

# The privatization of large regional airports in France: key issues and opportunities

This briefing note includes an outline of the regulatory environment for the regional airports privatization process in France, certain lessons learned from the Toulouse-Blagnac privatization, together with our expectations concerning future airport disposals.

## Background on the operating regime of regional airports in France

Regional airports in France were for a long time operated exclusively under concession agreements granted by the French State to *Chambres de Commerce et d'Industrie* (CCI), which are public entities in charge of the promotion of the local economy.

Law No 2005-357 of 20 April 2005, paving the way towards the privatization process, allows an existing concession agreement to be transferred to a dedicated airport managing company upon demand by the relevant CCI. Airport managing companies are private law companies which were initially entirely owned by public entities: the French State (60%), CCI (25%) and local public authorities (15%).

To date, the concession agreements which have been transferred to airport managing companies concern the following airports: Lyon, Bordeaux, and Toulouse (2007), Nice (2008), Montpellier (2009), Fort-de-France – Martinique (2012) and Marseille (2014).

## Lessons learned from the privatization of the Toulouse-Blagnac airport

The French State is entitled to sell the shares that it owns in regional airport managing companies to private parties, subject notably to the rules governing the privatization process of public companies.

The French State began the privatization process of regional airport managing companies with the Toulouse-Blagnac airport (turnover of EUR 117 million; 7.6 million passengers per year in 2013). The transaction consisted of a sale of 49.9% of the State's shares in the airport company to the selected bidder, together with a put option (not a call option) of the State to sell its residual participation representing 10.1%<sup>1</sup>.

## Key issues

- Background on the operating regime of regional airports in France
- Lessons learned from the privatization of the Toulouse-Blagnac airport
- Other airport privatizations expected in the short-term
- Key features of the *ad hoc* tender processes
- Towards greater independence of the supervisory authority in the airport industry

After launching the tender process in July 2014, the French State selected in December 2014 a consortium primarily made up of Chinese investment funds and asset managers (Shandong High Speed Group and

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<sup>1</sup> Please refer to the tender specifications for the sale of the State shares in the Toulouse-Blagnac airport managing company available on the website of the French Ministry for Economy: <http://www.economie.gouv.fr/files/files/dir>

Friedmann Pacific Investment Group) and a Canadian operator (SNC Lavalin).

The outcome of the tender process for the Toulouse-Blagnac airport shows that, although the transfer to a private investor of shares in a company controlling strategic infrastructure remains politically very sensitive, the State is prepared to sell its shares in airport managing companies to foreign investors, subject to there being a satisfactory bid price and development plan in place for the airport. Of course, the State keeps control over the airports through concession agreements.

The sale of the State's shares in the airport company for Toulouse-Blagnac nonetheless generated strong negative reactions, mostly at a local level, both with respect to the principle of the privatization and on the selected consortium which did not include any French entities.

Opponents to privatizations also exist at a local level for other regional airports. For instance, the privatization of the Nice airport company did not receive approval under a local referendum organized by the mayor in the Nice municipality on 19 February 2015 (with a participation rate of 17%). Although the referendum does not have any binding legal value, it is one factor that could lead to the State adopting a more "political" stance by selecting future consortia bidders that include a national or local member.

### Other airport privatizations expected in the short-term

The State is expected to initiate tender processes to transfer its

shares in airport companies operating the other large regional airports.

The next transactions are expected to concern the Nice and Lyon airports:

- The company "Aéroports de la Côte d'Azur" has operated the airports in Nice and Cannes since 2008. Its turnover amounted to EUR 222 million and the number of passengers to 11.5 million (65% for international destinations) in 2013<sup>2</sup>.
- The company "Aéroports de Lyon" has operated the two airports in Lyon (Lyon-Saint Exupéry and Lyon-Bron) since 2007. Its turnover amounted to EUR 158 million and the number of passengers to 8.5 million (63% for international destinations) in 2013<sup>3</sup>.

The draft law for growth and economy (referred to as the "Loi Macron")<sup>4</sup>, which is currently being discussed before Parliament - and therefore may be amended, authorizes the transfer to the private sector of more than 50% of the shares of the airport managing companies for Lyon and Nice. In other words, the French State, which owns 60% of the shares in the airport companies, may sell all of its shares.

Even if there is no certainty as to the timetable, it could reasonably be

assumed that the tender processes will be launched after the entry into force of the *Loi Macron*, i.e. probably during the second half of 2015.

### Key features of the *ad hoc* tender processes

The selection criteria should mainly be the financial interests of the State (the price per share) and the long term development opportunities for the airport based on the industrial and social projects proposed by the bidder.

Proposed development projects must comply with the provisions of the concession agreement, as well as with other existing agreements such as the Economic Regulatory Contract ("ERC") if applicable.

An ERC is intended to identify planned development projects for the airport over a five-year period (e.g. new capex, improvement of the quality of service) and, on such basis, determine changes in the airport charge rates. *Aéroports de Lyon* for instance, has entered into an ERC for the period 2015-2019.

It is very likely that the weight accorded to the proposed development project for the airport will have a greater importance in the future than in previous transactions. The draft *Loi Macron* provides notably that the tender specifications shall set the obligations of the selected bidder with respect to economic and tourism development and attractiveness, as well as with respect to cooperation with local authorities.

As regards the shareholders agreement, it is possible that, as in recent tender processes, the agreement is not negotiable.

Further, the sale of the State's shares may, as in the case of Toulouse-Blagnac, be conducted in two steps:

<sup>2</sup> Annual report for *Aéroports de la Côte d'Azur*, 2013.

<sup>3</sup> Annual report for *Aéroports de Lyon*, 2013.

<sup>4</sup> The draft Law for growth and economy has been approved in initial votes before the *Assemblée Nationale* (February 2015) and the Senate (May 2015) and is due to be examined before a joint parliamentary committee in June 2015.

first, the State would sell only 49.9% of the shares in the airport company to the selected bidder and then the State would have a put option to sell the residual 10.1% with no obligation for the State to exercise its put option, with the result that the selected bidder would have no certainty that it will ever hold an absolute majority of shares in the airport company.

The tender processes that will be implemented by the French State to sell its shares in airport managing companies are *ad hoc* procedures. Therefore, an analysis of past processes may assist with identifying the issues to be discussed with the administration before a process is launched, with the aim of implementing the most economically effective tender process for the benefit of the State, the candidates and the selected bidders.

### Towards greater independence of the supervisory authority in the airport industry

Airport charges, which are collected by airport managing companies mostly from airlines for the use of the facilities and services for landing and take-off and for the processing of passengers and freight, account for a significant part of airport managing companies' revenues.

Airport managing companies have the power to set airport charges, which must comply with the rules set out in the French Transport Code (*Code des Transports*) and the French Civil Aviation Code (*Code de l'Aviation Civile*).

- When an ERC has been entered into by the airport managing company, this contract states the conditions of evolution of airport

charges, taking into account the costs and revenues expected and planned investments.

- In the absence of such a contract, airport managing companies set airport charges on an annual basis.

Under applicable rules, airport charges, either determined under an ERC or on an annual basis, must be approved by the Directorate for Air Transport (*Direction du Transport Aérien*) which is a sub-division of the General Directorate for Civil Aviation (*Direction Générale de l'Aviation Civile*) – a department of the Ministry for Transport.

At the moment, the State acts concurrently as the supervisory authority for airport charges and as the owner of airports, shareholder of several airport managing companies (ADP and regional airports) and minority shareholder of an airline (Air France).

There is therefore a theoretical risk that, when approving airport charges, the State will favour an airport managing company over airlines or vice versa in another airport. The State may also take decisions that impact traffic distribution and that favour the development of one airport over another.

In a recent decision of 29 April 2015, the *Conseil d'État*, acting as the highest administrative Court of France, criticized this state of affairs. The *Conseil d'État* ruled that the status of the Directorate for Air Transport does not provide the guarantees necessary to perform the role of an "independent supervisory authority" as required under European Directive No 2009/12 of 11 March 2009. Pursuant to this Directive, Member States must guarantee the independence of the

supervisory authority by ensuring that it is legally distinct from, and functionally independent of, any airport managing company or airline.

Underlining that the French State retains ownership of major airports and has a shareholding in several airport managing companies, as well as in an airline, the *Conseil d'État* ruled that the independence of the Directorate for Air Transport from airport managers and airlines is not guaranteed, even though, as the French Ministry for Transport asserted, the interests of the State as a shareholder are managed by the *Agence des Participations de l'Etat*, which is controlled by the Ministry for Economy and Finance. The *Conseil d'État* has therefore ordered the Prime Minister to take remediation measures within eight months, i.e. before the end of 2015.

The new organization for supervision of airport charges has not yet been publicly announced. A new independent supervisory authority may be created on the same model as the regulatory body for energy created in 2000. It is also possible that the scope of intervention of the regulatory body for rail created in 2009, which will be extended to motorway fees in the future, may be further extended to include airport activities.

This is a rather positive signal for bidders interested in regional airport managing companies, as it could put an end to a situation characterized by conflicts of interests.

Full independence of the supervision authority in the airport industry could prevent airport charge amounts being fixed taking "political" interests into account and instead ensure that they are set based on economic efficiency and fair competition.

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