

Template pursuant to Section 3 (a) of the ICN Framework on Competition Agency Procedures

[Agency name, Jurisdiction]

The following template is submitted by **Polynesian Competition Authority/Autorité polynésienne de la concurrence (APC)** pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures ("CAP").

I. Introduction

The Polynesian Competition Authority (APC) was created by the law of the country n ° 2015-2 of February 23, 2015 based on the article 30-1 of the statute of French Polynesia. Inside the French Republic, it is the first independent administrative authority (AAI) which was not instituted by the French State, but by the autonomous country of French Polynesia. This special status makes it a real innovation within the Polynesian administrative landscape. An independent administrative authority does answer to the classic administration's hierarchy and has its own powers. It has a functional and material autonomy. The APC acts on behalf of French Polynesia, which has delegated a fraction of its regulatory power. It is independent of both government and controlled undertakings . It carries out several missions : referral to the government for opinion, notification by an enterprise of a merger or creation/extension of commercial surfaces, or referral of a complainant in anti-competitive practice. It can also seize on its own initiative.

<https://www.autorite-concurrence.pf/>

II. Laws, Regulations, and Policies relevant for the implementation of the CAP

For each CAP Principle below, please explain how your competition law investigation and enforcement procedures meet the Principle. Please highlight important features relevant for the implementation of the CAP and explain limitations, if applicable. Feel free to include links or other references to related materials such as relevant legislation, implementing rules and regulations, and guidelines where helpful and appropriate.

Please update your Template reflecting significant changes as they relate to the CAP, as needed.

b) Non-Discrimination

Each Participant will ensure that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances.

In accordance with the provisions of Article 6 of the European Convention on Human Rights, everyone has the right to a fair hearing, by an independent and impartial tribunal. Consequently, the investigating department, under the direction of the general rapporteur, conducts the APC's investigations independently. It is only after a contradictory investigation procedure that the cases are transmitted to the College of the Authority for examination.

Competition Code (in French): <http://lexpol.cloud.pf/LexpolAfficheCodes.php?code=27>

Rules of procedure of the Authority (in French): <https://www.autorite-concurrence.pf/apc/textes/reglement-interieur-de-l-apc>

c) Transparency and Predictability

- i. Each Participant will ensure that Competition Laws and regulations that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- ii. Each Participant with the authority to adopt Procedural Rules will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.*
- iii. Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- iv. Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.*
- v. Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, as appropriate.*

- i. French Polynesian Competition Laws and regulation are already publicly available online on the APC's website (<https://www.autorite-concurrence.pf/>) and published in the French Polynesian Official Journal (<http://lexpol.cloud.pf/>).
- ii. The main procedural rules are already adopted and published: Rules of procedure of the Authority (in French) (<https://www.autorite-concurrence.pf/apc/textes/reglement-interieur-de-l-apc>). This main body of procedural rules was modified thirteen times. The last version was ratified by the French Polynesian government Order No. 107 CM of January 23, 2019 approving the internal regulations of the Polynesian Competition Authority. Merger control procedure guidelines are also available here : <https://www.autorite-concurrence.pf/concentrations-surfaces-commerciales/le-controle-des-concentrations/lignes-directrices-relatives-au-champ-d-application-et-a-la-procedure-de-controle-des-concentrations>. Leniency guidelines are available here: <https://www.autorite-concurrence.pf/espace-presse/communiqués-de-presse/210>.
- iii. French Polynesian Competition procedural rules are already publicly available online on the APC's website (<https://www.autorite-concurrence.pf/>) and published in the French Polynesian Official Journal (<http://lexpol.cloud.pf/>).
- iv. Procedural rules are followed and enforced by the APC's agents. The procedure is strictly recalled in all the APC's decisions, especially for anticompetitive practices: <https://www.autorite-concurrence.pf/pratiques-anticoncurrentielles/liste-des-pratiques-anticoncurrentielles>.
- v. More understandable content about the Investigations and Enforcement Proceedings are available on the APC's website (<https://www.autorite-concurrence.pf/>) and Facebook page (<https://www.facebook.com/APC689/>) as well as on Twitter (<https://twitter.com/APC689>), LinkedIn (<https://www.linkedin.com/company/apc689/>) and Instagram (https://www.instagram.com/apc_987/). The APC annual reports can

also be a useful source of information: <https://www.autorite-concurrence.pf/apc/rapports-activite>.

d) Investigative Process

- i. Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g., forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.*
- ii. Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal, economic, and procedural issues, according to the status and specific needs of the Investigation.*
- iii. Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.*

- | | |
|--|--|
| <ul style="list-style-type: none">i.ii. | <p>Based on the article LP 630-2 of the French Polynesian Competition Code about adversarial character of the proceeding, the inquiry and procedure before the competition authority are both adversarial and subject to the provisions of article LP 630-4 for saving business secrecy. Inquiry is lead independently by the inquiry service under the leadership of general rapporteur. Legal representation is not mandatory for proceedings before competition authority.</p> <p>For anticompetitive practices, the general rapporteur shall send the claims to the parties concerned and to the government representative, who may consult the file, subject to the provisions of Article LP 630-4, and present their observations within two months. This notification mentions, by persons concerned, the possibility of being assisted or represented by any person of their choice. The report shall then be sent to the parties, to the government representative. It shall be accompanied by the documents that the rapporteur is relying on and the observations, if any, made by the parties concerned. The parties have a period of one month, in which to submit their observations in reply, which may be consulted by the persons referred to in the previous paragraph during the fifteen days preceding the sitting. At the end of the pre-trial phase, general rapporteur sends the file to the president of Competition Authority for consideration by the college of the Competition Authority. For merger issues, The</p> |
|--|--|

- Competition Authority shall decide on it within twenty-five business days as from the date it receives the complete notification.
- iii. Reasonable time is given to persons based on the article LP 630-2 of the French Polynesian Competition Code about adversarial character of the proceeding.

e) Timing of Investigations and Enforcement Proceedings

Each Participant will endeavor to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.

For merger and retail store control, the APC must act in 25 and 30 days. There is no time limit for anticompetitive practices because of the fact that adversarial character of the proceeding must be endorsed.

f) Confidentiality

- i. *Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.*
- ii. *Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.*
- iii. *Each Participant will take into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding.*

- i. Based on the article LP 610-10 of the French Polynesian Competition Code about Professional secrecy, members and public officers of the Authority must preserve professional confidentiality for the facts, acts or information, which have come to their knowledge through their function. They incur disciplinary or criminal penalties, as the case may be, according to legislation. The obligation of professional secrecy are without prejudice to communication by the Authority of information or documents held toward another Authority units with similar abilities or to an administrative service of French Polynesia, subject to reciprocity and provided that their members, public officers are required to preserve such professional confidentiality.
- ii. An act adopted by the Council of Ministers at the request of the Authority determines the duties and obligations of the members of the college (Annex of the Order No. 1347 CM of September 10, 2015 creating the "Orders" part of the French Polynesia competition code: <http://lexpol.cloud.pf/LexpolAfficheTexte.php?texte=457066>). It aims to preserve the dignity and impartiality of their duties and to prevent conflicts of interest, and particularly: Ethical rules applicable to them, and to the officials of the services of the Authority; Obligation as to circumspection in the public expression on any matter which might be taken up by the Authority; Other activities incompatible with their functions; Protecting the confidentiality of the Authority's deliberations and work.
- iii. The fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding is protected by the general rules enforced in French Polynesia through the Competition Code, the French

and French Polynesian Civil Procedure Code, the French Penal procedure code and the Article 6 of the European Convention on Human Rights

g) Conflicts of Interest

Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.

The article A. 610-2-1 of the French Polynesian Competition Code states that the members of the Authority, including the president, exercise their functions with dignity, probity and integrity and take care to prevent or to put an immediate end to any conflict of interest in accordance with the French law n ° 2013-907 of October 11, 2013 relating to the transparency of public life.

In their work, the members, including the president, do not receive or request instructions from any authority. They do not take, on a personal basis, any public position prejudicial to the proper functioning of the authority to which they belong. Members and former members, including the president, are required to respect the secrecy of the deliberations.

They are subject to professional secrecy, under the conditions provided for in articles 226-13 and 226-14 of the French penal code. They exercise professional discretion for all the facts, information or documents of which they have or have knowledge in the exercise or in the exercise of their functions. Each member, including the president, must comply with the provisions of the ethics charter (Annex 5 of the Competition code).

Each member shall communicate, when he takes office, the list of interests he holds and of the functions he exercises in an economic activity on that date, as well as the list of the functions he exercised, the mandates and the interests he held during the five years preceding this date. The president is required to respond appropriately to avoid any conflict of interest likely to taint the opinions and decisions of the Authority.

h) Notice and Opportunity to Defend

- i. Each Participant will provide Persons subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defense, parties should be informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or claims.*
- ii. Each Participant will provide Persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter in the Participant's possession that is necessary to prepare an adequate defense, in accordance with the*

requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.

- iii. Each Participant will provide Persons subject to an Administrative Proceeding with reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.*

- | | |
|------|--|
| i. | For anticompetitive practices, the general rapporteur shall send the claims to the parties concerned and to the government representative, who may consult the file, subject to the provisions of Article LP 630-4, and present their observations within two months. This notification mentions, by persons concerned, the possibility of being assisted or represented by any person of their choice. The report shall then be sent to the parties, to the government representative. It shall be accompanied by the documents, which the rapporteur is relying on, and the observations, if any, made by the parties concerned. The parties have a period of one month, in which to submit their observations in reply, which may be consulted by the persons referred to in the previous paragraph during the fifteen days preceding the sitting. At the end of the pre-trial phase, general rapporteur sends the file to the president of Competition Authority for consideration by the college of the Competition Authority. For merger issues, The Competition Authority shall decide on it within twenty-five business days as from the date it receives the complete notification. |
| ii. | Same as (i) |
| iii. | The French Polynesian Competition Code article LP 630-5 states that the meetings of the Competition Authority are not public. Only the parties and the government representative can attend them. The parties may ask to be heard by the Competition Authority and can arrange to be represented or assisted. The Competition Authority may hear any person needed. The general rapporteur and the government representative may present their observations. The general rapporteur and the government representative do not assist at the deliberation. |

i) Representation by Counsel and Privilege

- i. No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.*
- ii. Each Participant will provide a Person a reasonable opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.*
- iii. Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.*

- | | |
|-----|--|
| i. | The fact of being assisted or represented by any person of their choice is always possible and reminded to the parties at every level of procedures (investigation and enforcement proceedings). |
| ii. | The adversarial character of the proceeding is enforced in French Polynesia through the Competition Code, the French and French Polynesian Civil Procedure Code, the |

- French Penal procedure code and the Article 6 of the European Convention on Human Rights.
- iii. The rules for legal counsel are mainly present in the National Internal Rules of the Legal Profession (RIN) available here: <https://www.cnb.avocat.fr/fr/reglement-interieur-national-de-la-profession-davocat-rin> (for lawyers). The other rules are enforced in French Polynesia through the Competition Code, the French and French Polynesian Civil Procedure Code, the French Penal procedure code and the Article 6 of the European Convention on Human Rights.

j) Decisions in Writing

- i. *Each Participant in charge of issuing decisions or orders will issue in writing its final decisions or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions. Each Participant will ensure that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions.*
- ii. *Each Participant will ensure that all commitments it accepts to resolve competition concerns are in writing. Subject to confidentiality rules and applicable legal exceptions, each Participant will (i) make public the commitments it accepts, and (1) describe the basis for the competition concerns or (2) reference public materials in which those concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.*

- i. All the decisions or orders are available on official journal and the APC's website (<https://www.autorite-concurrence.pf/>) and Facebook page (<https://www.facebook.com/APC689/>) as well as on Twitter (<https://twitter.com/APC689>), LinkedIn (<https://www.linkedin.com/company/apc689/>) and Instagram (https://www.instagram.com/apc_987/). The APC annual reports can also be a useful source of information: <https://www.autorite-concurrence.pf/apc/rapports-activite>. The decisions or orders are written following the European and French legal practices for competition decision (especially for the French Competition Authority).
- ii. All the decisions or orders are available on official journal and the APC's website (<https://www.autorite-concurrence.pf/>).

k) Independent Review

No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an opportunity for the Person to seek review by an independent, impartial adjudicative body (e.g. court, tribunal, or appellate body).

The French Regulation No. 2017-157 of February 9, 2017 extending and adapting to French Polynesia certain provisions of Book IV of the Commercial Code relating to controls and sanctions in matters of competition, precise the appeal mechanism for the French Polynesian Authority: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000034020558&categorieLien=id>. Different jurisdictions are involved (Cassation Court, State Court, Paris Appeal Court, Administrative Appeal Court, Administrative Tribunal of French Polynesia).