

PART II
Chapter 5

**Civil Aviation: Structures, Reforms
and Performance***

* For more information see: “Background report on Civil Aviation: Reforms, Structures and Performance” available at www.oecd.org/regreform/backgroundreports.

Civil aviation in France

French civil aviation holds an important place in international comparisons. France accounts for 7% of world air traffic against only 1% of the world population. The past ten years have seen major reforms and developments, entailing substantial adjustments on the part of enterprises and their employees. Reforms have been accomplished without compromising two overriding objectives, safety and security. Because of the sharp rise in air traffic, a third objective – protecting the environment – has claimed an important place in government policymaking and will undoubtedly influence the extent, nature and outcome of future reforms.

Much of the regulatory reform undertaken by France over the past ten years has been in conjunction with the EU's adoption of three "packages" of air transport liberalisation, introduced in 1987, 1990 and 1992. Furthermore, a new political EU agreement on air traffic control services (the "Single European Sky") was reached in December 2002 by the European Council of transport ministers. Partly because of the unique and highly regulated nature of the civil aviation sector, the EU framework of market liberalisation in this area is more limited and gradual than that of other sectors, such as telecommunications. France's regulatory reform – like that of other EU countries – reflects the basic standards of liberalisation agreed at the EU level.

The Civil Aviation Code consolidates legislative and regulatory provisions relating to issues including air transport, aircraft, airports and flight personnel. Three principal characteristics of French civil aviation must be borne in mind.

First, the regulatory authority is not structurally independent from the various public entities providing civil aviation services. French aviation is overseen by a single government agency, the Directorate-General for Civil Aviation (*Direction générale de l'aviation civile*, or DGAC), under the authority of the Minister of Transport. The DGAC plays a dual role, which subjects it to potential conflicts of interest. On one hand, it is responsible for regulation, supervision, co-ordination, training and administration of all aspects of civil aviation, involving both public and private enterprises. On the other hand, it is also a service provider, furnishing carriers with air traffic services for which it is paid.

Second, the air transport sector in France is one of the areas in which the conception of public service runs deep, and in which there is always a risk of confusion between the different roles of the State as regulator, shareholder, licensing authority and service provider. The primary players (the national airline, airports) belong to the State or to public bodies and are administered by public institutions. A large number of them perform public service missions with public power prerogatives.

Finally, while the air transport sector is subject to competition rules, many activities fall outside the purview of the Competition Council (*Conseil de la concurrence*). Relatively few cases are taken before that Council insofar as the power to take administrative decisions in the performance of public service missions using public power prerogatives lies with the public law judicial system and not the Council. Because decisions to authorise

concentrations are a prerogative of the Minister for the Economy, the Competition Council – to which submissions in such cases are optional – was not asked for its opinion on recent concentration operations, such as Air France’s equity investments or its acquisitions of small regional airlines, in a sector that is especially concentrated.

Regulatory reforms of passenger transport services

The regulatory context

The international framework for national regulation of air transport is set primarily by the Chicago Convention of 1944. It provides a complex framework (with which States and carriers are very familiar) for national regulation, under which limited market access agreements are negotiated bilaterally. Such bilateral agreements establish, on a reciprocal basis, the rights of each country’s carriers in respect of scheduled air transport of passengers and freight. This system of bilateral deals inhibits free trade in air transport services and impedes the optimisation of carrier movements, while raising production costs to the detriment of users.

The far-reaching reform of the French passenger air transport sector was implemented in conjunction with application of the three packages of EU liberalisation. The French Government transposed the EU provisions. In accordance with the EU timetable, access to the French market was opened up in three stages: liberalisation of all services between France and EU member States (1 January 1993); opening of the French domestic market to competition from French carriers (1 January 1996); opening of the French domestic network to competition from Community carriers (1 April 1997).

In terms of market access, implementation of the third package, and in particular the provisions of Regulation 2408/92, was significant. European companies theoretically have access to all national and international routes within the Community and may price those services freely, subject only to *ex post* supervision by the competition authorities. Competition has intensified on three fronts but has yet to pose any serious threat to the market share of the flagship carrier, Air France. In the first place, this competition involves primarily networks of big international alliances. Second, the strong performance of low-cost carriers on certain routes is one of the main competitive breakthroughs, and this competition could grow in the future if they are granted sufficient market access (slot allocation). Finally, the development of high-speed rail links has made competition keener on certain routes, both domestic (such as Paris-Marseille) and international (such as Paris-London and Paris-Brussels). Nevertheless, in France, as in most other European countries, the national airline provides most of the scheduled intra and extra Community flights originating or terminating on its soil, as part of a competition strategy that involves building networks of alliances while maintaining its dominant position within its platform of concentration and “hubs and spokes”.

On domestic routes, French companies enjoy a very large combined share of the market. Air France holds a very strong position, which has yet to be eroded by the arrival of low-cost carriers or the development of high-speed rail service – a fact noted in reports by a number of official bodies, such as the Economic and Social Council (*Conseil économique et social*) and the Senate.¹

Regulatory reform in the air transport market has not produced all of the expected results. This may be explained, in part, by the fact that policy in this sector is still based on a “public service” concept in which the notion of competition has yet to be completely

embraced, reflecting conflicts of interest that are apparent in three areas: the problems that carriers encounter in obtaining slots at the busiest airports; the continuing subsidies provided to carriers, primarily for regional development reasons; and finally, the status and governance of Air France, now that the French government has passed a law authorising a substantial reduction in State ownership of the “national” airline.

Slot allocation

The allocation and the scheduling of slots (the scheduled time of arrival and/or departure available or allocated to an aircraft movement on a specific date) constitute one of the essential pillars of market access, and of effective competition between airlines. Any carrier depends on these essential concessions in respect of both possibility of access and equality of access to facilities.

Since 1993, slot allocation within the EU has been governed by an EU Council Regulation (No. 95/93) of 18 January 1993 on common rules for the allocation of slots at EU airports (“Regulation 95/93”). Under this Regulation, prior allocation of a slot is required in order to land or take off at “fully co-ordinated” airports, i.e., at airports where congestion is such that it cannot be resolved by other means. Also, slot allocation at congested airports should be based on rules that are neutral, transparent and non-discriminatory.

A number of provisions have been adopted in France in application of Regulation 95/93. Orly and Roissy/Charles de Gaulle (“CDG”), along with Lyon/Saint-Exupéry, were designated fully co-ordinated airports, and Nice/Côte d’Azur was designated a co-ordinated airport. Air traffic congestion is particularly acute at the Paris airports, where demand for slots far exceeds supply. For this reason, market access is restricted. Given the constraints arising from traffic congestion at the Paris airports, especially at peak hours, the slot allocation mechanism runs up against three problems that restrict market access and that could distort competition: application of the historic rights (or “grandfather”) clause in allocating slots; quantitative restrictions on movements of aircraft, which therefore limit the number of slots available; and the decision-making process of the body responsible for allocating slots (*Association pour la coordination des horaires*, or COHOR).

The historic rights clause significantly limits market access and establishment of effectively competitive conditions in the main co-ordinated airports of European Union countries, including French airports. At France’s co-ordinated airports, primarily those run by ADP, Air France found itself in a position of strength when markets were opened to competition, enjoying a substantial number of slots at choice hours. Air France has nearly 50% of slots at Roissy/CDG and at Paris/Orly.

The anticompetitive effects of allocating slots on the basis of historic rights are compounded by quantitative restrictions on slots at the Paris airports. Orly Airport has seen its maximum number of aircraft movements set at 250 000 per year following public concern due to phonic nuisances around the airport, by virtue of the Decree of 6 October 1994 of the Minister for Infrastructure, Transport and Tourism. At present, no potential new entrant may obtain slots unless those slots are relinquished by carriers active at the airport. The situation is such that the pool of available slots at Orly is often equal to zero. By contrast, Roissy/CDG has not been subjected to any such regulatory cap. Building a third airport would not seem to be an option for the short term. Moreover, a number of slots at Orly have been set aside for domestic services in connection with regional planning schemes, and this reduces still further the number of slots available to Air France’s competitors.

The task of allocating slots has been assigned to the COHOR Association, composed of airlines that join voluntarily and the airports concerned. COHOR appoints a designated co-ordinator to allocate slots and provides him or her with the staff and technical resources needed to perform the task properly. COHOR's by-laws and mandates reveal a concern for making slot allocation subject to rules of neutrality, transparency and equal treatment. However, certain remarks seem to have fallen short of those rules. For instance, following the demise of Air Lib in February 2003 and the consequent availability of that carrier's 48 000 slots, official statements indicated that the government was exploring the possibility of allocating the available slots to airlines that would pledge to hire former Air Lib employees. The regulator was questioning the interest of a change in the regulatory framework that would have been implemented by the co-ordinator. Beyond these recent remarks, the allocation of available slots at Paris airports in recent years, in terms both of the choice of recipients and of the proportion of slots allotted to them (with slots being spread thinly), has spared Air France from an intense head-to-head confrontation with more aggressive rivals such as the low-cost carriers. The re-allocation of Air Lib's slots in the spring of 2003 was not done in a way that would strengthen competition for ADP arrivals and departures. For example, Virgin Express has decided not to open a Paris platform, on the grounds that the low number of slots (5 840) allotted to it would not make this a paying proposition. EasyJet also received too few slots to allow it to compete effectively with Air France. The existence of a fully independent authority would guarantee that the general interest will prevail over that of the national airline or certain domestic regional carriers when slots are being allocated at co-ordinated airports.

Subsidies

Government assistance to airlines – whether direct or indirect – can distort the market, not only thwarting current or potential competitors of the beneficiaries of such largesse, but penalising users too in the end. In many cases, assistance is explicit and direct, but in others it is provided as indirect subsidies or cross-subsidies. In France, for example, the notion of public service has been invoked by the Council of State ever since the companies were founded to justify government intervention and the assistance handed out in return.²

French regulations have followed EU law on State aid (Articles 92 and 93 of the EC Treaty). A Communication sets out EU policy regarding State aid in the aviation sector. These measures are not compatible with the Treaty unless they correspond to one of the exemptions provided for by Community law. Yet even if they are consistent with European law, subsidies can distort competition and impede proper market functioning, as would seem to be the case in the French air transport market. Two distinct types of public aid are worth noting: first, the aid authorised under Article 92(3) of the Treaty and Article 61(3) of the Agreement on the European Economic Area; and second, aid in connection with public service obligations in respect of domestic services under Article 4 of Regulation 2408/92. It is apparent that there is resort to both direct and indirect public assistance which is likely to distort competition to the detriment of competing carriers and users alike.

Aid authorised under Article 92(3) of the Treaty and Article 61(3) of the Agreement on the European Economic Area

As part of the implementation of the programme of liberalisation of the air transport sector within the EU, a number of member states, including France, were authorised to

recapitalise their flag carriers. The recapitalisation of Air France, amounting to 20 billion French francs paid in three instalments between 1994 and 1996, was authorised by the EU Commission subject to severe restrictions which were lifted at the end of the company's restructuring plan, i.e. on 31 December 1996. These measures in favour of Air France have distorted competition, which may explain in part the failure of attempts to launch a second major airline in France. Other carriers in the market, and potential competitors as well, have suffered unfair competition from the national airline because of these privileges. Subsequently, Air France, like many carriers abroad, received subsidies (authorised by the European Commission) following the attacks of 11 September 2001, to offset the losses suffered between 11 and 14 September. Projected subsidies for the period immediately after September 14 were challenged by the European Commission, which also launched an inquiry into the French authorities' support for Air Lib (which nevertheless went into bankruptcy in February 2003).

Aid authorised under Article 4 of Regulation 2408/92

Under Community Regulation 2408/92, a member state may impose public service obligations in respect of services considered vital for regional economic development, to the extent necessary to ensure adequate provision of services satisfying standards of continuity, regularity, capacity and pricing that carriers would not assume if they were solely considering their economic interest (Article 4). A member State may pay compensation to an air carrier, selected according to the criteria stipulated by that Regulation, which means a public offering at the European level, to enable the company to meet the standards arising from the public service obligations. As part of its regional development policies, the French government instituted an "Intervention Fund for Airports and Air Transport" (FIATA).³ Public service obligations have been published in respect of some 80 routes in France. Clearly, not all of these routes receive subsidies, since some of them are operated without financial compensation. About a third of the routes are subsidised.

France is the EU member State that invokes Article 4 of Regulation 2408/92 most frequently and as a result subsidises domestic routes that are subject to public service conditions due to reasons of regional development. It must be noted that the total number of passengers carried on these subsidised routes is low, amounting to the percent of French domestic traffic. A limited number of European countries have invoked Article 4. When they do, it is in respect of a very small number of routes (contrary to French practice), primarily serving islands (e.g., the Azores and Madeira for Portugal), which are not comparable with some of the French routes in question, such as Montpellier-Bordeaux or Béziers-Paris.

Governance and status of Air France

If the national airline is a public enterprise, and the air transport authority is not fully independent, the confusion of roles between the State as shareholder and the State as regulator can be a source of market dysfunctions and competitive distortions, where the interests of the flag carrier can exert considerable influence over decisions of the supervisory authority in promoting competition.

Air France is one of Europe's few majority state-owned airlines, along with Alitalia and Olympic Airways. However, the French government has gradually reduced its interest in the company. The State's share in the capital of Air France, which had been 94.1% just

before the company's February 1999 initial stock market listing, was subsequently decreased in a series of stages. In December 2002 the government presented a bill would lower the State's shareholding to roughly 20%, with a further 20% of the shares set aside for group employees. This process was supposed to be consolidated in the alliance concluded in September 2003 between Air France and KLM. The bill calls for employee representation on the board of directors, a peculiar feature for a private company. Implementing this plan would represent a first step in reducing the confusion of roles in the French air transport market.

Performance

The main available indicators of passenger air transport performance relate essentially to Air France, given the disappearance of Air Lib and the lack of comparable data on the smaller regional airlines, some of which are in fact affiliated with Air France. Air France's performance, in terms of business growth and trends in market share and profits, compares favourably with that of other European airlines. Nevertheless, the good health of Air France which is not unrelated to the subsidies received in the past contrasts sharply with the fragility of the second-ranking French carrier, whether the SAir Group (or its successor, Air Lib), which had the ambition to be the second player in the French air transport market and which has disappeared since.

For European airlines, the 2000-01 financial year saw a sharp increase in operating costs, due in particular to rising fuel prices and appreciation of the dollar over the course of the year. In FY2001-02, carriers suffered the consequences of the US economic slowdown, and then the air transport crisis triggered by the events of 11 September 2001. Despite this, Air France posted an operating surplus in FY2001-02, with an operating margin of 1.9% (Table 5.1). In contrast, the operating margins of the other major carriers were in the red. Air France's net margin dropped by 2.2% but was still positive (at 1.2%). Those of British Airways (-1.7%), KLM (-2.4%) and Lufthansa (-3.8%) all became negative.

The Air France group has the highest ratio of total wage bill to turnover of any major European airline, but the differential narrowed from the previous year.⁴ To boost profitability, Air France has taken steps to trim its total wage bill; the main measures, concerning pilots, were introduced as part of a multi-year agreement signed in October 1998 providing for shares in exchange for pay cuts when the company's capital was opened in February 1999. As a result, the ratio of the wage bill to turnover, which had been 32.5% at the end of the 1998-99 financial year, declined by 2.7 points at the end of FY2001-02, to 29.8%.

Table 5.1. **Operating margins and wage bill burdens for FY2001-02**

In million euros

2001-02 Financial year	Annual report			
	Air France Group	British Airways Group	KLM Group	Lufthansa Group
From	01 April 2001	01 April 2001	01 April 2001	01 January 2001
To	31 March 2002	31 March 2002	31 March 2002	31 December 2002
Turnover	12 528	13 618	6 532	16 690
Operating profit (loss)	235	-180	-94	-316
Net profit (loss)	153	-232	-156	-633
Operating margin	1.9%	-1.3%	-1.4%	-1.9%
Net margin	1.2%	-1.7%	-2.4%	-3.8%
Wage bill	3 738	3 223	1 747	4 481
Wage bill / turnover	30%	24%	27%	27%

Source: DGAC.

Comparisons of the productivity of airlines are tricky because of differences between route networks, average stage length, and activity (passenger or freight transport). Data from the DGAC suggest that the overall productivity of Air France personnel is lower than that of British Airways, KLM or Lufthansa, when measured in terms “equivalent passenger kilometres transported” (EPKT).

An airline’s load factor may be considered a measure of the productivity of its capital. It can be seen below that Air France recorded a higher than average load factor amongst carriers belonging to the Association of European Airlines between 1999 and 2002 (Table 5.2). Yet a high load factor for a given airline does not mean that the situation is optimal from a competitive viewpoint, especially for users. It may even have been produced to their detriment. A high load factor may reflect a policy of deliberate over-booking – although on this score Air France does not seem to be any more guilty than its major European competitors – and of course the fact that passengers may have no alternative to that company for flying certain routes.

Table 5.2. Load factors in 1Q 2003

As a per cent and change 2002-2003%

Company	Load factor (%)	Change (%)
KLM	76.8	-3.3
Air France	73.9	-2.2
Lufthansa	73.6	-1.5
Iberia	71.7	+2.0
British Airways	69.8	-2.6
Swiss	67.9	-1.9
Alitalia	66.2	-2.2
Austrian Airlines	64.8	-1.1
TAP	64.2	-3.3
SAS	63.4	0.3
LOT	61.8	3.0
Finnair	60.0	-3.4
Turkish Airlines	59.9	-5.6
British Midland	57.0	0.4
Olympic	56.8	-4.6
Malev	50.7	-4.9

Source: *Le Temps*, 3 May 2003, p. 2 according to AEA data.

Air France has restrained its pricing of international flights to and from France in response to keener competition from the major European and international airlines, and in the context of the market entry of low-cost competitors on certain specific routes. While fare cuts have so far been less spectacular than those following deregulation outside Europe, the results of greater competition are more visible in France than in many other countries. According to one OECD study, for example, the business and economy class fares, as well as special fares (*e.g.* APEX), offered through Paris airports in the late 1990s compared very favourably with those observed in other major European countries. A comparison of 2003 fares places Air France near the average, as a general rule.

On the domestic market, which is relatively less open to competition, prices have as a rule remained high, especially in “business class”, while there has been a decline in “economy class” fares for a number of routes on which low-cost airlines compete. In addition, the flying public has noted a certain deterioration of the quality of service in general, all airlines

combined.⁵ Of course, the significance of such complaints is very relative compared with the overriding issue of “safety”, where there is no indication of any slippage.

Regulatory reforms of airport management

By their nature, airports enjoy a local or regional monopoly. Users therefore run the risk that access to facilities will be discriminatory and that the services offered by the airport will be inferior, in quantity and in quality, and will cost more, than they would in a more competitive situation. This feature in itself means that in most countries airports are subject to special regulations, whatever the corporate status of their management. Moreover, when airports are public enterprises, their financing, organisation and missions may diverge from strictly market mechanisms and profitability concerns. There is a high risk that resources will be allocated inefficiently, in terms of output, distribution and trade, to the detriment of users and taxpayers, whether individuals or businesses.

Structure of the airport system

Partly because of its geographic size, France is in the lead among European countries in terms of airports open to commercial traffic, with more than a hundred. The 12 main airports in mainland France – those of Paris (ADP, comprising CDG and Orly), Nice, Marseille, Lyon, Toulouse, Mulhouse, Bordeaux, Strasbourg, Nantes, Montpellier and Lille – account for more than 90% of passenger traffic. The national airport traffic system is highly centralised. Throughout the post-war period in France, the dominant pattern has been a convergence of routes towards Paris. ADP handles nearly 60% of domestic passenger traffic and nearly 90% of freight. Nearly 130 carriers serve Paris airports, but the platform at Roissy/CDG is reserved primarily for Air France, which has set up its hub there.

One of the reasons for this concentration of flights in Paris (a problem that was acknowledged by the Minister for the Environment and Regional Planning in 2001),⁶ is the hub strategy being pursued by Air France at ADP, and especially at Roissy/CDG. Moreover, some (for example the Economic and Social Committee) think that the privileged relationship between the DGAC, ADP and Air France may also have played a role.⁷ Draft legislation for decentralising regional and local airport management and reforming the system of national airports may have some impact in this area, under the condition that carriers would have a real interest in serving these airports.

The lopsided structure of the French airport network results in less-than-optimal utilisation of the capacities of many airports.⁸ With traffic so heavily concentrated in the Paris area, many provincial airports have overcapacities and would be able to absorb some of the traffic, and particularly certain international routes, as well as freight traffic, which at present is heavily concentrated in Paris.⁹ Such a development would help to rebalance the system, thereby improving resource allocation and reducing some of the negative externalities of traffic concentration around Paris. Yet this presupposes that air carriers as a group have an interest in such a development and that the market is thus ready for it.

While certain medium-sized regional airports offer a real potential for growth, the problems would appear more complex with regard to certain small, severely loss-making regional airports that sustain low traffic with scant prospects for development. Local authorities and chambers of commerce are generally behind their creation and/or preservation. Because of the high density of regional airports, it would not seem possible to operate these platforms without subsidies. Lower airport density would lead to better

resource allocation. While some airports may have been justified in the past, the intervening development of alternative transport facilities has changed the situation. From this perspective, a better balance between rail and air could offer more economical solutions than keeping money-losing local airports alive for which, in the end, there is very little demand. The French government (DGAC) points out, however, that it is not in a position to decree the closure of airports when local governments are committed to maintain them and ready to cover their losses.

Intermodal management of air and rail traffic has scored certain successes, in particular as regards TGV services to Roissy/CDG and Lyon/Saint-Exupéry airports. Clearly, integration of the two modes of transport, as can be observed in other European countries, such as Germany (*e.g.*, baggage check-in at train stations), is currently more limited in France. A certain potential for developing the possibilities for complementarity between air and rail traffic may still be exploited in the future, as part of an integrated transportation policy.

Airport ownership and operation

The main French airports receiving commercial traffic currently belong to the State. They are operated either by special public establishments (such as Aéroports de Paris and Aéroport de Bâle-Mulhouse) or under public service concessions. These government-granted concessions are currently held by public establishments: for example the chamber of commerce and industry (CCI) for the area in question or, more rarely, a joint syndicate (groups of local authorities, in some cases with one or more CCI).

In the case of ADP, its conversion into a corporation (*société anonyme*) with majority State ownership is planned, but has not been implemented. For the larger provincial airports, the government is currently considering a move to award them under concession to corporations that would be open to private sector equity participation. Other airports would be decentralised (handed over to local governments).

With the new (1997) specifications there is nothing to stop other concessionaires from bidding for concession renewals. The CCIs would then be forced to compete with private candidates. Experiments abroad – in particular, with private management of Heathrow, Gatwick and Stanstead airports in the UK – have proven their worth. Enlisting the private sector in this way would help to modernise the mechanisms by which airports are managed and should address the concerns formulated in recent years, in particular by UCCEGA,¹⁰ the Economic and Social Council¹¹ and the Director-General of the DGAC.¹²

Aviation charges

Airports are monopolies. For this reason, it is essential to ensure that they deliver value for money, and that their fees are in line with the costs incurred in providing their infrastructure and services. The ICAO has made recommendations in this direction. In 1998, the European Commission presented a draft Council Directive on airport charges, although it was subsequently withdrawn.

The DGCCRF, together with the DGAC, jointly regulates the charges that airlines pay to airports. It ensures that the fees levied on carriers are justified. In particular, it makes sure that fees are set in compliance with European Union rules, and that they are in no way discriminatory: the DGCCRF checks that all airports comply with these principles, that fee trends remain moderate (airlines and passengers being captive users of such infrastructure), and that there are no pricing mechanisms that might benefit one company more than another.

In France, as in most countries, the system for setting airport charges does not really offer many incentives for efficient resource management, as regards either the use of existing infrastructure and capital investment decisions for new infrastructure (covering facilities and costs), or the pricing of access to that infrastructure, on the basis of supply and demand (slot pricing). Based on experience abroad, for example, at London/Heathrow, and on studies of the issue,¹³ the introduction of an incentive pricing scheme would enhance the efficiency of infrastructure use and access. Such a reform, together with an overhaul of slot allocation, based on a pricing system, would improve the allocation of resources and generate greater efficiency, to the benefit of carriers and passengers alike. France is planning to examine such a reform, along with the proposed change in the status of ADP and of the major provincial airport operators.

Subsidies

A subsidy may be justified to ensure the provision of a non-commercial service that is deemed essential in the public interest. When it comes to airports, while the financing measures relating to safety, security and environmental supervision are in line with this principle, subsidies for airports' investments and, in particular, their operating costs deviate far from this criterion in some cases.

It is primarily the local authorities that grant subsidies for airport investment and operations. The main motivations for such aid are to pursue regional planning objectives and local economic development. The subsidy habits of local governments may explain why there is such a high density of regional airports serving commercial traffic in some regions of France. For example, within the perimeter made up by the Provence – Alpes Côte d'Azur region and the Languedoc-Roussillon region, there are no fewer than 12 airports. Under the commonly accepted rationale that public services have an obligation to support regional planning and local development, such subsidies would not be justified in all cases. This situation represents a poor allocation of resources in terms of airport facilities, and may in some cases imply substantial costs to local taxpayers that are out of proportion to the benefits they receive in return.

Performance

According to ICAO, worldwide experience indicates that where airports have been operated by autonomous authorities, as has long been the case for nearly all French airports handling commercial traffic, their overall financial situation and operating efficiencies have generally tended to improve. ICAO also notes that nearly all such entities were created by governments, although the operation of many of these airports has subsequently been transferred, wholly or partially, to the private sector.

Mainland France's 12 leading airports, which handle 90% of traffic in terms of number of passengers, generate their own resources, constituted by fees charged to users and by income from ancillary activities on airport premises, which are sufficient to finance their capital spending programmes, either directly or through borrowings (Table 5.3). The other airports in mainland France each handle fewer than a million passengers per year. Some twenty of these, essentially the busiest amongst them, break even on routine operations but need to be subsidised for capital investment. The others need subsidies for operations as well. For all of these airports, aggregate infrastructure subsidies account for nearly half of all investment resources, or nearly EUR 260 million between 1990 and 2000.

Table 5.3. **Financial position of the main airports**

2001 and projections for 2005

	2001 outcome			Projections for 2005	
	Traffic	SFC ² (€ m) ¹	Debt (€ m) ¹	SFC ² (€ m) ¹	Debt (€ m) ¹
ADP	71 025	318.5	1 714.9	434.8	2 990.5
Nice	8 973	32.2	166.4	38.8	194.5
Lyon	6 066	16.0	82.8	27.1	247.2
Marseille	5 842	13.1	56.6	14.5	55.5
Toulouse	5 187	17.6	41.1	16.5	142.7
Basel/Mulhouse	3 581	20.9	158.9	29.6	140.1
Bordeaux	3 039	7.5	29.2	9.9	39.2
Strasbourg	2 090	5.9	28.3	6.6	38.1
Nantes	1 932	3.7	11.9	5.6	8.9
Montpellier	1 542	2.1	11.7	3.0	14.8
Lille	963	1.4	10.7	2.1	9.9

1. € m: million euros.

2. SFC: self-financing capacity for the year.

Source: DGAC.

In terms of the quality-price ratio of airports, some studies show that French airports are rather less expensive than their European counterparts, particularly when it comes to domestic flights and small carriers. In comparison to major European airports, ADP is clearly less costly for this last category, while it is rather more costly for large international carriers. With respect to the quality of service, several reports point to the potential for improvement in the case of ADP. The Court of Auditors considers that "the quality-price ratio of Parisian airports is not very good."¹⁴

Ground services

Ground services are vital to the success of air transport and make an essential contribution to the efficient use of air transport infrastructure. Carriers depend for their competitiveness on the speed, quality and cost of ground services, and on non-discriminatory access to them. Only an open and competitive market can ensure that carriers and, in the end, passengers are not stuck with low-quality services at uncompetitive prices.

European Council Directive 96/67 of 15 October 1996 on the liberalisation of the ground handling market at Community airports ("Directive 96/67") was enacted to liberalise access to the ground handling market, and to enable carriers to engage in self-handling. The Directive lays down minimal standards for the liberalisation of this market. For certain ground services, member States may limit the number of entities authorised to provide services to third parties, and the number of carriers authorised to engage in self-handling.

Third party ground handling services

In France, the minister responsible for civil aviation may, at the request of the airport manager, decide to limit the number of ground service suppliers. The decision to limit services must be justified either by the space available or the capacity of the airport's facilities, or by considerations relating to the safety and security of persons, aircraft, facilities and equipment. With this provision, it would seem difficult to avoid all risk of conflict of interest in decisions to impose such quantitative restrictions. First, any airport manager that also provides ground handling services (as is the case with ADP) will have an

interest in limiting the number of competitors. Secondly, since the airports making such a request are public entities, the minister's decision is also subject to a conflict of interest. Third, the criteria for imposing quantitative restrictions leave broad room for discretion in the decision. Only a thoroughly independent authority can ensure that decisions to restrict market access are taken in a transparent and non-discriminatory manner.

Currently, there are three major airports, Roissy, Orly and Nice, that are limited. Since the above-mentioned directive was adopted, the number of service providers has risen, on average, from two to three at the various ADP terminals. Given the volume of traffic at the main terminals of these airports, it is doubtful whether an increase in the number of ground service providers would pose any threat to safety or security. By comparison, some smaller airports, such as the Bordeaux airport, have four suppliers of third party ground handling services.

Where the number of suppliers of ground handling services at an airport is limited, the airport manager is selected automatically (Article 6 of Directive 96/67) and need not undergo a selection procedure. For example, at Paris airports, ADP is automatically included among the service suppliers.

With regard to the other service suppliers, the Airport Users' Committee (a body provided for by Article 5 of Directive 96/67) must be consulted. This Committee is made up of the air carriers using the airport. All users have the right to be on this committee or be represented on it. The Committee selects suppliers by voting on applicants. However, Decree 98-211 specifies that "*when the committee holds a vote, the number of votes of each air carrier shall be equal to the number of traffic units handled at the airport by this air carrier during the last calendar year for which the airport's traffic is known*". Air France thus enjoys considerable clout, and even an absolute majority, in the voting of these Committees.

Under Article 11 of Directive 96/67, suppliers of ground handling services are chosen, following consultation with the Airport Users' Committee, by the airport management firm, provided that it does not provide similar ground handling services and has no direct or indirect control over, or involvement in, any enterprise which provides such services. In all other cases, suppliers are chosen by competent authorities of the member States which are independent of the airport manager concerned, and which first consult the Airport Users' Committee and the airport manager. These provisions have been incorporated in the reform of French legislation. The relevant decision-making body is the Prefect, except for the airports of Paris-Orly and Paris CDG, for which the decision-making body is the DGAC. Although this provision complies with Directive 96/67, the fact is that the selection of ground service providers at limited French airports is decided by a public authority, with a provider that is subject to its supervision, and this is a potential source of conflict of interest.

At Paris airport terminals, both ADP and Air France are included among the suppliers of third party ground handling services. Since each terminal has, on average, only three providers, this means that there is only one licence available for a third enterprise. This third position is sometimes awarded to an enterprise that is affiliated with, or a subcontractor to, ADP or Air France. A market that is shared between ADP, Air France and a company with links to either one of those cannot be considered competitive. Under these conditions, it is doubtful that carriers and users are obtaining optimal value for money.

The establishment of an independent authority would ensure effective and non-discriminatory market access, while respecting the constraints imposed by available facilities and by safety and security concerns.

Self-handling

As in the case of third-party ground services, the minister may, at the request of the airport manager, limit the number of air carriers authorised to self-handle for baggage handling, ramp handling, fuel and oil handling and freight and mail handling services. The decision to limit services must be justified either by the space available or the capacity of the airport's facilities, or by considerations relating to the safety and security of persons, aircraft, facilities and equipment. In addition, temporary quantitative limitations are allowed for other ground handling services. As was the case with limiting the number of suppliers of third party ground handling services, the provisions for limiting self-handling rights do not ensure that decisions will be taken impartially by an arm's-length entity.

The criterion for choosing the carriers authorised to self-handle is based on the number of commercial movements of air carriers at the airport in question (Art. R.216-3 III). This criterion is valid if one considers that self-handling is only justified above a sufficient number of commercial movements. Nevertheless, when it comes to allocating a scarce resource among a limited number of users, an auction system would be more appropriate, and would prevent a built-in advantage from accruing to the dominant national or regional carrier, such as Air France. Currently, Air France has a double advantage. First, in contrast to other companies, regulatory provisions make it virtually automatic that Air France can provide its own ground services. Second, because Air France also provides services to third parties, it has some room for manoeuvre in the quality and cost of the services it provides to some of its competitors. The Competition Council recommended the introduction of an auction system in order to avoid distorting competition, but this advice has not been followed.¹⁵ It must be noted, however, that the number of companies requesting self-handling rights at Paris airports has yet to reach the authorised maximum.

These regulatory gaps relating to third-party ground services are also apparent in relation to self-handling, and concern primarily the lack of any independent authority, and the application of selection criteria that *de facto* favour the dominant carrier, Air France.

Performance

More than over 150 French and EU companies are providing ground handling services in French airports. A significant number of these companies entered this market after the liberalisation established by the EU directive. The market share held by companies that have newly entered the market differs across airports depending on the nature of the services provided. It is larger for services inside terminals than for runway services, for which the number of qualified service providers is necessarily more limited. The DGCCRF does not have accurate statistics on this. However, market opening has been felt primarily at the regional airports, which are not limited by quantitative restrictions. In contrast, at the major French airports, namely Roissy, Orly and Nice, competition in ground services market remains weak. Airlines serving ADP and Nice are faced with a limited choice of service providers (which includes in some cases their competitor, Air France), a situation that does not ensure them the quality and value for money that they could obtain in a competitive market. This situation also affects users, who do not benefit from optimal quality/cost conditions for ground services.

With regard to prices for ground services, the initial objective was to obtain an average price reduction of 20% below the prices charged before implementation of the directive. According to the government, some prices have unquestionably fallen at some airports, but it does not have overall statistics on this subject. According to the Airport Users' Committee, the level of prices at ADP has dropped slightly since the entry into force of Directive 96/67, although the prices of some services, such as the bus transport of passengers, have risen.¹⁶ Prices seem to have gone down slightly in Nice and to have fallen substantially in Lyon and Toulouse.

With regard to the quality of ground handling services, on the basis of a study limited to five French airports (Orly, Roissy, Nice, Lyon and Toulouse), the Airport Users' Committee concluded that the level of quality of services at ADP had been stable since the entry into force of Directive 96/67, although some carriers criticised the quality of some services, in particular those connected with baggage handling. In Nice, Lyon and Toulouse, the Users' Committees of these airports considered that the quality of services was stable.¹⁷

Regulatory reforms of air traffic control

Since 1987, the number of flights controlled in France has doubled. The responsible bodies controlled over 2.5 million flights in 2000 (aircraft movements at French airports for domestic and international flights and overflights of airspace), or 5.2% more than in 1999. After 15 years of rapid increase in IFR traffic until 2000, French air traffic control services controlled 2 477 355 flights in 2002, which is a change of 0.9% compared with 2001, which itself showed a reduction of 0.6% compared with 2000. France is the first-ranking European country, ahead of Germany, in terms of the amount of traffic controlled. For the long term, forecasts were predicting that the traffic controlled by France will double again by 2015, but this hypothesis is now abandoned as it would suppose an average yearly increase of 6% during 12 years.

The regulatory context for air navigation services

In France, air navigation control is a public administrative service managed as a monopoly by the State. French administrative law considers air traffic control and the management of air navigation as an administrative police activity. The legal framework is laid down by decrees. This activity is thus regarded as falling within the purview of the public authorities.

Air navigation control operates in the framework of an integrated organisation. The DGAC functions both as the regulatory authority and as a provider of navigation services. One of the consequences of this type of organisation is that there is no separate budget for air navigation as such. The expenditures and revenues of air navigation control appear in the civil aviation budget annex, which is separate from the general State budget and also includes the financing of State activities in this field.¹⁸ Nevertheless, a statement of accounts showing the basis for each of the two air navigation charges is presented to carriers, using the same standards as those applied by Eurocontrol for route charges. Moreover, the national parliament receives an annual presentation analysing the itemised expenditures of the DGAC, including those for air navigation. Yet disputes have arisen in the past with airline companies over the inclusion of certain expenses (such as runway marking, fire fighting) in the approach/departure charges. Those disputes have now been settled.

This integrated method of management of French air traffic control is unique in Europe (Table 5.4). Although it is true that the function of regulating air navigation is carried out by a government department in all countries, operational services are most often entrusted to separate, specific entities.

Table 5.4. **Status of air traffic control bodies in Europe**

	Status of operational body
Germany	Private limited liability company with State-owned capital
Italy	Public institution
Portugal	Government-owned enterprise
Spain	Agency – status of government-owned enterprise
Sweden	Administration
Switzerland	Business corporation with majority control by Confederation
United Kingdom	Subsidiary of an agency – partly private capital

Source: Court of Audit (2002), p. 19.

Since 1991, the Court of Auditors has favoured an overall reorganisation of the DGAC, so as to establish a clear distinction between activities that are prerogatives of the State and service provision activities such as air traffic control. The Court recommended in this regard that the mission of air traffic control be entrusted to a separate body with a clearly recognisable identity.¹⁹

The hypothesis of structural separation is not currently envisaged by the government at this stage. If this were to be the case in the future, the alternative would be to entrust air traffic control services either to a publicly-owned or private enterprise. However, the view of the public authorities is that a private status would call into question the notion of administrative police related to air traffic control. The option of privatisation has been chosen by some countries, such as Canada and, within Europe, the United Kingdom.

Management and control of civil and military airspace

The strong growth of air traffic makes it necessary to optimise the use of airspace by establishing adequate air traffic control capacities and also by ensuring an efficient organisation of airspace. This raises the issue of the allocation of airspace between civil and military air traffic, the latter being traditionally large in the North and East of France, although these regions are also areas with heavy civil air traffic.²⁰ At present, the control of civil and military air traffic is not unified in France. This situation can lead to delays for civil air traffic. However, France has adopted co-ordination mechanisms between civilian and military organisations, consistent with the principle adopted by Eurocontrol for management of the airspace (FUA, Flexible Use of Airspace). In the organisation of airspace, the French situation is different from that of many countries, such as the United States, the United Kingdom and Germany, which have opted for a unified management of civil and military air traffic. In a report on air transport in Europe published in 1998, the National Assembly's Delegation for the European Union tended to favour this kind of solution for France. Since the beginning of the 1990s, there has been undeniable progress in establishing close co-ordination between both types of air traffic. The fact remains that unifying the management of the two control systems would improve the situation considerably, primarily by reducing delays due to the current separation. The technical solution of automated co-ordination currently under development and which will be implemented in 2004, should, according to the French authorities, lead to a similar level of efficiency.

Investment policy

The volume of investment in air traffic control managed by the DGAC's Air Navigation Directorate (DNA) is large (between EUR 180 and EUR 200 million per year). Investment policy for air traffic control is based on reliance on national suppliers and only rarely on foreign suppliers.²¹ With regard to contracting, there are many negotiated contracts, which have accounted for approximately 50% of all contracts signed in recent years.²² This type of contracting is only authorised if the company selected is the only one providing this type of equipment or service. Nevertheless, in many cases, the reports on these contracts did not show conclusively that the companies involved were really the only ones able to provide the goods or services in question. A significant portion of contracts (34%) was concluded through closed bidding procedures, but very few involved open bidding (1%).²³ By contrast, contracts negotiated without competition, which accounted for a quarter of contracts concluded in 2001, have since become the exception, and open tendering has been expanded to cover about 30% of contracts by number, and more than 40% by value.

Performance

The main indicators of the efficiency of air navigation control activity are safety, punctuality, productivity and costs.

With regard to *air safety*, none of the accidents of recent years can be attributed to French air traffic control services. Although safety measurement indicators, which are not limited to "crashes" but also include "near misses" of aircraft recorded as "airprox" and "safety nets", are difficult to compare for different years and different countries, they do not show that safety conditions have deteriorated – or improved – in France. According to a study conducted during the 1994-98 period, there was a significant decrease in the number of airprox for Germany and the United Kingdom after they had established an agency, i.e. after 1993 and 1996 respectively.²⁴ Contrary to the fears of the opponents of these changes, they seem not to have had a negative impact on safety. Admittedly, these results do not make it possible to conclude that there is a direct connection between these changes and the number of airprox, but neither do they show that there is a link between these changes and a deterioration of safety.

With regard to *traffic punctuality*, two indicators can be considered. First, there is the average delay due to air traffic control per flight ("ATC" delay) and, second, the percentage of ATC delays at the European level compared to the percentage of such delays for traffic controlled by French services.

The average ATC delay recorded in 1998, 1999 and 2000 was respectively 2.97 (minutes and hundredths of minutes), 4.04 and 2.50 minutes. This measure declined to 2.02 minutes in 2001 and to 0.98 minutes in 2002. The results for 1999 might be partly explained by the bringing into service of new European air routes and the conflict in the Balkans. These results led to a deterioration of performance in 1999 relative to the preceding year, but international comparisons show that the air traffic control systems in neighbouring countries (Switzerland, Italy and Germany) experienced similar problems.

A number of measures were adopted in France at the beginning of 2000 to improve control capacities. A "programme for improving air traffic" presented to the Council of Ministers on 26 January 2000 included plans to increase the number of control sectors, increase the number of controllers, modernise control equipment and improve co-ordination of civil and military air traffic. A forward-looking strategic plan of the DGAC completes the range of

new measures that have been adopted in order to improve the performance of air traffic control services in France.

The results recorded in 2000, 2001 and 2002 suggest that progress has been made in reducing ATC delays and the delays attributable to French air traffic control in Europe. ATC delays in 2002, averaging 0.98 minutes, were at a much lower level than in 1998 (Table 5.5).

Table 5.5. Delays in France (1997-2000) in half-minutes

	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
1997	2	2	2	2	3.5	4	4	4	3	2.5	2	1.5
1998	1	1	2	2.5	4	5	5.5	5	5	4	2	2.5
1999	2.5	4	6.5	6.5	8.5	8	7	5	5	4	3	3
2000	2.5	2.5	3.5	4	4.5	5.5	5.5	3.5	4.5	3.5	2.5	3

Source: Court of Auditors (2002), p. 74.

A comparison of France and Germany shows that *productivity* in Germany improved following structural change, while the productivity of French controllers stagnated. It is also apparent that, on average, there are economies of scale in the French air control sector, i.e. costs rise less quickly than output.²⁵ Tables 5.6 and 5.7 illustrate this point.

Table 5.6. A comparison of the number of IFR¹ flights controlled and of staff numbers between France, Germany and the United Kingdom in 2000

	Number IFR flights (a)	Total staff (b)	(a)/(b)
France	2 615 000	8 453	309.4
Germany	2 639 000	5 214	506.1
United Kingdom	1 943 000	5 414	358.9

1. Instruments Flight Regulations.

Source: Eurocontrol (2002), *Performance Review Report*, Brussels.

Table 5.7. Comparison of the number of Units of Service controlled and of staff numbers between France, Germany and the United Kingdom in 2000

	UDS total flights 2000 (a) (en millions)	Total staff (b)	(a)/(b)
France	14.59	8 456	1 726
Germany	9.39	5 214	1 801
United Kingdom	8.97	5 414	1 657

Source: DGAC.

Although the method of calculating approach charges varies across countries, route charges, which are set uniformly by Eurocontrol on the basis of actual costs, are a good indicator of the cost of the service. A comparison of *unit costs* across EU countries shows that the costs of the French air traffic control system are lower than for many other countries (Table 5.8).

Table 5.8. **Unit cost of route charges of EU countries at 1 January 2003**

	Overall unit cost (euros)
Belgium – Luxembourg	95.23
Germany	92.51
United Kingdom	84.08
Austria	72.49
Continental Spain	71.59
Italy	68.24
Spain (Canaries)	67.01
Netherlands	65.99
Denmark	63.73
France	62.19
Sweden	59.36
Portugal (Lisbon)	52.29
Greece	44.30
Finland	39.27
Ireland	28.60
Portugal (Santa Maria)	21.07

Source: Order of 24 December 2002 amending the Order of 18 July 1990 amending publishing the unit costs of route charges, *Official Gazette of the French Republic*, 31 December 2002, pp. 2247-2248.

Conclusions

The French regulatory system has some major strengths that should enable France to face growing international competition in the civil aviation sector and the increasing problems related to safety, security and environmental protection. These strengths are based primarily on the DGAC, which has taken a methodical, progressive approach to the development of competition, and on a government which has recognised that it is crucial for this sector to adapt to competition, while preserving a spirit of dialogue not only with enterprises but also with employees. Major reform steps are being taken regarding the privatisation of Air France, modernisation of airport management, and the allocation of airport concessions on a competitive basis.

In a context that is difficult for all airlines, Air France has been given the necessary tools – through recapitalisation by the government, with the approval of the EU Commission in 1994 under severe constraints – to enable it to face international competition successfully and perform well. France has a well-developed airport network, and its main airports have high-quality infrastructure.

The impact of French regulatory reform in the civil aviation field, however, has fallen short of expectations. While significant funds are budgeted by the State and local authorities, the lack of competition in certain markets means that the quality-price ratio of service is suboptimal for the user. This result could reflect deficiencies in market access and in the play of competition. The dominance of the public sector, which does not confine itself to supplying collective goods but in fact enjoys a privileged position in the markets for commercial goods and services, *i.e.* private markets, produces competitive distortions in the absence of a regulatory authority that is structurally separate from market players. The allocation of resources is suboptimal, from the production, distribution and trade viewpoints.

The confusion between the different roles of the State as regulator, shareholder and service provider makes it impossible to avoid conflicts between the interests of the public

and those of public operators such as Air France or ADP. Regulations now in place are not sufficient to ensure that decisions are taken in a transparent and non-discriminatory way such as to foster healthy competition on markets. This is particularly obvious when it comes to slot allocation at co-ordinated airports, and the awarding of ground service licences at limited airports. The main reasons for this have been discussed in this chapter. On the one hand, market access decisions are not taken by an authority independent from the public authorities or from the main carriers. On the other hand, the procedures for allocating access rights are not based solely on the principles of competition (selective award of licences, grandfather clauses, etc.).

The Competition Council has little room for initiative. The EU competition authorities are responsible under EU law for addressing anti-competitive practices in the civil aviation sector, and they have exercised these responsibilities with regard to ADP. The powers of the Competition Council are limited in this regard, for it can only intervene in a case concerning a public institution such as ADP if it does not involve administrative decisions taken in the course of public service missions that entail the use of public prerogatives. For example, airport management, which is governed by the special public sector regime, lies outside the Council's jurisdiction. However, other decisions or practices, even if taken by public entities, may be examined by the Council – this is the case, for example, of ground handling services. An important question is to what extent the Competition Council, which is the national competition authority under Community law, is competent to enforce EU competition law in the civil aviation field? There is also a question of whether, under these conditions, operators that were victims of anti-competitive practices were not dissuaded from filing complaints, short of appealing directly to the European Commission.

Finally, and paradoxically, the end user (consumer) has been little involved in the procedures for assessing and determining the reform of French civil aviation regulation. Regular and systematic consultation with consumer protection bodies, such as COMUTA, which was recently transformed into the *Conseil national des clients aériens* (“National Council of Airline Clients”, CNCA), might ensure that consumer interests are taken more thoroughly into account.

Policy options for consideration

1. Ensure that regulations and regulatory processes are transparent, non-discriminatory and efficiently applied.

Clarify the role of the State by separating structurally the functions of regulator from those of shareholder and service provider.

The lack of clarity between the roles played by the State as regulator, shareholder and service provider is a source of distortions of competition and does not ensure optimum resource allocation in production, distribution and trade.

Give decision-making power regarding the granting of market access rights (slots, ground handling licences, etc.) to an authority that is completely independent.

Current practice shows that the fact that decisions are either made by entities that have a conflict of interest (ground handling services) or by authorities that have functional or institutional ties with government and market operators (Cohor) does not ensure complete independence of decision making.

Restrict the assignment of public service obligations to regional routes in a process justified by very strict criteria. When certain routes are so designated, ensure that the procedures for assigning public service obligations to a carrier and any related financial compensation are transparent.

In some cases, the designation of certain routes as a public service obligation goes beyond the generally accepted concept of what is understood by public service. Furthermore, the procedures used in this regard, in particular with respect to financial compensation, do not seem to meet the criteria of transparency, equal treatment and efficiency in all cases.

Pursue measures designed to ensure better allocation of airport resources at the national, inter-regional and regional level.

The French airport network faces problems of capacity management. The airports of Paris suffer from congestion, while other secondary airports have capacities that are underused. In addition, some small airports are kept open even though they do not meet vital economic needs. There should be a in-depth reassessment aimed at achieving a better allocation of resources at the national, inter-regional and regional levels, in a perspective of intermodal transport.

2. Reform regulations to stimulate competition and eliminate them except where clear evidence demonstrates that they are the best way to serve broad public interests.

Systematically reassess all public subsidies granted to air carriers and airports. If subsidies are granted, for example for regional reasons, they should be transparent and for a strictly limited time.

An accurate study of the current system of subsidies granted to airports and air carriers should be carried out in order to determine needs and the impact in terms of costs and distortions of competition. A narrow concept of public service should be applied so as to keep public subsidies to a minimum. When government subsidies are necessary, a transparent procedure should be used and they should be granted for strictly limited time.

Finalise the privatisation of Air France.

Under its current status, Air France has limited operational, strategic and financial scope for action in comparison with its main privatised competitors. The privatisation of the company should enable it to become more efficient and to eliminate the conflicts of interest that currently favour the flag carrier.

Consider eliminating restrictions on owning and controlling French airlines in the light of the developments set to take place in the ICAO

At the ICAO's international conference on air transport held in March 2003, it was recommended that restrictions on owning and controlling of airlines by foreign interests should be eliminated progressively and flexibly, while ensuring effective monitoring of security. The adoption of this recommendation would allow a substantial opening up that would be beneficial to French airlines, in particular through equity investments and even concentrations with non-EU foreign airlines.

Consider adopting new mechanisms for allocating, monitoring the use and redistributing slots so as to ensure effective and non-discriminatory market access.

The current method of slot allocation based on the historic rights clause does not allow for real market contestability. Steps should therefore be taken to envisage a system of pricing slots on the basis of supply and demand and to base slot allocation on an auction system.

Systematically use a competitive system whenever airport concessions are renewed and open up the market to all public and private enterprises.

Regarding airports managed as concessions, the adoption of new operating guidelines in 1997 has opened the way for greater diversity in the designation of managers. In the future a competitive system should be used for all concessions up for renewal. The designation of the concession operator should also be open to private enterprises. The privatisation of the operation of certain airports, and especially the Aéroports de Paris, would enable them to become more efficient and flexible at a time of greater competition between major European airports. Privatisation of airport management should be accompanied by an appropriate reform of the relevant regulations. As part of this process, the government should also continue its efforts to modernise the management procedures required of airport concession operators.

Increase the number of ground handling service providers in “limited” airports, while continuing to monitor service quality.

There has been greater competition on the ground handling services market since the implementation of Directive 96/67. However, in “limited” airports, and in particular those of ADP, competition might be opened up to more enterprises, but without jeopardising safety and security requirements.

3. Review and strengthen where necessary the scope, effectiveness and enforcement of competition policy and the means to ensure compliance with the resulting obligations.

Strengthen the role of the Competition Council and systematically consult it in the course of reviews of concentration transactions and regulatory reforms. Make sure that, as in the other sectors of the economy, the Competition Council is systematically consulted about all concentration transactions and all draft texts at national level concerning the organisation and functioning of the sector, which could affect competition.

Give the Competition Council national responsibility equivalent to the European Commission’s responsibilities in the field of civil aviation.

Since the major actors in the French civil aviation sector are entities that perform public service missions using public power prerogatives, the Competition Council, which is an independent body, is not competent to rule on competition issues when these pertain to administrative decisions made in the course of public service missions involving the use of public power prerogatives, which are the responsibility of the Council of State (*Conseil d’État*). Furthermore, the Competition Council’s opinion is rarely sought in cases of concentration transactions and regulatory reform procedures in the field of civil aviation. Regarding concentration transactions, how is it possible to ensure that they are handled impartially on the basis of strict criteria of competition by a ministry when these

transactions directly or indirectly affect State-owned enterprises and when the ministry in question must protect other interests beside those of competition (such as employment)? Only the opinion of the Competition Council, a completely independent authority, would make it possible to handle such cases in the interest of competition on the market in question. Steps should also be taken to enact the necessary provisions so that the Competition Council will have the same responsibility at the national level that the European Commission has at the Community level.

Notes

1. "While the theoretical monopoly has in fact been broken, the historical monopoly has reclaimed its position", Conseil économique et social (2002a), *Aéroports de proximité et aménagement du territoire*, p. II-10 "French regional air transport, under the Air France group, has reverted to a virtual monopoly", Sénat (2001a), No. 237, p. 53.
2. In a Decree of 20 December 1935 exempting the airline Air Union from turnover tax, the Council of State considered that the company "was not merely a subsidised operator of a private enterprise, but the concessionaire of a public service", basing its opinion, *inter alia*, on the "series of specific obligations closely supervised by the Air Navigation Service" contained in the agreements that had been signed with the State. Cited in Lecat, Jean-Jacques (2002), No. 2, p. 20.
3. An Air Transport Equalisation Fund was thus instituted by Acts of 29 December 1994 and 4 February 1995 to compensate the operating deficits of airlines selected through a bidding process to operate "regional-planning routes". The Fund is constituted by an equalisation tax levied on airlines and based on the number of passengers embarking at airports located in continental France. The 1999 Budget Act extended the missions of the special allocation account of the Air Transport Equalisation Fund to that of "an Intervention Fund for Airports and Air Transport" (FIATA). (Article 75, Decree No. 98-1266 of 30 December 1998.)
4. Attention should be drawn to the difficulty of making objective comparisons between groups, because of differences in their perimeters of activity and subcontracting options; furthermore, each group operates in a different accounting and tax environment.
5. A Senate report, based on a vast survey conducted in connection with the operation of the FIATA, noted that a large majority of respondents felt that the quality of service had deteriorated over the past ten years. For example, the Union of Chambers of Commerce and Airport Managers (*Union des Chambres de Commerce et des Établissements de Gestionnaires d'Aéroports*, UCCEGA) found that the route restructuring at the end of 2000 had led to a deterioration of quality. Sénat (2001a), *op. cit.*, p. 32.
6. "In respect of regional planning, the French exception is that air transport patterns continue to reflect a hyper-concentration of international flights at the Paris airports, which handle nearly 80% of them. To a large extent, air transport has thus far escaped the efforts to shift the balance between Paris and the provinces that have been made in respect of land transport. This situation does not stem merely from the demographics of the capital region alone; it results from a combination of airline strategies and policy choices", *Assemblée Nationale* (2001a), p. 55.
7. "The concentration of powers in the hands of the DGAC has at times had drawbacks for French provincial airports, with which it has been finicky and rather inflexible. Its special relationships with Aéroports de Paris and Air France have often introduced distortions. While the Directorate-General has worked effectively and diligently, a little less exclusivity in its support for the major airports might have enabled medium-sized airports to find their place and contributed to a more balanced geographical coverage." Conseil économique et social, *op. cit.*, p. II-17.
8. "Many airports have capacities that are used poorly, with traffic concentrated on the Paris airports", Conseil économique et social (2000b), p. 1.
9. With regard to freight traffic, for example, some experts believe the Vatry airport is an alternative, because Vatry, located 150 km from Paris, is underused. Vatry has a 3 860-metre runway (the third-longest in France), a 45-metre-high control tower and 4 200 sq. metres of terminal space. This 1 800-hectare airport is in the heart of one of the busiest freight traffic areas in Europe. Located south of Châlons-en-Champagne, in one of France's most sparsely populated areas (7 persons per sq. km), Vatry would be able to develop substantial traffic while at the same time meeting environmental constraints, thus relieving areas such as Roissy that suffer from air traffic

congestion. At present, about 70% of the freight unloaded at Orly and Roissy is re-dispatched to the provinces by truck. Insofar as the bulk of air freight traffic is combined with passenger traffic, the Vatry alternative would clearly not deprive ADP, which would retain most of the market. It has been reported that some carriers wishing to route their freight traffic through Vatry have not received the necessary authorisations from the DGAC. *Le Monde*, "In Champagne, Vatry plays David to Roissy's Goliath". 11 July 2002.

10. UCCEGA (2002).
11. "It is nonetheless imperative that French airports be managed in conformity with economic and financial realities, so they can generate enough cash to finance their own capital spending, while associating interested local economic agents", Conseil économique et social (2002a), *op. cit.*, p. I-10.
12. The current status of the airports is no longer entirely suitable. First, because many more people need to play a role in their management, but also because there is a need for more reactive, more dynamic and more flexible economic management. The Chambers of Commerce are not to blame, but concessions are perhaps not the most modern or the most reactive system, Assemblée nationale (2001a), *op. cit.*, p. 7.
13. Bonnafous, Alain and Yves Crozet (1998). This study proposes some gradual amendments to the current mechanism of charges to put greater emphasis on incentive pricing and thereby help to address environmental problems
14. Cours des Comptes (2002).
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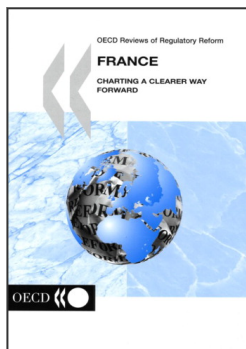
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