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The admissibility of appeals against the rejection of commitments by the French Competition Authority

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Resume: *The final word in the Sony PlayStation procedural saga was rendered by the Cour d'appel de Paris on 4th December 2025[1]. This solution follows a debate in the case law involving a ruling by the Constitutional Council and a ruling by the Court of Cassation. The question concerned a procedural matter, on the possibility to appeal a decision of the Competition Authority to refuse the commitments submitted by an undertaking under investigation for an abuse of dominant position. The judges granted an appeal limited only to procedural grounds.*

The final word in the Sony PlayStation saga was rendered by the *Cour d'appel de Paris* on 4 December 2025. The appeal concerned a procedural matter regarding the possibility of appealing against a decision by the Authority to refuse commitments.

As a reminder, in October 2016, Subsonic filed a complaint to the French Competition Authority, the *Autorité de la Concurrence* (*ADLC*) against Sony and its French companies[2]. Two practices were alleged: the first was the implementation of technical countermeasures to disrupt the functioning of unlicensed controllers. The second one was the opaque licensing policy that restricted the access by competitors to the PlayStation 4 controllers' market[3].

In 2019, the French Authority notified Sony its competition concerns. Given that the matter involved a suspected abuse of a dominant position, the undertaking sought to negotiate with the Authority to establish commitments designed to remedy the anticompetitive practices. By a decision of

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1 Cour d'appel de Paris, 4 déc. 2025, n° RG 24/04183, Sony

2 Autorité de la concurrence, Decision 23-D-14 of December 20, 2023, concerning practices implemented in the sectors of eighth-generation static video game consoles and control accessories compatible with the PlayStation 4 console, Dec. 20, 2023.

3 E. DE CARO, "Sony Sanctioned for Abuse of Dominant Position in the PlayStation 4 Ecosystem", *Competition Forum*, 2025, n° 0070 https://competition-forum.com.

October 23, 2020[4], following extensive discussions and negotiations, the members of the Authority terminated the commitment procedure and referred the case back for standard investigation, thereby resuming ordinary enforcement proceedings. Subsequently, Sony submitted two appeals, one before the French administrative high court, the *Conseil d'État* and the second before the *Pôle 5, Chambre 7* of the *Cour d'appel de Paris*, the competent jurisdiction on economic and antitrust matters.

Before both courts, the question of jurisdiction was raised. The first one declared it lacked jurisdiction to rule on the matter, as Article L. 464-8 of the Code de commerce confers exclusive competence to the Civil court[5]. In a decision rendered on 21 April 2022, the *Cour d'appel de Paris* refused Sony's appeal[6]. The Court applied a strict reading of Article L. 464-8 of the French *Code de commerce* which provides an appeal against decisions that accept commitments but stays silent about decisions refusing commitments. The explanation given was that decisions that accept commitments put an end to the procedure, whereas refusals of proposed commitments are part of the procedure and its continuity, and in practice justify the recovery of the investigations. Moreover, the Court refused to recognize a "right to commitments" for undertakings under investigations; it is merely a possibility left to the Authority's discretion.

The legal issue is to determine the possibility to appeal a decision by the Authority to refuse the commitments proposed by an undertaking subject to proceedings.

As Article L. 464-8 does not mention the possibility of appealing a decision to reject the commitments, the legal framework has been developed in stages (I.) which has been implemented by the referring court through **a** control of the procedural warranties (II.)

I. The gradual development of the legal framework governing refusals to make commitments

Before the *Cour de cassation*, Sony presented two constitutional concerns regarding Article L. 464-2 that needed to be reviewed by the *Conseil constitutionnel*. The first regards whether members of the Competition Authority who reviewed a rejected commitment proposal could subsequently rule on sanctions in the same case, which could potentially infringe upon the impartiality principle. The second question, on the same matter, relied on the

4 Aut. conc., déc. n° 20-S-01, 23 oct. 2020

5 Conseil d'État, 3ème - 8ème chambres réunies, 1 juil. 2022, n° 448061

6 Cour d'appel de Paris, 3 nov. 2022, n° 22/03703 ; L. DENIS, "The refusal of the French courts to accept immediate appeals against decisions of the competition authority rejecting proposed commitments. (Paris Court of Appeal ruling of 21 April 2022).", *Competition Forum*, 2022, n° 0035, https://competition-forum.com.

right to an effective remedy before a court according to the Declaration of 1789.

On February 20, 2023, ruling on the first ground, the *Conseil constitutionnel* ruled[7] that the commitment procedure does not violate the principle of impartiality because its objective is to resolve competition concerns rather than to prove or legally qualify antitrust infringements. The commitment procedure allows the *ADLC* to remedy the competition concerns, without carrying a sanction procedure. Commitments thus contribute to the effectiveness of competition law[8]. According to David Bosco, the Court based its decision on the intended objectives of the procedure but did not consider the factual reality where the same Authority's agents, who likely formed their own opinion on the case during negotiations, are the same individuals who ultimately judge the merits[9]. The *ADLC's Collège* is the body that imposes penalties and the one that considers the commitments. The *Conseil* did not recognize here any infringement of the impartiality principle nor the separation of powers when the Authority acts within the scope of its prerogatives.

On the second ground, Sony contested the constitutionality of Article L. 464-2 of the *Code de Commerce* for a violation of the right to an effective remedy before a court. Regarding the consequences of a refusal of commitments, the *Conseil* ruled that the latter constitutes a decision against which an action may be brought.

Using this solution, the *Chambre Commerciale* of the *Cour de cassation* quashed the judgment on 31 January 2024[10]. It held that the relevant law does not prevent the availability of an immediate action for judicial review of legality against a decision by the Competition Authority refusing proposed commitments and bringing all related discussions to a close. The Court grounded this right of appeal in Article 6.1 of the European Convention on Human Rights, which guarantees the right of access to a court.

Nevertheless, the Court limited the reach of this right of appeal. Consistent with settled case law[11] recognizing the Authority's discretionary power to accept or reject proposed commitments, the appeal is purely procedural in nature and undertakings do not have a right to commitments[12]. The Court of last resort held that the appeal's goal is "*to verify that the company has indeed been able to submit, within the time limits and under the*

7 Cons. const., 10 fév. 2023, n° 2022-1035 QPC

8 P. Idoux, "Constitutionnalité de la procédure de sanction après refus d'engagements par l'ADLC": *AJDA*, 2023, p. 542

9 D. Bosco, CCC n° 7, juill. 2023, comm. 120.

10 Cass. com., 31 janv. 2024, n° 22-16.616, Sté Sony Interactive Entertainment France

11 Cass. com., 2 septs. 2020, n° 18-18.501, Sté Umicore France

12 D. BOSCO, "Pratiques anticoncurrentielles - Le recours contre une décision de rejet d'engagements est recevable", *Contrats Concurrence Consommation,* n° 3, Mars 2024, comm. 47

conditions set forth in the applicable laws and regulations, a proposal for commitments that would address the competition concerns previously identified by the Authority"[13]. It does not afford the appeal court any power to assess the substantive merits of the *ADLC*'s decision or to second-guess the Authority's evaluation of the proposed commitments. Its sole purpose is to allow the *Cour d'appel* to verify what falls outside the scope of the Authority's discretionary power. If a procedural mistake is found, the court may invalidate the decision and return the matter to the *ADLC* to remedy the procedural error identified[14].

II. The implementation by the referring court: a control of the procedural warranties

Following the Cour de cassation's judgment, Sony advanced four primary grounds before the *Cour d'appel* on remittal, seeking the annulment of the Authority's decision.

The first ground of appeal concerns the Authority's failure to provide adequate reasoning in support of its decision. Indeed, Sony claimed that the Authority provided reasons only for the referral to the investigations and did not explain how the commitments submitted failed to address the competition's concerns. The company argues that such a rejection must be supported by reasons.

The Court replied to this argument by reiterating that the appeal is limited to verifying whether procedural guarantees have been respected and is not intended to review the merits of the denial, as the *Cour de Cassation* stated in its decision[15]. The Authority's reasoning was sufficient in this case, as it found that the commitment proposed by Sony regarding its licensing policy was insufficient to address the competition concerns identified by the instruction service, while no commitment could resolve[16].

Next, Sony challenged the changes in the competition concerns identified during the procedure. Indeed, according to Sony, in the preliminary assessment, the Authority communicated only one concern based on a combination of the licensing policy and the existence of technical measures. During the commitment procedure, the Authority rejected Sony's proposal, saying that it made only one proposal and not two. Sony claims that only one concern had been

13 Cass. com., 31 janv. 2024, n° 22-16.616, Sté Sony Interactive Entertainment France

14 "Recours en légalité: droit d'appel des entreprises face au refus des engagements proposés par l'Autorité de la concurrence", *La Semaine Juridique* - Edition Générale n° 6, 12 février 2024, act. 194

15 "Un recours possible contre les décisions discrétionnaires de l'Autorité de la concurrence: un contrôle limité aux vices de forme", *La Semaine Juridique* - Entreprise et affaires n° 6 du 8 février 2024

16 A. GIOE DE STEFANO, "Manettes de jeux vidéo pour PS4: la cour d'appel de Paris confirme la décision de l'Autorité de la concurrence rejetant les engagements proposés par Sony", *L'ESSENTIEL Droit de la distribution et de la concurrence*, N° 1, 15 janv. 2026

communicated during the preliminary assessment, so both concerns constitute only one practice. In response, the *ADLC* argued that the *Collège* is not bound by the preliminary assessments or discussions held with the instruction service.

In its decision, the Court upheld the Authority's argument, citing the procedural notice of 2009, which explains the guardrails to ensure legal certainty and prevent the *Collège* from modifying the competition concerns identified by the instruction service. However, according to the Court, Sony misinterpreted the Authority's position that mentions two distinct competition concerns. A further analysis of the commitments' effectiveness would fall outside the scope of the appeal, which is limited to determining whether the Authority imposed a new competition concern.

Third, Sony argues that it should have been notified of the contested decision.

The judge dismissed that argument, noting that Sony had not suffered any harm, as the appeal had been declared admissible.

Finally, Sony's last argument relies on a violation of the adversarial principle and that of equality of arms. The undertaking contests how its last proposal was examined by the Authority, as the latter refused it only because Sony did not present a second commitment.

The court refused to recognize this violation because Sony had the opportunity to be heard at each round of negotiations. Lastly, the Court ruled that the principle of equality of arms is inherently inapplicable to commitment procedures, given their non-adversarial nature, which distinguishes them from standard infringement proceedings.

The resulting right of appeal remains paradoxically tight. By confining judicial review to procedural legality and explicitly excluding the principle of equality of arms from negotiated procedures, the *Cour d'appel de Paris* has underscored the Authority's expansive discretionary power. This creates a restrictive space for contestation where undertakings can challenge the procedural conditions of their submission but cannot effectively dispute the Authority's substantive evaluation of those commitments. Ultimately, the Sony saga demonstrates that, while an appeal now exists, the Authority retains a near-total prerogative in determining when negotiations have run their course. As for the other independent public authorities, the *ADLC* retains considerable latitude within the scope of its mandate, to achieve the intended purpose. These decisions ultimately highlight the delicate balance between administrative efficiency and judicial control. In this context, Marcel Waline's definition of administrative law remains relevant: "*If a definition of administrative law were to be given in a few words, […] it is essentially the study of the*

discretionary power of administrative authorities and its limitations […]"[17].

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[17]M. Waline, Étendue et limites du contrôle du juge administratif sur les actes de l'administration: EDCE 1956, p. 25