

## Penalties

With regard to anti-competitive practices, when the Polynesian Competition Authority recognizes the existence of an unlawful agreement or an abuse of a dominant position, it has various types of penalties available in order to put an end to the behaviour of companies, punish and prevent them.

### Financial penalty

Article LP 641-2 of the Competition Code provides that the Polynesian Competition Authority “may impose a financial penalty applicable either immediately, or in the event of non-execution of injunctions, or in the event of non-compliance with the commitments that it had accepted”.

This penalty can go up to 5% of the amount of the turnover generated in French Polynesia during one of the last three years, if the offender is a company or up to XPF 100 million in the opposite case.

The Authority sets the amount of the penalty according to the duration and seriousness of the alleged acts, taking into account in particular the extent of the damage caused to the economy, the distortion caused on the market(s) concerned, the actual and potential effects on consumers, the situation of the company having committed the infringement or of the group to which it belongs as well as the possible reiteration of prohibited practices.

These penalties have a repressive as well as a dissuasive role vis-à-vis the interested parties and all economic operators.

These penalties are paid into the budget of French Polynesia. They are not intended to repair the damage suffered by the parties, who can take action before the civil court to claim damages.

### Injunction

The Polynesian Competition Authority can also order the party in question to put an end to the anti-competitive practice reported. It can also order him to change his behaviour.

By way of example, the National Competition Authority has ordered a company to remove from certain agreements provisions relating to customer allocation, market sharing, restriction or prohibition of competition, and to cease any practice having the same object (ADLC Decision No. 04-D-49 of 28 October 2004) or to modify a computerized information exchange system between competitors (ADLC Decision No. 12-D-08 of 06 March 2012).

The decisions of the Authority are enforceable upon notification to the parties.

### Periodic penalty payments

Persons sentenced by the Authority may be subject to periodic penalty payments up to a limit of 1% of the average daily turnover per day of delay from a date set in the decision.

The purpose of this penalty is to compel them to execute a decision which obliged them to put an end to the anti-competitive practices ascertained, to execute a decision which imposed special conditions or to respect their commitments or to respect the protective measures enacted in accordance with article LP 641-1 of the Competition Code.

### Publication, dissemination or display of decision

Article LP 641-2 of the Competition Code also provides for the possibility for the Polynesian Competition Authority to order the publication, dissemination or display of its decision or an extract thereof.

This publication is a means of warning competitors, customers, public authorities and consumers in order to encourage them to be vigilant and to avoid the repetition of penalised practices.