

**ARAB CIVIL AVIATION COMMISSION SEMINAR
ON ACCOMPANIMENT OF AIR TRANSPORT
LIBERALISATION BY NATIONAL LEGISLATIONS
RABAT, DECEMBER 21-22, 2005**

**The legal and regulatory role
played by the European Commission
in implementing air transport liberalisation**

**by Mr. Emmanuel Vivet
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Honourable members of this assembly,

Ladies and gentlemen,

Let me first of all, on behalf of the European Commission, express grateful thanks to the Arab Civil Aviation Commission for the invitation it sent to its colleagues of the European Commission. It is a great opportunity to have the chance to address this honourable assembly, among which I recognise some well known faces.

The in-depth interventions of previous speakers have addressed the usefulness of liberalisation but also the need for a regulatory framework. The excellent presentation of my ECAC colleague set very clearly the dynamics of liberalisation in Europe and its beneficial consequences. Let me now address the philosophy and the institutional mechanisms that have been used in Europe to organise such liberalisation, that is, the way the system has been run ever since the liberalisation started in 1987. I will also, if time permits, tell you about the air relations between Europe and the outside world, in particular the United States negotiation.

The philosophy of Europe in implementing its liberalisation

From the very start, in 1987, European aviation policy has had not just one objective, but two: the first one is to open the markets in Europe in order to provide more and wider opportunities for the airlines, while maintaining a high level of safety. Mrs. Barbin very well recalled how this allowed low-cost carriers, such as Ryanair, to emerge and become major players.

But the second objective has also been to accompany liberalisation with a set of common rules in order to ensure that competition will be fair between the different players. The belief behind this is that liberalising without harmonising the rules would lead to imbalanced situations where some airlines might benefit from favourable competitive situations and not others. In the US, the 1978 liberalisation occurred in a united country, where harmonisation was already a fact. But in Europe, which represented 12 countries in 1992 and 25 countries today, setting common standards is necessary.

What are these common rules about? We try to include as many subjects as necessary. The issues cover not only competition rules, but, in fact, rules in all aspects of the aviation life: safety and security of course, but also economic rules such as financial fitness standards for the issuing of licences, common rules for slot allocation at congested airports, insurances, wet-leases, computer reservation systems, state aids to airlines, consumer protection rules or common approach to tackle environmental issues. Take two small examples:

- chapter II aircraft: it was decided in 1992 to ban these aircraft from European airports as from April, 2002, in order to reduce noise over the cities. What would it be if chapter II aircraft were allowed in the Netherlands, but not in Belgium? Would it not give a competitive advantage to KLM over SN Brussels when using these cheaper aircraft? Would it not also attract some cargo traffic in Ilyoushine 86 aircraft to the Netherlands, thus distorting competition between the airports of Amsterdam and Brussels?
- Overbooking: it was decided in 2004 that the airlines should grant compensation between 400 euros and 600 euros to each passenger who has to suffer from overbooking and who therefore is denied the boarding. Would it be

fair that such stringent rule applies for, say, Canada – India connexions at Frankfurt, but not at London Heathrow?

I would like to add that the European set of common rules is not just a corpus set once and for all. On the contrary, it continuously improves. Some rules are no longer relevant and can be deleted; some new subjects arise and need common standards because the industry and the Member States ask for it.

Finally, I should say that creating common rules has lead European institutions, little by little, to also create autonomous bodies, institutions. In addition to the European Commission, a new body dedicated to safety was created in 2002, known as the European Aviation Safety Agency. It has started working and is now about to deliver its first Airworthiness Certificate of the Airbus A 380.

The institutional arrangements

Now, if we put aside the rules themselves and look at the institutions, at how it works, we would need to go a little bit into the mechanics. The subject may not sound very attractive, but it is necessary to look at it if you think that we have 25 different States with different interests working together. The more the players, the more important the decision-making process. This is where the European Commission has a specific role to play.

The Commission was created in 1957 at the foundation of the European Community and ever since, it has had three main roles: firstly, and albeit some rare exceptions, it cannot decide new legislation but it has the exclusive right to propose it to the Member States and the Parliament. Proposing texts and having the monopoly for that is already quite a power, especially towards a large assembly such as the Council of Ministers. Secondly, it has, especially in competition matters, some specific executive powers. Thirdly, it must ensure that common rules are properly implemented, and can go to Court if necessary.

The proposition role means that new legislation cannot be passed if the Commission has not decided to table it. Then a majority of Member States and the Parliament have not given their approval. In Transport, the Member State majority is currently set at about 72 % of votes and 50 % of Member States, given that bigger Member States have more votes than smaller ones.

Parliament majority is set at the normal 50 % limit. In practice, as you can imagine, this implies complex and long multilateral negotiations between the Commission, which has a proposal it thinks good, Member States, which all have national interests and preferences, and the Parliament. Before any new rule is adopted, long discussions take place: you can imagine the tension in the negotiations when it was decided to liberalise European aviation in the 1990s.

The executive powers conferred to the Commission are in the competition field. This means that competition rules are not, at European level, implemented by the Member States, but by the Commission itself. For instance, it is up to the Commission to decide whether state aids can be granted to one or the other airline, like Alitalia today. It was also up to the Commission to allow the merger of Air France and KLM, then Lufthansa and Swiss, and to check whether these mergers were not leading to anticompetitive situations.

The legal role is to ensure that Member States properly implement the standards decided in common and that there is no “free rider”. In the end, the Commission can go to Court, and indeed it does.

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This is, all in all, the way Europe sees how the aviation market should function. The work is never finished and can always be improved, but the philosophy is still the same: no liberalisation without harmonisation.

External relations: Negotiations lead by the European Commission

I will conclude in examining how Europe is pursuing its aviation policy today not only within Europe, but also in its relations with the outside world: what we call in our jargon “third countries”.

The question of who should negotiate is sensitive, I am sure you imagine. It is like deciding who should be head of delegation... In usual trade fields, there is no doubt the Commission is competent. But in aviation, the legal competence is less clear. The competence issue was settled in a decision of the European Court of Justice, in November 2002. But I will not bother you with the details of competence discussions. The European Community had already been

negotiating in the 1990s as a united entity with third countries, such as Norway, Iceland, Liechtenstein and Switzerland. This kind of negotiation took another dimension in 2003, when the Council of Ministers granted a mandate to negotiate with the United States of America. In 2004, another mandate was granted for the Commission to negotiate with Morocco, as well as with nine countries located in the Balkan region, South East of Europe. While granting these mandates, the first question is what country does Europe need to negotiate as a united entity. Once this is decided, the goal is, again, to harmonise the aviation rules while liberalising the market.

You will understand that I will not comment on the EU aviation negotiations with Morocco, that have been taking place until last week ... I leave this to our distinguished hosts who might prefer to do it themselves. All I can say, without revealing any secrets, is that working in a very constructive atmosphere on complex issues has lead both delegations to an extremely interesting result which will continue to boost the market.

On the US, between October 2003 and November 2005, what we have been doing is to try and invent a new type of air services agreement. The US have their open-sky concept, and as you know, one of their main objectives was to gain a liberalised access to Heathrow airport, which has restrictions under the Bermuda II agreement with Britain (1977). What we did is to explain to the US that we had no problem with an open-sky agreement, but we wanted more than just that. It took the US delegations some months to see how far we wanted to go in order to create a level playing field in not only safety, but other areas such as security, wet leasing, environment protection and competition. Of course, we did not get all what we wanted... neither did the US, actually. But we also created a Joint Committee made up of both sides to continue the discussion on issues such a state aids, code-shares, alliances approvals, Fly America etc. So, after a little bit more than two years of negotiations and a 12-month interruption in between, the Commission and the US reached, end of last November, an agreement *ad referendum* on allowing any EC carrier to fly from any airport in Europe to the US irrespective of nationality, liberalising 3rd and 4th freedom, granting unrestricted 5th freedom to US carriers and 7th freedom to EC carriers and a number of other issues. Member States have expressed that they content

with the result. Soon, when the US changes their rules on actual control of airlines and I hope they will do it despite opposition at the Congress, it will be submitted to them for definitive approval. When this Agreement is concluded, between the two biggest markets in the world, it will be a kind of a revolution in Aviation Agreements.

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Further down the road, in conclusion, what can we imagine? I see three points:

- first of all, within ten to fifteen years, nationality of airlines will not be a subject any more. In the past, we had in Europe the rule that airlines should be majority owned and effectively controlled by the State issuing its AOC or its nationals. Since 1992, the rule has been widened to European interests. Regional groupings will become more numerous. Some countries in the world, like Morocco, are already implementing total openness in ownership rules. As long as safety is under control, I do not see reasons why this trend should not go on, little by little, as long as it is in the interest of airlines.

- secondly, safety and security will remain high on the agenda; as traffic grows, accidents will always happen whereas the safety expectations of the public will become higher and higher. Increasing freedom for the airlines will therefore mean increasing controls and checks on them.

- thirdly, market opening will continue, but with ups and downs. Liberalising is a sensitive move and will long remain a political primarily decision. Among the willing, some will prefer a classical open-sky concept, like the US, whereas the European Union will advocate an "open-sky plus" concept, where harmonisation and common rules will go along liberalisation. It is clearly up to each country, each region in the world to make its choice, for the best of its consumers, airlines and airports.

Thank you for your kind attention.