

**Decision no. 2025-PCR-01 of 16 April 2025
concerning the invoicing practices of the company Mercure**

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

Summary¹

Mercure operates as a wholesaler in New Caledonia, notably in the sectors of tobacco, electronic cigarettes, and OPT phone cards.

As part of an *ex officio* investigation, the *Autorité de la concurrence de la Nouvelle-Calédonie*'s (hereinafter "the *Autorité*") investigation service examined a sample of invoices issued by the company between January 2023 and March 2024 to its professional customers.

This analysis revealed the presence, on some invoices, of a line item labelled "STOCK/LOGISTICS MANAGEMENT FEES", which did not comply with the requirements of Article Lp. 441-3 of the Commercial Code, which mandates a precise description of each service invoiced. The *Autorité* found that this vague wording did not allow verification of the existence of the service or understanding of its nature, and that Mercure failed to demonstrate the existence of any actual storage or logistics service.

Moreover, these fees were systematically applied to certain professional clients who paid, mainly for tobacco and Mobilis phone cards, using an American Express card. In contrast, other products (such as electronic cigarettes or general merchandise), or payments made by other means, were not subject to these fees. This mechanism allowed clients to benefit from deferred payment.

Before the *Autorité*, the representative of Mercure admitted that these fees in fact corresponded to a "cash flow deferral service", charged to offset the payment delays granted to clients using American Express. He justified the additional charges by the need to meet the demands of certain professional clients while limiting the impact on the company's liquidity.

The *Autorité* considered that this practice amounted to a serious breach of invoicing rules, which are intended to ensure transparency and fairness in business-to-business commercial relationships. In this case, the seriousness of the breach stemmed from the use of vague terminology on invoices, which allowed the company to gain an undue competitive advantage, thereby having effects on the market, as competitors who could not offer similar arrangements were placed at a disadvantage.

In light of the seriousness of the infringement, its impact on market transparency, and Mercure's individual situation, the *Autorité* imposed a fine of XPF 3 million. It also ordered the company to publish, at its own expense, a press release in the daily newspaper *La Voix du Caillou* and on its website, in accordance with Article Lp. 444-1 of the Commercial Code.

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