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The French Court of Cassation upholds Apple's liability for a vertical agreement and abuse of economic dependence

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Abstract: *The Apple saga came to an end on 13 May 2026 with a judgment of the French Court of Cassation, after more than a decade of proceedings (Cass. com., 13 May 2026, nos. 22-22.623, 22-22.647, 22-22.677 and 22-22.727). The case concerned the limits of a supplier's freedom to organise its distribution network, in particular whether Apple's customer allocation system constituted a vertical agreement restricting competition by object, and whether the conditions for an abuse of economic dependence were met. The Court upheld the Paris Court of Appeal's reasoning on both points, confirming in particular that economic dependence must be assessed in concrete terms.*

After more than a decade of proceedings, the judgment delivered by the French Court of Cassation (the "Court") on 13 May 2026 brings the Apple case to a close and provides important clarifications on the application of competition law to the relationship between a supplier and its distribution network.

In this case, in 2012, eBizcuss, an "Apple Premium Reseller" (APR), lodged a complaint with the French Competition Authority (the "Authority") concerning various anticompetitive practices allegedly committed by several Apple group companies. By a decision of 16 March 2020, the Authority fined Apple approximately €1.102 billion for several anticompetitive practices, including a vertical agreement and abuse of economic dependence. Tech Data and Ingram Micro were fined approximately €76.1 million and €63.0 million, respectively, for their participation in the customer-allocation agreement. The Authority also found resale price maintenance, a finding subsequently overturned on appeal.

Following an appeal against that decision, the Paris Court of Appeal (the "Court of Appeal"), in a judgment dated 6 October 2022, partially overturned the Authority's decision. In particular, it reduced the amount of the fine and dismissed the allegation of resale price maintenance, while upholding the finding of a vertical agreement between Apple and its wholesalers and the existence of an abuse of economic dependence.

Four appeals on points of law were lodged by the companies concerned and by the

President of the Authority. In its judgment of 13 May 2026, the Court was called upon to rule on several issues relating to the characterisation of the anticompetitive practices alleged against Apple. In particular, it had to determine whether the evidence identified by the lower courts was sufficient to establish a vertical agreement based on customer allocation, whether the conditions for finding an abuse of economic dependence were satisfied, and whether resale price maintenance could be established. The judgment also raised several issues concerning the use of certain documents submitted during the proceedings.

The Court largely upheld the reasoning of the Court of Appeal. It affirmed the findings of a vertical agreement and an abuse of economic dependence, while confirming the dismissal of the resale price maintenance allegation. On the resale price maintenance issue, the Court held that the conditions required to establish such a practice had not been met. Although this issue is of interest, it will not be examined in detail in this article, which focuses on the two legal classifications that underpinned the decision to uphold Apple's liability.

The significance of the judgment lies in the circumstances in which the organisation of a distribution network may fall within the scope of the law on anticompetitive agreements, and in the criteria used to establish the abusive exploitation of a position of economic dependence under French law. It therefore raises two questions: first, how a vertical agreement based on customer allocation may be established and legally characterised; and, second, how the economic dependence of distributors and its abusive exploitation may be identified.

Finally, the procedural issues relating to the documents submitted during the proceedings will not be addressed in detail. In this respect, the Court confirmed that the Authority may rely before the Court of Appeal on documents contained in the case file even if they were not discussed during the administrative proceedings and on documents covered by business secrecy where the companies concerned have not requested that the confidentiality restrictions be lifted.

Accordingly, this article will first examine the characterisation of the vertical agreement based on customer allocation (I), before turning to the characterisation of the abuse of economic dependence (II).

I. Establishing a vertical agreement in Apple's distribution network

Article L. 420-1 of the French Commercial Code and Article 101 TFEU prohibit agreements that have as their object or effect the prevention, restriction or distortion of

competition[1]. In the context of vertical relationships, establishing an infringement requires demonstrating, first, the existence of an agreement between undertakings operating at different levels of the supply chain and, second, that the agreement has an anticompetitive object or effect. The Apple case is particularly significant in this regard: the practices at issue were embedded in the organisation of the group's distribution network, raising the question of where to draw the line between a supplier's freedom to organise its distribution system and unlawful interference with its distributors' commercial autonomy.

In this case, Apple had put in place a system for allocating products and dividing customers between its two authorised wholesalers, Ingram Micro and Tech Data. Apple determined the quantities of products to be allocated to each wholesaler's customers and monitored compliance with those allocations. The Court of Cassation upheld the finding that this mechanism was not merely a means of organising the distribution network, but a vertical agreement aimed at allocating customers between the two wholesalers.

A. Establishing the existence of an agreement between Apple and its wholesalers

The first issue was whether a genuine agreement existed between Apple and its wholesalers. Apple argued that the allocations resulted from unilateral decisions by the supplier and amounted merely to recommendations designed to organise the supply of its distribution network. However, establishing a vertical agreement requires a "concurrence of wills" between the undertakings concerned[2]. Such an agreement need not take the form of a formal contract; it may be inferred from the parties' conduct and established on the basis of a body of evidence.

The Court of Cassation upheld the Court of Appeal's finding that an agreement existed, based on several elements of evidence.

An agreement may be established through direct evidence or through a body of circumstantial evidence constituting a set of precise and consistent indicia. In this judgment, the Court of Cassation clarified the distinction between direct evidence and evidence inferred from the parties' conduct. Apple and its wholesalers argued that only direct evidence could relieve the court from having to determine whether a distributor

[1] Article L.420-1 of the French Commercial Code and article 101 TFEU.

[2] L. Idot, *« L'Autorité de la concurrence condamne très sévèrement Apple et ses deux grossistes français »*, *Revue des contrats*, 2020.

had significantly complied with its supplier's recommendations. In their view, the evidence relied upon was merely circumstantial, so the court should have examined whether the wholesalers had significantly complied with Apple's allocations. They maintained that only a contractual document formally recording the parties' commitment could constitute direct evidence. The Court rejected that argument, holding that the emails exchanged between Apple and its wholesalers constituted direct evidence of the agreement.

Eturas does not establish a general rule that one message cannot prove an infringement: it holds that sending a message through a shared information system does not, without more, establish that recipients knew its contents[3]. Knowledge may, depending on the evidence, support a rebuttable presumption of participation. In Apple, the Court relied on emails involving Apple and its wholesalers, alongside other consistent evidence, to establish their agreement.

Nevertheless, the classification of these emails as direct evidence merits closer scrutiny. This classification affords them considerable probative weight, as it dispenses the court from having to establish whether the wholesalers had significantly complied with the allocations. The Court, however, made clear that the wholesalers' actual conduct remained relevant, particularly when assessing the harm caused to the economy by the agreement.

In this case, the specific circumstances and the particular organisation of Apple's distribution network justified treating the emails as direct evidence. The Authority had also observed that the exchanges between the undertakings were "very frequent and detailed", enabling Apple to monitor the implementation of the allocation system.

This analysis is consistent with A.-S. Choné-Grimaldi's commentary on the 2020 decision, which emphasised the highly structured nature of Apple's distribution system[4]. The difficulty did not lie in the absence of a contract expressly providing for customer allocation, but in the fact that Apple's and its wholesalers' respective conduct evidenced a common intention to implement that allocation.

The Court upheld the Court of Appeal's rigorous approach to determining the period during which the anticompetitive agreement had been established. It upheld the Court of Appeal's decision to amend the Authority's findings as to the duration of the infringement. The Court of Appeal had found that the customer-allocation

[3] CJEU, 21 janv. 2016, *Eturas UAB*, C-74/14, para. 50.
[4] A.-S. Choné-Grimaldi, "Les géants du numérique face à l'interdiction des abus de dépendance économique : Les Français contre-attaquent", 1er novembre 2020, *Concurrences* N° 4-2020, Art. N° 97016, pp. 84-92.

restrictions were established only from November 2009, rather than December 2005, because the email sent in December 2005 contained "ambiguous wording" and could not be regarded as evidence of an unlawful agreement.

Accordingly, the existence and duration of an anticompetitive agreement must be established by reference to the undertakings' exchanges and, where relevant, their conduct. In the Apple case, the exchanges between the parties, together with the repeated implementation of the allocations, provided the basis for finding a concurrence of wills.

B. Characterisation of a restriction of competition by object

Once the existence of an agreement had been established, the remaining question was whether it restricted competition. On this point, the Court of Cassation upheld the Court of Appeal's finding that the agreement restricted competition by object.

As the CJEU has consistently held, the decisive criterion for classifying an agreement as a restriction by object is whether it reveals, by its very nature, a sufficient degree of harm to competition[5]. Although horizontal agreements are generally regarded as posing the greatest risk to competition, the CJEU has confirmed that vertical agreements may also restrict competition by object[6].

In this case, Apple's system allocated products and customers between its two authorised wholesalers, which meant that they were no longer free to decide which customers to supply with Apple products.

As A.-S. Choné-Grimaldi explains, the practice cannot be viewed as a mere means of organising vertical distribution flows: Apple intervened directly in its wholesalers' commercial relationships and determined which customers each could serve, thereby restricting the competition that would otherwise have existed between them[7]. The Authority had already concluded that, in light of its content, objectives and economic and legal context, the practice restricted competition by object. The Court of Cassation endorsed the Court of Appeal's analysis, which relied on the economic context and market structure: the market operated within a closed distribution system in which only two authorised wholesalers competed, so that allocating products and

[5] CJEU, 11 septembre 2014, *CB / Commission*, C-67/13, para 57.

[6] CJEU, 14 mars 2013, *Allianz Hungária Biztosító*, C-32/11, para 43: "the fact that both cases concern vertical relationships in no way excludes the possibility that the agreement at issue in the main proceedings constitutes a restriction of competition 'by object'."

[7] A.-S. Choné-Grimaldi, "Entente verticale : La Cour de cassation confirme la condamnation pour entente du fait d'une pratique de prix imposés et d'un accord de répartition de marchés (Ingram Micro / Apple e.a.)", 13 mai 2026, *Concurrences* N° 7-2026, Art. N° 135914.

customers between them was particularly harmful by its very nature.

This analysis also explains why Apple's argument based on supply shortages was rejected. Apple maintained that the allocations were necessary to manage scarcity and ensure efficient distribution. However, the mechanism had been applied so broadly and for so long that it could no longer be regarded as a temporary supply-management measure. In particular, the Authority found that the allocations were implemented even outside periods of supply "constraint".

Under EU law, characterising an agreement as restrictive by object does not require proof of its actual or potential effects on competition[8]. Nevertheless, established, relevant, agreement-specific and sufficiently significant pro-competitive effects may form part of the economic and legal context and cast doubt on whether the agreement is sufficiently harmful. The Court of Cassation followed the CJEU's approach in Generics (UK), rather than adopting a separate French test.

II. The characterisation of an abuse of economic dependence

A. The existence of a state of economic dependence

The Court rejected Apple's ground of appeal challenging the Court of Appeal's finding that Apple Premium Resellers (APRs) were economically dependent on Apple. To establish such dependence, the Authority and the French courts traditionally rely on four criteria: the supplier's brand recognition, its market position, the share of the reseller's turnover attributable to the supplier, and the absence of an alternative source of supply[9].

Here, Apple's brand recognition was undisputed, and Apple-branded products accounted for between 78% and 90% of the APRs' turnover. The main difficulty lay in assessing Apple's market position and determining whether an alternative source of supply was available.

Apple argued, in particular, that the presence of competitors such as Samsung precluded a finding of economic dependence. The Court rejected this essentially quantitative approach, holding that "the Samsung group did not constitute an alternative supplier". It thereby upheld the Court of Appeal's decision to

[8] CJEU, 21 Dec. 2023, European Superleague Company, C-333/21, para. 166; CJEU, 30 Jan. 2020, Generics (UK) and Others, C-307/18, paras. 103, 105 and 107.

[9] J.-B. Blaise et R. Desgorces, *Droit des affaires : Commerçants - Concurrence - Distribution* (13ème édition), LGDJ, 2025, p.430.

examine Apple's specific ecosystem on the basis of a body of indicia, rather than relying on market shares alone.

Apple also argued that economic dependence could be established only where substitution was impossible, and that it was sufficient for a distributor to have an alternative enabling it to redirect its business, even at the cost of temporary difficulties or a slight loss of revenue. The Court rejected this argument, holding that the alternative must constitute "a solution that is technically and economically equivalent to the contractual relationship established with the supplier". The Court thus applied that any comparable alternative must be available within a reasonable period.

Economic dependence must thus be assessed in concrete terms. The mere presence of another supplier on the market is not enough: the undertaking must actually be able to turn to that supplier on sufficiently comparable terms. The Court emphasised that, although APR status was voluntary, it was necessary to attract customers, and losing it would mean losing customers. It also took account of Apple's specific sales model, in particular customers' attachment to the Apple ecosystem, in concluding that APRs had no equivalent alternative. Refitting premises and retraining staff would have made reconversion costly and impracticable within a reasonable period.

The judgment thus shows that Apple's power over its distributors does not derive solely from its market share: it also stems from its brand recognition, the distinctive characteristics of its products and the organisation of its distribution network.

B. Establishing Apple's abuse of economic dependence

Establishing economic dependence is not enough to find an infringement of Article L. 420-2, paragraph 2, of the French Commercial Code[10]: wielding significant economic power over a business partner is not unlawful in itself. It must also be shown that the dependence was abused, that is, that the undertaking imposed on its partner conditions that the latter would not have accepted had it enjoyed genuine economic freedom.

The term "abuse" suggests a parallel with abuse of a dominant position, since in both cases competition law targets not economic power as such but its abusive exploitation. The judgment shows, however, that the two regimes should not be conflated. Under EU law, dominant undertakings bear a "special responsibility" that prohibits conduct in

[10] Article L.420-2 of the French Commercial Code.

which a non-dominant undertaking could lawfully engage[11]. Apple expressly relied on this concept, arguing that "this responsibility must be interpreted strictly". The Court of Cassation did not decide that objection: in paragraph 95, it treated the challenged appellate reasoning as unnecessary to its decision. Instead, it upheld the finding of abuse using a criterion described by commentators as "centred on the economic rationality of the dependent undertaking"[12].

The question was thus not whether Apple's conduct would have been permissible for a dominant undertaking, but whether an undertaking enjoying genuine economic freedom would have refused the conditions imposed on the APRs.

In this case, Apple applied discriminatory supply conditions that placed the APRs at a competitive disadvantage compared with Apple Stores and other distribution channels for IT and electronic equipment. Apple opened its own stores in the most profitable catchment areas, leaving the APRs to operate in less attractive ones. Its supply policy further restricted their ability to compete. The APRs thus faced constraints comparable to those of vertically integrated operators, while continuing to bear the commercial and financial risks of independent businesses. The Court held that this gave Apple "an advantage in inter-brand competition". It was these conditions, which the APRs would not have accepted had they not been economically dependent on Apple, that established the abuse.

This approach highlights a distinction between the two legal frameworks, without resolving whether the notion of special responsibility could apply by analogy to abuse of economic dependence. In the latter case, the undertaking is subject to a special responsibility because of its market power; in the former, it is the specific relationship between the two undertakings that justifies the intervention of competition law. The abuse thus arises not from Apple's economic power as such, but from the way it was exercised against business partners who lacked the economic freedom to resist. The two concepts nonetheless remain close. As A.-S. Choné-Grimaldi observes, "it would have been possible to analyse the facts just as successfully under the heading of abuse of a dominant position"[13].

[11] CJCE, 9 nov. 1983, *Michelin c/ Commission*, 322/81 para 57 : "a special responsibility".

[12] M. Cartapanis, "Abus de dépendance économique : La Cour de cassation confirme un arrêt de la Cour d'appel de Paris sanctionnant un fabricant de smartphones pour abus de dépendance économique (Apple)", 13 May 2026, *Concurrences* N° 7-2026, Art. N° 135856.

[13] A.-S. Choné-Grimaldi, "Les géants du numérique face à l'interdiction des abus de dépendance économique : Les Français contre-attaquent", 1er novembre 2020, *Concurrences* N° 4-2020, Art. N° 97016, pp. 84-92.

Finally, the Court of Cassation found that the practices had produced an appreciable effect on the functioning and structure of competition. Article L. 420-2, paragraph 2, requires only that the conduct be capable of affecting competition, without expressly specifying a minimum threshold. Although the Court of Appeal considered that no appreciability threshold was necessary, the Court of Cassation did not decide the point: given the appreciable effect established in this case, it treated that reasoning as superfluous (para. 95).

This position may be compared with *Post Danmark II*, in which the CJEU rejected any specific appreciability threshold for abuse of a dominant position, while requiring that the anticompetitive effect be probable, without proof that it is serious or substantial[14]. The comparison suggests a possible convergence, without settling whether Article L. 420-2, paragraph 2, imposes an appreciability threshold. More broadly, the judgment shows how one distribution network can give rise to distinct infringements: an agreement allocating customers between wholesalers and an abuse of dependence affecting specialised resellers, each subject to a different legal test.

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[14] CJEU, 6 oct. 2015, *Post Danmark II*, C-23/14, para 73 and 74.