

## FAQ relating to retail spaces

### What is the purpose of controlling retail spaces?

In order to preserve a sufficiently competitive climate in the field of retail trade, the Polynesian Competition Authority controls the creations and modifications of retail spaces. To this end, any person wishing to create, extend or transform a retail space exceeding 300 square metres must comply with the provisions of the Competition Code and the internal regulations of the Authority.

### What operations are affected by the control of retail spaces?

The operations concerned by the control of retail spaces are defined by article LP 320-1 of the Competition Code. Thus, any commissioning of a new retail store, when its sales area is greater than 300 m<sup>2</sup>; any opening, in a retail store already in operation, of a new sales area, when the total sales area of this store is or becomes greater than 300 m<sup>2</sup>; any change in the trade name of a retail store with a sales area greater than 300 m<sup>2</sup>, and any change in the sector of activity of such a store; any takeover by a new operator of a retail store with a sales area greater than 300 m<sup>2</sup> except when the operation is considered as notifiable under articles LP 310-1 et LP 310-2, require notification.

The sales area is defined by article 131-01 of the internal regulations.

When the conditions defined by the aforementioned articles are met, and under the terms of articles LP 320-2 and LP 620-10 of the Competition Code, the operator of the store concerned must notify the operation to the Authority before the completion of the project.

### Is it possible to make a pre-notification?

A pre-notification of the case is not compulsory. However, it is essential to limit the risk of incompleteness of the notification. This informal phase allows companies and the Authority to discuss the controllable nature of the operation, the specificities of the markets concerned or possible competition problems. It allows companies to be warned if the information forwarded needs to be completed.

It is therefore strongly recommended that the parties and their counsel contact the Investigation Department as early as possible.

This phase is strictly confidential and does not give rise to any publicity or contact with third parties, unless the parties agree.

### On whom does the notification obligation fall?

The notification obligation falls on the natural or legal person who will operate the store concerned (article LP 320-2 of the Competition Code).

### When and how to notify the Polynesian Competition Authority?

The party notifies the Polynesian Competition Authority as soon as its project is sufficiently completed, i.e. between obtaining the building permit and opening the retail space to the public.

The content of the notification file is defined by articles A. 320-1 of the Competition Code and 132-03 of the internal regulations. This file must contain, drawn up in writing, in a precise and detailed manner, the elements of Annex 4 of said regulation, the main ones being in particular:

- Information relating to the operator or the future operator, and to the group to which he belongs;
- Information on the conditions for carrying out the project;
- Project information;
- Information relating to market research;
- Land rights;
- The declaration concluding the application for authorization.

The notifying party must provide all details of the elements by strictly following the plan in appendix 4. The information given to the Authority must be precise and substantiated.

The transmission of the notification file must comply with the procedures provided for by articles 111-01 and 111-03 of the aforementioned regulation. Thus, the notification file must be sent in two hard copies and one digital copy (autorite@autorite-concurrence.pf) either by registered letter with request for acknowledgment of receipt to the postal address of the Authority, or filed with the Procedure Department at its geographical address on working days from 7:30 a.m. to 12 p.m. or from 1 p.m. to 4 p.m.

If the file is incomplete or non-compliant, the Authority asks the parties, via a letter of incompleteness, to complete or rectify the file, under the terms of paragraph 2 of article A. 320-1 of the Competition Code.

### What happens after the operation is correctly notified?

When the file is complete and compliant, it receives an acknowledgment of receipt.

The receipt of the complete notification is also made public in a press release published by the Authority on its website and/or in the Official Journal of French Polynesia in accordance with the terms defined by articles 132-05 and 132-06 of the internal regulations.

According to article LP 320-3 of the Competition Code, the file is examined by the Authority, which has thirty working days from the date of receipt of the notification to issue a decision. On this occasion, the Authority examines the potentially anti-competitive effects of the project and whether it meets the land use planning requirements.

### How is the file examined?

The file is examined impartially and independently by the Authority's Investigation Department under the supervision of the General Rapporteur.

This Department, after checking whether the operation is controllable, "analyses whether the boundaries of the relevant markets proposed by the parties are appropriate, assesses the effects of the operation on competition, and, where applicable, the relevance of the commitments offered." (Paragraph 2 of article 133-01 of the internal regulations).

At the end of the examination, an investigation report is notified to the notifying party and to the Government Commissioner.

The party then has five working days to send the Authority a brief in response to this report, which will also be sent to the Government Commissioner.

### What can the Polynesian Competition Authority decide?

According to the third paragraph of article LP 320-3 of the Competition Code, the Authority may take one of the following three decisions:

Authorization of the operation (1°);

Prohibition of the operation (2°);

Injunctions to take any appropriate measure to ensure sufficient competition (3°).

In the third case, the party must undertake to take any measure to ensure sufficient competition on the market and submit an additional file within 30 days, the content of which is defined by the last paragraph of article 133-01 of the Authority's internal regulations. This additional file must contain the applicant's commitments, a study of the impact on competition and the deadlines for fulfilling the commitments. The Authority examines these commitments and can either authorize the operation or prohibit it if it considers that the measures are insufficient or if the said additional file is not submitted to it.

### What happens if the operation is achieved in a non-compliant way?

A non-compliant performance of the operation occurs when it happens (i) in the absence of notification, (ii) before the decision, (iii) in contravention of the decision or in the event of (iv) omission or misrepresentation in its notification. Under these conditions, the Authority may impose financial penalties, the maximum amounts of which amount to 5% of the turnover excluding tax generated in French Polynesia during the last financial year for a legal person and XPF 20 million for a natural person (article LP 320-4-I of the Competition Code).

The Authority may also order the party under penalty to return to the state prior to the notification and to execute within a time limit that it sets the injunctions provided for in its decision (article LP 320-4-II of the Competition Code).

### What happens after the Authority's decision?

According to the terms of article A. 320-2 of the Competition Code, the decision is notified to the person performing the operation, who has fifteen calendar days to inform the Authority of what comes under business secrecy. The decision is then forwarded to the President of French Polynesia. Finally, the Authority must make sure the non-confidential version of its decisions is published on its website or in the Official Journal of French Polynesia.