, thereby reinforcing market-closure effects and fully justifying the sanctions imposed by the Authority.

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¹⁶ The fuel market is characterized by a strong degree of concentration : C. Bizet, « Sanction d'une entente

dans le secteur de la distribution de carburants routiers en Corse », *LEDICO*, December 2025, n°DDC20314.