

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

Autorité de la concurrence de la Nouvelle-Calédonie

The following template is submitted by the Competition Authority of New Caledonia pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures (“CAP”).

I. Introduction

Please add brief presentation/link to agency website.

<https://autorite-concurrence.nc/>

The Competition Authority of New Caledonia (ACNC) is charged with keeping watch over the free play of competition and the competitive functioning of markets in New Caledonia (NC), in conditions laid down by the commercial code applicable in NC.

The ACNC is an independent administrative authority established under the Caledonian law (loi du pays) of 24 April 2014, which took effect on the 2nd March 2018. ACNC bases its decisions solely on competitive criteria. It processes and decides individual cases independently without external instructions.

NC is a French territory, but with full competence and authority regarding competition law, laying down, in a fully autonomous manner, the rules governing competition, set out in the commercial code. Yet, the principles and procedures so established are essentially identical to those envisaged in French law. Furthermore, ACNC takes account of jurisprudence as established by the French and European competition authorities.

ACNC exercises four missions :

- a consultative mission: ACNC delivers formal opinions on draft texts from the NC government and Congress and more generally on any questions concerning competition in the market ;
- a control mission including preventative *a priori* measures, regarding mergers and operations in the retail sector (opening and enlargement of commercial premises, changes in branding, change of sector of activity, and change of operator) all with a view to their compatibility with competition rules;
- a repressive *post hoc* mission, intervening in cases referred by ACNC itself or by other parties regarding anti-competitive or commercial restrictive practices with the possibility of sanctions ;
- an informative mission (advocacy) with the objective of explaining the mission and procedures of ACNC to businesses, institutions and associations and the objectives of competition policy in NC.

ACNC is chaired and directed by independently appointed members and personnel.

The competences of the institutional college are exercised by four members, comprising the chair and three non-permanent members.

The powers of investigation and report are exercised by a senior rapporteur (“Rapporteur general”) supported by a deputy rapporteur (“Rapporteur general adjoint”) and five other rapporteurs.

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.

The rules of competition set down of the commercial code apply to all businesses active in the Caledonian market.

No distinction is drawn in function of nationality, residence or origin of the businesses concerned.

The Hague Convention of 15th November 1965 *regarding the meaning and notification abroad of judicial and extrajudicial acts, civil or commercial*, applies to NC in accordance with the adhesion of France to the convention.

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. Each Participant will ensure that Competition Laws and regulations that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.

The dispositions relating to investigations and administrative procedures of ACNC are brought to public attention in various ways :

Through its internet site, ACNC provides access to the full set of relevant texts concerning the exercise of its missions and the application of competition rules. The category devoted to texts includes in

particular legislative and regulatory dispositions of the commercial code already cited : <https://autorite-concurrence.nc/autorite-de-la-concurrence/textes>

This collection of texts covers normative dispositions applicable to anticompetitive practices, merger control and control of operations in the retail sector, which may lead to procedures to obtain undertakings or to injunctions and sanctions.

ACNC provides summary documents including brochures setting out applicable standards of investigation concerning the powers granted to agents of ACNC, or schematic presentations of fines procedures.

<https://autorite-concurrence.nc/pratiques-anticoncurrentielles/pratiques-anticoncurrentielles>

Likewise, a set of texts dealing with com regarding mergers and operations in the retail sector, includes a link leading to those texts specifying systems of notification of such developments. The set provides summaries, in tabular form, of forbidden practices, and applicable sanctions in the event of non-observance of the rules.

<https://autorite-concurrence.nc/controle-des-concentrations-et-des-commerces-de-detail/controle-des-concentrations-et-des-commerces>

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.

The normative framework for the procedures of ACNC derive partly from legislative texts or regulations adopted by institutions in NC and partly from rules drawn up directly by ACNC for the sake of completion.

ACNC has adopted internal rules which specify different modalities applicable to its procedures. It sets out in particular the rules governing investigation procedures and procedures governing the college of members; it specifies applicable deadlines, rules for communication between ACNC and businesses, modalities of consultation on cases, the rules governing convocation of hearings and the interventions of parties during hearings...etc

https://autorite-concurrence.nc/sites/default/files/atoms/files/reglement_interieur_2019-d-01.pdf

ACNC also supplements legislative and regulatory texts through “communiqués of procedure”.

So far ACNC has published a communiqué regarding protection of commercial secrecy and one relating to the commitment procedure (Following a preliminary evaluation by the ACNC’s Investigation Services, the company can propose commitments to the ACNC that would address its competition concerns. After running a market test, the ACNC can accept them, sometimes after seeking certain adjustments, and close the case).

<https://autorite-concurrence.nc/communiqués-de-procedure>

iii. Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.

The previously cited rules of procedure are made available publicly via the internet site of ACNC.

In addition, ACNC makes publicly available summary documents, relating to procedures regarding anti-competitive practices, modalities of notification mergers and operations in the retail sector, the different sanctions regimes, and the powers of investigation of the agents of ACNC.

ACNC has created a contact form on its internet site and an e-mail address dedicated to public information responding to questions about rules and procedures of the Authority (contact@autorite-concurrence.nc).

iv. Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.

ACNC works under legislative and regulatory rules, in particular the principles of right to defence and cross examination, as well as rules providing guarantees of impartiality of investigation and decision, and safeguards for commercial secrecy. The respect for civil rights is also guaranteed by the framing of powers of investigation granted to agents of ACNC, the allowable investigatory measures being enumerated by the law, and so subject to judicial authority.

In the event of non-respect of these rules, ACNC is subject to sanctions before the courts.

The same applies to internally developed rules, including those set down in the communiqués covering procedure, which ACNC applies to itself and which constitute an elaboration of the principles set down by law.

v. Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, as appropriate.

ACNC publishes on its website schematics, tables and explanatory documents, highlighting the principal applicable rules with a view to making them accessible to the public.

ACNC publishes likewise procedural communiqués with a view to setting out the rules contained within the law.

ACNC also communicates through its Facebook and Twitter accounts.

Finally, ACNC publishes its annual report comprising a first part, relating to the activity of the Authority, and a 2nd part, retracing its own jurisprudence as relevant to its different missions with a view to providing a general vision of the ensemble of practice for arriving at decisions.

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.

The powers of simple investigation are set out in the commercial code applicable in NC, in articles Lp. 450-1 to 450-5.

Every person presenting evidence or interrogated by the investigatory service is aware of the objective of the investigation, its judicial basis and the stage of the procedure. The investigations result in a written record which is transmitted to the parties (article Lp. 450-2).

It should be noted that in conformity with article Lp. 450-5 « *When the establishment of proof of infraction or breach is under consideration and cannot be established otherwise, the agents of ACNC may defer the listing of such matters until the notification to the investigated party of the statement of infraction or breach.* ». On the other hand, « *Regarding controls on sales of goods and services via internet and of certain concerted practices mentioned in article Lp. 421-2-1, agents may resort to a borrowed identity.* »

Powers of complex enquiry are attributed to agents of ACNC by the commercial code of the French state and are equivalent to those attributed to agents of the French national competition authority (ADLC). Articles L. 450-2 - 450-8 of the state commercial code.

With regard to anti-competitive practices, a statement of objections (“notification de griefs”) is addressed to the accused party (article Lp. 463-2 of the commercial code ; article 48 of internal regulation).

The statement of objections identifies the practices complained about and susceptible to designation as anti-competitive. ACNC identifies the legal dispositions which form the basis of the grievances.

All the procedural steps can be contested before the Court of Appeal in Paris and then before the Court of Cassation. The jurisprudence applied is thus the same as for the ADLC.

During the course of mergers and operations in the retail sector, various practices can lead to the initiation of sanctions (failure to notify an operation, carrying out an operation without receiving the necessary authorisation (“gun jumping”), notification containing omissions or inexact information, non-execution within deadlines of conformity to injunctions, or prescriptions, failure to honour undertakings, non-respect of judicial decisions).

The usual rules of procedure and investigation apply.

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.

ACNC makes strenuous efforts to conclude its investigations and subsequent procedures as quickly as possible, allowing for urgent cases (interim measures, operations of merger and/or acquisition, operations in the retail sector and procedures where there is an obligation to render an opinion), despite limited resources.

The commercial code provides for a strict limitation period for the prosecution of anticompetitive practices of five years commencing with the termination of the infringement (Art Lp. 462-7). The period of limitation can be interrupted inter alia by the notification of the ACNC that investigation proceedings have been initiated.

In cases of mergers and operations in the retail sector, the time limit for ACNC to consent to proposals is reduced from 40 to 25 days for the simplest operations. Most requests follow that simplified procedure so as not to delay business operations that pose no difficulties in terms of competition. (articles Lp. 431-5 and Lp. 432-3 of the commercial code).

Regarding anti-competitive practices, certain matters can also be subject to a simplified procedure. Following the statement of objections, the Rapporteur general of ACNC can indicate to the parties if no report is issued, in which case, the time limit will be reduced while safeguarding the possibility for the parties to submit their observations, in line with the right to contestation (article Lp. 463-3 and Lp. 464-5 of the commercial code).

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. Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.

The obligation to respect commercial confidentiality is clearly established by the legislative dispositions applicable to the Authority, by its internal rules, by its charter of self-government, and by a procedural communiqué on commercial confidentiality, all of which are accessible to the public on the internet site of ACNC.

Any derogations from commercial confidentiality are framed by the law. It is possible for ACNC to communicate with other competition authorities information or documents, but only if those authorities are subject to the same obligations of confidentiality and to conditions of reciprocity (article Lp. 462-9 of the commercial code).

ACNC can refuse to transmit information to another competition authority in certain cases :

- if the request might endanger security, essential economic interests or the public economic order of NC ;
- if a criminal procedure has already taken effect in NC on the same factual basis and against the same parties or if those parties have already been sanctioned on the basis of the same facts.

In certain cases, ACNC can be legally obliged to transmit information, notably in response to demands from legal jurisdictions. This general principle follows from the dispositions of article Lp. 462-3 of the commercial code but may equally be laid down by specific dispositions. For example, financial

authorities may have access to all information held by ACNC without opposition under the terms of commercial secrecy (articles L. 241-9 and L. 262-44 of the code of financial jurisdictions).

ii. Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.

Respect for commercial confidentiality is imposed on all members of the college and all personnel of ACNC (article Lp. 463-6 of the commercial code), with regard to all facts, records of proceedings and information to which they may have access in exercising their functions.

The internal rules of ACNC set out this obligation as well as any penal sanctions incurred in case of non-respect of this principle, by virtue of the dispositions of the penal code applicable in NC (article 226-13 of the penal code, the sanction being set at one year of imprisonment and 15 000 euros fine).

On the occasion of taking up their functions, members of the college, as well as agents of ACNC sign a declaration to the effect that they commit to respect the secrecy of the proceedings (for the members) and commercial confidentiality (for the agents). They undertake furthermore to respect the dispositions of the self-regulation charter of the Authority.

This charter, approved by decision n° 2018-D-03 of 2 march 2018, lays down in point 1 the different rules derived from the obligation of commercial confidentiality.

In particular it lays down that the obligation covers the content of the files dealt with, the conduct of investigations, the conduct of the sessions and deliberations, as well as exchanges with other competition authorities. The corollary of commercial confidentiality, namely duty of professional discretion is equally applicable under the charter. Apart from penal sanctions, non-respect of these obligations can lead to disciplinary sanctions.

https://autorite-concurrence.nc/sites/default/files/atoms/files/decision_2018-d-03_charte_de_deontologie-1.pdf

Specific procedures are applicable in order to guarantee the protection of business secrets before ACNC.

The parties to a procedure have the possibility to request the protection of commercial secrets (see point below regarding details of procedures). In such cases, the relevant information must not be made public or communicated to other parties or 3rd parties.

In general, even though decisions by ACNC are published on its internet site, the information released may be limited in order to take account of the legitimate interests of other parties cited in order that their commercial secrets be not revealed (article Lp. 465-1 of the commercial code).

Respect for confidentiality is imposed equally on the parties in that they can receive penal sanctions in the event of divulging information concerning another party or a third party, which they could only have obtained from communication or consultation arising from the proceedings (article Lp. 463-6 of the commercial code).

Finally, ACNC, like all public and private bodies in NC, is bound to respect rules for protection of personal data. The relevant dispositions arise from amended law n° 78-17 of 6 January 1978 relating to data processing, files and personal liberties, derived in turn from Regulation (EU) 2016/679 of the European Parliament and Council of 27 April 2016 regarding the protection of personal data and free circulation of data, (general data protection regulation - GDPR) abrogating directive 95/46/EC.

A data protection officer has been designated for ACNC by Decree n° 2019-01/P of 1st August 2019.

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.

For every case dealt with by ACNC, every person addressing the Authority can require protection of his/her commercial secrets, under conditions defined by the law (article Lp. 463-4 and articles R. 463-1 under the commercial code).

In fine procedures (anticompetitive practices, non-respect of undertakings, failure of due notification...), businesses must formulate their demands including non-confidential versions of relevant documents and a summary of their case. To set out conditions relative to protection of commercial secrets in fine procedures, ACNC has published a communiqué of procedures on its internet site.

https://autorite-concurrence.nc/sites/default/files/atoms/files/communiqué_de_procedure_sa-210519.pdf

The objective of this procedure is to reconcile the protection of confidential information submitted by businesses or which ACNC encounters during its enquiries, with the rights of other parties and the transparency of public information.

In the following instances, protection can be refused :

- when communication or consultation of these elements is necessary for the exercise of rights of defence of a party under investigation,
- when these elements cannot be considered relevant to commercial secrecy; in such a case they can feature in the decision of ACNC, which is rendered public on the internet site.

Regarding the procedure for authorisation of mergers and operations in the retail sector, the notifying businesses may indicate, within the 10 days following the notification of a decision by ACNC, those matters which they consider to be relevant to commercial secrecy and which should not feature in the published decision.

These principles are set out by Decree n° 2018-41/GNC (article 7) and n° 2018-43/GNC (article 6) of 9 January 2018.

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 members of the college :

In ACNC, decisions are jointly taken by the President (or vice-president) and, at least, two non-permanent members of the college (except decisions mentioned at Art. Lp. 444-1, Lp. 462-8, Lp. 431-5, Lp. 432-3 and Lp. 464-1 under certain conditions).

The statutes of NC impose upon the permanent and non-permanent members of the ACNC college strict conditions regarding conflicts of interest. The law sets down that membership is incompatible with « *any elected mandate and any holding, direct or indirect, of interest in a business in the sector in which the authority exercises regulatory powers* ». (article 27-1 of the fundamental law n° 99-209 (modified) on 19 March 1999).

The French law n° 2013-907 of 11 October 2013 relating to transparency in public life, modified in 2018, applies to members of ACNC. It places them under the control of the High Authority for Transparency in public life (HATVP). As with others covered by this law, members of the Authority should send to HATVP a declaration of assets and a declaration of interests at the beginning and end of their mandates.

The non-permanent members of the college are furthermore obliged to inform the president of the Authority of any economic links which they may have or may have had, according to conditions set out by article Lp. 461-2 of the commercial code. This article lays down that « *no member of the authority may participate in a matter in which they have an interest or in which they represent, or have represented, one of the interested parties* ».

Rules relating to recusal are set out by the internal regulation of ACNC of which article 61 lays down : « *As soon as a member of the College considers, having seen the agenda of a session , that he or she cannot take part, this should be indicated without delay to the President of the Authority or, failing that, to the chair of the session so that that person can decide on the course of action* ».

As soon as the President of the Authority considers a member ineligible to participate, the member concerned must be informed without delay. »

-The “General Rapporteur”

The rules on conflict of interest for the General Rapporteur, whose functions are incompatible with any elected office, any other public, employment, or any interest in an economic sector subject to ACNC regulation, are laid down under the law (article Lp. 461-4 of the commercial code).

These principles are reaffirmed by the internal regulations of ACNC (article 16) and the senior rapporteur is obliged to declare any such economic interest to the president of the Authority. This rule applies retrospectively over a five years period, be the interest direct or indirect.

-The agents

All agents of ACNC sign an initial declaration of solemn commitment to exercise their functions in full independence, impartiality and conscience, respecting professional secrecy. They commit equally to conform to these obligations during their appointment and at the time of its cessation, as set out in the self-regulatory Charter of the Authority.

The members and agents of ACNC are subject to articles 432-12 and 432-13 of the penal code, under which, sanctions may be imposed in the event of an illegal conflict of interest.

https://www.legifrance.gouv.fr/affichCode.do;jsessionid=65F464F1E9AA7DA60B7C047B02162A53.tplgfr35s_2?idSectionTA=LEGISCTA000006181764&cidTexte=LEGITEXT000006070719&dateTexte=20190718

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.*

Article Lp. 463-1 of the commercial code lays down that the investigation, reporting and procedure involving the authority are all governed by the principle of adversarial debate, subject to rules governing commercial secrecy (article Lp. 463-4).

Fine procedures relating to anticompetitive practices is organised under the dispositions of article Lp. 463-2 of the commercial code.

Accused parties are informed by formal notification of the complaints made against them and the legal dispositions which they are accused of having infringed (the statement of objections).

The parties thus have the possibility to consult their file and to present their observations within a two months deadline.

During a second phase, the investigatory service issues its report which is notified to the parties with the accompanying documents which form the basis of any observations made by the parties. The parties have a further deadline of two months in order to present a response.

A supplementary delay of one month may be allowed by the senior rapporteur if justified by exceptional circumstances.

Within the framework of this adversarial procedure, the parties have therefore the possibility in two phases to make observations, except where it has not been possible to issue a report under the simplified procedure (articles Lp. 463-3 and Lp. 464-5 of the commercial code, under which monetary sanctions are possible up to a limit of 89,550,000 FCFP (75,000 euros)).

If the case is dismissed, the complaining party is so advised and allowed to make further written observations within a two months deadline as well as verbal observations during the session.

Furthermore, the parties have the possibility to be present or be represented at sessions of the Authority, and to formulate verbal observations (article 64 of the internal rules).

These rules apply equally to procedures leading to fine in the event of failure to notify a merger or an operation in the retail sector, or in the event of an inaccurate declaration, of non-respect of an injunction or binding commitment related to such operations.

In the event of a formal in-depth investigation of a merger or an operation in the retail sector, the draft decision of the Authority and the report in support are despatched to the parties who are allowed a reasonable deadline to present their observations (article Lp. 431-7 III and article Lp. 431-4 IV).

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.*

No disposition limits the right of an accused party to be represented by a person of his/her choice, during the investigatory and reporting phase for example at a hearing. Indeed the law affirms that "The parties may ask to be heard by the Competition Authority of New Caledonia and can arrange to be represented or assisted" at the hearings of the Authority (article Lp. 463-7 of the commercial code).

The deadlines allowed to the parties for their observations and the possibility to intervene during sessions, guarantees their right to put forward their point of view either directly or through an advocate or representative.

Secrecy of correspondence between advocates and their clients is guaranteed by dispositions of French law applicable in NC.

Article 66-5 of the law n° 71-1130 of 31 December 1971 regarding the reform of certain legal and judicial professions lays down that whether in the domain of legal counsel or of defence, consultations between advocate and client (or intended as such), and correspondence between client and advocate, excepting those designated as "official", meeting notes and, more generally, all file copies, are covered by obligations of professional secrecy.

These dispositions are applicable in NC, including within the framework of procedures introduced before ACNC.

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.

The decisions of ACNC result in a written document; these are notified to the parties (article 73 of the internal rules) and published on the internet site of the Authority (article Lp. 465-1 of the commercial code), having been anonymised and all commercial secrets expunged.

All the decisions of ACNC (rejection, dismissal, sanctions) are explained and published on the internet site, except for decisions taken in connection with requests for leniency (article Lp. 464-2 IV of the commercial code).

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).

Each binding decisions of ACNC may be reviewed judicially or administratively, according to the type of decision.

In matters of anticompetitive practices, decisions may be reviewed by the Court of Appeal in Paris within one month, with further recourse to the Court of Cassation (Ordonnance n° 2014-471 of 7 May 2014 – Article 5).

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028910625&fastPos=1&fastReqId=1731659558&categorieLien=cid&oldAction=rechTexte>

The reviewing forum may annul or recast the decision of the Authority. Specific rules governing deadlines apply to restraining measures adopted by ACNC in applying article Lp. 464-1 of the commercial code (see article 4 – Ordonnance n° 2014-471 of 7 may 2014).

Decisions on mergers and decisions on operations in the retail sector can be reviewed before the administrative courts. This may be the administrative court of NC with a deadline of two months following notification or publication, in conformity with the dispositions of article R. 421-1 of the code of administrative justice. The decision of the court is subject to appeal before the administrative Court of Appeal in Paris within a deadline of three months. Recourse to a process of cassation can be introduced before the Council of State (*Conseil d'Etat*) within a deadline of three months (see articles R. 811-2, R 811-5, R. 421-7, R. 821-1 and R. 821-2 of the code of administrative justice).

The decisions rendered by the General Rapporteur of ACNC with regard to commercial secrets are subject to recourse before the Court of Appeal in Paris, when the contested decision extends protection to business secrets or refuses its removal. The recourse is set under way at the moment of contestation of the decision of the Authority. Decisions refusing protection of business secrets or its removal may be taken up without challenge to the competence of the administrative jurisdiction, the recourse being launched within two months following notification of the decision.