



Autorité de la
Concurrence

NOUVELLE-CALÉDONIE

**Decision no. 2024-PAC-04 of 24 December 2024
concerning practices implemented in the telecommunications network equipment
sector in New Caledonia**

**Only the French version is authentic and it prevails in the event of its
differing from the translated version**

Summary¹

Pursuant to this decision, the *Autorité de la concurrence de la Nouvelle-Calédonie* (hereinafter "the *Autorité*") sanctions Ericsson and Intelia for engaging in anti-competitive practices in the telecommunications network equipment sector in New Caledonia, in breach of Article Lp. 421-2-1 of the Commercial Code. These practices consisted of Ericsson granting exclusive import rights to Intelia, and the implementation of concerted practices aimed at maintaining this exclusivity.

In December 2023, the *Autorité* initiated an *ex officio* investigation into potential violations of the prohibition on exclusive import agreements, introduced by *loi du pays*² No. 2014-7 of February 14, 2014. The investigation revealed that **Ericsson and Intelia had maintained an exclusive import agreement between March 2014, when the law came into force, and September 2024.** This exclusivity was initially provided for in an exclusive distribution contract concluded in 2009 and, after 2020, was maintained through a selective distribution contract and repeated refusals to sell.

This exclusivity granted Intelia a monopolistic position for the distribution of Ericsson solutions in New Caledonia, to the detriment of end customers, such as Office of Posts and Telecommunications (OPT), and competing distributors.

To set the amount of the fines, the *Autorité* relied on **the value of sales of the products and services related to the infringement,** taking into account the gravity of the practices, the harm caused to the economy and the duration of the infringement, which spanned **10 years and 5 months.**

Although the exclusive import practice is of lesser gravity than cartels or abuses of dominant position, it occurred in a strategic sector supporting critical infrastructures managed by OPT. The dependence of end customers on specific technological solutions, combined with the practical impossibility of substituting this equipment without substantial costs, amplified the anti-competitive effects. These factors led the *Autorité* to consider that the practices **are of significant gravity.**

As regards the extent of economic harm, the *Autorité* found that the practices significantly restricted intra-brand competition for Ericsson products and services in New Caledonia. The import exclusivity led to increased costs for end customers and reduced business opportunities for alternative distributors. **While the economic harm was significant, it remained moderate** due to the persistence of inter-brand competition in certain market segments.

¹ This summary is strictly for information purposes. Only the numbered reasons of the decision are authentic.

² A specific type of legislation enacted by the Congress of New Caledonia.

In individualising the fines, the *Autorité* considered aggravating circumstances, in particular the continuation of the practices after the *Autorité* took office in 2018 and Ericsson's status as part of an international group. Conversely, it acknowledged a number of mitigating circumstances, such as Ericsson's ability to sell its equipment directly to OPT, Intelia's significant economic dependence on its supplier, and the full cooperation of both companies throughout the proceedings.

As Ericsson and Intelia chose not to contest the notified objections, the maximum fine was halved to 2.5% of the highest worldwide turnover during the period of the practices.

Both companies also proposed commitments for the future. Ericsson has committed to removing certain clauses from its selective distribution contract with Intelia, opening its distribution network to new distributors, and allowing direct sales for certain services. Intelia committed to improving its contractual practices, including with other suppliers, and informing its customers of the end of exclusive clauses.

The *Autorité* deemed these commitments credible, substantial and verifiable. To take account of the non-contestation of objections and the commitments, the *Autorité* granted **a total reduction of 20% on the fines normally incurred by each company**, in line with the proposals of the *rapporteuse générale*.

Considering each company's turnover and all case elements, the *Autorité* imposed a fine of F.CFP 417,655,000 on Ericsson and F.CFP 62,191,300 on Intelia.