

**Opinion no. 2025-A-01 of 10 February 2025  
on the state of competition in the tourism and travel agencies sector**

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

## Summary<sup>1</sup>

The *Autorité de la concurrence de la Nouvelle-Calédonie* (hereinafter "the *Autorité*") has been consulted by the government of New Caledonia for an opinion on the state of competition in the tourism and travel agencies sector. More specifically, two main issues have been raised: the legality and the competitive risks associated with the intervention of "SPL Sud Tourisme" in the tourism and travel agencies sector, as well as the changes to be made to the regulation governing this profession.

**The tourism sector in New Caledonia is characterized by a strong public intervention**, primarily carried out by the provinces, in accordance with their competencies in economic and tourism development. Each of the three provinces has established structures dedicated to tourism promotion. Among them, SPL Sud Tourisme, created by the South province, plays a central role, specifically managing tourist offices, carrying out promotional activities, and coordinating local initiatives.

**In parallel, private travel and tourism agencies operate in a competitive market.** They offer services such as the sale of travel packages, an area in which SPL Sud Tourisme could also intervene. This dual presence of public and private players creates specific challenges, particularly regarding the public funding allocated to SPL Sud Tourisme and the strategic information to which it has access. As a result, the *Autorité* first recalled the principles governing public intervention in competitive markets. According to national and European case law, **such intervention must be justified by sufficient public interest, proportionate to the objectives pursued, and limited in its anticompetitive effects.**

In this context, the *Autorité* examined the various activities of SPL Sud Tourisme and identified several risks of competition distortion:

- **Public funding:** subsidies allocated to SPL Sud Tourisme for its public service missions could be used, directly or indirectly, to fund competitive commercial activities, such as the sale of travel packages. This could lead to cross-subsidisation or predatory pricing practices, which are contrary to competition law.

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<sup>1</sup> This summary is strictly for information purposes. Only the numbered reasons of the opinion are authentic.

- **Access to sensitive data:** As the manager of tourist offices, SPL Sud Tourisme has access to strategic information about private tourism operators, which could give it a competitive advantage, hardly replicable by its competitors.
- **Blurred lines between public and competitive activities:** The lack of a clear distinction between SPL's public service missions and its commercial activities could create confusion for consumers. For instance, selling travel packages in spaces dedicated to public service missions, such as tourist offices, could provide SPL Sud Tourisme with privileged access to a captive customer base, to the detriment of private agencies.

The *Autorité* thus recommends **preventive measures**, including the implementation of strict **analytical accounting** to clearly distinguish its public service activities from its competitive activities, as well as a **functional and organisational separation of the teams**.

Furthermore, the current regulation governing the creation and functioning of travel and tourism agencies, stemming from deliberation No. 185 of May 10, 2001, contains several competition-restricting provisions, **limiting the access and the exercise of the profession**. The *Autorité* has therefore identified several aspects to reform. It is indeed of the opinion that:

**Recommendation No. 1:** to make the criteria for accessing the profession set out in article 7 of the Deliberation less restrictive, or, where appropriate, to eliminate the requirement to demonstrate professional competence in order to practice as a tourism or travel agent.

**Recommendation No. 2:** to remove or limit the disqualifications and prohibitions on practicing the profession of tourism or travel agent for individuals who have been convicted of the criminal offenses listed in the regulation.

**Recommendation No. 3:** to simplify the guarantee mechanisms, their allocation and their implementation, by verifying that the amount of the guarantee required by the regulation remains appropriate for accessing the profession.

**Recommendation No. 4:** to remove the requirements to have suitable physical facilities in order to practice as a tourism or travel agent.

**Recommendation No. 5:** to eliminate the procedure related to the mandatory advisory opinion of the accreditation committee for travel and tourism agencies to access the profession of travel or tourism agent.

**Recommendation No. 6:** to replace the authorisation regime for practicing as a travel or tourism agent, which currently requires the granting of a license by a government order, with a declaration regime involving the registration of the declaration in a registry, enabling the administration to verify compliance with the essential requirements.

**Recommendation No. 7:** to specify the level of protection offered by the regulation to consumers of travel or tourism agency services and to clarify the responsibilities of these agencies towards consumers in the event of a carrier's failure to fulfill its obligations for the sale of "standalone" flights.