

Precautionary measures

The precautionary measures (PM) procedure is specific in that it is intended to respond to emergency situations of proven seriousness. As litigation proceedings can be lengthy, the Competition Code, in its article LP 641-1, provides that the PCA may, at the request of a party, intervene provisionally in the event of a serious and immediate infringement of the functioning of markets.

The Authority may thus be required, without waiting for the substantive examination of the case, to take measures aimed at returning to the situation prior to the deterioration observed or to suspend the practice in question to prevent it from creating any irreversible situation.

These specificities call for rapid examination of the case. However, the procedure remains contradictory.

Precautionary measures can only be granted on the double condition that the facts reported are sufficiently serious and that the resulting damage to the functioning of the markets is both serious and immediate.

The Authority is not bound by the measures requested. The measures granted must in any event be strictly proportionate to what is necessary to deal with the emergency. The procedure can also lead to commitments. Finally, the Authority can decide to reject the request for precautionary measures while keeping the file based on the merits of the case, or to reject the whole case.

The request for precautionary measures is subsidiary to a submission on the merits of a case. Such request cannot be granted if the submission on the merits is not admissible.

Except in the case where the submission on the merits has been declared inadmissible or lacking in supporting evidence, the case on the merits continues after the adoption of the decision of precautionary measures.

The decision about precautionary measures is in any way without prejudice to the outcome of the case on its merits.