

**Decision no. 2025-DN-01 of 15 July 2025
on the failure to notify the opening of a “Neamart” store with a sales area of 629 m²
in Nouméa**

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

Summary¹

On 8 November 2019, SARL HTDT opened a store under the “Neamart” brand, with a sales area of 629 m² in downtown Nouméa, without submitting any prior notification of this transaction to the *Autorité de la concurrence de la Nouvelle-Calédonie* (hereinafter “the *Autorité*”), in breach of Article Lp. 432-2 of the Commercial Code.

By letter dated 28 February 2024, the *Autorité*’s General Rapporteur requested that HTDT provide information on this transaction. On 12 March 2024, HTDT submitted initial information which led the General Rapporteur, on 24 April 2024, to determine that the transaction was subject to notification and to remind the company of its obligation to notify the transaction as soon as possible.

HTDT subsequently notified the transaction on 27 June 2024 to regularise its situation. The *Autorité* authorised this transaction retroactively, without conditions, by Decision No. 2024-DEC-04 of 9 September 2024.

On 12 September 2024, the *Autorité* opened proceedings on its own initiative regarding the failure to notify this transaction. A statement of objections was issued to HTDT on 7 January 2025 pursuant to Article Lp. 432-5 (I) of the Commercial Code, which provides that the *Autorité* may impose on the operator a financial penalty of up to XPF 200,000 per square metre of the retail surface area concerned.

HTDT does not dispute that the transaction was notifiable, nor that it failed to notify it in advance, but argues that the statute of limitations of the infringement has expired and that the sales area determined by the investigation service was inaccurate. It further submits that it was unaware in good faith of its obligation to notify, having neither an internal legal department nor experience in the notification of retail transactions, and argues that it fully cooperated with the *Autorité* once the request for regularisation was received. It also invokes a difficult financial situation, worsened by the May 2024 riots, which notably destroyed a logistics warehouse owned by the company.

However, the *Autorité* rejects the arguments based on the limitation period and on the contested sales area, in light of the objective evidence gathered during the investigation, in particular HTDT’s own spontaneous statements and the floor plan of the store. The *Autorité* further stresses that the “opening” of a retail store must be assessed as of the actual date on which the store opened to the public, as only that date is capable of producing effects on the relevant market(s), whereas the declaratory dates appearing in the RIDET, the Kbis or the lease cannot be regarded as conclusive.

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

The *Autorité* also considers that the failure to notify a retail transaction constitutes, by its very nature, a serious infringement of public economic order, as it deprives the *Autorité* of its power of *ex ante* control. HTDT's failure thus prevented any prior assessment of the potential effects of the transaction in the relevant catchment area, and this for a period of almost five years. The significant duration of the infringement also constitutes an aggravating factor.

Nevertheless, several mitigating circumstances led the *Autorité* to reduce the penalty imposed: the absence of any deliberate intent to circumvent the legislation, HTDT's full cooperation both during the regularisation procedure and during the present proceedings, the effective regularisation of the transaction, as well as its limited financial capacity.

Considering all these factors, the *Autorité* imposes a financial penalty of XPF 2,000,000 on HTDT for failing to notify before the opening of the Neamart store in Nouméa.