

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 11 June 1998

relating to a proceeding under Article 86 of the EC Treaty (IV/35.613 — Alpha Flight Services/Aéroports de Paris)

(notified under document number C(1998) 1417)

(Only the French text is authentic)

(98/513/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Whereas:

Having regard to the Treaty establishing the European Community,

I. THE FACTS

Having regard to Council Regulation (EEC) No 17/62 of 6 February 1962, first Regulation implementing Articles 85 and 86 of the Treaty ⁽¹⁾, as last amended by the Act of Accession of Austria, Finland and Sweden, and in particular Article 3 thereof,

Having regard to the complaint lodged by Alpha Flight Services on 22 June 1995 alleging an infringement of Article 86 of the Treaty by Aéroports de Paris and requesting the Commission to put an end to the infringement,

Having given the firms concerned the opportunity to make known their views on the objections raised by the Commission, in accordance with Article 19(1) of Regulation No 17 and Commission Regulation No 99/63/EEC of 25 July 1963 on the hearings provided for in Article 19(1) and (2) of Regulation No 17 ⁽²⁾,

Having consulted the Advisory Committee on Restrictive Practices and Dominant Positions,

(a) Subject of the Decision

- (1) This Decision concerns the system of commercial fees charged by Aéroports de Paris ('ADP'), the manager of the Paris airports, in exchange for the operating licence issued to suppliers of certain categories of groundhandling services at Orly and Roissy-Charles de Gaulle airports ('CDG').
- (2) On 22 June 1995 Alpha Flight Services Sàrl ('AFS'), a supplier of airport catering services at Paris-Orly, lodged a formal complaint against Aéroports de Paris, alleging that the latter was imposing discriminatory fees on the suppliers of catering services in breach of Article 86 of the Treaty.

(b) The parties

- (3) ADP is a public corporation enjoying financial independence and listed in the Paris register of companies. It is engaged in the planning, administration and development of all the civil air transport installations which are centred in the Paris

⁽¹⁾ OJ 13, 21. 2. 1962, p. 204/62.

⁽²⁾ OJ 127, 20. 8. 1963, p. 2268/63.

region and which seek to facilitate the arrival and departure of aircraft, to control traffic and to load, unload and groundhandle passengers, goods and mail carried by air. ADP is thus the managing body of Orly and Roissy-Charles de Gaulle (CDG) airports.

(4) AFS is a subsidiary of the UK company Alpha Airport Group and is a supplier of catering services at Orly airport. Alpha Airport Group supplies airlines at various Community airports, in particular London, Amsterdam and Orly. In 1995, AFS achieved a turnover of some FRF 150 million in its catering business at Orly.

(5) The contractual relationships between ADP and other suppliers of groundhandling services, including some airlines providing their own handling services (self handling), were examined by the Commission in connection with the present case. The firms concerned are not involved in these proceedings, although they will be referred to below.

(c) The commercial agreements concluded by ADP

(6) AFS and ADP concluded a 25-year commercial agreement, starting on 1 February 1990.

(7) AFS has operated from Orly since 1974 although at the time it was known as Forte Airport Services. In 1988, ADP issued an invitation to tender in order to select one company to supply catering services to third parties at Orly in addition to Air France. The call for bids gave tenderers a choice between a 'short' concession of some five years, not involving any substantial investment and a 'long' concession involving investment in an airport site. In both cases, the financial conditions imposed by ADP called only for the payment of a fee based on the supplier's turnover (see Annex 2 of the comments from ADP dated 25 August 1995, in particular Article 12 of the tender specifications).

(8) On 17 March 1988 the ADP Board selected Forte Airport Services. On 21 May 1992 ADP and Forte Airport Services signed a 25-year concession, which ran retroactively from 1 February 1990 and awarded

a licence to supply catering services at Orly and a licence to occupy property at the airport. The concession was amended on 12 April 1995 when Forte Airport Services changed its business name to AFS.

(9) The AFS commercial agreement includes the following conditions:

— Article 17, subject of the agreement — ADP permits AFS to occupy a number of sites at Orly airport designed for catering services and to build and equip a building for the same purpose,

— Article 18, scope of the licence — the licence is limited to Orly Airport and AFS is permitted to carry out a range of catering activities including the preparation, packaging, placing on board and removal of food, drinks and articles for passengers and crew. AFS may also prepare and clean aircraft cabins. It is also authorised to engage in catering activities not involving in-flight consumption and intended for customers outside the airport. According to information obtained at the hearing on 16 April 1997, AFS does not apparently carry out any cabin preparation or cleaning activities. Its outside catering activities also account for a very small proportion of its business,

— Articles 19 to 21, definition of sites and business conditions — these provisions concern the licence to occupy property having a surface area of some 8 000 m² within Orly airport. They also provide for an inspection by ADP of new building work carried out by the supplier,

— Article 22, operating conditions — these provisions require AFS to comply with service-quality criteria as regards both the condition of facilities and the satisfaction of airlines. The quality of the licensed services must always match the need for efficient and rapid air transport. The supplier undertakes to comply with a list of specific criteria; failure to do so may

result in ADP's promoting the rapid introduction of one or more other concession-holders capable of providing better quality services. ADP is entitled to ask AFS customers for their views and complaints, in particular by means of quality surveys,

— Article 23, financial conditions — in exchange for the accommodation and operation licence granted by ADP, AFS undertakes to pay a fee defined as follows:

- (i) no State fee is charged;
- (ii) a commercial fee is calculated as a proportion of turnover [...] achieved by AFS, [...]. Turnover in preparations on premises at Rungis, supplied direct to any other customers located at ADP airports, whether airlines or not, is subject to a fee⁽¹⁾. Initially, the rate of the commercial fee varied [...], depending on turnover. The rates were uniformly lowered to [...] on 26 February 1993;
- (iii) lastly, the supplier initially paid ADP the sum of FRF [...] in addition to the fee.

(10) AFS also occupies premises at Rungis outside the airport perimeter. These premises do not belong to ADP (see letter from AFS dated 18 March 1996, and Article 23(2) of the AFS agreement).

(11) AFS has complained about the difference in the commercial fees which ADP charges AFS and those charged to Orly Air Traiteur (OAT), a competitor for the supply of catering services at Orly. On 6 July 1995 the Commission asked ADP for information on the terms granted to OAT. The reply and comments from ADP dated 27 July 1995 and 25 August 1995 provide the following information.

(12) [...], ADP's management Board authorised La Toque Dorée, to provide catering services at Orly. On 17 July 1992, ADP sent a letter to the airlines at Orly reminding them that, following the operating licence granted to La Toque Dorée, which subsequently became OAT, only CARH (Air France), Forte Airport Services and La Toque Dorée were allowed to provide catering services to Orly airlines.

(13) OAT is subsidiary of Groupe Air France whose majority stake is held through its subsidiary Servair which also provides groundhandling services at CDG. [...]. The arrangements governing the operation of OAT were defined by letter dated [...]. [...], ADP granted OAT a 25-year concession, [...] to December 1992, which authorizes OAT to supply catering services and occupy property at Orly airport.

(14) The agreement concerning OAT specifies in particular:

(a) Article 19, subject of the agreement — ADP authorises OAT on the one hand to occupy a site referred to in Article 20 with a view to building and developing catering services and, on the other hand, to pursue at Orly airport the activities set out in Article 24;

(b) Articles 20 to 23, description of property, extent of work and various provisions — OAT is authorised to occupy a site [...] and build the facilities and necessary equipment;

(c) Article 24, authorised activity — the beneficiary of the agreement is permitted to carry out a range of catering activities including the preparation, packaging and placing on board of aircraft meals on trays, drinks and articles intended for passengers or crew. OAT is authorised to provide catering services not intended for consumption on board or intended for customers outside the airport;

(d) Article 25, operating arrangements — control by ADP of the quality of the services supplied to airlines (see Article 22 of the AFS agreement);

(e) Article 26, financial conditions — the conditions define the terms of remuneration for two licences, as follows:

— on the one hand, in exchange for a site-occupancy licence, the beneficiary undertakes to pay ADP an annual State fee in proportion to the surface area occupied,

— on the other hand, in exchange for a licence to operate, the beneficiary undertakes to pay ADP a commercial fee consisting of:

⁽¹⁾ Certain information is not included in the published text for reasons of confidentiality.

- (i) [...] of total turnover achieved through its business with Compagnie Nationale Air France and the subsidiaries of Air France, Air Charter, Air Inter (OAT services provided to subsidiaries or sub-subsidiaries of Servair, the holders of a commercial operating licence from ADP, being excluded from the turnover);
- (ii) [...] of total turnover resulting from business with any other airline.
- (15) In paragraph 2.3 of its comments of 27 July 1995, ADP stated that the structure of the financial terms granted to providers is composed of a fixed part corresponding to the occupancy of property and a variable part corresponding to turnover achieved at the airport and that in any case the tariff structure was included in all ADP commercial agreements and constituted an indivisible whole.
- (16) On 1 February 1996, a request for information pursuant to Article 11 of Regulation No 17 was sent to ADP in order to obtain details concerning the identity of the groundhandling firms licensed by ADP to operate at Orly and CDG and the fees imposed on such firms. The reply from ADP contained an exhaustive list of the firms licensed to supply each category of groundhandling service. The categories subject to a fee based on turnover include catering, cleaning and cargo services.
- (17) Some carriers are authorised by ADP to perform their own handling services. The carriers that have a financial interest in developing their own services are those with a sufficient volume of business in the airport. A limited number of carriers therefore perform their own handling services in each of the three abovementioned categories. Some carriers carry out such services through specialized subsidiaries.
- (18) Under the system adopted by ADP, different commercial rates are applied to service providers on the basis of:
- external turnover (outside the group), derived from services for third parties,
 - internal turnover (within the group), from services to airlines in the same group, namely turnover in self handling, for which the corresponding fee is generally lower than the external rate and, in certain cases, is nil.
- (19) The external and internal rates vary according to the identity of the supplier, as is shown in the following table:

Company	External fee	Internal fee (!)	
<i>Catering services</i>			
AFS	[..]	[..]	Orly
OAT (Air France group)	[..]	[..]	Orly
Servair (Air France group)	[..]	[..]	CDG
Skychef	[..]	[..]	CDG
HRS (AOM subcontractor)	[..]	[..]	
<i>Cleaning services</i>			
ACNA (Air France group)	[..]	[..]	Orly
Euronetec	[..]	[..]	Orly
Servair (Air France group)	[..]	[..]	CDG
Skychef	[..]	[..]	CDG
SAP (AOM subcontractor)	[..]	[..]	
<i>Cargo services</i>			
Air France (?)	[..]	[..]	
France Handling	[..]	[..]	
SFS	[..]	[..]	
Witra (Lufthansa subcontractor)	[..]	[..]	
Trafic (TWA subcontractor)	[..]	[..]	

Company	External fee	Internal fee (1)	
Alitalia, Lufthansa, Swissair	[..]	[..]	CDG
Air Canada, JAL, TWA	[..]	[..]	CDG
Fedex, UPS	[..]	[..]	CDG
Aéropostale	[..]	[..]	CDG

(1) Fee applied to self-handling activities.

(2) The ADP letter of 1 April 1996 stated that Air France performed very little groundhandling for third parties.

- (20) In addition, the service suppliers referred to pay State fees to ADP, in proportion to the surface area occupied within the airport. The rates vary according to the supplier.
- (21) According to the details sent by ADP on 23 May 1997 in reply to a request for information from the Commission, the variable commercial fees paid by certain suppliers for 1996 were as follows (in millions of French francs):

Company	External turnover	External fee	Internal turnover (1)	Internal fee
<i>Catering and cleaning services (2)</i>				
AFS	[..]	[..]		
OAT	[..]	[..]	[..]	[..]
Skychef	[..]	[..]		
Servair	[..]	[..]	[..]	[..]
ACNA	[..]	[..]	[..]	[..]
<i>Cargo services</i>				
Witra	[..]	[..]		
Trafic (3)	[..]	[..]		

(1) Turnover relating to selfhandling.

(2) A single rate is applied to one provider providing various categories of service.

(3) In the period 1 April 1996 to 31 March 1997.

- (22) In its comments of 28 February 1997 and at the hearing on 16 April, ADP pointed out that it was not asking for payment of the commercial fees provided for in the cargo-handling agreements. ADP justifies this temporary exemption on the ground of the financial vulnerability of the suppliers concerned. [...].

(d) Approval of groundhandling firms in the Paris airports

- (23) The commercial agreements concluded by ADP and each service supplier provide for two licences: one to occupy public property managed by ADP and one to provide airport catering, cleaning and cargo services.

- (24) In addition to the licence to provide services, suppliers having access to aircraft are subject to an approval procedure enabling ADP to prohibit access to airport facilities and airline companies by unauthorised external firms.

- (25) In 1993, AFS called for stricter controls to prevent firms not permitted to supply catering services to third parties at Orly from gaining access to the reserved area of the airport. AFS complained about the groundhandling services provided to third parties by users authorised only to perform their own handling services. AFS considered it could not compete with regard to prices against a firm not paying any airport fees and that access by unauthorised providers would entail losses for ADP in terms of fees (Annexes 13, 14, 15 and 20 to the AFS complaint).

(26) On 31 May 1994, in reply to a request from AFS, ADP stated that the approval procedure at Orly reflected its desire to put an end to unauthorized activities (Annex 23 of the AFS complaint). At the hearing on 16 April 1997, ADP described the approval procedure: a form provided by ADP is needed in order to obtain access authorisation from the police authorities responsible for controlling access.

(27) In addition, AFS asked ADP for permission to operate at CDG. On 24 May 1995, ADP rejected the request on the following grounds (Annex 26 of the AFS complaint):

— for reasons of security, access to restricted areas must be strictly limited to groundhandling requirements, taking account of the need for effective controls on persons and goods. In view of the very considerable resources already deployed by the police in cooperation with our establishment, we believe it would clearly be unreasonable to increase the number of people inside the restricted area without irreversibly impairing the quality and effectiveness of the abovementioned controls,

— it is also necessary to ensure the safety of persons and goods, in view of the large number of accidents occurring in spite of stringent measures, by limiting the number of vehicles within the restricted area. The arrival of a new operator could significantly increase the risk of all sorts of accidents. Aéroports de Paris could not therefore grant such authorisation without incurring liability,

— lastly, from a strictly commercial point of view, there is no evidence that the catering market, which is not in any way subject to a monopoly, is ready for a new operator. No airline has to date expressed dissatisfaction with the system set up by ADP or requested an increase in the number of providers in this area.'

(28) On 29 October 1996 AFS informed ADP that a company operating from Orly had, following a call for tenders, selected a supplier not approved by ADP despite the self handling licence issued to the company. In reply, ADP informed AFS on 24

December 1996 that the situation did not comply with the operating licences in force and that the necessary instructions had been given to ADP's officers to put an end to such practices as soon as possible (see AFS' comments of 21 February 1996).

(29) As a result, the authorisation procedures set up by ADP allow it to exercise effective control over access to the groundhandling services market in the Paris airports.

(e) The dispute

(30) When OAT was set up, ADP suggested to its management Board that it retain the financial terms and conditions negotiated with the supplier. [...]

(31) In 1992 a disagreement arose between AFS and ADP concerning the fact that the fee was calculated according to turnover and the quality of the services provided by AFS. Following agreement on payment of compensation by Forte Airport Services and in view of the new situation created by the arrival of OAT, ADP and AFS agreed on a [...] reduction in the commercial fee charged to AFS. The concession was amended accordingly on 26 February 1993.

(32) From business correspondence with its customers, AFS learnt of the amount of the commercial fee paid by its competitor OAT to ADP (see Annex 20 to the AFS complaint). Some of the letters show that certain companies quoted the commercial fees imposed by ADP on competitors as a reason for AFS to reduce its prices (Annexes 16 to 19 to the AFS complaint).

(33) For example, a carrier that had asked AFS for a price quotation also asked it to 'specify any fees payable in respect of Orly airport'.

(34) Following a quote from AFS, another customer stated that 'the ADP fee is a cause for concern [...] owing to the distortion it causes in an otherwise well-constructed bid'. In informing AFS of a more attractive bid by a competitor, the carrier asked AFS for a price reduction specifically aimed at reducing the effect of the commercial fee.

- (35) In several letters, in particular a letter of 29 December 1993 (Annex 20 to the complaint), AFS informed ADP that it considered that the commercial fees based on turnover paid by its competitors at Orly were not equivalent, even allowing for any differences in the State fee, and that such differences created distortions between competing suppliers. AFS pointed out to ADP that the different rate was causing it to lose customers and therefore requested that its fees be aligned on those of its competitors.
- (36) On 31 May 1994 ADP replied that the reduction agreed on 26 February 1993 resulted, when regard was had to property charges, in a rate equivalent to that applied to other licensed suppliers.

(f) The main arguments of the parties

- (37) On 22 June 1995 AFS lodged a formal complaint with the Commission against ADF on the ground that the latter was imposing unreasonable fees on airline catering firms in breach of Article 86 of the Treaty. AFS considers that if the commercial and State fees were identical to those charged to OAT, its annual fees would be reduced by some FRF 3,5 million.
- (38) At the hearing on 16 April 1997, AFS also supplied specific examples of negotiations with Community customers. According to AFS, the examples highlight the discriminatory effect of the commercial fees on competing suppliers: on the one hand, high prices could lead to AFS' losing customers; on the other, AFS could be compelled to align its prices on those of its competitors and sacrifice a part of its profit equal to the difference in the fees. The difference in the fees [...] would thus entail AFS' losing [...] of its profit margin.
- (39) [...]
- (40) On 4 December 1996 the Commission adopted a statement of objections concerning ADP, under Article 86 of the Treaty. In its comments of 28 February 1997 on the statement of objections and

at the hearing on 16 April 1997, ADP made the following claims:

- it does not hold a dominant position with regard to groundhandling companies in Paris airports as its activities are limited to the provision of real estate,
- its commercial agreements comply with French law on occupancy of public property,
- the commercial terms enjoyed by AFS and OAT are equivalent, once account is taken of their respective property charges and, in the case of OAT, of the fact that the turnover realised by members of the same group is excluded,
- OAT and AFS are not in the same position, chiefly because of the different airport sites occupied by those companies,
- lastly, firms providing their own handling services could not be regarded as operating on the same groundhandling market as those providing services for third parties.

II. LEGAL ASSESSMENT

(a) Laws applicable

- (41) The complaint by AFS concerns the system of fees applied by the manager of the Paris airports to airline catering activities at Orly and Charles de Gaulle airports. However, similar schemes are applied by the same manager to other groundhandling services: aircraft cleaning, cargo and mail handling.
- (42) Article 59 of the EC Treaty is aimed at abolishing restrictions on freedom to provide services in the Community, and Article 61 stipulates that such an objective must be attained within the framework of the common transport policy.
- (43) Such is the aim of Council Directive 96/67/EEC which provides, under certain conditions, for the gradual opening-up, from 1 January 1998 until 31 December 2002, of access to the groundhandling market in Community airports⁽¹⁾. The Directive sets up a new legal framework within which the competition rules continue to be applicable to businesses.

⁽¹⁾ OJ L 272, 25. 10. 1996, p. 36.

(44) In adopting Directive 96/67/EEC, the Council considered that access to airport installations had to be guaranteed to suppliers permitted to supply groundhandling services and to airport users permitted to self handle, to the extent necessary for them to exercise their rights and to permit fair and genuine competition; however, it should be possible for such access to give rise to the collection of a fee. Article 16(3) of the Directive provides that where access to airport installations gives rise to the collection of a fee, the latter shall be determined according to relevant, objective, transparent and non-discriminatory criteria. Directive 96/67/EEC does not, however, affect the application of the competition rules of the Treaty. The Commission is required to continue to ensure compliance with those rules (see recital 28 of the Directive).

(45) As regards the application of Articles 85 and 86 of the EC Treaty, the transport sector was removed from the scope of Regulation No 17 by Council Regulation No 141⁽¹⁾, which was subsequently replaced by three sectoral regulations relating to transport by land, sea and air (judgment of the Court of Justice of 11 March 1997 in Case C-264/95 P, *Commission v. UIC* ⁽²⁾).

(46) Article 1 of Council Regulation (EEC) No 3975/87⁽³⁾, as last amended by Regulation (EEC) No 2410/92⁽⁴⁾, provides that 'this Regulation lays down detailed rules for the application of Articles 85 and 86 of the Treaty to air transport services' between two airports of the Community.

(47) The activities of the body managing the airport and the handling services provided in those airports are not part of air transport services between two Community airports. These activities are therefore not covered by the rules of procedure specific to the transport sector but are covered instead by Regulation No 17 for the purposes of Articles 85 and 86 of the Treaty.

(48) As a result, the Commission considers that the rules of procedure applicable to the present case are those provided for in Regulation No 17.

(b) Concept of an undertaking

(49) The Court of Justice has consistently held that the concept of an undertaking encompasses every entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed (see in particular the judgment in Case C-41/90, *Höfner and Elser v. Macroton* ⁽⁵⁾).

(50) Articles 85 and 86 of the Treaty apply to the behaviour of a public entity when it is established that, through that entity, the State carries on economic activities of an industrial or commercial nature by offering goods and services on the market. It is of no importance that the State carries out the activities directly through a body forming part of the State administration or through a body to which it has granted special or exclusive rights. It is therefore necessary to examine the nature of the activities carried out by the public undertaking or entity granted special or exclusive rights by the State (see the judgment of 16 June 1987 in Case 118/85, *Commission v. Italy* ⁽⁶⁾ and judgment of 18 March 1997 in Case C-343/95 ⁽⁷⁾).

(51) ADP is a governmental corporation registered in the Paris register of companies; it is engaged in the planning, administration and development of all civil air transport installations in the Paris region that are designed to facilitate the arrival and departure of aircraft, and it supervises air-traffic control, and the embarkation, disembarkation and moving on land of passengers, cargo and air mail.

(52) Article R.252-12 of the French civil aviation code provides that the ADP Management Board is responsible for defining general policy at the Paris airports, for taking the necessary measures to create the resources to cover the costs of managing, maintaining, operating and improving the airports and for deciding on the allocation to users, under the arrangements for temporary occupation of public property, of airport land, works and installations and ancillary facilities.

(53) According to its 1996 annual report, ADP's turnover stemmed in particular from:

— commercial revenue (commercial concessions, fuel and other revenue): FRF 1 054 million, or 15 % of total turnover,

⁽¹⁾ OJ 124, 28. 11. 1962, p. 2751/62.

⁽²⁾ [1997] ECR I-1287, at paragraph 44.

⁽³⁾ OJ L 374, 31. 12. 1987, p. 1.

⁽⁴⁾ OJ L 240, 24. 8. 1992, p. 18.

⁽⁵⁾ [1991] ECR I-1979, at paragraph 21.

⁽⁶⁾ [1987] ECR 2599, at paragraphs 7 and 8.

⁽⁷⁾ [1997] ECR I-1547, at paragraphs 16, 17 and 18.

- use of installations and equipment (hardstandings, transport, boarding bridges, shuttles): FRF 866 million, or 12,5 % of total turnover,
- groundhandling (technical assistance for aircraft on the ground, checking-in of passengers): FRF 1 253 million, or 18 % of total turnover,
- State fees (land, buildings): FRF 720 million, or 10 % of total turnover.

- (54) According to the file, ADP's airport management activities include: authorizing suppliers to provide a specific category of assistance (see in particular paragraphs 9, 14 and 23 to 29), supervision of vehicle and staff movements and organization of activities in shared-use facilities (see paragraphs 12 and 26-27) and monitoring the quality of groundhandling services supplied to airlines (see paragraphs 9, 14 and 30). In its capacity as manager of the Paris airports, ADP negotiates its own commercial agreements with the service suppliers (see paragraphs 7, 8 and 9, 12, 13 and 14, and 18 to 22).
- (55) In view of the foregoing, the Commission considers that ADP lays down the conditions governing the activities of the groundhandling service suppliers it authorizes and that these constitute the activities of an undertaking within the meaning of Article 86 of the Treaty.

(c) Relevant market

Airport management services provided by the managing body

- (56) This case concerns the management and operation of the Paris airports. One of the principal tasks of an airport operator is to manage airport infrastructures and ensure their smooth operation by supervising and coordinating the activities pursued there.
- (57) Thus the Commission has already drawn a distinction⁽¹⁾ between the groundhandling market and the activities of the airport operator relating to management and organisation of the use of infrastructures as follows:

A key characteristic of the groundhandling market is that often only the airport itself or the national carrier are entitled to supply groundhandling

services. In addition self-handling is not always allowed or is reserved to certain carriers, often selected on the basis of criteria which are not transparent.

In such a situation, there is a risk that prices are fixed in a discretionary and not genuinely transparent manner. Also, carriers may not always have the means to improve the quality of the services or have them tailored to the specific needs of their customers. In addition, a groundhandler may favour certain carriers to the detriment of others. The risk is even greater where the monopoly is held by the national carrier in direct competition with the airlines which are compelled to use its services.

The role of the airports is to manage and maintain as well as sometimes even build airport infrastructure. Airports must make this infrastructure available to users and ensure that it functions efficiently, in particular by organising and coordinating all the activities which take place on the airport premises. Access to the groundhandling market for suppliers other than the airport would thus not affect the efficient operation of the airport.

- (58) The airport management services provided by ADP to groundhandling suppliers and users in the Paris airports include the approval of authorised suppliers, supervision and organisation of activities in airport installations in common use and control of the quality of groundhandling services supplied in the Paris airports (see paragraph 54). In exchange for such services, especially the operating licences, ADP may collect a fee which is defined in the commercial agreements.

Substitutability of airports

- (59) There is a specific market for the management and coordination of the activities authorized in Paris airports as the carriers using the airports, and the supplies of groundhandling services that are essential to the functioning of the transport services concerned, have no choice other than to use the Orly and CDG airports.

⁽¹⁾ COM(94) 590 final, paragraphs 12, 13 and 14.

- (60) Domestic or international airlines leaving or arriving in the Paris region use the Orly and CDG airports. Other airports capable of providing such a wide range of air services to the same destinations are several hundred kilometres away and generally situated in other Member States. Orly and CDG also play a special role as hubs enabling passengers on a very large number of domestic airlines to transfer to other domestic, intra-Community or international services.
- (61) Therefore, for many passengers leaving or arriving in the Paris region or other French regions, the domestic or intra-Community air transport services using Orly and CDG are not interchangeable with the services offered in other Community airports. These, on the whole, are passengers who for business reasons make use of the specifically adapted timetables offering a large number of daily flights, since the flight times and quality of services offered are decisive factors in satisfying their professional requirements.
- (62) Competition between airports is important only in so far as an airport forms a 'pivot' or transit point. In that context, several major airports compete for a share of total traffic, which means the indirect traffic using an airport as a transit point. However, transit passengers are not the only ones using an airport, a majority of which are those using an airport as a departure or destination point. According to an IATA 1996 Analysis contained in the magazine 'Airline Business', of December 1996, transfer traffic accounts for less than 5 % of total traffic at Orly and about 7 % at CDG.
- (63) Airlines providing domestic or intra-Community flights to or from the Paris region thus have no choice but to use Orly or CDG airports and the groundhandling services provided at those airports. The question whether the Paris airports are interchangeable is irrelevant in this case as ADP is the operator of the airports in the Paris region.
- (65) Groundhandling services are defined in the Annex to Directive 96/67/EC which classifies them in eleven categories. The different types of service have very different characteristics⁽¹⁾, in particular:
- the services do not all require the same type or degree of technical skill,
 - some services, such as baggage sorting, require major equipment or sophisticated systems,
 - others, such as ramp handling, take up considerable space or, as in the case of passenger services, require numerous customer service desks in the terminal; others, such as catering, can to a large extent take place off the airport premises,
 - some, in particular ramp handling, cleaning and catering, entail staff and vehicle movements in the restricted areas of the airport, requiring a high degree of safety and security, the provision of which is one of the main responsibilities of the managing body.
- (66) This case concerns in particular the following three categories of groundhandling service: freight and mail handling (category No 4 in the Annex to Directive 96/67/EC), aircraft cleaning and servicing (category No 6 in the Annex to the Directive) and catering (category No 11 in the Annex). Catering services as defined in the ADP agreements (Article 18(1) of the AFS agreement and Article 24(1) of the OAT agreement) also provide for some ramp handling within the meaning of Directive 96/67/EC, in particular 'the transport, loading on to and unloading from the aircraft of food and beverages' (category No 5.7 of the Annex to Directive 96/67/EC).
- (67) Groundhandling accounts for a fairly large proportion of a Community airline's operating costs. The costs are similar to the airport access fees paid by the airlines. Community carriers have a direct interest in reducing their groundhandling costs. In addition, groundhandling is an important factor in an airline's strategy of differentiating the quality of the transport service it offers, the aim being to adjust its services to customer requirements.

Groundhandling services in the airports

- (64) Groundhandling services at Orly and CDG are essential to the smooth running of air transport services to and from the Paris region. They make an essential contribution to the efficient utilisation of the airport infrastructures concerned.
- (68) Some carriers are licensed to provide some of their own groundhandling services. Others make use of suppliers of groundhandling services for third parties. Self-handling means that a user is authorized to provide a category of groundhandling

⁽¹⁾ COM(94) 590, point 11.

service for itself. Carriers providing their own handling frequently decide to entrust the task to a specialised subsidiary. Some self-handling users are authorised to supply services to other airlines. Other self-handling users, however, are not authorised to supply their services to third parties (see paragraphs 16 to 19, 25, 26 and 28).

- (69) Self-handling is one of the ways in which ground-handling services are supplied. The documents in the file show that the members of a given group do not always necessarily delegate their handling requirements to specialised subsidiaries within the group (see paragraph 28). In addition, some users with a limited self-handling licence would like to extend their activities to third parties, subject to the approval of the managing body (see paragraph 25). Subject to the licences issued by an airport managing body, a carrier's choice is nevertheless dependent on considerations of cost and profitability of the handling activity in question. A user opting for self-handling must nevertheless have a sufficient volume of activity to cover the cost of its investments.
- (70) The self-handling services provided by a carrier for its own air transport operations benefit from the services of the airport manager in the same way as groundhandling services for third parties.

Conclusion

- (71) In view of the foregoing, account should be taken of the market for airport management services provided to suppliers of groundhandling services or self-handling users in the Paris airports (hereinafter referred to as 'the market for airport management services'). Anti-competitive behaviour on that market also affects the market for groundhandling services in the Paris airports and, indirectly, the market for air transport services to and from such airports.

(d) Dominant position

- (72) The Court of Justice has consistently held that an undertaking benefiting from a legal monopoly may be regarded as holding a dominant position within the meaning of Article 86 of the Treaty. A dominant position is characterised by a position of economic strength enjoyed by an undertaking which enables it to hinder the maintenance of effective competition on the relevant market by allowing it to behave to an appreciable extent independently of its competitors and its customers (Case C-322/81 Michelin⁽¹⁾). It also follows from

the case-law of the Court that the application of Article 86 is not precluded by the fact that the absence or restriction of competition is facilitated by rules and regulations (Case C-30/87 Bodson⁽²⁾).

- (73) ADP holds the legal monopoly for the operation of Orly and CDG airports. It supplies certain ground-handling services directly in those airports and also holds the power to grant to other undertakings licences to supply groundhandling services.
- (74) As a result, ADP determines the number and identity of groundhandling suppliers or self handling users which it licences (see paragraph 54). Refusal to authorise a supplier to operate may be based on reasons of safety and security of goods and persons as much as on commercial considerations relating to the groundhandling market (see paragraph 27).

- (75) ADP alone decides on the terms granted to licensed suppliers in commercial agreements. Each agreement specifies, on the one hand, the airport real estate that is made available to the beneficiary and, on the other hand, the licensed ground-handling activities. ADP is also responsible for controlling the quality of the services supplied to third parties. Licensed suppliers pay State fees for the use of property within the airport and commercial fees in exchange for the licence to carry out groundhandling activities within the airport.

- (76) ADP has the power to authorise and determine the conditions under which groundhandling suppliers operate in the Paris airports. The suppliers of groundhandling services to third parties, users wishing to provide their own handling services and, more generally, the carriers for which ground-handling services are essential, are therefore placed in a position of considerable dependency on ADP.

⁽¹⁾ [1983] ECR 3461.

⁽²⁾ [1988] ECR 2479, at paragraph 26.

As a result, the Commission considers that ADP holds a dominant position on the market for airport management services, which is the relevant market in this case.

(e) Substantial part of the common market

(77) The market for airport management services taken into account in this case concerns the international airports of Orly and CDG. In terms of domestic and international traffic, they are the largest French airports.

(78) According to the ADP annual report for 1996, with its 59,1 million passengers and 1 244 000 tonnes of cargo and mail, ADP ranked second in the European air industry and second in the world market for international passengers, holding third place for cargo and mail in Europe. The distribution of passenger traffic at the two airports was 31,76 million for CDG and 27,37 million for Orly.

(79) Passengers and goods leaving or arriving in the Paris region, which is one of the largest economic areas in the Community, use air transport services to and from Orly and CDG which serve all the main domestic and Community airports. In addition, Orly and CDG act as efficient hubs for the transfer of many passengers wishing to go from one French region to a region in another Member State or vice versa. Lastly, the major international airports outside the Community are served by air transport services from the two Paris airports.

(80) As regards intra-Community traffic in particular, 63 % of total passengers using the two Paris airports stemmed in 1996 from domestic and Community air services. In the same year, domestic and Community cargo traffic, measured in tonnes, accounted for some 19 % of goods traffic in the two airports.

(81) The management of the Paris airports is essential to the proper operation of national and international air transport services to and from the Paris region. The management activities are also aimed

at ensuring effective use of infrastructure. The turnover generated by the activities of ADP concerning commercial concessions, use of facilities and groundhandling totalled some FRF 3,2 billion in 1996, and accounted for more than 45 % of ADP's total turnover (see paragraph 53).

(82) In view of the foregoing, it must be concluded that ADP holds a dominant position on a substantial part of the common market.

(f) Abuse of a dominant position

(83) In its judgment of 19 March 1991 (Case C-202/88, *France v. Commission* ⁽¹⁾), the Court of Justice observed that a system of undistorted competition, as laid down in the Treaty, can be guaranteed only if equality of opportunity is secured between the various economic operators. The Court has also held that an undertaking may not apply artificial price differences such as to place its customers at a disadvantage and to distort competition (Case T-83/91, *Tetra Pak v. Commission* ⁽²⁾ and the *Deutsche Bahn* judgment of 21 October 1997 ⁽³⁾, not yet reported).

(84) Article 86 concerns anti-competitive behaviour pursued by undertakings. It provides that an undertaking holding a dominant position in a substantial part of the common market may not apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage.

(85) ADP imposes different levels of fees on competing suppliers of certain categories of groundhandling services within the same airport. In view of the dominant position held by ADP, it is therefore necessary to decide whether, within one of the airports, differences in the fees collected by ADP from the suppliers of one category of groundhandling services creates dissimilar conditions for equivalent transactions, thereby distorting competition.

Licences issued by ADP

(86) ADP set up a procedure for approving the access of suppliers of groundhandling services to Paris airports, thus determining their number in order to ensure the smooth operation of the airport and protect its commercial interests (see paragraphs 23 to 29). On 1 April 1996 ADP sent a list of licensed

⁽¹⁾ [1991] ECR I-1223, at paragraph 51.

⁽²⁾ [1994] ECR II-0755, at paragraph 160.

⁽³⁾ [1997] ECR II-1689.

suppliers and a description of the financial conditions contained in their respective agreements (see paragraphs 16 to 22). ADP indicated that the same tariff structure was applied in all its commercial agreements (see paragraph 2.3 of the ADP comments dated 27 July 1995).

- (87) In principle, ADP distinguishes in its commercial agreements between the authorisation to supply a certain category of groundhandling service within the airport and authorisation to occupy sites within the same airport.
- (88) For example, Articles 19 and 24 of the OAT commercial agreement clearly distinguished between two licences: on the one hand, the licence to occupy property and, on the other, the licence to supply groundhandling services (see paragraph 14). The AFS agreement also concerns two different licences: Articles 17 and 18 provide, on the one hand, a licence to occupy property and on the other a licence to supply catering services only at Orly airport (see paragraph 9).
- (89) The ADP agreements clearly define the extent of the handling activities they authorise. They provide for surveys by ADP on customer satisfaction and on the quality of services supplied. ADP may impose penalties in the event of failure to comply with certain service quality criteria.
- (90) At the hearing on 16 April 1997 it emerged that ADP was not asking for the payment of a commercial fee based on the turnover achieved by catering suppliers where such suppliers provided catering services for customers outside the airport [...], as ADP considers that it is not opening up any markets at the airports with regard to services supplied to railways.
- (91) In view of the foregoing, it must be concluded that the commercial agreements concluded between ADP and the groundhandling suppliers concern the granting of two separate licences, one for the occupation of sites at the Paris airports and the other authorising and defining the conditions in which groundhandling activities will be carried out by approved suppliers at the Paris airports.

Fees for occupying public places or land

- (92) The occupation of a site within the perimeter of an airport managed by ADP entails the payment of fees by the beneficiary. As the Paris airports are on public land, the fee is termed a State fee or fee for occupying public places or land. Under French law, the fee must be calculated on the basis of the rental value of private property similar to the public property that is being let. The fee is calculated according to the specific characteristics of each site, the equipment made available and the location within the airport, which may lead to considerable disparities between fees based on surface area paid by various licensees (see paragraphs 9, 14 and 20). For the same surface area, the type of area (office, building or hangar) and its location within the airport gives rise to different fees.
- (93) It should be noted that some of the products required for groundhandling services provided at the airports may be partially or totally prepared outside the airport. The suppliers of such services have the choice of premises partly inside and partly outside the airport. For example, AFS has installations outside the airport perimeter in the municipality of Rungis (see paragraphs 10 and 65).
- (94) In this case, two suppliers competing for a single type of groundhandling service within the same airport may thus occupy different surface areas and installations, depending on whether they decide to take a site partially or completely inside the airport. That choice can lead to some disparities in the calculation of their respective State fees. A supplier paying a lower fee to ADP may therefore find himself paying higher rents and property charges outside the airport.
- (95) It may be concluded from the foregoing that the activity of allocating sites within the airports, which justifies the collection by ADP of a fee, is a separate activity from that of authorising and controlling activities taking place in the airport infrastructures. In respect of this activity, ADP competes with the owners of commercial and industrial property over a wide geographic area around the airports concerned.

(96) According to the conditions laid down by ADP in the tender procedure resulting in the acceptance of AFS' bid, no fee is imposed. However, under the financial terms of the agreement, AFS agrees to pay ADP the sum [...] in addition to the commercial fee. Even in this particular case, the financial conditions clearly distinguish between the fee and the commercial fee (see paragraph 9).

(97) According to the information sent by ADP on 1 April 1996, the other suppliers of the relevant handling services to third parties all pay fees in proportion to the surface area occupied. The fact that AFS does not have to pay the annual fee in consideration for its occupancy of property appears to be an exception to the fee scheme applied by ADP.

(98) The Commission considers that it is not required, in this case, to decide on the levels of fees charged to the service suppliers in question.

Commercial fees

(99) ADP stated that the structure of the financial conditions agreed with AFS and OAT, composed of a fixed part corresponding to occupation of property and a variable part corresponding to turnover at the airport, was applied in all ADP commercial agreements and forms an indivisible whole (see paragraph 2.3 of ADP's comments of 27 July 1995). ADP refers to the recommendations issued by the public authorities in this area, in particular the recommendations of the French tax departments (Annex 3 of the comments sent by ADP on 28 February 1997).

(100) The documents drawn up by the tax authorities concern fees paid to the Treasury, calculated as follows: rates fixed by law or according to scales established by the national, regional or local tax authorities, or by the head of the tax authorities in other cases. These procedure do not therefore concern the fees determined by ADP itself. It should nevertheless be pointed out that the recommendations of the tax authorities concerning the breakdown of fees for occupying public property stipulate as follows:

'while the fixed portion is the fee for the right to occupy the licensed premises, irrespective of actual occupation, the second portion of the fee, or the second component of the overall fee, corresponds to actual utilization of the property, in so far as the utilisation generates profits or appreciable benefits in cash, so that the overall fee represents a fair price for the service rendered.

It is therefore normal that the second part or the second component of the fee varies according to degree of utilisation of the premises. In this respect, recourse must not be had to any process consisting in determining the second component as a percentage of the fixed component.

The benefits to the licensee using the public property may for example be assessed on the basis of the savings made by using that property rather than private property. Turnover or profits of the enterprise may be used as factors in the assessment, whilst endeavouring to ensure, when other data may be obtained, that they are not the sole basis for calculating the second part or second component of the fee. In practice, the problem may be resolved satisfactorily by basing the calculation of the second part or component of the fee on a material fact which can easily be verified, in direct relation to exercise of the right arising out of the concession, and the variations in which give a sufficiently precise idea of the amount of use made of the licensed property.'

(101) In the case in hand, the Commission notes that the turnover of the service suppliers in question is not related to the extent to which the premises within the airport are used. In particular, cleaning of the aircraft, loading and unloading of cargo, beverages and food, and moving, delivering and storing goods in a restricted area are not activities linked to the use of property allocated by ADP to service suppliers. Furthermore, it emerged at the hearing on 16 April 1997 that ADP does not collect a commercial fee from catering suppliers on the basis of their turnover with [...] firms outside the airport. For these reasons, the fees charged by ADP do not meet the requirements of the internal recommendations referred to above.

- (102) In addition, the abovementioned recommendations do not cause ADP to infringe the Community competition rules. In any event, the competition rules of the Treaty would not allow the national authorities to lay down rules causing ADP to infringe the Treaty.
- (103) The commercial agreements distinguish clearly between the various remunerations received by ADP. For example, the financial terms of the OAT concession distinguish between the remuneration for each of the two licences (see paragraph 14):
- the State fee (Article 26(1)) is paid to ADP in exchange for the licence to occupy the licensed premises, and
 - the commercial fee (Article 26(2)) is paid to ADP in exchange for an operating licence.
- (104) With regard to AFS, the agreement distinguishes between the commercial fee and the State fee, even if the amount of the latter is zero (see paragraph 9).
- (105) ADP stated that the same tariff structure was applied to each of the commercial agreements concluded with the approved suppliers. The Commission therefore considers that the variable commercial fee constitutes an access charge paid in exchange for a licence to operate within the airport. The fee, based on the supplier's turnover, remunerates services provided by the airport manager which bear no relation to the allocation of business premises; the services provided by the airport manager include the supervision and organisation of groundhandling activities and the making available of facilities shared by users and suppliers operating at the airport.
- (106) The management of shared infrastructures makes it necessary to organize and coordinate all the activities that take place there, efficiently and safely. In particular, catering, aircraft cleaning and cargo and mail services involve the movement of people and vehicles in restricted areas of the airport requiring a high level of safety and security (see paragraphs 27 and 65).
- (107) As regards the catering, aircraft cleaning and cargo services, each of the suppliers licensed to supply a given category of service benefits from equivalent services provided by the airport manager in proportion to the activity of the supplier.
- (108) Because of the dominant position held by ADP, the payment of a commercial fee must not create dissimilar conditions for equivalent transactions, thus placing suppliers or users engaged in the same groundhandling activity at a competitive disadvantage.
- Commercial fee applied to groundhandling for third parties*
- (109) The commercial fee is an important part of a suppliers' cost structure. In this case, it is added to the unit cost of the services in question. According to documents in the file concerning commercial negotiations between airlines and service suppliers, an unfair difference in the level of the commercial fee has a significant effect on competition between suppliers to third parties (see paragraphs 30, 31 and 32 and 38).
- (110) It is clear from the foregoing that a supplier paying the highest rate cannot offer competitive prices whilst maintaining the same profit margin. As a result, the supplier will either lose customers or reduce its profit margin in order to quote a competitive price which compensates for the difference in commercial fee.
- (111) In 1995 on the basis of comparable turnovers of [...], the commercial fee paid by AFS was considerably higher than the amount paid by OAT. AFS paid some [...], whilst OAT paid only [...] in commercial fees, including intra-group and non-group fees (see ADP correspondence of 9 November 1995 and ADP's comments of 28 February 1997, p. 12). In 1996, AFS achieved a turnover of about [...] and paid some [...] in commercial fees, or an average of [...]. By comparison, OAT paid [...] in annual fees on an overall turnover of [...], giving an average rate of [...] (see paragraph 21).

(112) AFS enjoys special financial conditions as the commercial agreement signed with ADP does not provide for collection of the State fee. However, on the basis of equivalent turnovers, even including the State fee paid by OAT, the total fee paid in 1995 was [...] as against [...] paid by AFS, although OAT occupies a much larger surface area in the airport than AFS (see paragraphs 9 and 14). Furthermore, AFS originally paid ADP [...] in addition to the fee. The difference in the commercial fees paid [...] respectively is thus appreciably greater than would be warranted by incorporating a State element in the commercial fee paid annually by AFS.

(113) [...]

(114) A comparison of the commercial fees paid in 1996 by suppliers shows that the differences, at first sight relatively small, leads to large variations in the amounts actually paid. Apart from the example of AFS and OAT, variations in the commercial fees affect all suppliers of the three categories of groundhandling services concerned in this case (see paragraphs 19 and 21). On the basis of the turnover achieved by caterers and cleaners within the same airport, a rate that is lower by only a few percent leads to annual fees that are lower by several million French francs. The average external fees paid by the suppliers of catering and cleaning services to third parties referred to in paragraph 21 is [...] ⁽¹⁾, but the levels of the external commercial fees paid individually by the suppliers vary from [...].

(115) With regard to cargo services, ADP does not require the payment of the commercial fee provided for in the agreements with certain suppliers of groundhandling services to third parties. Commercial fees are nevertheless provided for in the agreements. One third-party supplier benefits from a zero rate whilst others pay [...]. Only two suppliers whose activities are limited to subcontracting work for other companies actually pay commercial fees and are therefore at a disadvantage (see paragraphs 19, 21 and 22).

⁽¹⁾ The sum of the external fees paid by the suppliers of catering and cleaning services referred to in paragraph 21, in relation to the sum of the external turnovers achieved by the same suppliers.

Commercial fees applicable to self-handling activities

(116) ADP requires certain companies, or their specialised subsidiaries, to pay a self-handling fee. This is referred to as an internal fee (see paragraphs 17 to 19 [...]). The existence of different rates for the services for third parties (external fee) and for self-handling (internal fee) may determine whether a user opts for a third-party service supplier or for self-handling (see paragraph 69).

(117) When an airline or one of its specialised subsidiaries is authorised by ADP to self-handle a specific category of services and is also authorised to supply the same services to third parties, ADP provides it with exactly the same airport management services as it provides for all its handling activities. However, a lower internal commercial fee based on self-handling turnover than the rate based on turnover from third-party business favours the self-handling activities of airlines in the same group.

(118) On the basis of the figures given in paragraph 21, in 1996 the total commercial fees paid by suppliers providing their own handling and paying an internal fee totalled some [...] ⁽²⁾ of the aggregate turnover of the suppliers concerned. If account were taken of the turnover of self-handlers not paying a commercial fee, the corresponding rate would be below [...]. On the other hand, total external commercial fees paid by suppliers for third-party handling amounted to some [...] of the total external turnover of the suppliers in question (see paragraph 114).

(119) Thus self-handling airlines benefit, for no objective reason, from cheaper assistance. However, account should be taken of the special situation of airlines licensed under ADP agreements only to self-handle.

(120) Any ban on the supply of services to third parties can entail financial disadvantages. This would be the case if such suppliers with limited rights were unable to expand their handling activities sufficiently to obtain a similar return on their investments as the suppliers of services to third parties.

⁽²⁾ Total internal fees paid by the suppliers of catering and cleaning services referred to in paragraph 21 in relation to total internal turnover of the same suppliers.

Since, however, ADP provides all groundhandlers with the same airport management services, any difference in the terms accorded to suppliers with a limited operating licence must be justified on objective, non-discriminatory grounds. In this case, the Commission considers that the non-imposition of a fee on users licensed only to self-handle gives them a discriminatory advantage in terms of costs with regard to their self-handling activities and, therefore, with regard to air transport (see paragraph 19).

- (121) It is possible that the turnover of a supplier of certain handling services cannot be determined as precisely or as reliably as that of other suppliers. In that case, the commercial fees collected from suppliers and users may be calculated as a direct proportion of a supplier's volume of activity, in particular: for catering, the number of passengers served; for cleaning, the number of aircraft cleaned; for mail and cargo, the number of tonnes of cargo and mail handled.
- (122) For these reasons, the Commission considers that the zero or very low rates applied by ADP to self-handling by airlines result in the cost of ADP's management services supplied to all groundhandlers, including self-handlers, being passed on to suppliers of services for third parties. Groundhandling services for third parties are therefore more expensive than self-handling services.
- (123) The Commission notes that the self-handling airlines are those with the largest volume of air transport operations in the Paris airports, chiefly the larger national airlines. A number of carriers from other Member States, however, do not have a sufficient volume of business to warrant self-handling. They are therefore compelled to use more expensive third-party groundhandlers and thus suffer the discriminatory effect of the commercial fees charged by ADP.

Conclusion concerning the commercial fees

- (124) It is therefore necessary, in order to prevent distortion between suppliers and users, to introduce a system of non-discriminatory commercial fees for all undertakings licensed in an airport to supply a

form of groundhandling service, including self-handling.

- (125) In the present case, ADP does not apply any commercial fee system which fixes in advance the rates for the commercial fee based on turnover. In exchange for the airport management services provided by ADP, the commercial fees vary individually according to supplier or user engaged in the same groundhandling activity (see paragraphs 16 to 22). The fee charged within the same airport thus varies from one supplier to another and from one user to another, thus having an appreciable effect on the cost of the services concerned and on the structure of the costs borne by the carriers. Such discrimination has anti-competitive effects on the market for air transport services.
- (126) In view of the foregoing, the Commission considers that the commercial fees in question constitute, with regard to the groundhandling suppliers concerned, the application by ADP of dissimilar conditions to equivalent transactions. The difference in fees charged distort competition between suppliers or users of groundhandling services in the Paris airports and also between users providing competing air transport services from Paris. They constitute an abuse of the dominant position held by ADP on the market for management services at the Paris airports.
- (127) With regard to AFS in particular, the Commission is not opposed, however, to the incorporation of a State component in the overall fee imposed. The State component does not, however, justify the differences in the commercial fees identified in the case in question (see paragraph 112).

(g) Effect on trade between Member States

- (128) The preceding appraisal shows that the commercial fees in question affected competition between domestic and Community flights to and from the Paris airports (see paragraphs 71 and 126).

- (129) In view of the size of the fee in question, ground-handling is a relatively large component of an airline's operating costs. It also determines the quality of the transport services available to passengers. The terms offered by groundhandlers in airports thus have a considerable effect on the structure of operating costs and the quality of air transport services to and from the Paris airports.
- (130) In particular, if a user licensed to self-handle is, for no objective reason charged a lower commercial fee than its self-handling competitors or those using the services of third-party suppliers, the difference affects air transport through its effect on the net costs of that transport service.
- (131) In addition, discriminatory differences in the commercial fees paid by suppliers influence the choice made by carriers through their effect on prices, without the difference in price reflecting the relative efficiency of competing suppliers (see paragraphs 30 to 33 and 38). The quality and efficiency of the services concerned are liable to be considerably affected owing to the distortions of competition between suppliers.
- (132) It must be stressed that the level of quality of groundhandling services is an important aspect of airlines' strategies to differentiate their transport services and match the quality of their services to the requirements of their customers (see Annexes Nos 4 to 6 of the ADP comments of 25 August 1995). As a result, the supply of intra-Community air services to and from the Paris airports is affected by the distortions of competition between ground-handling suppliers.
- (133) In view of the flows of passenger or cargo traffic on domestic and intra-Community flights to and from the Paris airports concerned (see paragraphs 77 to 80), it must be concluded that the abuse of a dominant position identified in the case under examination is liable to affect trade between Member States.

(h) **Conclusion**

- (134) The foregoing analysis establishes that the commercial fees charged by ADP for certain types of groundhandling service at Orly and CDG airports, in particular catering, aircraft cleaning and cargo services, are applied at discriminatory rates affecting competition between the suppliers of the handling services concerned and, indirectly, between Community airlines using Orly and CDG airports.
- (135) As a result, the Commission considers that the fee system in question distorts competition on the relevant market and is contrary to Article 86 of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

Aéroports de Paris has infringed Article 86 of the EC Treaty by using its dominant position as manager of the Paris airports to impose discriminatory commercial fees in the Paris airports of Orly and Roissy-Charles de Gaulle on suppliers or users engaged in groundhandling or self-handling activities relating to catering (including the loading and unloading of food and beverages on aircraft), to the cleaning of aircraft and to the handling of cargo.

Article 2

Aéroports de Paris shall put an end to the infringement referred to in Article 1 by applying to the suppliers of groundhandling services concerned a non-discriminatory scheme of commercial fees within two months of the date of notification of this Decision.

Article 3

This Decision is addressed to Aéroports de Paris, 291 bd Raspail, F-75675 Paris Cedex 14.

Done at Brussels, 11 June 1998.

For the Commission

Karel VAN MIERT

Member of the Commission