II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 27 April 1999

on the application of Article 9 of Council Directive 96/67/EC to Roissy-Charles de Gaulle airport

(notified under document number C(1999) 1067)

(Only the French text is authentic)

(Text with EEA relevance)

(1999/326/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports [1], and in particular Article 9(5) thereof,

Having regard to the request for approval of the decision of the French authorities of 8 January 1999, and after consulting those authorities,

After consulting the Advisory Committee,

Whereas:

I. SCOPE OF THE EXEMPTION NOTIFIED BY THE GOVERNMENT OF THE FRENCH REPUBLIC

1. The notificiation presented by the French authorities

(1) By letters of 8 and 27 January 1999, as registered by the Commission on 13 and 27 January 1999, the French authorities notified a request to approve the decision of the Government of the French Republic of 8 January 1999 to grant to Roissy-Charles de Gaulle airport (hereinafter CDG) an exemption:

— as regards terminal CDG 2:

to ban self handling and to reserve for the airport the provision of services to third parties concerning the transport of passengers between the terminal and the aircraft; category of services listed under point 5.4 of the Annex to the Directive. This exemption is granted, on the basis of Article 9(1)(b) and (d) of the Directive, until 31 December 2000,

— as regards terminal T 9:

— to reserve for the airport the provision of services to third parties for the categories of services listed under points 3, 5.1, 5.2, 5.4 concerning the loading and unloading of the aircraft and the transport of baggage between the terminal and the aircraft, along with the services listed under 5.5 and 5.6 of the Annex to the Directive, on the basis of Article 9(1) (b),

— to limit to two the number of service providers and users authorised to self handle for the category of services listed under point 2 of the Annex to the Directive. This exemption is granted, on the basis of Article 9(1) (a) and (c) of the Directive, until 1 April 2000.

[1] OJ L 272, 25.10.1996, p. 36.

(2) This decision is based on the provisions of the Decree of 22 December 1998 restricting access to the market for certain categories of groundhandling operations at the airport, in particular Article 4, which lays down special provisions for the operations covered by this exemption.

(3) The decision also provides for a restriction in all terminals, CDG 1, CDG 2 and T9, where passenger and freight transport is concerned, to three self handling airlines for each of the services listed under categories 3, 4, 5.2, 5.4, 5.5 and 5.6. This restriction stems solely from the decision of the Member State in application of Article 7(2) of the Directive and is thus not affected by the present Decision.

(4) Pursuant to Article 9(3) of the Directive, the Commission published an extract of this notification in the *Official Journal of the European Communities* [1] of 6 March 1999 and invited interested parties to submit comments.

(5) In accordance with Article 9(5) of the Directive, the French Government was consulted by the Commission on the Commission's draft evaluation on 18 and 24 March 1999. The French authorities responded to this consultation with written comments dated 19, 25 and 26 March 1999.

Basis of the exemption

(6) The general rules for access to the groundhandling services market are set out in Articles 6 and 7 of the Directive. These provisions clearly state the principle that most categories of groundhandling services should be opened up to the maximum possible extent. For an airport with the volume of traffic that Roissy-Charles de Gaulle has the Directive provides for recognition of the right to self handle as from 1 January 1998 and opens up the groundhandling market to third parties as from 1 January 1999. However, because of the specific situation and role of an airport, and in particular constraints of safety and security, but also space and capacity, which can arise in certain parts of most airports, the Directive does not impose total. freedom but requires a minimum degree of opening up of both self handling and services to third parties for four categories of services located air-side, i.e. in a particularly sensitive area of the airport. These categories concern ramp handling, baggage handling, fuel handling and certain freight and mail handling operations.

(7) Directive 96/67/EC also takes account of the fact that, in certain very special cases, severe space and capacity problems prevent the opening-up of the market to the degree provided for. In such cases, exemptions may be granted on a temporary basis to give the airports the time to overcome the constraints. These exemptions can therefore be only exceptional in nature and are not intended to automatically give airports an extra transitional period in addition to that already provided for in Article 1 of the Directive.

(8) An exemption can be granted only an the basis of specific space or capacity constraints. This is the basis on which the French authorities have granted the abovementioned exemption in accordance with Article R-216-7 of the French Civil Aviation Code, as ammended by Decree No 98-7 [2] of 5 January 1998 transposing Directive 96/67/EC into national law.

2. **Situation regarding groundhandling at Roissy-Charles de Gaulle Airport**

2.1. *Presentation of the airport*

(9) The airport of Roissy-Charles de Gaulle is currently the biggest airport in the Paris area with 38,5 million passengers in 1998, putting it ahead of Orly (just over 25 million). This airport is made up of two main terminals: CDG 1 in the north and CDG 2 to the south, plus terminal T 9, which is more restricted and reserved for certain charter flights.

(10) The airport is fully coordinated within the meaning of Article 2(g) of Council Regulation (EEC) No 95/93 [3] on common rules for the allocation of slots at Community airports because of problems of runway capacity which is currently at 84 movements per hour. With the construction of two new runways for landing, to the north and to the south, this capacity should permit up to 96 movements per hour as from the summer of 1999 (opening of the third runway) and 120 movements once the fourth runway is open. Nevertheless, the airport has major noise problems with local residents, as recently illustrated by the problem surrounding the decision to construct these new runways and the

[1] OJ C 64, 6.3.1999.

[2] Decree No 98-7 of 5 January 1998 amending the Civil Aviation Code (Part II) relating to groundhandling services in airports, *Official Gazette of the French Republic*, 7.1.1998, p. 293.

[3] OJ L 14, 22.1.1993, p. 1.

commitments undertaken by the operator and the French authorities, especially regarding the positioning of these runways to the east, restricting them to the sole function of landing and the number of movements at the airport limited to 84 during certain periods of the day.

(11) Air traffic at CDG 2 increased from 28,4 million passengers in 1995 to 38,5 million in 1998. Similarly, at the T 9 terminal traffic rose from 1,2 million passengers in 1995 to 1,9 million in 1998.

(12) The new installations completed (hall F 1 put into service in the spring of 1998) and projected at CDG 2 (opening of the hall F 2 for the 1999 summer season, opening of the E 1 hall for the 2001 summer season, opening of the E 2 hall for the 2003 summer seasons, opening of the E 3, F 3 and E 3 and F 4 halls between 2005 and 2010) and the entry into service of the third runway in 1999 and the fourth in 2001 should make it possible, in technical terms, to cope with an increase in traffic of 6,3 % (on average) for the years 1999 to 2004. The projects to upgrade CDG 2 and T 9 will also mean an increase in traffic of more than double in terms of area for T 9.

2.2. *Groundhandling services at the airport*

(13) The groundhandling services at the Paris airports of Orly and Roissy-Charles de Gaulle are currently open to competition in accordance with the provisions of the Directive and the French Regulation. Two Decrees issued by the Minister for Infrastructure, Transport and Housing on 22 December 1998 limit the number of operators at these airports for certain groundhandling categories listed in Articles 6(2) and 7(2) of the Directive. The provision of these services for third parties is thus put out to tender. At Roissy-Charles de Gaulle only the activities of passenger transport in connection with the CDG 2 terminal and activities concerning baggage handling, ramp handling and passenger handling at terminal T 9 are now restricted beyond the possibilities provided for within the normal framework of opening up the market and are thus the subject of this exemption.

II. CONSTRAINTS REFERRED BY THE FRENCH GOVERNMENT

(14) The exemption granted by the French Government [1] is based principally, on the one hand, on the problems of space encountered by the airport, namely:

— at CDG 2:

  — current organisation of the fleet of 17 aerobuses and 47 conventional buses,

  — lack of space to provide a parking area for the full fleet,

  — current structure of the terminal and the halls in it (A, B, C, D and F 1),

  — saturation of the aprons,

  — congestion of the service roads,

— at T 9:

  — insufficient space in the terminal (for baggage sorting area) and air-side to meet all the needs of the operators,

and, on the other hand, on the implications of opening up the market to the degree provided for by the Directive:

— at CDG 2 through:

  — the level of investment and maintenance costs which would automatically price ADP out of the market; even given the high level of quality, the quality/price ratio would be negative,

  — the growing difficulty of finding spare parts, which would increase maintenance costs,

  — the lack of access to all types of flight, which would mean restricting access to the market,

  — the lack of access to all parking positions, which would mean restricting access to the market,

— at T 9 through:

  — a reduction in capacity terminal and air-side caused by work in the terminal (installation of the control baggage system (CBS) and creation of additional space) and air-side (construction of an air-side building) and through the opening-up of the market,

  — the physical impossibility of admitting a second provider of ramp-handling services (categories 3 and 5),

  — the negative impact of opening up the market on the quality of the services provided.

[1] Decree of 22 December 1998 restricting access to the groundhandling market at the airport of Roissy-Charles de Gaulle, *Official Gazette* No 302, 30.12.1998, p. 19950.

A. **CDG 2 terminal**

(15) CDG 2 currently has five halls (A, B, C, D and F 1) and can handle 24,5 million passengers, i.e. 70 % of the airport's traffic, or 247 400 movements a year [1]. This terminal handles traffic from Air France, mainly in halls C and F 1, and from almost 30 other airlines. The rate of aircraft contact at the gate at CDG 2 is 45 to 50 %, which i.s fairly low compared with CDG 1 (93 %). The number of aircraft in remote positions and the proliferation of small carriers due to the Air France hub make for a lot of passenger transport. It is this category of services, transport of passengers between the aircraft and the air terminal (part of point 5.4 of the Annex to the Directive) for which the exemption concerning CDG 2 has been granted.

A.1. *Transport of passengers*

(16) This passenger transport operation to remote positions is performed:

— by 47 conventional buses providing a shuttle between the foot of the aircraft and the departure or arrival lounges (one per hall),

— by 15 aerobuses (plus two aerobuses for maintenance) with an elevator system to enable passengers to board and/or disembark directly at the aircraft door, on the one hand, and at the first floor of the halls, on the other. This system, which was chosen when the terminal was constructed, the terminal being equipped for operations of this kind, allows steps to be dispensed with at the foot of the aircraft and guarantees safe passenger transport at all times. On. the other hand, it is an unwieldy system and very expensive to purchase, requiring outsize taxiways and special driving qualifications. It is currently only used at CDG 2 and in certain North American airports, such as Montreal, because of climatic conditions, and production has now stopped on it, as far as the sizes used in Paris are concerned.

(17) The aerobus service handles 54 % of the passengers in remote positions at CDG 2, which amounts to 38 % of aircraft movements at that terminal. Priority is given to the transport of long-haul passengers.

(18) Transport operations are provided:

— in the case of aerobuses, by airport personnel specially trained for this kind of driving,

— in the case of conventional buses, by a subcontractor selected by invitation to tender.

(19) However, the two types are regulated from the same dispatching room, all the buses having to be coordinated.from there because of the lack of availability at boarding or disembarking door level at certain times of the day.

(20) Since 1 January 1999 Aéroports de Paris (ADP) has withdrawn from the passenger transport market at both Orly and CDG airports with the exception of CDG 2, which is the subject of the exemption. And as regards CDG 2, ADP also plans to cease being a service provider as from the end of the scheduled exemption period.

(21) Apart from the extreme difficulty in obtaining new aerobuses and the imminent reduction in the market because of a major improvement in the proportion of gate parking positions, the dossier presented by the French authorities focuses on the problems of vehicle parking space, boarding and disembarking capacity and apron saturation.

A.2. *Parking of equipment*

(22) According to the French authorities the only parking area at present, covering 1 054 m^2, is around the aerobes workshop. This is in the centre of the north of the terminal and obliges vehicles to cross the aircraft taxiways. In addition, being away from the central control of operations and from the drivers' zoom in hall A, it can only really be used for long-stay parking (overnight) and not for short stay.

(23) This area allows for theoretical parking, i.e. just the floor space used by the equipment, of 30 buses and two aerobuses being serviced in the workshop.

(24) Other vehicles, i.e. the aerobuses in operation and 17 ordinary buses, are parked on the apron and service roads alongside halls A, B and occasionally D under conditions which sometimes border on being unsafe.

[1] 1997.

(25) Given the ground coverage of the aerobuses (77 m^2) and the ordinary buses (30 m^2) and the minimum area needed for manoeuvring, put at 2 m for aerobuses and 1 m for conventional buses, making for a dynamic area of 137 m^2 and 42 m^2 respectively, the total area requirement for parking vehicles is put at 4 303 m^2 at the CDG 2 terminal.

(26) The current shortfall in parking space, for the remaining 17 buses and 15 aerobuses, is estimated at 1 665 m^2 in static area; or 2 769 m^2 in dynamic area, given the minimum manoeuvring requirements. In view of the distance from the workshop area, which only allows long-stay parking, the airport is of the opinion that the operational parking space needed under guaranteed safety conditions is over 4 000 m^2

A.3. *Boarding and disembarking capacity*

(27) Boarding and disembarking operations at the terminal are performed:

— in the case of aerobuses:

by double doors at the fingers on level +1 thanks to the elevation system of the aerobuses,

— in the case of buses:

— either by specialised lounges at level 0, one per hall,

— or at the foot of the stairs of the fingers, although this system compromises both the quality of the service to passengers and safety on the apron.

(28) In particular, hall C is only equipped for aerobuses as far as boarding is concerned, which ntles out conventional buses.

(29) Since whether aerobuses or conventional buses are used depends largely on the type of aircraft being handled and the time at which it has to be handled, the frequent changes of aircraft positions mean that bus or aerobus allocation have to be fully coordinated centrally as long as the two types continue to operate side by side. This coordination is centralised in order to make for optimum use of available capacity at any time at the terminal and at the air-side positions.

A.4. *Saturation of aprons*

(30) The dossier presented by the French authorities shows that, given the areas available and the vehicles involved expressed in traffic units, the passenger transport vehicles have 1,6 times more room to move around and park at CDG 1 than at CDG 2. This is due to the area available, the types of vehicle (no aerobuses but conventional buses and articulated buses at CDG 1 [1]) and lesser vehicle requirements at CDG 1 because of the high proportion of gate parking positions at that terminal.

(31) Similarly, the ratio between the service road areas [2] shows that conditions are worse at CDG 2 than at CDG 1 (1,1 times more congestion at CDG 2), even if identical air-side equipment density is used for the comparison between the two terminals, which is not the case because the better rate of apron contact at CDG 1 makes for a saving on certain air-side equipment:

(32) According to the report presented development of parking areas is prevented to the north by the crossing of the taxiways and the periphery of the controlled area, and to the south by the taxiways and runways.

(33) To the west the problem is similar to the hall A satellite. Development to the east seems to be the only possible solution, but the construction area around halls F and E will mean parking outside that area (*Grand Large zone*). However, a parking area in this part of the airport could only be used for parking at night or for buses on standby because the distance from the dispatching rooms and the rest areas, which would mean transporting the drivers by car, would make it impossible for buses to be available as required.

(34) The report indicates that at present, parking vehicles alongside the terminals or aircraft parking positions is not even satisfactory with a single operator, involving, as it does, problems not only of

[1] Taking a transport unit as a ratio of the floor coverage of the vehicles gives the following weighting scale:
conventional bus: 30 m^2 = 1 TU, articulated bus: 63 m^2 = 2,1 TU, aerobus: 77 m^2 = 2,56 TU.
The parking area at CDG 1 amounts to 0 TU in that all the buses at CDG 1 and T 9 are parked at T 9; the parking area at CDG 2 amounts to 90,5 TU (2,56 × 15)
Apron area:
— CDG1: 376 100 m^2, CDG2: 674 800 m^2
— CDG2: $\frac{674\,800\ m^2}{90{,}5\ TU}$ = 7 456 m^2/TU;
CDG1: $\frac{376\,170\ m^2}{31\ TU}$ = 12 134 m^2/TU.

[2] Service road area:
— CDG1: 52 000 m^2, CDG2: 134 000 m^2,
— CDG2: $\frac{134\,000\ m^2}{90{,}5\ TU}$ = 1 480 m^2/TU;
CDG1: $\frac{52\,000\ m^2}{31\ TU}$ = 1 677 m^2/TU.

parking equipment at the apron positions but also moving in that area, especially at Air France's hub peaks. Opening the groundhandling market up to other air-side operations only reduces the space available in that area and makes the problem worse. According to the report the arrival of other operators providing passenger transport services is not therefore possible at the moment.

(35) According to the dossier increasing the parking areas cannot therefore be extended beyond the work zone of hall F. The current carpark around the workshop can only be increased in the reserved area and parking CDG 2 vehicles in the areas of CDG 1 and T 9 is not feasible because of the distances.

B. **T 9 Terminal**

(36) The T 9 terminal, which is to the east of CDG 1 and to the north of the business park, was completed in 1991 to cope with the increase in charter traffic. It met the pressing need to handle peak summer traffic that the provisional installations at Orly and the new amenities there could not cope with.

(37) The T 9 terminal has the peculiarities:

— of not being comparable in terms of size with CDG 1 and CDG 2, which handled 9,7 and 24,1 million passengers respectively in 1997, whereas only 1,5 million passed through T 9,

— of handling only charter flights, which means handling one third of the annual traffic just in the months of July and August and half the weekly traffic volume at the weekends,

— of only having, until recently, a light structure in part (office container), making it not as suitable as the other terminals.

(38) For some years now crew administration (points 1 and 9), marshalling on departure (point 5.3), catering (point 11) and loading on board (point 5.7), cleaning (point 6), fuel handling (point 7) and aircraft maintenance (point 8) have been carried out by several service providers. Similarly, one airline already self handles for the ramp handling operations covered by the exemption (point 5) and for fuel handling. Finally, since 1 January all operations, except for those affected by the exemption, are open to competition pursuant to the provisions of the Directive and the French regulation transposing it.

(39) The report submitted by the French authorities shows that space has been becoming tighter for a number of years now in this terminal because of the significant rise in charter traffic at the airport. This has led to rapid saturation of infrastructure, making it difficult to handle passengers properly. The creation of extra space to increase the terminal's capacity would also mean new space constraints while work was being done.

(40) It is these temporary constraints for the duration of the work in progress which are the basis for the exemption concerning terminal T 9 for passenger handling (point 2 of the Annex to the Directive), baggage handling (point 3) and ramp handling (point 5 with the exception of point 5.3 concerning communication between aircraft and supplier).

B.1. *Saturation of existing installations*

(41) Terminal T 9, with its simple design and spacious waiting areas to meet the demands of charter traffic (groups, long waits to board, numerous accompanying persons), has found it dificult to cope with the remarkable growth in non-scheduled traffic at the Paris airports, from 3,5 million passengers in 1990 to 4,2 million in 1996, which has meant that more than 55 000 overflow passengers have had to be passed on to other terminals.

(42) It appears from the dossier presented that the problem arises essentially from the concentration of traffic over the summer months. The peak traffic forecasts, based on the 25th summer peak hour, indicate complete saturation of installations. This gives rise to numerous incidents in the summer, especially at the weekends because of the impossibility of handling all passengers at certain times.

(43) The airport authorities have decided to expand the terminal in order to cope with this traffic. Initial work began in 1997 and an additional hall was opened at the end of April 1998, notably to cope with the extra traffic brought on by the World Cup. This is being followed by a second stage of work

designed to increase the space available to take account of the effects of the Directive. The situation has also been improved temporarily by the transfer of Star Airlines to CDG 1.

(44) Since April 1998 the old terminal has thus been converted into a departure hall, the new hall being used only for arrivals. In the departure hall 14 check-in desks have been added to the international area with its 20 check-in counters (plus two outsize ones). These check-in desks should also help to handle Schengen traffic which has been growing regularly for the past few years. This growth means that the airport has to create specific installations, particularly at boarding level, in order to guarantee the quality of passenger handling.

(45) The lack of space has also meant that the airport has had to use temporary structures (office containers) covering almost 800 m^2 (of which 700 m^2 air-side) to house more than 46 % of requirements in terms of offices, hall rest areas, administrative premises and bus dispatching centre for the transport of passengers to the aircraft.

(46) The area shortfall in premises is currently put by the airport authorities at 1 600 m^2.

(47) With the work carried out so far the areas available are now 600 m^2 in the terminal (of which 500 m^2 for groundhandling) and 700 m^2 (600 m^2 for groundhandling) air-side.

(48) The new facilities have thus provided, in an initial phase now completed, the resources needed for handling traffic by way of check-in desks, baggage conveyors and departure lounges. The second phase of the work, i.e. the period of the exemption, is intended to provide the space needed for suppliers and users to self handle.

(49) As regards baggage handling, terminal T 9 has had a 100 % hold luggage control system since June 1997. The work to extend the control system to all departure facilities since the rearrangement of the terminal, especially on the south side behind the 14 new check-in desks, requires some of the space along the south side of the departure hall to be condoned off, making for constraints in both space and movement in this area and, according to the French authorities, not permitting the arrival of an additional operator during the work period, which should be for the whole of 1999.

III. REACTIONS OF THE INTERESTED PARTIES

(50) Following the publication of the résumé of the notification of the application for exemption by the French authorities, the Commission has received no comments from any interested parties.

IV. EVALUATION OF THE EXEMPTION IN THE LIGHT OF THE PROVISIONS OF DIRECTIVE 96/67/EC

1. The rules in force concerning groundhandling

1.1. *The scope for restricting access to the market*

(51) Directive 96/67/EC provides for the structured opening-up of the market as a function of the manner in which groundhandling operations are provided (self-handling or services to third parties) and the volume of traffic at the airport.

(52) The general rules for self-handling and the provision of services to third parties as set out in the notification from the French authorities are laid down by Articles 6 and 7 of the Directive. These rules are included in Article 1 of the French Decree of 5 January 1998 amending the French Civil Aviation Code and transposing the Directive. According to the Directive a Member State may limit the number of suppliers and users self handling for certain categories of services listed in points 3, 4, 5 and 7 of the Annex to the Directive to a minimum of two.

(53) However, where specific space or capacity constraints, in particular because of the rate of use or congestion of space, make it impossible to admit a new supplier and/or to authorise self handling to the degree provided for by the Directive, the Member State in question may, in accordance with Article 9 and the particular categories concerned, restrict or even reserve the provision of services to third parties for a single operator and/or ban or limit self handling to a single user.

(54) Nevertheless, under Article 9(2) an exemption of this kind must:

— specify the category or categories of services for which the exemption is granted and the specific constraints of available space or capacity which justify it,

— be accompanied by a plan of appropriate measures to overcome these constraints.

(55) Also, under Article 9(2), the exemption must not:

— unduly prejudice the aims of the Directive,

— give rise to distortions of competition,

— extend further than necessary.

(56) As the Commission pointed out in its Decision of 14 January 1998 concerning the airports of Frankfurt and Düsseldorf ([1]), the main purpose of the Directive is to liberalise groundhandling services. Limitations imposed on third parties amount to restrictions to those parties' freedom to provide services. By way of analogy with State measures restricting the freedom to provide services ([2]), measures which are liable to exclude or prohibit the activities of a provider of services or users wishing to self-handle, even if they apply without distinction to national providers of services and to those of other Member States, must 'be such as to guarantee the achievement of the intended aim and must not go beyond that which is necessary in order to achieve that objective. In other words, it must not be possible to obtain the same result by less restrictive rules' (ground 15 of the judgment) ([3]).

(57) It is in the light of the principles of necessity and proportionality that it has to be examined whether the national provision in question (Decree of 22 December 1998 restricting access to the market of groundhandling for the airport of Roissy-Charles de Gaulle) contains restrictions on freedom to provide services and, if so, whether those restrictions are justified by overriding reasons relating to the public interest ([4]).

([1]) Commission Decisions 98/387/EC and 98/388/EC (OJ L 173, 18.6.1998, pp. 32 and 45).

([2]) Judgments of 25 July 1991, Case C-288/89, Mediawet-Collectieve Antenne voorziening Gouda, [1991] ECR I-4007 and Case C-76/90, Sager v. Dennemeyer [1991] ECR I-4221.

([3]) See in particular the judgment of 25 July 1991, Case C-288/89, Mediawet-Collectieve Antenne voorziening Gouda, [1991] ECR I-4007, grounds 10 to 16.

([4]) Commission interpretative communication conecrning the fret movement of services across frontiers (OJ C 334, 9.12.1993, point III.2).

1.2. *Procedure*

(58) As recalled in the various decisions ([5]) on the application of Article 9 of the Directive, the Commission must base its examination on:

— the existence and extent of the space and capacity constraints used to justify the exemption and the impossibility of opening up the market to the degree provided for in the Directive; only the space and/or capacity constraints can be taken into account,

— the plan of appropriate measures to overcome the constraints; this plan must be credible and unconditional and have a timetable for the implementation of those measures,

— conformity with the principles referred to Article 9(2) concerning compliance with the objectives of the Directive, no distortion of competition and extent of the measure.

(59) The granting of an exemption is not meant to grant the airport a further general adaptation period in addition to that already granted by Article 1 of the Directive. It must allow the airport to overcome the specific constraints that it may encounter when the market is opened up. Any exemption must therefore be examined in the light of the specific constraints invoked to justify the impossibility of opening up the market within the time permitted. Moreover, according to the case-law of the Court, any exemption must be interpreted strictly and the scope of an exemption must be determined in the light of the aims of the measure in question ([6]). It is in the light of these considerations that this exemption has to be examined.

(60) In accordance with Article 9(4) of the Directive, the Commission has made a detailed analysis of the alleged space and capacity constraints, has considered whether the decision taken by the French authorities is appropriate to those constraints, and has appraised the measures put forward to overcome them. It has based its examination on the dossier presented by the French authorities, on the visit it made to Roissy-Charles de Gaulle Airport following the notification by the French authorities and on the report drawn up on its behalf by the

([5]) Commission Decisions 98/387/EC and 98/388/EC (OJ L 173, 18.6.1998) concerning the airports of Frankfurt and Düsseldorf;
Commission Decisions 98/630/EC, 98/631/EC and 98/632/EC (OJ L 300, 11.11.1998, pp. 25, 33 and 41) concerning the airports of Cologne, Stuttgart and Hamburg.

([6]) See judgments of 20 April 1998 in Joined Cases 80 and 81/77 [1978] ECR 927, p. 945, and of 25 June 1992 in Case C-116/91, British Gas [1992] ECR I-4071, ground 12.

company Aerotec Ground Handling & Management Consultants. The conclusions of this report, entitled 'Access to aircraft groundhandling market at Community airports — Paris (CDG)', were submitted to the Commission in March 1999. The Commission also took account of the comments made by ADP and the French authorities with regard to this appraisal, which were communicated by the French authorities on 19, 25 and 26 March 1999.

2. **Constraints referred to by the French authorities**

(61) The exemption concerns different categories of services in two separate terminals which are not comparable either in situation, size or type of traffic. Each of the situations must therefore be presented and examined separately.

(62) However, the French authorities point out in general that the capacity and space at the airport as a whole must not hide problems of space for parking specific groundhandling equipment at certain specific points in the airport. This equipment has to be parked close to where it is used.

(63) Wherever possible space for groundhandling equipment should ideally be close to the aircraft, i.e. near the terminals. However, this is only as a matter of priority. The Directive provides that the authorities of the Member State must demonstrate that it is impossible to open up the market to the degree required. The Member State must therefore show that there is insufficient space to park the equipment and carry out the intended operations without specifically setting quality criteria for each of the positions so as not to affect the proper functioning of the airport.

CDG 2

(64) The visit by the Commission and the report drawn up on its behalf confirm that the terminal CDG 2 uses two types of passenger transport operations: transport by aerobus (mobile lounge) and transport by conventional and articulated buses. In principle the two types of transport can be interchanged from an operational viewpoint. As already mentioned, the three types of bus differ in terms of design and energy supply requirements (aerobus: electricity). However, not all of the arrival areas (fingers) allow aerobuses and conventional buses to be used at the same time. At present aerobuses can perform departure anal arrival operations on 23 fingers whereas the departure operations (only) performed by conventional buses are at 18 departure gates. ADP uses five dedicated arrival lounges.

(65) That said, boarding and disembarking by conventional buses is not a full option in hall C. As already said (point 28), only aerobuses can be used for boarding in hall C. Since it only has fingers, the hall does not have the doors and stairs for boarding by conventional buses. The configuration of this hall is such that it is impossible to use normal buses to transport passengers between the terminal and the aircraft, thus making aerobuses the only possibility, although disembarking by normal bus at level 0 to the arrivals lounge is possible. This is thus a significant capacity constraint which prevents the arrival of a service-provider or self handler before the configuration of the hall/terminal is changed to enable the use of any type of bus for passenger transport.

(66) As regards the other halls at CDG 2, the Commission, while recognising that there are significant peak periods at the terminal, nevertheless feels that the French authorities have not demonstrated that all of the space available was in use. On the one hand, they claim that the space available (1 054 m^2) only covers part of the overall needs (4 303 m^2). On the other, they say that in 1999 already they will be phasing out eight of the aerobuses and adding 27 conventional buses to the 47 existing ones. Phasing out eight aerobuses will mean a gain in dynamic area of 1 096 m^2 = (8 × 137 m^2) whereas the extra conventional buses will mean additional requirements of dynamic area of 1 134 m^2 (27 × 42 m^2). However, the French authorities have not shown how they plan to park (long and/or short stay) the extra buses.

(67) The French authorities maintain that because of the Air-France hub operations at this terminal and because of the reduction in the number of aerobuses, extra conventional buses are needed and that this requires centralised coordination to guarantee the flexibility (change of operating plans at the last minute) and the quality of the service provided. It also claims that the arrival of another service provider would not permit this kind of coordination. While recognising that coordination may be necessary for more efficient operations, especially in the case of delays and/or any last-minute changes of plan, it is up to the airport to provide proper management of bus services to avoid any operational disturbances on the aprons. Management of this kind is in place in airports allready open to competition as a result of the regular administration and supervision rights of the

airport, which may impose rules on all operators working there in order to make for a fully functional system. The French authorities have not shown that the presence of a single operator in hall C would not make for a fully operational system throughout the terminal and that coordination of that kind could not be achieved if the groundhandling market were made open in the other halls of the terminal.

(68) The French authorities also claim that any self handler or other provider of passenger transport services would only use the conventional buses and not the aerobuses, since the latter are no longer in production, which would have serious consequences for ADP (higher maintenance costs for the aerobuses). This argument cannot be accepted: firstly, because it does not explain either the lack of parking capacity or show an inextricable link with the saturation of the aprons and service roads; secondly, because this point does not affect handling capacity in terms of passengers. As already said, Article 9 has to be interpreted strictly and account taken of the purpose of the measure in question. The purpose of the Directive means that only the constraints mentioned in Article 9, which are in themselves barriers to the application of the Directive, can serve as a basis for an exemption. The impossibility of opening up the market must be due to a fact independent of the party invoking that impossibility. According to ADP, however, it is not just the lack of space as such that makes it impossible for the arrival of a new operator at CDG 2 but also the fact that the arrival of this new operator would increase the maintenance costs of the aerobuses.

(69) The visit by the Commission and the report drawn up at its request confirm that the buses (aerobuses and conventional) do not necessarily have to be parked near the terminal that they service. At many airports, such as Heathrow, buses use the long-stay parking areas around the perimeter of the airport and ate used according to the needs of users and/or suppliers. If this capacity is put to effective use buses only need to be parked during the period when they are not in use. These buses could be parked, for example, to the east of the current building area, on the sites of. the future halls F 3, E 3, F 4 and E 4 which will not be put into service until between 2005 and 2010.

The arrival of another supplier and/or user applying self handling would not affect the terminal's traffic handling capacity. At present there are 23 fingers (piers) and only 14 aerobuses that can be used at any one time. The argument put forward only stresses the commercial consequences that the arrival of a new service provider or self handler would have on ADP. There is no mention of congested areas (fingers and remote positions) which might cause serious operational disturbances and jeopardise the terminal's traffic handling capacity. According to the dossier 18 of the gates can be used only for boarding, arrivals being channelled via five others. The fingers cannot be used at the same time by aerobuses and conventional buses. Even if a supplier and/or user were to handle 20 % of the terminal's traffic (double the market share estimated by ADP) the increase in the number of conventional buses would not have serious consequences either for space or operations. ADP had in fact planned to increase the bus fleet from 47 to 74 in 1999 (an increase of 57 %) and to phase out some of the aerobuses (there will only be nine at the end of 1999). ADP does not feel that it will be impossible to park these extra buses.

It has not therefore been shown that, in halls A, B, D and F, the extra number of conventional buses cannot be operated by another service provider or self-handler.

T 9

(70) The visit by the Commission and the report drawn up on its behalf confirmed the reality of the constraints and the validity of the points made by the French authorities concerning passenger

handling in the terminal, in particular ticket control, travel documents, registering baggage and carrying it to the sorting area (category 2).

(71) As far as baggage sorting is concerned, and transport of the baggage between the aircraft and the terminal, the Commission noted in its various Decisions [1] that, generally speaking, the number of trolleys needed for the baggage sorting system depended on the number of flights to be handled and not the number of operators within the system. However, in some cases the very configuration of the baggage-sorting hall prevents any crossing of vehicles in the hall. As in the case of Stuttgart airport, the fact that the hall is small and at times congested is indisputable. Because of the tightness along the baggage-conveyance system and the single door which obliges operators to make a U-turn it is not possible to admit more than one vehicle into the hall at any one time. The airport therefore has to regulate trolley management in the hall, the other trolleys having to be kept on hold near the door [2]. In the particular case of the T 9 terminal the baggage sorting hall has been placed between the departure lounge with its passenger rest area and the arrivals hall, thus making it impossible to park the extra baggage-transport equipment near the hall. The area currently set aside for storage of the baggage-transport equipment for the whole terminal is 2 500 m^2 and is completely full at present. A second service provider would need a minimum additional area of 500 m^2 The work in progress on two of three sides of the hall air-side in order to make the terminal bigger will reduce available space by some 700 m^2 and will thus amount to a further constraint and, for the period in question, prevent the parking of equipment belonging to a second operator in the area around the terminal.

(72) Space and capacity constraints thus exist which justify the decision of the French authorities to reserve the provision of services to third parties for a single operator and to prohibit self handling for baggage sorting and transport between terminal and aircraft (point 3 and part of point 5.4 of the Annex to the Directive).

(73) As regards the other air-side operations referred to by the exemption, it is generally acknowledged that the presence of several operators calls for more equipment than is needed for a single supplier and also more space to park that equipment. While equipment needs in the case of a single provider depend on the volume of traffic during the peak periods of the terminal, in a system open to competition account has to be taken of the peak periods of each of the operators, which do not necessarily coincide with those of the airport. A competitive situation would therefore mean more equipment required and more space needed to park it.

However, during calmer periods, especially at night when the equipment is used to a lesser degree, the free positions at the airport can in principle act as temporary parking areas for equipment. Account also needs to be taken of the fact that the advent of competition will lower the market share of the operator currently in a position of sole supplier and thus also lower equipment requirements and parking space.

(74) At present the terminal apron has 14 aircraft parking positions, requiring pushing operations (TIPO — taxi in push-out — positions). The parking positions are MARS (mufti-aircraft remote stands) positions allowing simultaneous parking of 8 to 14 aircraft depending on their size/type and the configuration of the apron. Parking is always nose-in. ADP takes the view that a new operator with a market share of around 10 % would be able to handle 2 000 movements a year. However, the figures submitted by ADP show that in 1998 there were 13 900 movements at that terminal, i.e. 10 % amounts to a maximum of 1 400 movements. ADP reckons that a new operator could handle three aircraft at the same time; the equipment for an operation of this kind would take up about 1 000 m^2. However, only 600 m^2 is needed to park equipment which has to be used right next to the aircraft. During peak periods 10 aircraft movements can be handled per hour. Making more efficient use of the available space around the noses of the aircraft could save space of around 1 800 m^2. The

[1] See Commission Decisions concerning the airports of Frankfurt, Stuttgart and Cologne/Bonn.
[2] See, in particular, the Decision concerning Stuttgart airport.

standards and practices recommended by the International Civil Aviation Organisation (ICAO) lay down the space and areas that have to be reserved for safety purposes and for equipment on aircraft positions as a function of the type of aircraft. Inspection of the installations showed that there was still plenty of space left to park groundhandling equipment around the noses of the aircraft. Also, during peak periods most of the groundhandling equipment is in use and therefore does not need to be parked.

(75) The French authorities claim that during peak periods personnel and equipment from CDG 1 are used in T 9 to handle extra traffic. ADP's argument that air-side operations prevent any parking of extra equipment for safety reasons cannot be accepted because this kind of situation is common in many international airports and does not present any particular problems. A clear demarcation of positions along with supervision to ensure that the aircraft position provides all the safety guarantees on arrival of the aircraft (which is a normal safety procedure in many airports with nose-in positions) will solve this problem.

(76) At present ADP uses office containers to provide a total area of 800 m^2 of offices, administrative units and rest areas, i.e, more than 46 % of the office space. It is accepted that during work phases there is no extra space to house the offices and administrative units of a new operator. However, stacking up two office container systems, as has already been done on other building sites, including at airports, would provide premises both for ADP and another operator. In addition, these installations only need to be at a reasonable distance from operations in order to show access to the terminal in time to provide the services concerned.

(77) The French authorities have not therefore demonstrated that it is impossible to accept the arrival of a second service provider for the air-side operations in question (except for baggage sorting and transport between the aircraft and the terminal) as long as this second operator accepts being subjected to the parking and housing constraints described above.

3. **Measures planned**

(78) Article 9(2) of the Directive provides that the exemption must be accompanied by a schedule of appropriate measures that are intended to overcome the constraints cited.

CDG 2 terminal

(79) The schedule presented sets out to make a marked improvement in the proportion of gate parking positions at CDG 2, in particular through the construction of the new F and E halls to handle the Air-France hub, Air-France being the main generator of traffic peaks at CDG 2. The proportion of gate parking positions after the work planned is completed is put at 90 and 100 %, thereby making for a considerable reduction in vehicle requirements and hence parking space. Space will also be freed up as the work sites at CDG 2 disappear. In addition, the aerobuses will be gradually phased out: phasing-out of aerobuses in 1999 for halls B and D, making for a reduction in the number of aerobuses for the 15 at present to nine by the end of 1999 and an increase in the number of normal buses from 47 at present to 74 by the end of 1999; in 2000 phasing-out of all aerobuses and stabilisation. of the number of conventional buses at 49.

(80) The French authorities are planning major work on hall C (cost: EUR 1,5 million) to overcome the constraints cited. They plan to (i) create a covered stairway to handle departures in C 2 to C 12, (ii) install an escalator and a lift to the transfer hall and then to the arrivals filters at C 0 to C 10, and (iii) convert the aerobus disembarkation door on the west of the arrivals hall. By the end of the period in question this work will make for boarding and disembarking by conventional buses and will eliminate the capacity constraint.

Consequently, the planned measures submitted by the French authorities can be considered as suitable for overcoming the constraints identified in tbis hall.

(81) As regards halls A, B, D and F, since the constraints indicated by the French authorities have not been established the measures put forward to overcome such constraints need to be examined in more detail.

T 9 terminal

(82) After the first phase of work, which was completed on 25 May 1998 and solved the problem of resources to cope with traffic through the creation of a new departure hall and 14 extra check-in desks, the second phase will comprise:

— installation of a baggage control system south-side,

— the creation of the additional infrastructure needed for groundhandling operations.

(83) The measures planned are as follows:

— In the departure hall:

  — rearrangement of the public area to avoid passenger flows crossing,

  — creation of an additional 30 m^2 waiting area,

  — creation of around 500 m^2 of office space,

— in the arrivals hall:

  — possibility of doubling the baggage sorting area,

— outside:

  — construction of an air-side building with an area of around 2 000 m^2,

  — possibility of 50 % more space in storage area.

(84) This work should help to meet space requirements (administrative offices/operations rooms) of the order of 1 400 m^2, especially in the view of the need to re-house the office containers and meet pending requirements as well as new requirements due to the application of the regulation on ground-handling.

(85) A first reorganisation of resources (passenger traffic) which did not create extra 'exclusive' space, was completed in May 1998. The plans submitted by the French authorities show that the space currently dedicated to land and air-side activities of 1 300 m^2 (of which 1 100 m^2 for groundhandling services) will increase to 2 700 m^2 (of which 2 100 m^2 for groundhandling) in April 2000. The space created will be for users (airlines, groundhandling suppliers, etc.). Consequently, the planned measures presented by the French authorities can be regarded as appropriate for overcoming the constraints identified at that terminal.

4. **Compliance with the criteria laid down in Article 9(2) of the Directive**

(86) As regard the objectives of the Directive, the title of it is enough to explain that the main objective is access to the market. However, its purpose is that this access should be real, i.e. that 'the opening-up of access to the groundhandling market should help to reduce the operating costs of airline companies and improve the quality of service provided to airport users' (fifth recital of the Directive). Thus, opening-up which also helps to improve the services on offer and the prices paid by users will help to achieve the objectives of the Directive by introducing competition between service providers.

(87) As regards the extent of the measures, since only the constraints concerning hall C in terminal CDG 2 have been established it is only in respect of this hall that the proportionality of the measure should be reviewed. In this instance immediate opening-up of the market would not amount to real access being a possibility. The work planned by the French authorities is indispensable for the departure areas to be converted to enable passenger boarding by conventional buses. In view of the current situation in this hall the Commission takes the view that the measures taken do not extend further than necessary and that the available capacity does not allow immediate opening-up of the market in this hall to the degree provided for by the Directive.

As regards the other halls in this terminal, however, the constraints cited by the French authorities have not been established and thus there is no need to make a more detailed examination of the proportionality of the measures put forward to overcome these constraints.

(88) As far as terminal T 9 is concerned, the exemption granted by the French authorities seems to extend further than necessary in that it involves air-side activities, notably marshalling of aircraft, assistance to aircraft parking, loading and unloading, engine stetting and moving the aircraft, which are not necessarily linked either to the passenger-handling service or to the baggage handling service in the sorting area and the transport of baggage between the aircraft and the terminal, and for which space constraints have been established.

V. **CONCLUSION**

(89) The CDG 2 terminal does net present any structural space and capacity problems which prevent the opening-up of the groundhandling market concerning the transport of passengers. The French authorities have not cited specific space and capacity constraints to demonstrate that it is completely impossible to open up the market for this service. None the less, the configuration of hall C justifies reserving the provision of this service solely for the airport in this hall for the period in question.

(90) The T 9 terminal has only partly structural space and capacity problems which prevent the opening-up of the groundhandling market to the degree provided for by the Directive. The space available and the work in progress to enlarge and improve traffic handling at this terminal do not allow for more than two self handlers and two providers of services to third parties for passenger handling. By the same token, the space available for baggage sorting and transport of baggage between the terminal and the aircraft does not allow for a second provider of services to third parties. However, it has not been sufficiently demonstrated that ADP should continue to be the sole provider of groundhandling services for the remaining air-side activities since the lack of space and capacity does not affect the provision of these services,

HAS ADOPTED THIS DECISION:

Article 1

The exemption decision granted to Paris-Roissy-Charles de Gaulle airport, as notified to the Commission on 8 and 27 January 1999, is approved subject to the following amendments being made by the French Republic:

— as regards the provision of air-side services to third parties concerning marshalling (point 5.1 of the Annex), parking (point 5.2 of the Annex), loading and unloading (part of point 5.4 of the Annex), engine starting (point 5.5 of the Annex) and moving of the aircraft (point 5.6 of the Annex) at terminal T 9, the decision taken on the basis of Article 9 (1) (b) must permit the opening-up of the market to a second provider of services to third parties,

— as regards the provision of services to third parties and self-handling in. passenger transport at CDG 2, the decision taken on the basis of Article 9(1)(b) and (d) shall be revoked for halls A, B, D and F.

Article 2

The French Republic shall notify the Commission, before it enters into force, of the exemption decision as amended in accordance with Article 1.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels, 27 April 1999.

For the Commission

Neil KINNOCK

Member of the Commission