

FAQs on anti-competitive practices

Some questions to ask yourself before contacting the Authority

Can you contact the Authority?

The petitioning party must be qualified to contact the Authority.

According to article LP 620-5 of the Competition Code, the Polynesian Competition Authority can be contacted by:

- businesses,
- the President of French Polynesia,
- the Speaker of the assembly of French Polynesia,
- a mayor or a Chair of a public establishment of inter-municipal cooperation,
- a representative professional or trade union organization,
- an association registered with the competent State Departments whose corporate purpose is the protection of consumer rights and,
- a consular chamber.

In competition law, the concept of business is widely interpreted. It follows from this interpretation that any legal person governed by private law or any natural person, individual operator or member of a liberal profession can ask the Authority to intervene. On the other hand, a natural person who does not carry out a commercial activity in his/her own name cannot be regarded as a company. An individual consumer cannot therefore contact the Authority. A deregistered company, which no longer has a legal personality, cannot contact the Authority either.

Do you have an interest in taking action?

Companies must also be able to justify the exercise of an economic activity on the market concerned by the practices reported or on a related market.

As for the professional or trade union organizations and associations mentioned above, they must be responsible for the interests which the practices reported in their complaint undermine.

The absence of legal interest in bringing proceedings is a cause of inadmissibility of the complaint (LP 620-9 of the Competition Code).

Is your complaint sufficiently substantiated?

Under the terms of article LP 620-9 of the Competition Code, the Polynesian Competition Authority “may reject the complaint by a reasoned decision when it considers that the facts adduced are not substantiated by sufficiently convincing evidence”.

As a result, although the petitioning parties do not have to prove with absolute certainty the existence of the practices reported, they must nevertheless provide as concrete and as precise evidence as possible, making the alleged infringements of competition sufficiently probable.

Is the Authority competent to find a solution to your problem?

The Polynesian Competition Authority, as guarantor of competitive public order, does not settle private disputes between two companies but takes decisions aimed at restoring the conditions of competition in a market, for the benefit of all players in this market (suppliers, customers, competitors, consumers, etc.).

Unfair competition between companies is not an infringement of competition law because it does not concern the behaviour of a company penalizing the competitive functioning of a market but the failure of a company to compete fairly with another company. The Authority is therefore not intended to deal with commercial practices deemed to be pernicious or unfair, which fall within the jurisdiction of the judicial courts or the mixed commercial court.

It is also not competent to award damages intended to repair the damage suffered and may not award reimbursement of non-recoverable costs (procedural costs).

Finally, the Authority cannot be asked to rule on the legality of an administrative act, whether it is a decision (such as an order) or a contract (a public procurement agreement by example). It cannot order its cancellation, which falls within the competence of the administrative court or the judicial courts, as the case may be.

Are the facts in support of your complaint not too old?

According to article LP 620-8 of the Competition Code, “the Polynesian Competition Authority cannot be referred to for facts dating back more than five years, if no action has been taken to look for them, ascertain them or penalise them”.

In addition, as the Competition Code entered into force in 2016, practices subsequent to that date can only be considered as anti-competitive. It is therefore useless to contact the Polynesian Competition Authority for previous practices.

Do you need a lawyer?

The assistance of a lawyer is not compulsory in proceedings before the Polynesian Competition Authority. However, the assistance of a legal practitioner can be useful as competition law calls for complex legal and/or economic concepts, knowledge and reasoning.

How to contact the Authority?

What are the procedures for laying cases before the Authority?

Article A 631-1 of the Competition Code specifies the procedures for laying cases before the Polynesian Competition Authority:

“Laying a case before the Authority must be done with a registered letter with acknowledgment of receipt or submitted to the secretariat of the Authority in triplicate.

The submission specifies:

- its subject matter and the regulatory provisions on which the petitioning party bases its petition;
- the surname, first names, corporate name or corporate form, profession or activity, and address of the domicile or registered office of the applicant, as well as, where applicable, its articles of association and the mandate given to its representative”.

These provisions are supplemented by the Authority’s internal regulations.

According to articles 111-01 to 111-06, any submission, any application for precautionary measure or any production of documents must be sent or filed between 7:30 a.m. and 12 p.m. or between 1 p.m. and 4 p.m. to/with the Authority in one (1) digital copy and two (2) hard copies to/at the following address:

Geographic address:

Autorité polynésienne de la concurrence
Service de la procédure
Bâtiment du gouvernement – rez-de-chaussée
Avenue Pouvana’a a O’opa
PAPEETE

Postal address:

Autorité polynésienne de la concurrence
Service de la procédure
BP 27
98713 PAPEETE RP

Submissions and applications for precautionary measures must be signed by the party submitting them, by the representative they have appointed or by a lawyer from the law firm or firm with which they have taken up legal residence.

All documents produced must be written in French, or, failing that, accompanied by a translation into French.

What elements must be included in the submission?

Article 141-1-01 of the Authority's internal regulations provides that the submission "shall include at least:

- an indication of the provisions of competition law that have been breached according to the applicant;
- a statement of the facts characterizing such breach and other circumstances useful for its assessment, in particular in relation to the sector and the geographical area concerned, the products or services affected, the companies in question or the relevant legal and economic context;
- the identity and address of the companies or associations to which the petitioning party imputes such breach, insofar as it can identify them".

Article 141-1-02 of the same text provides that "when the submission is accompanied by additional documents, aiming in particular to establish the facts and other elements useful for their assessment, these must come with a list indicating the number of each document, its title or nature and the number of pages it contains. These additional documents must be numbered consecutively".

Is there an emergency procedure?

Faced with an emergency situation requiring rapid intervention, the Authority may be required to issue precautionary measures, pending a decision on the merits of the case.

The request for precautionary measures can only be made incidentally to a submission to the Authority.

This type of measure can only be justified in the event of serious and immediate damage to an economic sector or to a company. It can take the form of an injunction such as the removal of anti-competitive clauses from a contract, the modification of statutory provisions or the cessation of disparagement of competitors, etc.

The urgency is however interpreted strictly and the measures must remain limited to what is necessary to face it (article LP 641-1 of the Competition Code).

Article 141-2-01 of the Authority's internal regulations provides that "the requests for precautionary measures referred to in articles LP 641-1 and A 640-1 of the Competition Code

are presented in a separate document from the submission to which they are the accessory. The details and the motivation they must include should be, at a minimum:

- 1) the reference to the identification number of the submission, when it has already been assigned;
- 2) the circumstances establishing the behaviour likely to constitute anti-competitive practices;
- 3) the circumstances establishing the serious and immediate interference with the interests mentioned in article LP 641-1 of the Competition Code;
- 4) description of the precautionary measures requested.

They are presented in one (1) digital copy and two (2) hard copies. They may be accompanied by additional documents, which must be presented in the forms provided for in article 141-1-04 of these internal regulations.

They are recorded by the Procedure Department, in the forms and modalities provided for in article 141-1-05 of these internal regulations, if they meet the requirements provided for in this article, in paragraph I of this section and by section I of this chapter”.