26 February 2010: Competition and regulation of airport activities

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The Autorité de la concurrence recommends a strengthening of the open competition obligations and advocates the implementation of a more efficient regulation

> Version française

A request for an opinion had been submitted to the *Autorité de la concurrence* by the *Association pour le Maintien de la Concurrence sur les Réseaux et Infrastructures* (AMCRI - Association for the continuation of competition in networks and infrastructures), regarding the competition problems that could arise from the possible privatization of French airports. The government has not announced yet any project in this area. In any event, the privatization of the Aéroports de Paris would require the passing of a law. Therefore, the opinion issued at the association's request only has a prospective value.

Context of the referral

The reform of the management of French airports in 2004 and 2005 notably resulted in the creation of regional airport companies (French acronym: SAR) and by the transformation of the *Aéroports de Paris* (ADP) public undertaking into a limited company.

In its request for an opinion, the AMCRI postulates that this evolution of the legal statute of airports into commercial companies could be followed by the privatization of their capital at some point in the future, with the risk that their contracts for works or services would no longer be subject to public procurement rules that impose prior open competition.

Maintaining competition in the markets concluded with airports

To begin with, the *Autorité* noted that, in the event of any privatization, both the SAR and ADP would remain contracting entities within the meaning of both European and national legislations, and would thus be subject to advertising and open competition obligations for their contracts.

In the event of any such possible privatization, it nevertheless recommended that the specifications from the airports in question should include the existence of an independent invitation to tender committee that would render an appropriate opinion on the work and service contracts over and above the thresholds that would be set so as to cover the bulk of the orders in terms of value.

As such, these proposals are similar to the ones that pertained to opinion 05-A-22 of 2 December 2005, relative to the privatization of motorway concession companies.

The *Autorité de la concurrence* recommends the creation of an independent supervisory authority

The AMCRI also queried the *Autorité* regarding the regulation of the rates applied by airports for services provided to airline companies.

The *Autorité* firstly pointed out that the State is currently both the regulator of airport activities and a shareholder of airport operators, which can be confusing.

At the same time, the 2009 European directive relative to airports called for the implementation of an independent supervisory authority for the setting of airport fees.

Therefore, the creation of such an authority seems to be necessary and could provide an opportunity to contemplate, more broadly, the establishment of a regulatory agency for intermodal transport, thereby building on the *Autorité de régulation des activités ferroviaires* (ARAF – Regulatory authority for railway activities), pursuant to the law of 8 December 2009.

Actually, concentrating the areas of competency within a single transport regulator would allow to better seize the common issues faced by the whole transport sector. However, it is not up to the *Autorité de la concurrence* to decide on this matter, since it depends on a political choice that is the responsibility of government and parliament.

> *For further details, please consult the full text of the opinion 10-A-04 of 22 February 2010*