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French courts ruled on two follow-on actions brought by Carrefour group, following the “Compote Cartel”

On 18 November 2025, the Economic Activities Courts (‘Tribunaux des Activités Economiques’ or ‘TAE’) of Marseille and Lyon heard compensation claims brought by companies belonging to Carrefour group, following the decision of the French Competition Authority (‘FCA’) concerning the so-called "compote cartel” (ADLC, 17 December 2019, no. 19-D-24).

In both cases (respectively n° 2025F00115 and 2021J00094), Carrefour Group sought compensation for losses it claimed to have suffered as a result of artificially inflated prices caused by the cartel. The proceedings before the Lyon Court concerned Materne (from which Carrefour claimed 8 million EUR in principal), while those before the Marseille Court concerned Charles Faraud (22.5 million EUR in principal), both undertakings having been definitively sanctioned by the FCA.

Delivered in a largely identical factual and legal context, these two judgements provide an instructive illustration of the persistent uncertainties characterising French competition damages litigation, in particular as regards the *ratione temporis* application of Directive 2014/104/EU of 26 November 2014 (the ‘Damages Directive’) and the methods used to quantify harm.

The *ratione temporis* application of the Damages Directive: a broadly convergent analysis

From a legal standpoint, the two courts largely converge in their analysis of the *ratione temporis* application of the Damages Directive, as transposed into French law by Ordinance of 9 March 2017. As the anti-competitive practices ended before the transposition deadline (27 December 2016), both courts rightly excluded the retroactive application of the Directive’s substantive provisions.

Characterisation of the civil fault

However, the Marseille Court held that the irrebuttable presumption of fault arising from Article 9(1) of the Damages Directive, a provision of a substantive nature, was applicable in the present case by reason of the date of the French Competition Authority’s decision (17 December 2019), which was issued after the transposition deadline (27 December 2016).

The Lyon Court, for its part, did not rely on the Damages Directive's concept of an irrebuttable presumption, instead adhering to a monistic conception of fault. It held that the establishment of an anti-competitive infringement in itself constitutes a civil fault.

Characterisation of damages and causal link

The Marseille judges expressly excluded the application of (i) the presumption of harm laid down in Article 17(2) of the Damages Directive and (ii) the presumption of non-passing-on of the overcharge provided for in Article 13, on the ground that these provisions, likewise substantive in nature, cannot govern practices that ceased prior to transposition.

Consequently, the dispute was not governed by the transposed provisions of the French Commercial Code (Articles L. 481-7 and L. 481-4), but solely by the general law of civil liability under Article 1240 of the French Civil Code.

It therefore fell to the injured undertaking (Carrefour) to establish the existence of harm, its quantum, and the absence of any pass-on of the overcharge.

The Lyon court reached similar conclusions as to the applicable legal framework. However, the outcomes diverged significantly.

A clear divergence in the treatment of evidence and the quantification of damages

In both cases, Carrefour's claims as to the quantification of harm were based on the same methodology. The analyses in both proceedings had been carried out by the same expert appointed by Carrefour.

In Marseille, the court was confronted with two conflicting economic expert reports produced by the parties, which it considered inconclusive. Taking the view that it lacked sufficient evidentiary material to rule on the amount of the harm, the court adopted a cautious approach and ordered a court-appointed expert investigation, entrusting the appointed expert with clarifying the existence and extent of the alleged damage.

In Lyon, by contrast, the judges, while acknowledging the complex and hypothetical nature of the counterfactual analysis, chose to exercise their sovereign power of assessment. They disposed of the dispute by awarding Carrefour 750,000 EUR in damages, approximately half of the principal amount of harm (1.5 million EUR) claimed by the applicants. The court rejected the "umbrella pricing" argument relied upon by the Carrefour Group for lack of sufficient evidence.

Burden of proof and pass-on of the overcharge: a debatable line of reasoning

The courts' treatment of the issue of the pass-on appears more questionable. Although the Lyon judges affirmed the inapplicability of the presumptions introduced by the Damages Directive, they held that Materne had failed to establish that the overcharge had been passed on to consumers, thereby seemingly placing on the defendant a burden of proof which, under ordinary rules of civil liability, would normally rest with the claimant.

This approach gives the impression of an implicit reversal of the burden of proof, which is difficult to reconcile with the principles affirmed earlier. By contrast, the solution adopted by the Marseille Court can be described as cautious, as it relied on a court-appointed expert to assess the damage.

Conclusion

In conclusion, these two judgements illustrate two distinct conceptions of the judge's role and discretionary power in competition damages actions: one, cautious and methodical, favouring the rigorous establishment of damages through expert analysis; the other, more pragmatic, but carrying the risk of a questionable application of evidentiary rules.

In this respect, the Marseille approach appears more consistent with the requirements of legal certainty and the soundness of judicial reasoning.

Please note that these judgements are subject to appeal.