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Enhancing Competitiveness, Purchasing Power and Employment by Increasing Competition in France

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By Antoine Goujard

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ABSTRACT/RÉSUMÉ

Enhancing Competitiveness, Purchasing Power and Employment by Increasing Competition in France

Over the past decade, France has substantially eased the burden of anti-competitive regulations and effectively enforced competition law against anti-competitive practices. Various sectors have been opened up more widely to competition, and the powers of the Competition Authority have been strengthened. However, the administrative procedures involved in starting a business remain lengthy, and the number of regulations and rules is substantial, while their potential impact on competition is not fully taken into account when they are drawn up and implemented. Recent streamlining initiatives are welcome but remain limited. Meanwhile, the territorial fragmentation of public procurement procedures, which could decline following ongoing reforms, impairs their efficiency and entry and operating requirements appear to go beyond consumer protection in several regulated professions, such as in legal services and health care. In the retail sector, recent reforms have significantly relaxed negotiating conditions between suppliers and retailers, and Sunday trading is intended to be partly liberalised. However, the ban on resale below cost has not been challenged, nor the tight rules controlling commercial zoning. Individual shops that contract with superstore chains cannot change chain easily. Of the network industries, it is in the telecommunications sector that competition has made the most progress, and there is room for further improvements in transport and energy.

This Working Paper relates to the 2015 OECD Economic Survey of France (www.oecd.org/eco/surveys/economic-survey-france.htm).

JEL classification codes: L1, L3, L4, L5, L8, L9, O43
Keywords: Regulation, competition, France, growth, productivity

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Améliorer la compétitivité, le pouvoir d'achat et l'emploi en renforçant la concurrence en France

La France a considérablement diminué le poids des réglementations anticoncurrentielles et appliqué de façon efficace le droit de la concurrence dans le cas de pratiques anticoncurrentielles au cours des dix dernières années. Divers secteurs ont été ouverts plus largement à la concurrence et l'Autorité de la concurrence a été dotée de pouvoirs accrus. Toutefois, les procédures administratives lors des créations d'entreprises restent longues et le nombre de normes et réglementations pouvant être appliquées est substantiel alors que leur impact potentiel sur la concurrence n'est qu'imparfaitement pris en compte lors de leur élaboration et de leur mise en œuvre. Les récents efforts de simplification sont bienvenus mais demeurent encore limités. Dans le même temps, les conditions d'attribution des marchés publics pâtissent, elles, du morcellement territorial de la commande publique qui devrait être réduit grâce à la réforme territoriale en cours, tandis que les conditions d'entrée et d'exercice de nombre de professions réglementées restent relativement restrictives, notamment dans les services juridiques et dans le domaine de la santé. Dans le secteur du commerce de détail, les réformes récentes ont permis d'assouplir significativement les conditions de négociations entre fournisseurs et distributeurs, et les conditions de l'ouverture dominicale sont en train d'être réformées. Cependant, le principe d'interdiction de la revente à perte n'a pas été remis en cause, tout comme le fort encadrement de l'urbanisme commercial. Les commerçants indépendants qui contractent avec de grandes enseignes peuvent difficilement changer d'enseigne. Parmi les industries de réseaux, c'est dans le secteur des télécommunications que la concurrence a le plus progressé, mais elle reste perfectible dans les transports et l'énergie.

Ce Document de travail se rapporte à l'Étude économique de l'OCDE de la France 2015 (www.oecd.org/fr/eco/etudes/etude-economique-france.htm).

Classification JEL : L1, L3, L4, L5, L8, L9, O43
Mots clefs : Règlementation, concurrence, France, croissance, productivité

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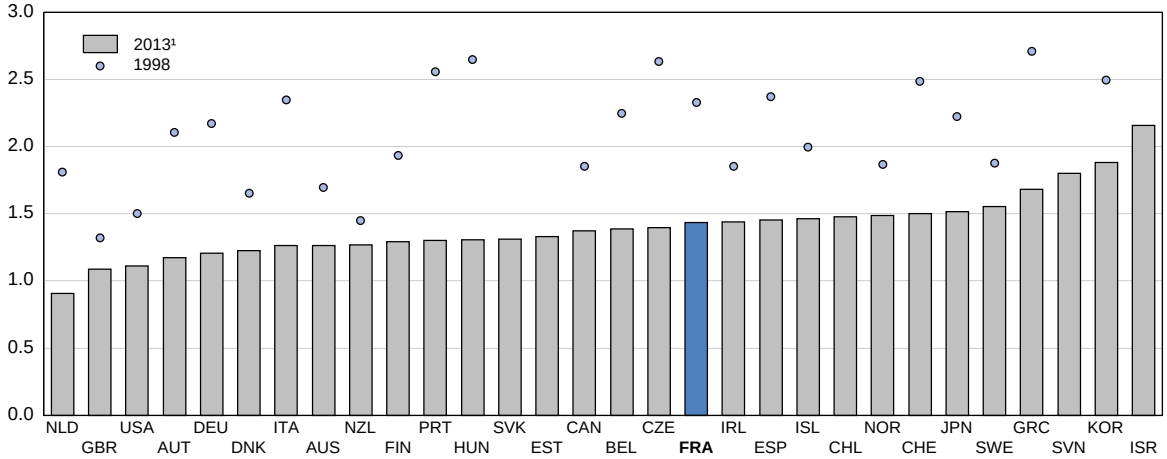
ENHANCING COMPETITIVENESS, PURCHASING POWER AND EMPLOYMENT BY INCREASING COMPETITION IN FRANCE

By Antoine Goujard[1]

Increasing competition by reducing burdens on French businesses would stimulate innovation, increase productivity and support growth. The public has traditionally underestimated the benefits of competition, and the government must therefore educate the public when implementing relevant measures. Over the past decade, France has made significant progress in opening up various services sectors that hitherto had little or no exposure to competition. The burden of anti-competitive regulations has substantially decreased since 1998, according to the Product Market Regulation (PMR) indicators developed by the OECD (Figure 1; Koske et al., 2015), and the regulatory framework surrounding competition has improved. However, the business environment remains relatively restrictive, and obstacles to competition persist in several services sectors, in retail trade and in some network industries.

Figure 1. **Regulatory developments in the goods and services markets**

Index scale from 0 to 6, from least to most restrictive



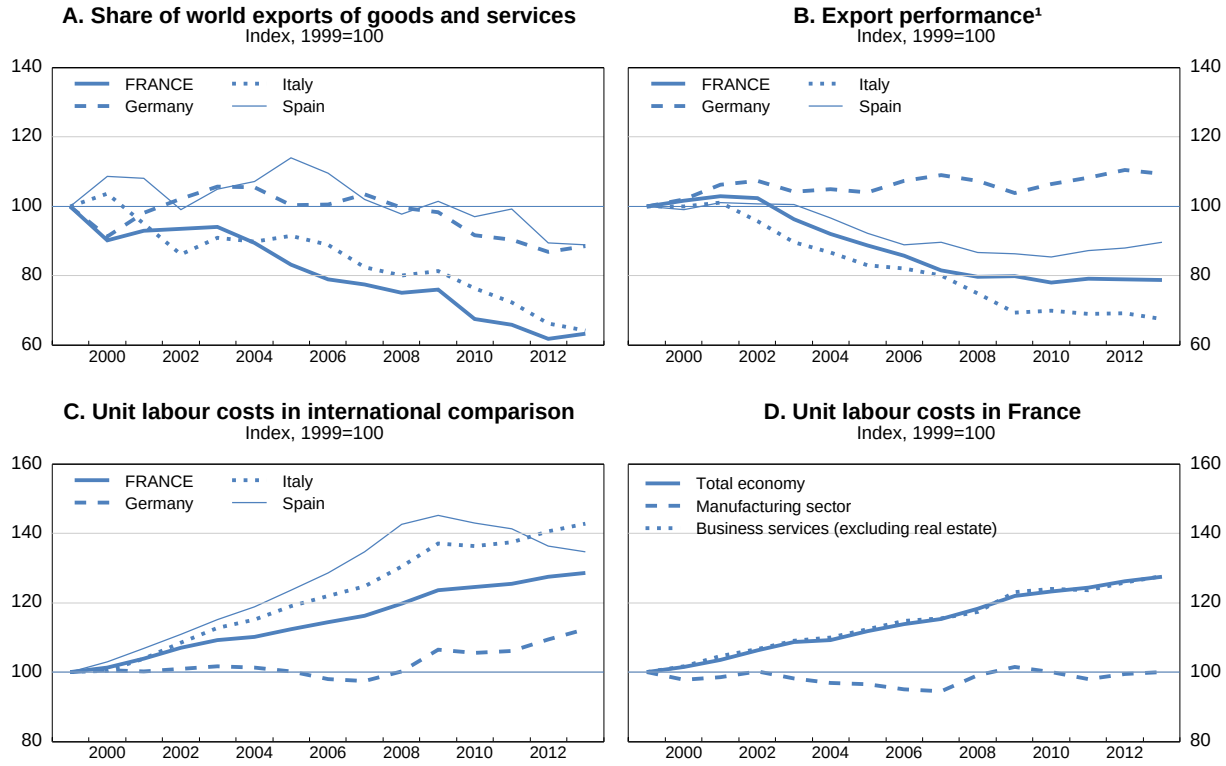
1. 2008 for the United States.

Source: OECD (2013), Product Market Regulation database.

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Increased competition in the product market would have positive potentially significant effects on competitiveness, employment, equity and well-being. Over the last decade, France's export market share losses have been slightly greater than in the main euro area countries (Figure 2, Panel A). This outcome is mainly due to the relatively slow growth of French exports compared to their export markets before the global financial crisis in 2008. French export market performance has thereafter stabilised, like those of Italy and Spain, though German exports continue to outgrow their export markets (Panel B). At the same time, French wages increased faster than labour productivity and unit labour cost growth exceeded the corresponding German rate, even after 2008 (Panel C). This trend is mainly explained by developments in economic sectors that are partly sheltered from international competition (Panel D). Strengthening competition in those sectors would likely increase their productivity and benefit all sectors that use them as inputs in their production process. Such reforms would not only improve the cost-competitiveness of French exporting firms, but also their profit margins and investment capacities.

Figure 2. **Changes in export market shares and unit labour costs**



1. Difference between export growth and export markets' growth, in volume terms (with export markets as of 2010).

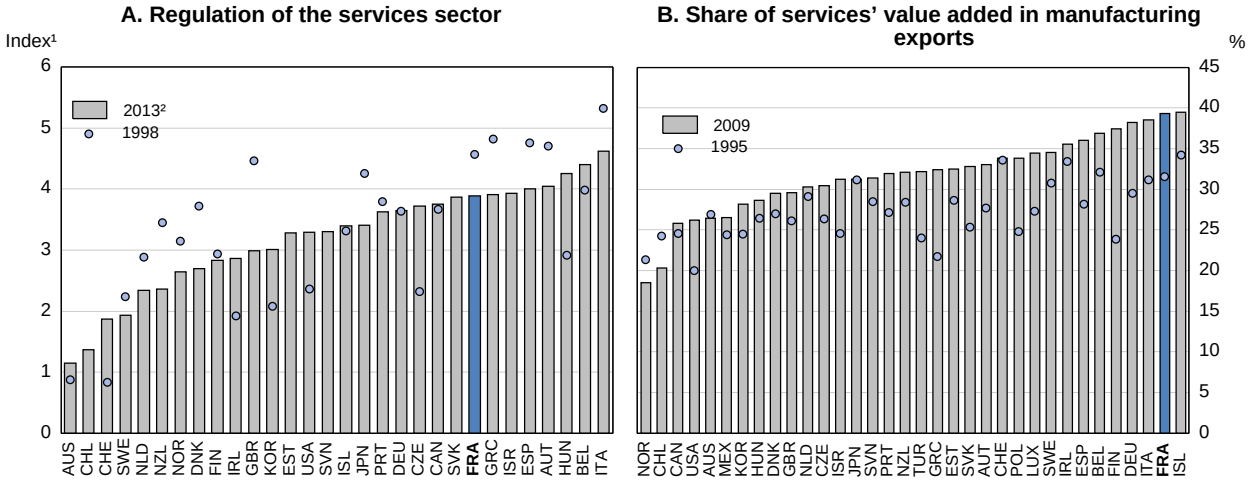
Source: OECD (2014), Economic Outlook 96 and Productivity databases.

In particular, France's regulations concerning services are less conducive to competition than in most OECD countries (Figure 3, Panel A). Though these regulations do not particularly affect foreign firms (OECD, 2014a), they indirectly affect the manufacturing sector through its sizeable purchased service inputs: services value added accounts for a large and growing share of French manufactured exports (Panel B). The services sector's low exposure to competition is also associated with low employment opportunities by international comparison, suggesting significant employment potential (Cahuc and Kramarz, 2004).

More generally, firms' size structure points to the existence of barriers to competition. The French economy is divided between large international firms that do an increasing share of their business outside

France and a large number of SMEs (Figure 4). Intermediate-sized enterprises (ISEs) capable of innovating and developing and exporting new products are in short supply. The economy could benefit from substantial productivity gains by aligning its regulations concerning services and network industries with OECD countries' best practice (Bourlès et al., 2013; Fernández Corugedo and Pérez Ruiz, 2014). If implemented rapidly, such reforms could boost productivity by 2.5% within five years (Bouis and Duval, 2011). These reforms would push firms to adopt innovative organisational structures and technologies, particularly in the sectors currently least exposed to competition. In addition, at the macroeconomic level, such reforms would enhance the responsiveness of inflation to the economy's spare capacity (Cournède et al., 2005; Pelkmans et al., 2008), thereby improving the effectiveness of macroeconomic policies.

Figure 3. **The services sector**

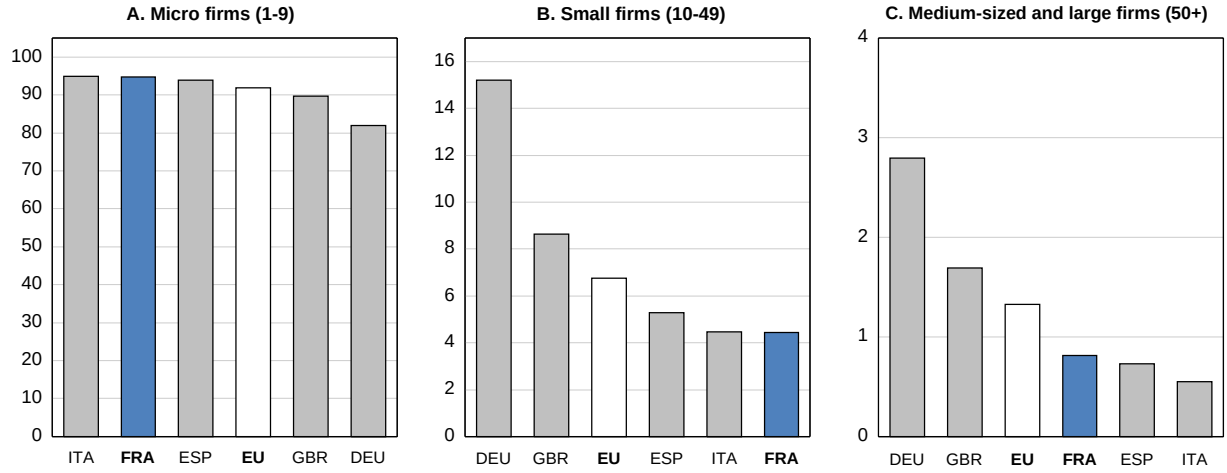


1. Index scale from 0 to 6, from least to most restrictive.
2. 2008 for the United States.

Source: OECD (2013), Product Market Regulation Database (Panel A); OECD-WTO Trade in Value Added (TiVA) – May 2013 (Panel B).

Figure 4. **Distribution of firms by number of employees**

Share in number of firms, 2011 or latest available year¹



1. The EU group reflects the unweighted average shares of 25 countries.

Source: OECD, *Entrepreneurship at a Glance 2014*.

Besides the effects on input prices, increased competition in one sector also has an indirect positive effect on jobs in other sectors. Price reductions on certain goods help to improve households' purchasing power, thereby stimulating sales and job creation in other industries (Combes, 2011; Gabaix et al., 2012). Regulatory barriers to market entry frequently generate income concentration within pressure groups, to the detriment of the majority of consumers and enterprises (Delpla and Wyplosz, 2007). Taken as a whole, enhanced consumer purchasing power and growth potential could have significant positive effects on subjective well-being, particularly in the long term (Aghion et al., 2015).

This paper reviews the regulatory framework surrounding competition and the administrative and legal business environment, before focusing on some specific sectors of the economy. The main results are the following:

- Despite a sound regulatory framework surrounding competition, regulations and institutions are in some respects ill-designed to increase competition and competitiveness. Stepping up the ongoing simplification efforts is needed.

- Significant progress has been made in retail trade, though urban zoning law and price-settings remain restrictive. Regulations go beyond consumer protection in many professional services.

- In network industries, telecommunications are competitive, and regulated tariffs are being progressively phased out in retail energy markets, but competition is limited in the transport sector.

The regulatory framework surrounding competition has been significantly improved

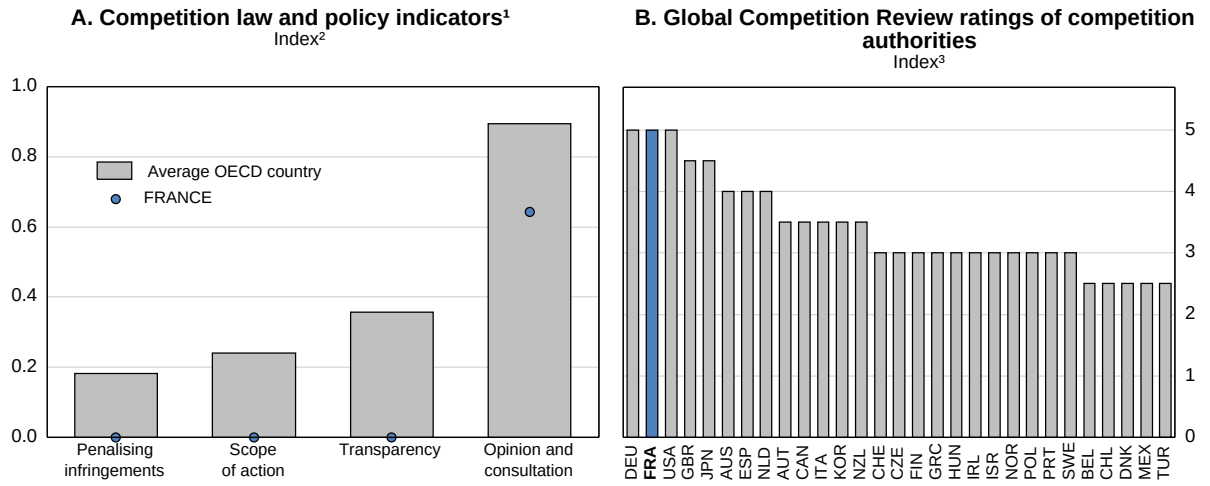
The government has recently improved the regulatory framework surrounding competition by strengthening the role of the Competition Authority and developing facilities for compensating consumers affected by anti-competitive practices.

The regulatory framework has become more efficient

The Law on Modernisation of the Economy (*Loi de Modernisation de l'Économie* – LME) reorganised competition law and established the current Competition Authority in 2008. Responsibilities are now shared between this independent institution, which replaced the Competition Council, and the Directorate for Competition, Consumer Affairs and Fraud Prevention (DGCCRF), part of the Ministry for the Economy, Industry and Digital Affairs. The LME gave the Authority more powers by transferring certain responsibilities from the DGCCRF, such as reviewing and authorising mergers and acquisitions, thereby strengthening the independence of competition law enforcement.

The Competition Authority has broad powers. According to the Competition Law and Policy (CLP) indicators developed by the OECD (Figure 5, Panel A; Alemani et al., 2013), the Authority's remit is wide, the imposition of penalties is systematic and the probity of its investigations is widely accepted. The Authority must be consulted for an opinion whenever a draft law or regulation seeks to regulate prices or restrict competition. Its intervention in litigation is driven by self-referrals and external referrals from businesses, organisations and external authorities such as the DGCCRF. When an anti-competitive practice is proven, it may order its discontinuation, impose injunctions and penalties, and accept commitments proposed by the parties to address its concerns. In addition, the Authority has frequently taken interim protective measures at the request of the party alleging the anti-competitive behaviour. Finally, it may be asked to respond to requests for advice from the government or regulators in sectors such as energy or telecommunications, or it may express competition concerns and issue opinions on measures to remedy them.

Figure 5. **The Competition Authority, 2013**



1. The indicators for France are based on national provisions and those of the Directorate for Competition of the European Commission. The indicators for the French authorities alone are identical, except for opinions and consultations.
2. From the structure most (0) to least conducive (6) to competition.
3. From the lowest (0) to the highest (5) perceived effectiveness.

Source: OECD (2013), OECD Database of CLP Indicators (Panel A); Global Competition Review (2013), Rating Enforcement 2013 (Panel B).

The Authority works closely with the DGCCRF, which has retained an important role in gathering information and settling local cases and has wider responsibilities, ranging from consumer protection and safety to fraud control. Co-operation with the DGCCRF allows the Authority to benefit from the local deployment of its 3 100 staff; indeed, certain minor cases, which could soak up excessive resources, are handled by the DGCCRF. The DGCCRF brings to light a large number of potentially anti-competitive practices, around 400 per year, and instructs the Authority accordingly. The Authority takes on around 30% of these cases, notably those relating to nationwide anti-competitive practices, examining indicators and possible legal action (Autorité de la Concurrence, 2013). For local cases that are not taken up by the Authority, the DGCCRF produces an initial report, based on which the Authority again decides whether to examine the case with a view to legal proceedings, although this happens only rarely (9% of reports submitted in 2012). Most local cases are therefore handled by the DGCCRF. They predominantly concern SMEs, since the turnover of each firm involved may not exceed EUR 50 million in France in the last completed financial year, and EUR 200 million for all the involved firms (EUR 100 million up to 2014). As an administrative authority, the DGCCRF has the right to order an end to the anti-competitive practices and to propose financial settlements, called *transactions*. Firms are free to refuse these settlements, and in this scenario, the Competition Authority rules on the case and may establish more substantial financial penalties.

The powers of the DGCCRF in the area of local anti-competitive practices were strengthened in 2012 and 2014. This should significantly enhance deterrence. First, financial settlements and decisions were made public and readily searchable in 2012, whereas they were previously confidential. Second, in 2014, the maximum *transaction* amount was doubled to EUR 150 000, though it must not exceed 5% of firms' domestic turnover. In some cases, notably for firms with large turnover, the maximum *transaction* was much lower than the excess earnings generated by the anti-competitive practices (CREDA, 2011), and, in practice, firms have rarely refused the *transactions* proposed by the DGCCRF.

The Competition Authority is considered among the most effective in the OECD. The Global Competition Review (2013) awarded it the maximum rating of five stars (Figure 5, Panel B). Nevertheless, there is no law or regulation requiring the government to respond or explain its lack of response to the Authority's recommendations if it detects a restriction on competition due to an existing or planned regulation, unlike in Denmark or the United Kingdom. For example, it issued an unfavourable opinion on the decree proposed by the government regulating private-hire vehicles (PHVs) in order to protect the taxi driver profession (Autorité de la Concurrence, 2014a), but even so the law adopted in September 2014 prevented PHVs from using mobile booking systems (see below).

In addition, with 187 employees in 2013, its resources appear to be low by international standards, which may constrain its activity, particularly in reviewing existing regulations, detecting anti-competitive practices and following up on decisions. In August 2015, the law on "growth, activity and equal economic opportunity" (Box 1) gave the Authority new responsibilities, including the examination of regulated tariffs in regulated legal professions, either on its own initiative or in response to an external application. It will also be responsible for suggesting and identifying areas in which new entries will be liberalised and assessing the impact of entry on local incumbents outside these areas. If there is no corresponding hike in resources, however, these new responsibilities could further constrain the Authority's discretionary activities.

Box 1. **The "Growth, Activity and Equal Economic Opportunity" Law**

The draft legislation was submitted on 11 December 2014 and enacted into law on 6 August 2015, after the Government took responsibility for the bill in accordance with Article 49, paragraph 3 of the French Constitution. It contains a number of significant provisions in the realm of competition in product and services markets, including:

- **Passenger land transport:** The Law sets up an intermodal regulatory authority overseeing the rail network, motorways and coach services. The starting-up of coach services that do not include stops with distances under 100 km is fully liberalised. Unfortunately, routes including stops with distances under 100 km will still be subject to prior authorisation and must not disrupt the financial balance of existing public transport services.

- **Regulated legal professions:** The Law institutes controlled freedom to set up practice in areas determined jointly by the Ministers of Justice and the Economy based on proposals from the Competition Authority. Outside such areas, the Authority shall issue opinions on proposed new practices, and the Minister of Justice may forbid the new practices. Fees for regulated services will be reviewed regularly on the basis of their costs, and limited discounts will be possible, whereas the creation of firms combining all legal and accounting professions is facilitated.

- **Retail trade:** The Law delineates new areas (international tourist areas defined by the Ministers in charge of labour market, trade and tourism, as well as major railway stations) in which Sunday trading will be subject to industry-, company-, establishment- or region-wide agreements. It gives mayors an opportunity to authorise businesses to open 12 Sundays per year, versus five at present. It also regulates contractual relations between networks of chain stores and merchants to facilitate merchants' mobility.

In addition, the Law has introduced changes in other fields:

- **Clearing the legal uncertainty surrounding redundancies:** The stricter training requirements of tribunal advisors and the reorganisation of tribunal procedures, should give the labour market more fluidity by making compensation more predictable and by reducing the time and money spent on legal proceedings. The constitutional council cancelled a complementary measure, which would have set a range supra-legal compensation for unlawful dismissals, because it conditioned the range on firm size thresholds. However, the government plans to introduce a revised version of this measure.

- **The reform of opt-out agreements for businesses in the event of serious economic difficulty (job-preservation agreements – AMEs) and the simplification of collective redundancy schemes**: the law extends the term of AMEs from two to five years and introduces clauses for the potential amendment of the

agreements, depending on the economic position of the business. Refusing the conditions of AMEs now constitutes genuine and serious grounds for redundancy, which should facilitate their adoption. Collective redundancies (employment-protection schemes) have been simplified, with the streamlining of the evaluation of businesses' resources and some redeployment obligations.

- **The improvement of driving licence procedures**: the Law introduces a maximum period of 45 days between two attempts at the test and authorises the use of public officials in the case of a shortage of inspectors. The minimum 20-hours' driving requirement has been scrapped. External candidates may now present for the test, which should encourage the growth of online training sites, and the theory test can be taken in schools.

- **The increase in employee shareholding and employee savings schemes**: the Law simplifies BSPCE share warrants for entrepreneurs (*bons de souscription de parts de créateurs d'entreprise*) to allow new businesses to allocate warrants for their shares to employees of their subsidiaries, and businesses created by mergers to continue to use them. Performance shares have also been simplified and their taxation reduced. Employee savings will be encouraged, especially in small and medium-sized businesses.

- **The streamlining of procedures for building permits and major infrastructure projects**: the Law introduces a single environmental authorisation procedure for all major projects. It allows the government to issue orders to simplify building regulations and standards, and building permit procedures in order to save on time and costs.

The OECD (2015) estimated that five sets of measures of the Law – the reform of regulated professions, the extension of Sunday and evening trading, the opening-up of passenger coach transport, the simplification of redundancy rules, and easier procedures for obtaining a driving licence – could increase France's potential GDP by 0.3% over 5 years and by 0.4% over 10 years. These effects would consolidate the reforms already undertaken since 2012, which, in October 2014, the OECD (2014b) estimated could boost potential GDP by 1.5% over 5 years and by 3.5% over 10 years. In January and April 2015, at the time the "Growth, Activity and Equal Economic Opportunity" bill was debated in Parliament, an independent commission also assessed that its main provisions would have positive effects on employment and economic activity (Commission d'étude des effets de la loi pour la croissance et l'activité, 2015a and b), though many improvements remain possible (see below and OECD, 2015).

The number of firms applying to the French leniency programme is similar to the average of the national Competition Authorities in the European Union. However, firms appear much more likely to apply for leniency to the European Commission and to the German Bundeskartellamt. Indeed, the European Commission can intervene in a wider range of areas, and the German leniency programme is highly attractive for cultural reasons and its coverage of administrative sanctions against individuals. In place since 2001, the French programme enables firms to report an anti-competitive practice and obtain immunity or a reduction in penalties in return for their co-operation. Firms and lawyers view it as significantly improving deterrence (Autorité de la Concurrence, 2014b). Indeed, the Authority imposed historically high fines on two cartels of home care and personal care manufacturers in December 2014 through the leniency programme. Sixteen leniency applications were received in 2013, and a total of 111 since 2002. Since the adoption of the programme, only nine decisions have been handed down, despite the publication of implementing rules in 2006 and a reform in 2009.

There are several reasons for the average take-up of the leniency programme. There may be several reasons for this. First, criminal penalties for individuals are not subject to the leniency programme, and this may discourage its use, even if such penalties are rare (Lemaire, 2005). Second, the programme does not cover the applications for compensation by victims. These applications, however, rarely succeed in France. The judicial procedures facing victims were recently eased (see below), but the Competition Authority has stated that it will not give access to documents gathered as part of the leniency programme for any future applications for compensation, in line with the position of the European Commission (European Commission, 2014a). For those applying for leniency gathering the evidence is a major challenge, particularly if this requires costly research and the co-operation of former employees. In principle, former

employees can, as individuals, incur penalties. Therefore, they may not be interested in co-operating with the lawyers representing the firm applying for leniency (Autorité de la Concurrence, 2014a). The Authority changed the programme in April 2015, notably to take into account changes to the model leniency programme of the European competition network. In particular, this extended the system of summary applications. This system allows firms to apply efficiently for leniency with several national Competition Authorities and, at the same time, to apply for leniency with the European Commission.

In mergers and acquisitions the government has veto and approval rights that can, in principle, be used in many circumstances. It may intervene at three stages. First, after an initial review by the Competition Authority, it may ask the Authority to undertake a thorough review if the latter does not take it upon itself to do so. Such thorough reviews have so far been undertaken solely at the initiative of the Authority itself. In addition, the Authority has argued that its independent status gives it the freedom to refuse to grant this government request (Autorité de la Concurrence, 2014a). Second, following a thorough review, the relevant minister may make a decision on national-interest grounds, such as industrial development, business competitiveness or employment. This power to override such decisions on national-interest grounds also exists in other OECD countries, such as Germany (OECD, 2009a). It seems less appropriate in cases where the Authority has held that the transaction does not restrict competition, but it has never been used to date in such circumstances. Finally, in some sectors, takeovers of French firms by foreign investors and firms have been subject to prior government approval since late 2005. This approval applies to firms in the fields of defence and security and, as of May 2014, in the fields of water, health, energy, transport and telecommunications. Such refusals by the government should, as with the power to override Authority decisions, be exercised only in exceptional cases. Government decisions that exercise the power to override the Authority and refuse prior approval must be submitted for public justification and may be challenged before the supreme administrative court (*Conseil d'Etat*). However, the need to combine prior approvals and the power to override is unclear, and reviewing applications for approval (which takes up to two months) lengthens the process faced by foreign firms.

Compensation for victims of anti-competitive practices has been partially eased

In addition to public enforcement of competition law, compensation for victims and the introduction of class actions may strengthen deterrence and equity. Although an individual consumer cannot refer a case to the Competition Authority, accredited consumer groups referred around 30 litigation cases between 1997 and 2012 (Conseil de la Concurrence, 2006; Autorité de la Concurrence, 2013). These referrals are used to report anti-competitive behaviours that the Authority has to investigate. In addition, businesses, consumers and local authorities can directly seek redress for anti-competitive practices before the courts. Damages can act as a deterrent, but their use could be improved further, despite the positive changes in the 2014 Law on Consumer Affairs (see below).

Consumers and businesses harmed by an anti-competitive practice may seek redress through the courts before or after a decision by the Competition Authority. Since 2005, 16 high and commercial courts specialising in competition law have been established, including eight civil courts competent to adjudicate cases between private parties. This framework enables the judiciary to develop complex competences combining legal and economic analysis, including determining the amount of damages incurred by victims of anti-competitive practices. The 2008 LME strengthened this expertise by entrusting the specialist courts established in 2005 with adjudicating anti-competitive practices in the wholesale and retail sectors.

The 2014 Law on Consumer Affairs enhanced complementarity between procedures for seeking redress and the actions of the Competition Authority. First, the Authority's decisions now constitute indisputable evidence in applications for redress by consumers and businesses. Previously, if the Authority held that an infringement of competition rules had taken place and took action against this, its decision could help victims bring proceedings for compensation, but this would not constitute conclusive evidence

of fault in such claims, unlike the decisions of the European Commission. Moreover, the five-year limitation period for claims for compensation is henceforth interrupted while the Authority is reviewing the case, whereas previously the duration of competition proceedings frequently resulted in the expiry of periods during which claims could be lodged.

The 2014 Law also reformed the procedures for class action suits by consumers, in line with most of the recommendations in previous *Economic Surveys* (2009a, 2013a). Given the low amount of damages incurred by individual consumers, SMEs and local authorities, claims for damages in respect of anti-competitive practices are rare, even though, from a collective perspective, the sums involved are substantial and may act as a deterrent. Until 2014, accredited consumer groups could, in principle, represent consumers, such as through a class action. To participate, consumers had to give consent, but consumer groups were not authorised to advertise their intention to bring an action. For example, a well-known action concerning the arrangement between mobile telephone operators was dismissed in 2007 and 2010, because the consumer group had created a website about the intended action, infringing the advertising ban (Béteille and Yung, 2010). The new law authorises consumer associations to advertise their actions, but only once the initial ruling has been handed down, and reduces costs and uncertainties by strengthening the weight of prior Competition Authority decisions. Following the recommendations of the European Commission (Commission Européenne, 2013), the new regulations are based on the opt-in principle: following the ruling, consumers who come forward are compensated, while money that has not been claimed remains with the companies found guilty. The alternative would have been a tacit consent (opt-out) system such as in the United States, or more recently in Portugal, whereby all consumers affected must be reimbursed, and the unclaimed money is paid to a public fund. Class actions on competition cases can, in principle, be assigned to one of the 160 regional courts, which will require substantial training of judges in determining damages.

Class action proceedings are still restricted for anti-competitive practices, and, so far, no anti-competitive case has been brought to courts under the new 2014 law. First, action can cover only compensation for material damage suffered by consumers, excluding SMEs. This runs contrary to the recommendations of the European Commission and the Competition Authority (Commission Européenne, 2013; Autorité de la concurrence, 2012a). Smaller local authorities could also gain from being authorised to participate in class actions if they are victims of similar anti-competitive practices. Second, some sectors, such as public health and the environment, are excluded from the scope of allowed class actions, although extensions are under consideration. The draft law on health of October 2014 would introduce class actions for health damages. Third, the procedures can be lengthy: claims for compensation must follow the completion of all appeals against a decision of the Competition Authority or of the European Commission (as recommended by the European Commission in June 2013), when all possible recourses against the established infringements have been exhausted. Finally, only 16 accredited consumer groups are authorised to bring such actions. This may give them too much power (Gabaix et al., 2012) and could ultimately limit the expansion of class actions, while there is no evidence that allowing consumers and lawyers to initiate these proceedings as soon as a decision of the Authority or the Commission is handed down would give rise to an excessive number of proceedings.

More generally, the quantification of damage by the judiciary acts as little deterrence. In France, the burden of proof of harm lies with the victims, contrary to the European Commission's proposal that it should be established by the national courts (Sénat, 2013). In addition, the enforcement of competition law is not favourable to the direct victims of anti-competitive practices. French courts rely heavily on the "passing on" defence. For equity reasons (damages are set to be compensatory and not punitive), firms convicted of anti-competitive behaviours can ask to compensate their direct victims only up to the amount of the price premiums they were unable to pass on to their own downstream customers. This practice enables indirect victims to be compensated and is in principle more equitable than limiting compensation to direct victims, but it also limits the enforceability of compensation (Combes et al., 2011). For example,

in the case of the vitamin cartel in 2006, the Nanterre commercial court ruled out any claim for compensation, even though the claimant had chosen not to increase its prices, on the basis that this option was available to it. By contrast, the European Commission, in its directive of November 2014, states that companies which had engaged in anti-competitive practices may use the "passing on" defence, but that they are responsible for providing evidence that illegal overcharges were not fully passed on to their direct victims. The French judicial system is, however, set to become much more favourable to victims and deterrence in 2016, once the European directive for antitrust damages adopted in November 2014 is implemented.

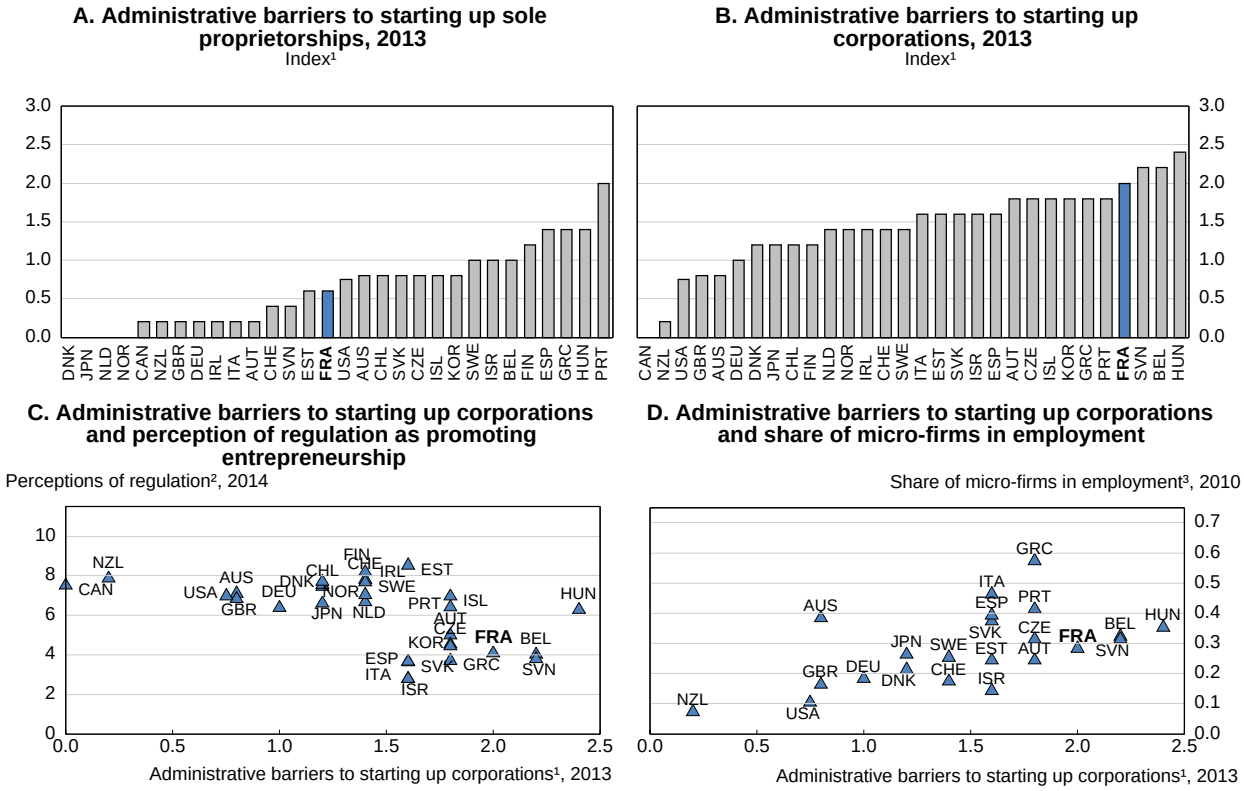
The competitive implications of the administrative and legal environment are uneven

Beyond appropriate regulation, stimulating competition requires creating an overarching administrative and legal environment that is itself conducive to corporate life, and to starting up and growing businesses. Overall, in international surveys, business leaders see the French legislative and regulatory framework as undermining competitiveness, due to a plethora of regulations and their perceived lack of transparency (World Economic Forum, 2013; World Competitiveness Center, 2014). Certain barriers prevent new entrants entering the market, while business development is constrained by a complex regulatory and fiscal environment, and investor protection appears lower than in many OECD countries. Streamlining administrative procedures, including the tax system and government support, as well as increasing funding opportunities for innovative start-up businesses, together with improving public procurement practices, would allow substantial productivity gains and growth.

The regulatory environment has begun to be streamlined

France is among the OECD countries for which administrative barriers to starting up a sole proprietorship firm are low, according to OECD PMR indicators (Figure 6, Panel A), while the barriers to establishing corporations are significant (Panel B). These barriers take into account the number of procedures involved and the number of institutions to be contacted to register a company, as well as filing a company name, opening a bank account or establishing a formal contract between partners, the duration and cost of these procedures and the minimum capital required. They correlate strongly, in international comparison, with entrepreneurs' perception that regulations hinder company start-ups (Panel C) and with small enterprises' relatively large share in employment (Panel D). In particular, in France, the procedures leading up to the process of registering a company are lengthy, while the registration process itself is relatively easy, according to OECD indicators and "Doing Business 2015" (World Bank, 2014). Furthermore, the number of rules that can in principle be applied is excessive (Lambert and Boulard, 2013). These rules, which are partly justified by public policy objectives, often dwell too much on the details of technical requirements, which restrict competition between enterprises, activity and productivity, and ultimately become inconsistent with technological developments.

Figure 6. **Cumbersome administrative procedures are harmful to business creation**

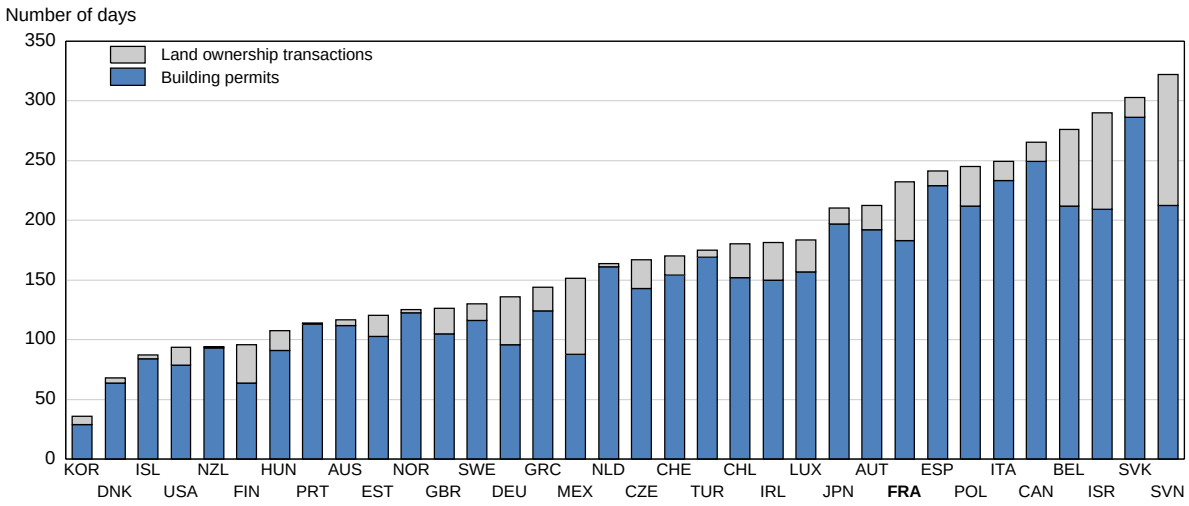


1. From most favourable to competition (0) to the least favourable (6).
2. Scale from 0 to 10, from the least favourable to the most favourable perceptions of the ease of creating a business.
3. Firms with nine or fewer employees.

Source: OECD (2013), Product Market Regulation Database (Panels A, B, C and D); World Competitiveness Center, 2014 (Panel C); OECD and Eurostat (2014), Structural Business Statistics (Panel D).

The application procedures for building permits and land ownership transfers are slower than in most OECD countries (Figure 7). It takes more than eight months to obtain a building permit for a typical warehouse in France, compared with less than five months in Germany or the United Kingdom. The costs of getting a building permit increased sharply in 2012 and in 2013 (World Bank, 2014), due to the impact of new rules, such as environmental standards. The government's recent commitment to reducing the duration of building permit procedures to a maximum of five months and to streamlining the 3 700 rules governing the construction of buildings and houses is welcome (Président de la République, 2014). For example, for fire extinguisher installations, though not mandatory, a national certificate was usually required and contributed to a hike in prices (Autorité de la Concurrence, 2013), while the upgrading of lifts, mandated by law, is also believed to have contributed to large price increases and added costs to tenants (UFC Que Choisir, 2008). But this streamlining should be combined with a comprehensive reform of local planning regulations, with responsibility for the latter entrusted to supra-municipal institutions that would enable competences to be shared, externalities between municipalities to be internalised and procedures for enterprises to become clearer (OECD, 2014c). The 2014 Law on Access to Housing and Town Planning Reform (Alur) has only partly strengthened the transfer of planning powers to *intercommunalités*.

Figure 7. **Estimated duration of procedures for building permits and land ownership transactions, 2014**



Source: World Bank (2014), Doing Business 2015.

Most recent initiatives have focused on streamlining the business environment. In 2013, as part of the "*choc de simplification*" (streamlining drive), more than 100 streamlining measures for businesses were announced and are now being implemented. In addition, a new Business Streamlining Council (*Conseil de la Simplification pour les entreprises*) was established in January 2014 and is responsible for proposing strategic streamlining guidelines to the government concerning businesses. It presented 50 new such measures in April and October 2014, and 52 in June 2015. It plans to propose new measures every six months. However, the introduction in 2015 of a single sole proprietorship system, i.e. "micro-enterprise", a compromise between tradesmen and micro-entrepreneurs (Grandguillaume, 2013), has created additional obligations for smaller entrepreneurs. The reform did introduce some streamlining and retains the key features of the existing micro-entrepreneur system (the *auto-entrepreneurs*), but small business owners working in the craft industry, for example, must now complete a training course before starting up, register with the chamber of trades and crafts and pay tax on local chambers' fees. In addition, in 2015, all micro-enterprises will be liable for the business property tax (*cotisation foncière des entreprises* – CFE). Since three-quarters of "*auto-entrepreneurs*" said they would not have started up a business without this status, and 23% said they had registered an existing grey-zone activity (Barruel and Thomas, 2012; Deprost et al., 2013), the current reform could limit start-ups and increase the size of the informal economy.

The government has taken measures to avoid excessive burdens on businesses due to new regulations. A freeze was introduced on regulations imposed on local authorities, businesses and the public in 2013. The administrative and economic burden of any new law or regulation must be evaluated through an impact study. Moreover, the administrative and economic burden of new regulations must be offset by the removal or relaxation of existing rules. However, an initial moratorium introduced in 2010 to freeze the proliferation of rules affecting local authorities failed to curb the flood of standards (CCEN, 2013). In addition, at the request of the Prime Minister, the Business Streamlining Council spoke for the first time, in June 2014, about the entry into force of a new regulation, the "*compte de pénibilité*", a points-based system designed to take into account strain at work in calculating pension and training rights. Its judgment highlighted the lack of prior evaluation of the effects of such a large-scale reform. It would therefore be necessary to enhance prior economic impact studies, even though impact studies by ministries have been an institutional requirement since 2009 (OECD, 2010a). Any new rule or regulation should be subject to prior review of its necessity, and the assessment of its economic impact should be evaluated by an

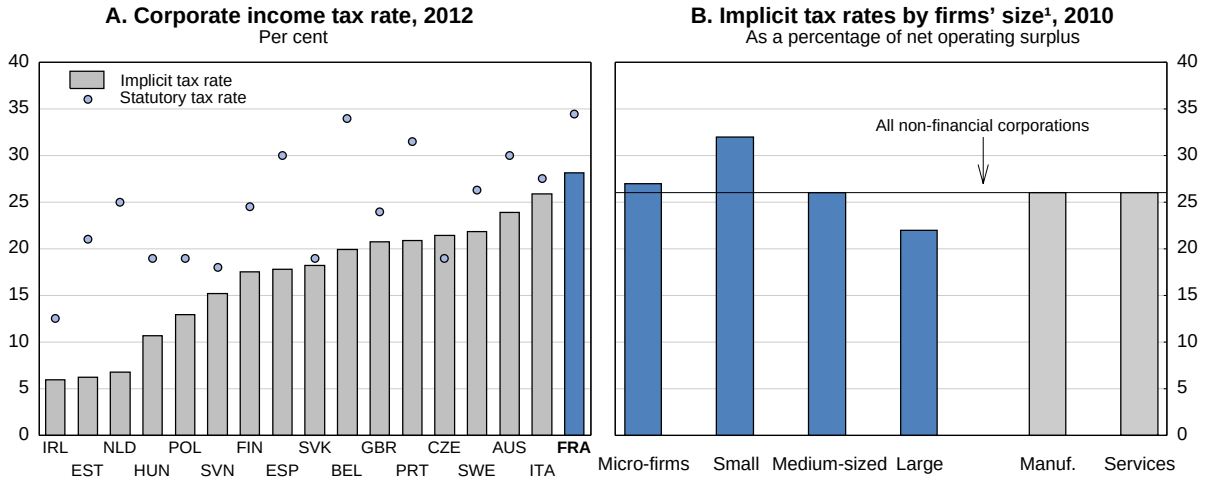
independent body (to ensure it can better withstand pressure groups), in line with the recommendations of the Competition Authority (Autorité de la Concurrence, 2012b) and the OECD (2010a); the government announced the creation of an independent oversight body in January 2015. More generally, the government should build on a thorough evaluation of the results of its current simplification efforts to deepen regulatory reform. It should continue to ensure an adequate contribution from all relevant stakeholders, and communicating on the positive results will be instrumental to ensure broad based support for the reform.

A systematic review of existing regulations from a competition perspective by an independent authority should also be established according to a set schedule, and then implemented rapidly. Targeting general practices, rather than specific sectors, could aid reform, even if problems specific to certain sectors and regulated professions persist (see below). The accumulation of legislative and regulatory instruments over time creates potential barriers to competition due to the resulting complexity. In this area, the OECD (2011a) developed a method to evaluate, from a competition perspective, the regulations applicable to different sectors of the economy and to identify pro-competitive alternatives. This method has been used successfully in other countries and would help the French authorities to enhance the regulatory framework and increase its consistency with the principles of competition. In line with the OECD methodology and building on its own experience, in 2012 the Competition Authority published its own guidelines to help policymakers to assess the impact of draft regulations on competition. These guidelines also set up the framework of both mandatory and optional regulation reviews that may be submitted to the Authority. Going further, a systematic review of existing regulations, together with dedicated resources, could be entrusted to the Competition Authority or to the French Court of Auditors. When this review would identify a rule that restricts competition excessively (compared to its public policy objectives), it should be systematically amended, unless the government asks the responsible agency to prepare a second opinion for public submission, to enable a final review within a pre-set deadline.

Bottlenecks persist in the tax system, in the allocation of subsidies and in social security thresholds

The tax system remains complex for firms. It contains multiple tax expenditures depending on the number of employees and turnover, and, as in other countries such as Canada, Korea or Spain, SMEs are subject to a reduced rate for the corporate income tax (15% instead of 34.4%). At the same time, large, notably multinational, companies have more opportunities to optimise their tax deductions (OECD, 2013b), and, as a result, statutory and effective rates differ markedly. The average effective tax rate is high and has a hump-shaped distribution across firm size, which may discourage the growth of young dynamic firms (Figure 8; CPO, 2010). Broadening the tax base by paring tax expenditures, and establishing a single, steady and lower corporate tax rate for all firms would provide stronger incentives for business growth, better align corporate taxation with the EU average and limit opportunities for tax avoidance. Indeed, in France, lower statutory tax rates have been associated with stronger firm growth and an increase in the propensity to export (Bernini and Treibich, 2013).

Figure 8. **The tax system is complex**



1. The sample covers profit-making businesses only.

Source: OECD (2014), Tax database and Eurostat (2014), *Taxation trends in the European Union* (Panel A); 2013 Finance Bill, Rapport sur les prélèvements obligatoires et leur évolution (Panel B).

Businesses have to meet different formal organisation criteria, such as the presence of union representatives, employee and security committees, depending on their number of employees. These create staffing thresholds that may hamper the growth of young firms and thus affect competition and competitiveness. For example, a staff representative must be elected if the business has more than ten employees; it is mandatory to set up a staff committee (*comité d'entreprise* – CE) and a hygiene, safety and working conditions committee if the business has 50 or more employees; and there are additional requirements regarding meetings of the CE if the business has 150 or more employees, and so on. In general, these staffing thresholds were designed to promote SMEs, as opposed to larger companies, while avoiding concentrating new provisions around a single threshold, which explains the multiple thresholds (Attali Commission, 2008). However, these thresholds hinder, rather than promote, young firms' growth, in comparison with large firms. According to Ceci-Renaud and Chevalier (2010), these threshold effects explain only some of the size differences between France and Germany, but structural estimates of their impact on GDP and competitiveness are significant, although heterogeneous. Gourio and Roys (2014) estimate a cost of 0.3% of GDP for the single threshold of 50 employees; Garicano et al. (2013) estimate that this same threshold could cost between 0.5% and 4.5% of GDP, depending on the degree of downward wage rigidity.

A far-reaching reform aimed at a substantial streamlining of all tax and social security obligations that may create staffing thresholds and hamper firm growth, as well as of the labour code and its enforcement, is required. The complexity of the labour code and the uncertainty surrounding the decisions of the labour courts disproportionately penalise young firms. The professionalisation of the labour courts begun in 2015 and the creation of upper and lower limits for supra-legal compensation are likely to bring significant benefits (Box 1). However, it would also be useful to harmonise the different social security and union representation functions, by establishing a single staff council in companies with fewer than 250 employees. Furthermore, continuing to smooth out social security thresholds, as initiated by the 2008 LME, and which is partly provided for in the 2015 bill on social dialogue and employment, would be beneficial. Experiments could be organised to assess their constraints on employment. However, a temporary suspension of some tax and social contribution requirements imposed on crossing some thresholds, as announced by the government, is questionable (Premier Ministre, 2015), because such a

measure could lead to increased uncertainty and encourage the creation of temporary jobs in order to fall below the threshold again at the end of the suspension of the related obligations (Poutvaara et al. 2015).

The direct subsidies and tax incentives for businesses are also numerous and of varied effectiveness. Although there is a centralised Internet portal listing support available for businesses, administrative costs are substantial and access is unequal, in part because of the different practices of the plethora of agencies and local governments in charge of the support systems. The dispersal of subsidies into multiple small grants also hinders the coordination of their different policy objectives and their evaluation. Making the region the sole decision-maker on local subsidies, as recommended by Demaël et al. (2013), would allow a better trade-off between taking into account local specificities and the need to coordinate such schemes, and strengthen the existing governance structure, as regions are already in charge of many local subsidies.

The complexity of some tax incentive schemes can also rule out young firms and SMEs. For example, introducing smaller and more targeted tax credits for R&D and reducing overall corporation tax could do more to stimulate innovation than the current generous tax credit system, which tends to favour larger firms (OECD, 2014d and 2014e). More generally, the links between the evaluation and evolution of subsidies and tax incentives need to be strengthened. For example, numerous studies have shown that some local tax-deduction schemes in deprived neighbourhoods (*Zones Franches Urbaines* or *ZFU*) were ineffective at creating local jobs, harming competition and generating significant displacement effects within municipalities (Givord et al., 2013; Mayer et al., 2013; Briant et al., 2014). The reform of ZFU in 2014 has scaled down possible corporate income tax deductions and increased subsidies for local job creation, but the schemes have been maintained up to 2020.

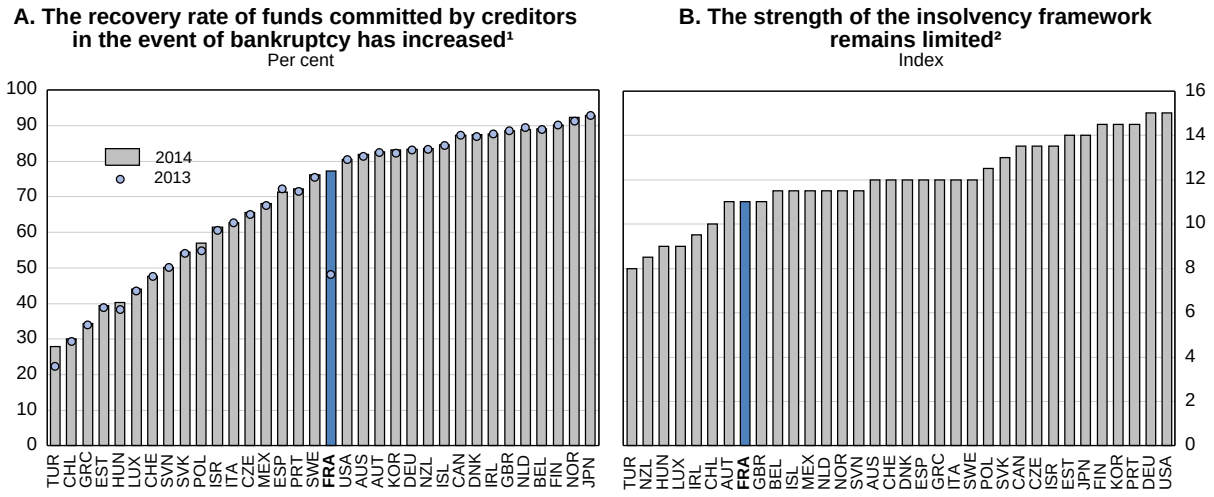
Enhanced protection of investors could improve business financing

The lack of financing for young firms, SMEs and ISEs could also explain their low growth and harm competition. In France, debt is the main source of business financing, particularly for SMEs. Although constraints on bank lending do not seem to weigh more heavily than elsewhere in Europe (OECD, 2013a; European Commission, 2013b), they could become more binding following the tightening of banking regulations (see the Assessment and Recommendations). French bankruptcy law stands out by international comparison due to a relatively low debt recovery in bankruptcy proceedings, according to judgements by national specialists, despite recent progress (Figure 9, Panel A), and, more generally, to an insolvency framework that could be improved (Panel B). Effective debt recovery rates tend to be lower than in Germany and the United Kingdom (Davydenko and Franks, 2008). This is partly explained by employees' rights, whereby the payment of salaries takes priority in the event of business failure, and by the precedence given to shareholders. However, the relatively low creditor protection may create funding problems for independent, dynamic SMEs. Their high-risk profile makes them particularly dependent on bank loans for investment and, where applicable, on buyouts by large firms (Chai and Nguyen, 2011; Chertok et al., 2009). In addition, the priority given to shareholders and employees may encourage unviable firms to stay in business. Resources allocated to such "zombie companies" could instead be devoted to starting up new businesses and boosting productivity, growth and employment (de Serres et al., 2006; Bravo-Biosca et al., 2013).

Some measures taken in March 2014 enhanced creditors' rights and the detection and prevention of difficulties facing firms. Creditors can now propose a plan to the court concurrent with that of the business managers in bankruptcy and recovery proceedings. In addition, administrative streamlining has, in principle, reduced the duration and costs of proceedings for creditors. However, improving bankruptcy proceedings would also require reviewing the rules governing access to and the method of remuneration of court-appointed administrators and curators. For example, the *numerus clausus* practice of the court-appointed curator profession restricts competition and is not based on a guarantee of expertise, which could further increase bankruptcy costs for creditors (Plantin et al., 2013).

More generally, measures to help diversify the financing of SMEs and ISEs are welcome at a time when bank financing could be scaled down (Wehinger, 2012). Since August 2013, insurance companies have been able to invest in such firms. In addition, the creation of a new pan-European stock market for SMEs in May 2013 could improve their access to financial markets. The targeting of the financing of non-large firms by the new public investment bank (*Banque Publique d'Investissement* – BPI) set up in 2013, strengthened in 2015 (Prime Minister, 2015), is also a step forward to co-ordinate public actions, because it groups together several existing institutions (OECD, 2014d and 2014e). However, the reactivation of the *fonds de résistance* (economic resiliency fund) in November 2013 is questionable. This fund aims to provide loans, subject to certain conditions, to struggling ISEs that apply for such support. The fund has limited resources, and the deadweight costs may be significant in situations where problems in access to credit are not proven (Fontagné et al., 2014). Continuing to increase the supply of business financing by changing tax incentives, which are now biased towards the housing sector (OECD, 2013a), in part through regulated saving accounts (such as the *livret A*) would be desirable.

Figure 9. **Business financing and investor protection, 2014**



1. As a percentage of the initial investment recovered.
2. Index scale from 0 to 16, from the system the least (0) to the most (16) able to rehabilitate viable firms and liquidate nonviable ones.

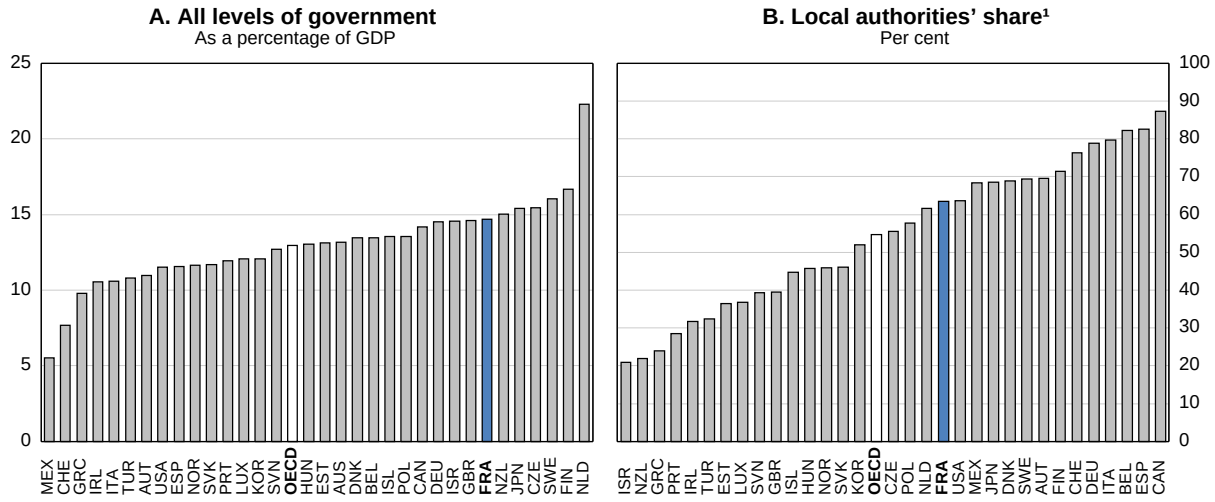
Source: World Bank (2014), *Doing Business 2015*.

Efforts to introduce more professional modes of public procurement must continue

Public procurement procedures and practices have important implications for competition, public finance and long-term growth. Public purchasing was estimated to account for nearly 14% of GDP in 2011 (Figure 10, Panel A), of which local authorities account for a significant proportion (Panel B). Several positive features characterise public procurement procedures. For example, the share of SMEs is considerable, at nearly 58% of contracts and 28% of their total value in 2012, without taking into account sub-contracting (OEAP, 2014), and simplification efforts in 2015 may further improve this situation. Similarly, the number of computerised and paperless procedures is relatively high (OECD, 2013c). However, the excessive formalisation of certain criteria may lead to including "best endeavours" obligations, rather than those based on results or performance, within the specifications of calls for tender, harming competition (OECD, 2009b). For example, in implementing the personal training account (see Brandt, 2015), awarding training contracts will require formalising the definition of one hour of training, rather than adhering to performance criteria, which may generate excessive administrative costs for large training providers, such as the unemployment agency (*Pôle Emploi*), and limit workers' choice. Furthermore, several specific factors limit competition in public procurement procedures.

Barriers to participation by foreign companies can reduce the effectiveness of tender procedures. Entrepreneurs perceive the openness of French public tenders to foreign companies as limited (World Competitiveness Center, 2014). In addition, the share of foreign businesses in public purchases appears low compared to other European countries, although international comparisons are difficult (PwC, 2014). Their participation in tender procedures is restricted by the cost of preparing bids, but also by linguistic barriers, since calls for tender are primarily published in French. Administrative barriers, where response deadlines are sometimes too short, and organisational hurdles, where social security clauses can be difficult for foreign businesses to understand and apply (Autorité de la Concurrence, 2013), are also limiting factors. In practice, contracts with social security clauses, such as the employment of local long-term unemployed or disabled workers, are more often awarded to local candidates than other types of contracts (OEAP, 2013). Therefore, the plans to develop such contractual clauses in 2015 should take into account their potential detrimental effects on competition. Last, the territorial fragmentation of public procurement procedures can also restrict their intelligibility, as suggested by the low share of foreign businesses in contracts awarded by local authorities (OEAP, 2012), although this may be partly due to subsequent contract-monitoring obligations.

Figure 10. **Size of government purchases, 2011**



1. Proportion of government purchases, excluding social security bodies.

Source: OECD, *Government at a Glance 2013*.

Due to the small size of local authorities, the scope for introducing more professional modes of public purchasing may be limited. Local authorities awarded nearly 54% of all public contracts in 2012 (OEAP, 2014), and municipalities' external spending rose faster than prices in 2012 and 2013 (Observatoire des finances locales, 2014). For example, fragmented local management of household waste does not encourage the development of contracts of sufficient size to curb the increase in costs (Cour des comptes, 2011a), although in some regions, such as Nord-Pas-de-Calais, joint contracts for several municipalities have been awarded. The ongoing development of a new e-procurement system by the main central public purchasing office (UGAP) may help to encourage co-ordination between the different levels of government and improve efficiency. However, introducing paperless procedures for public procurement does not guarantee greater collaboration among local authorities. Many of them are developing their own e-procurement systems. This leads to duplication and may also hamper co-operation between different levels of government, since these systems are rarely interoperable (European Commission, 2014b). A comprehensive strategy, such as recommended by the OECD (2014f), to encourage the transition to e-procurement and to co-ordinate its implementation would save money, improve transparency, reduce administrative delays and increase competition. Efforts to strengthen public procurement would also require encouraging procedures by central purchasing offices or project management support services, as

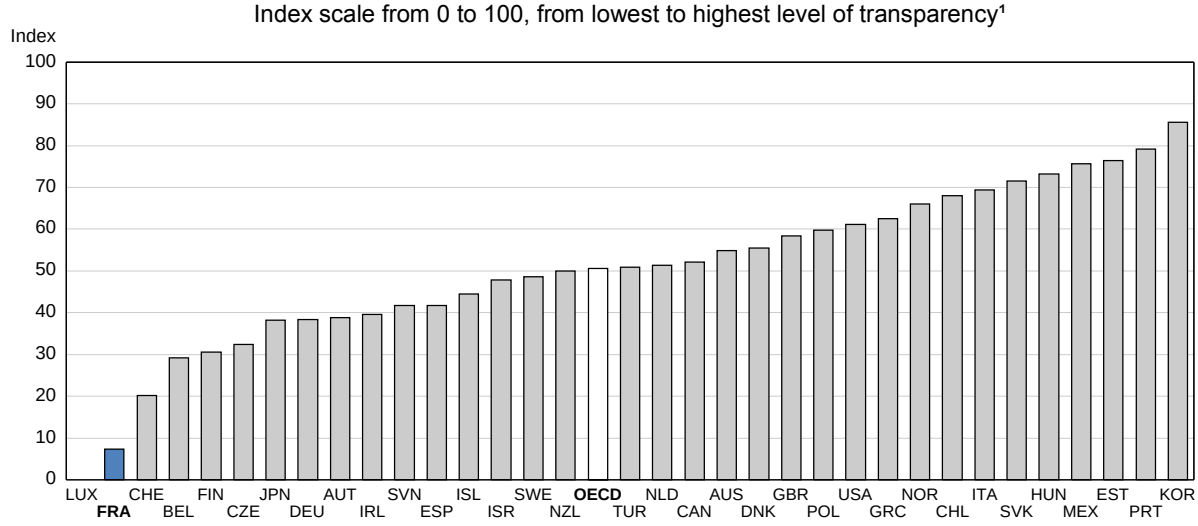
recommended by the Competition Authority (2013) in the case of urban transport, and merging small municipalities and inter-municipal institutions.

The territorial fragmentation of public procurement may also restrict competition opportunities and the enforcement of penalties for anti-competitive practices. First, some contracts in smaller municipalities do not exceed the critical thresholds required under national implementation of EU law. As such, in 2012, 26% (expressed in value) of public contracts referred by local authorities to the Economic Observatory for Public Procurement (*Observatoire Économique de l'Achat Public*, OEAP) were awarded under adapted procedures entailing more relaxed advertising and competitiveness obligations, compared with 11% for those referred by the central government and 5% for those referred by network operators. Although the reduced formalism of these procedures is adapted to the value of the contracts, it also makes auditing them more difficult. Second, the small size of the municipalities can actually prevent them from seeking redress for anti-competitive practices. Most of the 36 700 municipalities do not yet have the resources and incentives required to undertake costly legal procedures, particularly if the losses they incur individually are low, such as in the case of the mobile telephone cartel penalised in 2005. They should therefore ultimately be included in the new class action procedure discussed above to enhance deterrence.

More generally, the fragmentation of regional powers may contribute to corruption, particularly in public procurement, despite the strict procedures in place (SCPC, 2012 and 2014). Bertrand et al. (2008) identified a positive correlation between local election timelines and employment within large industrial groups, depending on their link to the outgoing candidate. This correlation reflects the existence of *quid pro quo* for the businesses concerned. In France, six in ten companies view corruption as an obstacle to their growth, while the European average is only four in ten (European Commission, 2014b). The level of transparency required of politicians and magistrates was until recently relatively low (Figure 11), which is not conducive to preventing and detecting illicit conflicts of interest (OECD, 2010b; Djankov et al., 2010). Following a political scandal in early 2013, several important measures were adopted in this area. In 2013, protection for civil servants reporting corruption was enhanced, as was the required transparency of local politicians' finances. However, civil servants must always notify their superiors before reporting suspected corruption, and some local civil servants are not subject to mandatory asset declarations (SCPC, 2014). In any case, the conditions for accessing asset declarations are very strict, and easing them would surely improve how this information is used, even if close supervision is necessary to preserve privacy.

Figure 11. **Transparency of the assets and private interests of public decision makers, 2012**

Index scale from 0 to 100, from lowest to highest level of transparency[1]



1. Transparency covers not only the degree of declaration of assets and private interests but also the extent to which this information is publicly available. The OECD survey relates to politicians of the central government and magistrates.

Source: OECD (2012), Managing Conflict of Interest Survey, cited in OECD (2013), *Government at a Glance*.

Developments in competition in various sectors: some progress, but results are mixed

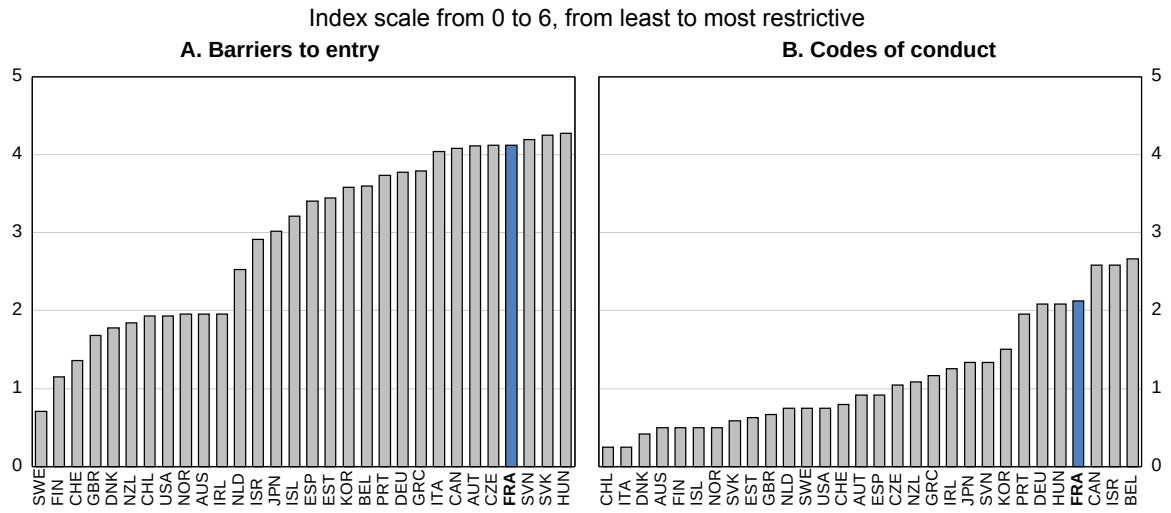
The extent of sectoral regulations varies. Some sectors, such as retail trade and financial services are competitive by nature, but the degree of competition they experience appears to be diminished by trade-distorting regulations. For example, internal regulations that are often adopted by the Ministries in consultation with professional associations frequently bolster the position of "insiders". By contrast, network industries often include segments that constitute natural monopolies, and introducing competition there is difficult (or even impossible). In that environment, the regulatory framework should be designed to ensure non-discriminatory access by third parties to the networks and competition introduced into segments that have competitive potential. The network industry where competition has made most progress is telecommunications; by contrast, there is still room for improvement in the transport and energy sectors.

The regulations and formalities are excessive in some professions

Professional services play a key role in the business services market, accounting for 12.4% of GDP and 13.5% of employment in France – more than manufacturing, without taking into account growing output of services by manufacturers (Crozet and Milet, 2014). In most OECD countries, many professional services are subject to a raft of regulations (in the form of self-regulation and/or government-imposed regulation), some of which have a direct impact on competition. The main barriers to entry include the minimum number of years of study required to pursue the profession and additional examinations for recognition as a full member or a *numerus clausus* (quota). Restrictions on practice include price controls, advertising bans and a protected framework of tasks that the professional is allowed to perform and/or the legal form of the business through which services are to be supplied. In France, the Treasury estimates that over 10% of the active population works in a regulated profession.

The various regulations can stifle competition, even if they are usually motivated by market failings stemming, for example, from information asymmetries between the professional and the client. The restrictive nature of regulatory barriers in certain professions varies considerably across OECD countries, suggesting that, in some, barriers to entry and restrictions on practice go beyond what is necessary to ensure adequate consumer protection. In particular, for architectural, accountancy and legal services, barriers to entry and controls on practice in France are among the highest in the OECD (Figure 12). Conversely, there are no particular regulatory barriers to entry to the engineering profession either for French or foreign companies, suggesting that it should be possible to reach a better balance between quality control, integrity and competition in architectural, accountancy and legal services.

Figure 12. **Regulations of architectural, accounting and legal services, 2013[1]**



1. Regulations at 1 January 2013; 2008 for the United States.

Source: OECD (2013), OECD Product Market Regulation Statistics.

The 2014 Law on Consumer Affairs and the 2015 Law on growth, activity and equal economic opportunity would, to some extent, strike a better balance between consumer protection and competition. The former ended pharmacists' monopoly on the sale of certain products (such as pregnancy tests), restrictions on some optical products and the ban on advertising for legal professionals. At the same time, the restriction on the number of salaried notaries was eased and some requirements on own funds for accountants were removed. The Law on growth, activity and equal economic opportunity suggests three further improvements to the regulations of legal professions (Box 1). First, the fees for some of the regulated tasks reserved for these professions will now be regularly reassessed by the Ministers of Justice and the Economy, and may be submitted for review to the Competition Authority, which may also take this step on its own initiative. Indeed, regulated fees for certain tasks have changed little over time and have not been updated with technological gains. The professionals will also be able to apply regulated discounts to all their clients, and these discounts would have to be public and transparent. Second, the Competition Authority will be responsible for identifying and suggesting local zones for the approval of the Ministers of Justice and the Economy where new entries will be liberalised. Outside these zones, however, new entries could potentially be refused by the Justice Minister, advised by the Competition Authority. Third, some restrictions on participation on company boards have been lifted, as the draft law would allow joint participation in judicial and legal companies for all professions in the sector and chartered accountants, but external investment remains banned.

However, some regulated professions remain sheltered from competition. For example, the restricted access to external sources of funding for accountancy and veterinary practices restricts competition and deprives businesses of potential scale economies (Cahuc and Kramarz, 2004; Attali Commission, 2008). There was only limited progress in widening capital participation for accountancy practices in April 2014, when the requirements moved from a majority holding by accountants registered in France to a two-thirds holding by European accountants, and the veterinarians' code of ethics still prevent non-veterinarian investors from funding their activities. Furthermore, taxi drivers and health-care professionals still encounter significant barriers to access and practice. Some of the restrictions on advertising are too burdensome, for example in pharmacy, where they *de facto* constrain the opportunity to move into online trading (Autorité de la Concurrence, 2014a). Moreover, only certain medical professions whose activities are paid for by the taxpayer should continue to be subject to restricted access through a quota mechanism.

Health professions are to be reformed in the summer of 2015, but neither significant changes to pharmacies' monopoly nor a review of existing quotas for students are likely.

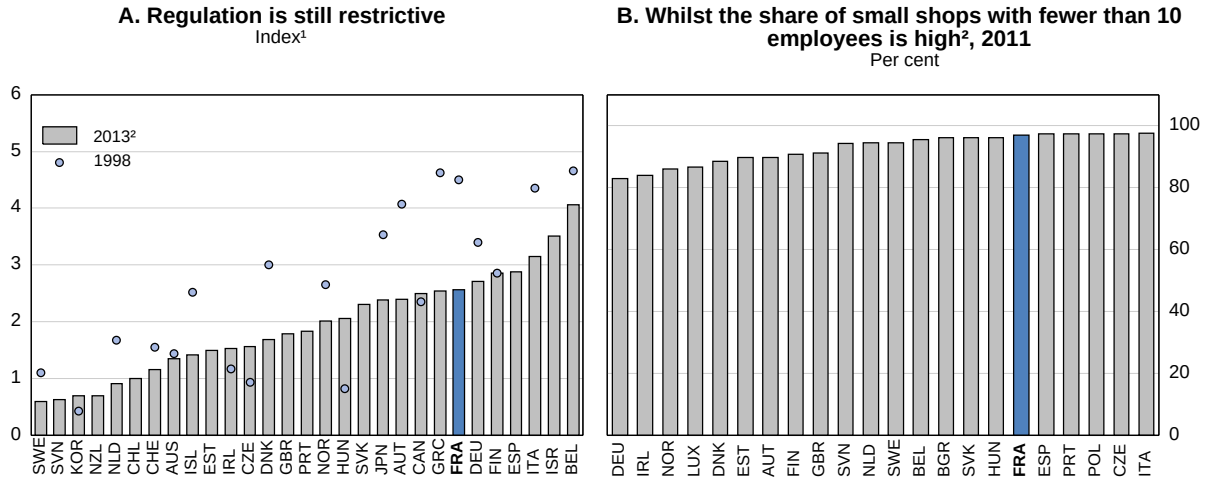
Such changes must be planned without unduly harming current practitioners, who had to make a significant investment in order to enter the profession, and without undermining the rule of law. For example, becoming a taxi driver requires passing a professional examination and acquiring a licence. Although a framework is needed to ensure passenger safety and minimum service standards, the number of licences would appear to be too low. Any new licences that are issued can, in principle, be obtained free of charge from local authorities, but the waiting lists are long – 15 to 20 years in Paris (Autorité de la Concurrence, 2014a). Since the law of October 2014, new licenses are set for five years and renewable, and they cannot be sold. However, the number of taxis is low, chiefly to the benefit of licence owners, and whilst fares are regulated, price competition is limited and demand predictable. The alternative is to buy an existing licence costing on average more than EUR 200 000 in Paris and over EUR 350 000 in some towns on the Côte d'Azur, or to rent a licence. The upwards trend in prices for licences indicates growing consumer transfers to licence holders, although the criteria governing the award of licences are less than perfect and local authorities have difficulties monitoring the existing licenses, which may lead to tax evasion and hamper the potential effectiveness of regulation (Bacache-Beauvallet and Jarnin, 2009). At the same time, the capitalisation of rents in licence prices exposes licence holders to potential policy changes and technological upheaval such as the rise of mobile Internet access and private-hire vehicles, and restricted supply encourages consumers to look for alternative solutions.

Several reforms of regulated professions have been successfully introduced in OECD countries. For example, taxi licences were withdrawn in New Zealand in 1988, and, as a result, the number of taxis rose by two-thirds in five years and, in real terms, fares fell (OECD, 2007). Payment of a partial indemnity to existing holders based on harm suffered, as in Ireland, could facilitate reform. The successful introduction of a reform of this kind would make it possible to remove restrictions that are difficult to implement, foster innovative supply and head off the temptation to introduce further regulations to reduce the distortions created by the low number of licences, such as excessive formalisation of the profession of PHV driver to protect the value of taxi licences. In that regard, relaxing taxi fare regulations, at least for advance bookings, would appear appropriate (Autorité de la Concurrence, 2014a). By contrast, whilst proportionate qualitative regulation of PHV services is justified, it should not preclude the development of low-cost suppliers, nor should restrictions on their activities be imposed. An initial draft regulation introducing a minimum period of 15 minutes between booking a PHV and client pick up was suspended by the Conseil d'État in 2014 following a negative opinion from the Competition Authority (Autorité de la Concurrence, 2014a), which was of the view that it introduced restrictions that could not be justified in the general interest. However, the Thévenoud Report (2014) proposed again to limit mobile electronic booking to taxis. The final version of the law adopted in October 2014 does not set a time constraint between the booking of PHV services and client pick up, but it forbade PHV to publish their location and availabilities through mobile devices.

The regulatory constraints on wholesale and retail trade have been partially relaxed

France has a high level of anti-competition regulation in wholesale and retail (Figure 13, Panel A) and a significant number of small shops where productivity is low (Panel B). This sector accounts for 4.3% of GDP and employs 7.5% of the workforce, but the share of employment in retail is among the lowest in the OECD, despite France's attractiveness to tourists, even if the low rate is due in part to greater efficiency in French businesses in this sector. Market outcomes are influenced by restrictions on negotiations between retailers and suppliers, protective price frameworks and commercial zoning practices.

Figure 13. **Commercial regulations are restrictive**



1. Index scale from 0 to 6, from least to most restrictive.
2. Share of all enterprises.

Source: OECD (2013), Product Market Regulation Statistics (Panel A); Eurostat (2014), Structural business statistics, classification into 64 sectors (Panel B).

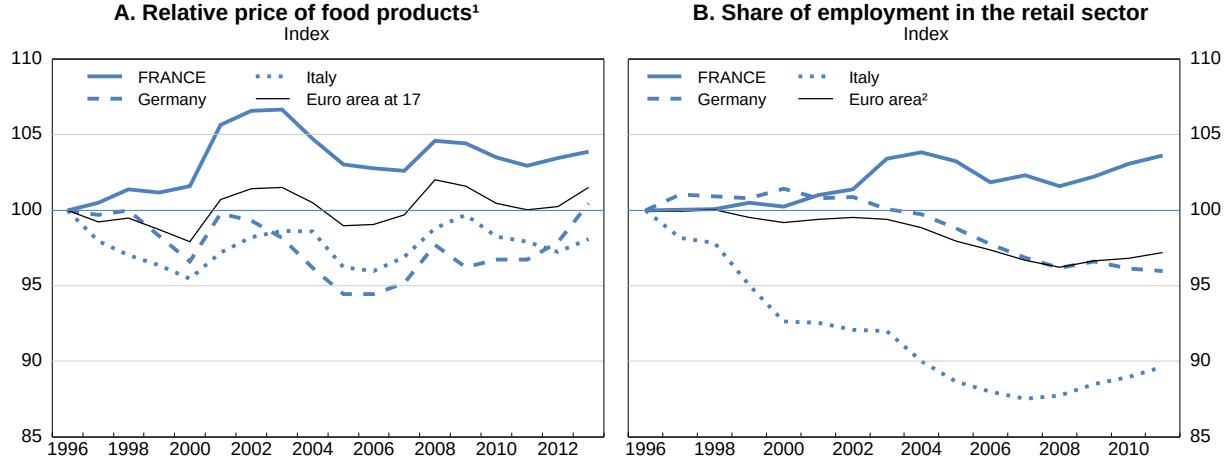
The protective framework for prices and commercial relations has been relaxed

The 1996 Galland Law provided a restrictive framework for commercial relations. The standardisation of general conditions of sale, the prohibition on suppliers adjusting their selling prices for different retailers and the imposition of a minimum sale price or resale below cost (RBC) threshold for retailers led to significant price rises. In particular, in order to ensure an acceptable income for small retailers, the RBC threshold was the price on the retailers purchase invoice minus all the financial benefits agreed by the seller (and plus specific resale charges and transport costs). That definition, especially the fact that it did not incorporate any of the discounts not yet in place at the time of sale (e.g. discounts conditional upon attainment of certain objectives), meant that it was possible to manipulate the wholesale and retail prices. By making any discounts that were not conditional appear as if they were, it was possible artificially to raise the RBC threshold and set a high standard minimum resale price, as illustrated by the large number of cases involving vertical cartels in the distributive trades (Perrot et al., 2008).

The Dutreil (2005), Chatel (2008) and LME (2008) Laws gradually decreased the regulatory burden on commercial relations. On the one hand, they enabled a drop in RBC thresholds by taking full account of the discounts not yet earned at the time of sale. On the other hand, contracts between retailers and suppliers can now lay down different prices for different retailers, a relaxation that has resulted in favourable changes in prices and employment (Figure 14). Whilst between 1996 and 2003 relative food prices had risen more quickly than in the euro area and France's main neighbours and the share of employment in the sector had stagnated, the decade to 2013 saw a relative fall in food prices and an increase in the share of employment in retail trade, though the trend in neighbouring countries was downwards. In fact, retail price sensitivity to local competition has risen significantly. Additionally, price differences between distributors' and major national brands (which are subject to less competition from distributors and enjoy substantial advertising budgets and were therefore better able to benefit from the old definition of the RBC threshold) have been reduced (Biscourp et al., 2013; Biscourp, 2014).

Figure 14. **The relaxation of commercial regulations in the 2000s was good for prices and employment**

1996 = 100



1. Price of food products corrected for general inflation.
2. Euro area of 17 excluding France, but also Greece, Ireland and Spain, for which data are missing.

Source: Eurostat, Harmonised Price Index (Panel A); Eurostat, Database of National Accounts 2014, classification into 64 sectors (Panel B).

However, retail price regulation remains relatively strict and still restrains competition between brands. Retailers are still not allowed to sell below cost, in contrast to most other European countries. Predatory pricing from a dominant market position is already prohibited under competition law; the prohibition on resale below cost is therefore superfluous. In any event, it is costly and difficult to police, and its benefits are uncertain. Moreover, sales periods, when reselling below cost is allowed, are restricted to certain dates. Even though the LME had introduced greater flexibility, the possibility for shops to set their own limited sales periods was eliminated in 2015. Finally, price competition is restricted for certain pharmaceutical products, car spare parts and books. For example, the method whereby the prices of medications that are reimbursed by sickness insurance are determined on the basis of minor technological differences is questionable (Bergua et al., 2012). Competition for non-prescription drugs is also limited by pharmacies' monopoly on many products, their low negotiation margins compared to the major laboratories and lack of consumer information (Autorité de la Concurrence, 2014a). This may help explain the steady rise in consumption of medicines until 2011 (Le Guarrec and Bouvet, 2014), which remains among the highest in the OECD (OECD, 2014g). Similarly, the price of car repairs has increased extremely fast since 2000, in part because of the legal monopoly of car producers on visible spare parts (Autorité de la concurrence, 2013). Moreover, distortions in book prices may have restricted consumption, particularly of some mass market items where the price elasticity of demand is highest (Perona and Pouyet, 2010), although since 2000 the average price of books has risen more slowly than general inflation, on a par with the European average (Besson and Morer, 2013; Eurostat, 2014a).

The commercial zoning code is complex and restrictive

The provisions of the commercial zoning code are restrictive. The Royer (1973) and Raffarin (1996) Laws attempted to halt superstore developments that would compete with small shops by preventing their construction. For example, the Raffarin Law required a trading authorisation in order to set up a shop with a sales floor greater than 300 m². These mechanisms have had negative consequences on employment and competition in the sector by restricting business growth and the number of potential local competitors (Bertrand and Kramarz, 2002). Moreover, by restricting store-brands' internal growth, the law encouraged

superstores' growth by acquisition and concentrations such as the development of chains of franchises and distributor networks to the detriment of independent traders (Sadun, 2014) of which there are currently very few (Ferrante, 2012). For example, in Paris, co-operative groupings or associations of independent traders account for less than 10% of the floor space and turnover in food retailing, although many small shops dominate the sector (Autorité de la Concurrence, 2013).

Access to the sector is still limited by discrimination on grounds of the size of commercial establishments and significant procedural delays. All shops must obtain a construction permit, but superstores also require trading authorisation from local boards. The LME introduced major changes to the trading authorisation procedure by raising the thresholds above which trading authorisation was required, increasing the independence of the boards responsible for authorisations from the local shops that were represented on them (Delpla and Wyplosz, 2007) and abolishing several authorisation criteria, such as the local market's capacity to absorb a new entrant, that were incompatible with the very principle of competition (OECD, 2009a). However, trading authorisation is still required to open a store with a sales floor greater than 1 000 m², and for smaller sales floors the local administration in a small commune can still make a reference to the local boards for an opinion when examining applications for construction permits for sales floors greater than 300 m². This discrimination on grounds of size restrains competition. First, it prolongs the procedures for establishing superstores, especially when an application for an authorisation to open a shop was dismissed, since, until June 2014, the applicant had to wait one year before submitting another request. Second, boards' make-up does not always ensure a satisfactory degree of independence from local firms. Most members are still local politicians, and this can lead to policies that stymie the establishment of foreign competitors (OECD, 2009a). Finally, each board varies depending on the project location, its field of activity and its customer catchment area. The way it is structured is a source of uncertainty and does not ensure equal treatment of applications to establish superstores in a given area, even for neighbouring communities, though there is a national committee to assess equitably complaints against local boards' decisions.

The 2014 Law on Craft Industries, Retail Trade and Very Small Enterprises contains some partial steps forward. They include a unique file for large stores' building permits and authorisations to trade. It also abolished the requirements for project backers to submit a new application for authorisation in the event of a store-brand change, along with the one-year interval required for resubmission of a project that was initially refused. However, the trading authorisation procedure is hard to justify because the criteria used by the authorising boards are very similar to those for the award of construction permits, which already take account of regional planning, zoning and environmental objectives (OECD, 2009a).

In addition to regulatory barriers, competition is also hampered by behavioural barriers. They may be associated with store-brand network practices, local planning restrictions and local property market conditions. The Competition Authority (Autorité de la Concurrence, 2010) has complained about the length and rigidity of contracts (non-compete clauses, priority rights, etc.) that restrict the ability of independent shops to shift between rival store-brand networks, resulting in worryingly high concentrations in some customer catchment areas. The draft "Lefebvre" Law of June 2011, which aimed to strengthen consumer rights, protection and information, called for a reduction in these obstacles to store-brand competition, but the bill never passed the National Assembly. Landlords' reticence and network lock-in practices, together with poor availability of real estate, commercial leases and their cost, may lead to levels of concentration that are not conducive to competition. As a result, the Competition Authority (Autorité de la concurrence, 2013) decided to force the sale of some shops in Paris when Monoprix was taken over by the Casino group. Moreover, distributors are organised in six main purchasing groups and the four largest groups cover more than 90% of the retail market (Autorité de la Concurrence, 2015). This entails risks for competition among purchasing groups and may further constrain the ability of independent retail shops to shift between rival store-brand networks.

In a welcome move, the "growth, activity and equal economic opportunity" law regulates some contractual relationships between store-brand networks and independent shops to ease the mobility between networks. It bans non-compete clauses and sets up common dates to break all contract agreements between an independent retailer and its network. However, the Competition Authority has not been given power to start an investigation into local zoning plans to avoid that they unduly restrict competition in retail trade (as planned in the initial draft bill), while this measure would have usefully completed the new legislation.

Procedures authorising Sunday opening should be further reformed

The regulations governing Sunday trading hours and the way they interact with complex exemptions also restrict competition, consumer choice and employment. Sunday trading regulations were relaxed in 2009 for shops outside tourist areas, then in 2014 for DIY stores, and finally in 2015. The law on "growth, activity and equal economic opportunity" adopted in August 2015, takes two significant steps. First, it extends Sunday trading possibilities. Local mayors may now grant a higher number of opening authorisations (twelve, compared to five previously), although the seven additional days are subject to the approval of the local *intercommunalités*. It also proposes to create new international tourist zones and define some mainline stations where Sunday and evening trading restrictions will be relaxed. These zones will be delineated by the Ministers of Labour, Commerce and Tourism, or Transport, after the relevant mayors and *intercommunalités* have given their opinion. Second, it standardises the opening conditions for business zones (former PUCEs, or *périmètres d'usage de consommation exceptionnel* – areas of atypical, habitual trading), existing tourist zones, new international tourist zones and stations, and some prefectural authorisations. The sole condition for Sunday opening is now the existence of a collective agreement at the level of the branch, group, business, establishment or territory, including compensation for employees. In businesses with fewer than eleven employees, a majority employee agreement is sufficient. Different authorisation procedures have hitherto given employees different compensation: in tourist zones Sunday trading incurred no pay obligations, while in the PUCEs businesses had to pay at least twice as much for working on a Sunday as for working a normal day.

Sunday opening regulations nevertheless remain heterogeneous and anticompetitive. Different procedures coexist: opening authorisations may be awarded automatically depending on the type of activity (such as food on Sunday morning), on agreements with and compensation for employees or their representatives in some zones, as well as under various exemption procedures (Bailly, 2013; Mocquax, 2013). Applications for authorisation are also submitted to employers' and employees' organisations for approval, and their positions may differ between municipalities and shops. And authorisation procedures still refer to different zones, which distorts competition between identical businesses in neighbouring streets without benefit to consumers or local governments. Finally, the law on "growth, activity and equal economic opportunity" requires supermarkets and hypermarkets to compensate employees with at least 30% additional pay for Sunday morning opening, while they could heretofore open without offering any compensation. It also differentiates between compensation in businesses of over and under eleven employees in some zones. All these measures are designed to protect small shops, but also tend to limit competition and economies of scale in the retail sector.

The possibility of opening shops on Sundays, while guaranteeing weekly rest days and Sunday pay rates negotiated under business agreements ought to be independent of the location and size of businesses, and from the type of activity, without losing sight of the social and environmental consequences of opening. In OECD countries, authorising shops to trade on Sundays has boosted employment and business, without any discernible impact on prices. According to estimates by Genakos and Danchev (2015), France could further stimulate job creation if it continued to relax Sunday trading regulations, to bring them into line with Ireland, Italy or Sweden. This trend would reflect changes to working hours, since less than 50% of the population now works a standard working week (Sautory and Zilloniz, 2014).

Intermodal competition is low in transport

Competition in the transport sector is growing but remains weak. Some modes of transport, such as railways, are partially protected from competition, especially from intermodal sources.

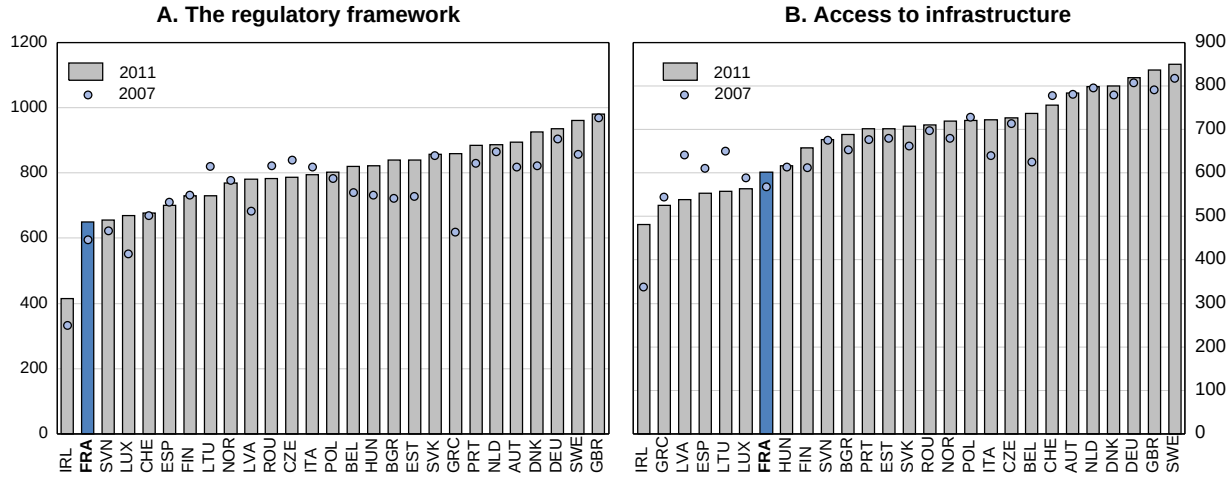
The structure of the rail sector is not conducive to competition

The rail sector has many striking, specific economic features that are associated with the level of investment required in infrastructure, low returns on investment, hybrid financing based both on user payments and general taxation, and the presence of several services on a single network (freight, passenger transport, high-speed lines, regional and intercity transport) that have shared costs but require different responses in terms of competition strategies. Regulations in this sector must also address public interest concerns, such as safety, regional development, the environment and affordable passenger fares, in addition to competition.

Liberalisation in this sector appears to be lagging behind that in most European countries. The regulatory framework does not provide for equal access to the network and generates costs to users and the public purse (Figure 15; IBM Global Business Services, 2011). Despite the legal separation between the *Réseau Ferré de France* (RFF – the French Rail Network), which has responsibility for organising and overseeing the network, and the incumbent operator, the SNCF, some overlap between infrastructure management and operation remained because the SNCF performed delegated infrastructure management on the behalf of the RFF: it was therefore both an RFF client and an RFF sub-contractor. This situation was not conducive to developing competition (Autorité de la Concurrence, 2013; OECD, 2013d). For example, the SNCF was criticised by the Competition Authority in 2012 for hampering the entry of new operators into the freight market. The railway reform implemented in January 2015 merged the RFF and the SNCF into a single body, a move that is unlikely to facilitate access by other operators.

Figure 15. **Liberalisation of rail services remains poor**

Index scale from most to least restrictive[1]



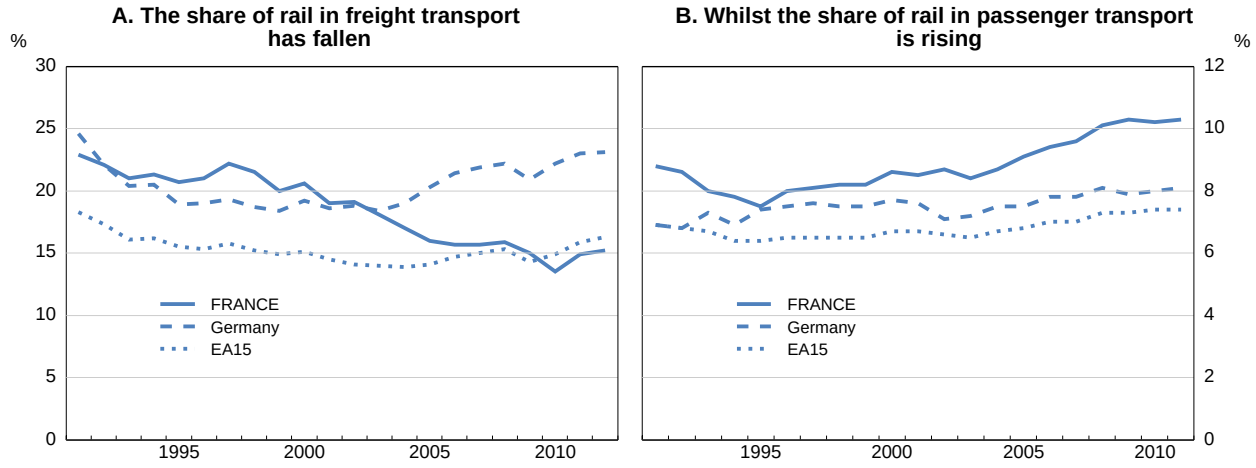
1. The indicators take account of freight and passenger transport services.

Source: IBM Rail Liberalisation LEX and ACCESS Indices, 2011.

The sector where competition has made most headway is rail freight. The SNCF's share of rail freight (32% of domestic tonne-kilometres in 2012) is comparable to the shares for incumbent operators in Germany and Poland and much higher than those for the Netherlands or the United Kingdom (CGDD, 2013b), although the share of rail in freight transport has declined to 15% in 2012 (Figure 16, Panel A). The declining share of rail is all the more noteworthy, given that it has remained relatively stable in Germany. Differences in the cost of road haulage between the two countries cannot explain this situation; rather it stems from the difficulties that the SNCF has had in generating returns from its rail freight activities (CGDD, 2013a), under-investment by the SNCF in information technology, making efficient allocation of service slots difficult, and the priority afforded to passenger transport (where intermodal share is rising more quickly than elsewhere in Europe, Panel B). Further development of competition could temper the steady decline of the share of rail in inland freight transport (CGDD, 2013a) and could be effective in achieving the objective of a 25% non-road and non-air modal share in freight transport by 2022 set by the 2009 Grenelle Environment Forum.

The SNCF dominates the passenger transport sector. Domestic services are not open to competition, and international rail transport services are almost exclusively provided through co-operation agreements between the SNCF and neighbouring countries' incumbent operators, with the exception of one Paris-Venice service opened by the Italian operator Thello (ARAF, 2014). Additionally, for international services, the European Commission has allowed operators to serve national stations since 2010, but the cabotage conditions are strict: the main object of the service must be an international service, and cabotage must not upset the economic balance of public service contracts that may be affected by the new service. The authorisation procedure was set out in detail by the national regulator for the sector, the ARAF, in February 2013 and utilised for the first time in October 2013. However, the service is not yet running, and the Regional Council for Provence-Alpes-Côte d'Azur has brought proceedings against the authorisation before the Conseil d'État.

Figure 16. **Modal share of rail freight and passenger services**[1]



1. Percentage of total inland tonne-kilometres for freight and of total inland passenger-kilometres for passenger transport.

Source: Eurostat (2014), *Modal split of freight and passenger transport.*

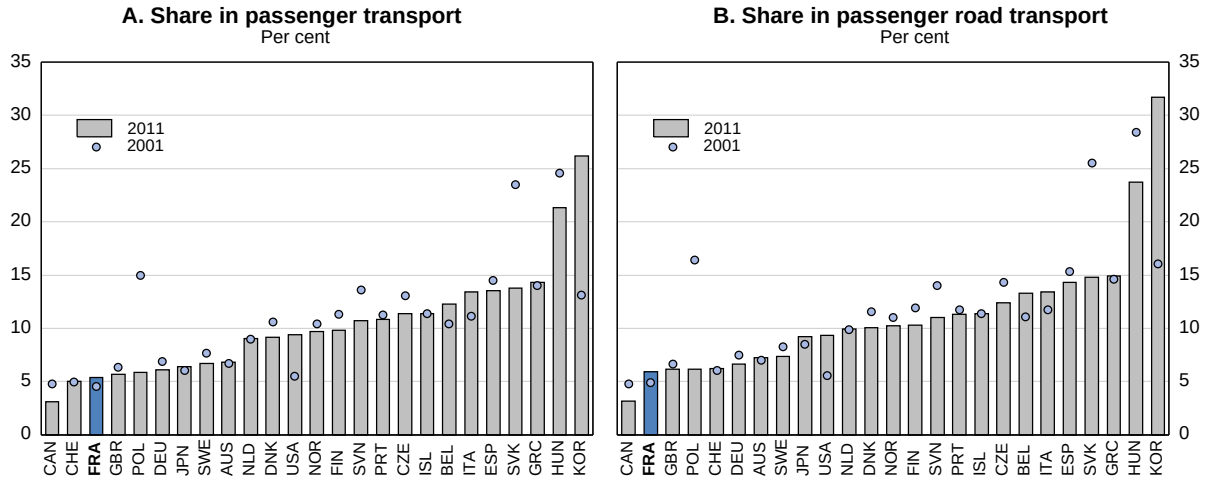
There are several barriers hampering long-term development of competition for freight and passenger transport. First, technical barriers constrain the interoperability of national networks. Second, infrastructure charges remain opaque, and giving them a higher profile, by setting a clear schedule of their medium-term changes, and improving the quality of access to infrastructure, by updating the software tools to allocate services, would encourage the entry of new operators and increase the intermodal share of rail in freight

(ARAF, 2014). Third, the status of rail sector workers could slow liberalisation of potentially rival segments in the sector, as noted in the Grignon Report (2011). For example, the Court of Auditors recommended reviewing and streamlining the travel facilities for members of rail workers' families at least by bringing them within the scope of taxation like any other benefit in kind, with a view to fully opening rail transport to competition (Cour des comptes, 2014a). The German example has shown that, although delicate politically, rail worker status must be abandoned for the incumbent operator's new recruits if there is to be a level playing field. Fourth, the SNCF still enjoys privileges. For example, access to its ticket booking system is complex and costly for independent travel agencies (Autorité de la Concurrence, 2014c). Finally, merging the RFF with the SNCF into one group at the beginning of 2015 could slow the development of competition, even though the way in which they were separated in 1997 did not significantly increase it. Separating the accounts must ensure the absence of conflicts of interest between the activities of rail operator and infrastructure manager, but it must also separate the activities of network manager with a legal monopoly, such as network operation and maintenance, from the activities that are open to competition, such as network renewal and development (Autorité de la Concurrence, 2014d).

A liberalisation of the underdeveloped coach transport network is underway

Competition in the transport sector is also intermodal, and the coach network is underdeveloped (Figure 17, Panel A), even though it could represent a competitively priced separate option for some consumers. Fast train tickets are, on average, twice as expensive as coach tickets for the ten routes used most by coach passengers (Autorité de la Concurrence, 2014e). Although some negative external factors, particularly concerning the environment, are more typical of InterCity transport by coach than by train, the constraints that hamper development of the coach network may also disadvantage it for shorter journeys, especially compared to private vehicles. When compared at international level, the market share of rail transport is a very small part of the reason for the low market share of coach journeys (Panel B).

Figure 17. **The share of coaches in passenger transport is low, 2001 and 2011**[1]



1. Share of the distance travelled by passengers on domestic services, 2011 or most recent year. Modes of transport included are coaches, trains and private cars.

Source: OECD, *Trends in the Transport Sector 2012.*

Scheduled inter-regional coach transport faces hefty regulatory barriers partly as a result of the historic preference for rail and the SNCF (OECD, 2005). The national transport market for coach passengers can take shape either within the framework of agreements between transport authorities (*départements*, regions and the State) and carriers, or by way of cabotage. Since 2011, the right of cabotage

has allowed international carriers to supply services within France on a cross-border route under certain conditions. The service may not be between two stations in the same administrative region, it is subject to prior governmental authorisation, and, once authorised, it must not account for more than half the passengers nor for more than half the turnover on a given international route. The authorisation system is lengthy and opaque. The Ministry of Transport refuses around 40% of applications to open coach routes because one of the main preconditions is that it will not prejudice the financial outcomes of a pre-existing agreed line, including a rail line. Analysis of these outcomes is a complex matter, the methods for performing it are ill-defined or undefined, and the data required are sometimes lacking (Autorité de la Concurrence, 2014e).

The "growth, activity and equal economic opportunity" law, passed in August 2015, offers several significant steps. It establishes a new intermodal regulator that covers both the rail sector and road passenger transport – the Regulatory Authority for Rail and Road Activities. It also fully liberalises the opening of bus lines whose stops are more than 100 kilometres apart, while shorter lines would remain subject to prior authorisation by the local governments in charge of public transport which will be able to refuse their authorisation after a review of the sector regulator if the new bus lines are estimated to disrupt the financial balance of existing public transport services. These measures would provide a significant boost for the sector and inter-modal competition, as shown by the experience of Germany, the United Kingdom and Sweden (Augustin et al., 2014; Commission d'étude des effets de la loi pour la croissance et l'activité, 2015c).

However, the development of coach services is also hampered by the low number of coach stations and difficulties in accessing them. Only 50% of French prefectures have a coach station (FNTV, 2012), and they are sometimes ill-equipped for long-distance transport, which needs specific facilities and services. The managers can be public or private and are subject to historic regulations (1945), which do not impose a requirement of equal access for the various coach operators. Moreover, partnering coach stations with SNCF stations raises questions about provision of access to potential competitors, namely coach services. It has proved difficult to separate the SNCF from its subsidiary with responsibility for stations: approval for the separation of accounts was given by the ARAF only in 2012, and the separate accounts for both entities are still not public (ARAF, 2013). SNCF executives with responsibility for station management must be given the most extensive accountancy, decision-making and financial autonomy possible to ensure a level playing field for rival operators (Autorité de la Concurrence, 2014e).

Air transport regulation could be improved

The index of service restrictions is relatively high for air transport, although France is below the OECD average (OECD, 2014a; De la Medina Soto and Ghossein, 2013). Like in other EU countries, the cap on non-Community investment for airlines is a formidable barrier to entry. However, other obstacles to competition are specifically French.

The regulator's independence has increased. Commercial air transport is subject to authorisation by the Directorate General for Civil Aviation (DGAC) under the control of the Ministry of Ecology, Sustainable Development and Energy. However, possible conflicts of interest between the Directorate's regulatory duties and the government's shareholdings in the dominant incumbent operator, Air France-KLM, and in various airports, have diminished. On the one hand, the central government reduced its stake in Air France-KLM from 44.1% in 2004 to 15.9% in 2013 (APE, 2014). On the other hand, ownership and management of the 150 state airports was transferred to regional governments, with the exceptions of the Paris airports, in which the central government retains a 50.6% shareholding, and the 10 major regional airports (managed by the Chambers of Commerce and Industry), in which the central government retains 60%. Additionally, the central government sold its shares in Toulouse-Blagnac airport in 2014 and intends to pursue further privatisations. This should eventually bolster the regulatory role of

the DGAC, which is all the more important, given that some of the administrative decisions taken in the course of public service missions in the sector fall outside the purview of Competition Authority (OECD, 2005).

There is room for improvement in the framework for allocating service slots and regional airport management. First, slot allocation to air carriers is regulated in a manner that is not conducive to opening up the market (OECD, 2014a). Slot times must be obtained in advance from an independent association in order to land or take off from the larger airports. For other airports, slots are allocated by the operating companies. They set and collect fees for all airports. The fees are notified to the DGCCRF for an opinion and to the Air Transport Directorate of the DGAC for approval. Air France-KLM still benefits from low charges for airport access (Autorité de la Concurrence, 2013), and its market share of passengers departing from French airports, at 38% in 2014, is still significant. Second, local governments provide some regional airports with very high operating subsidies per passenger, and their compatibility with European state-aid law is somewhat dubious, whilst the accounting process for setting fees is sometimes inadequate, and small local airports are regularly in deficit (Cour des comptes, 2008). For example, in July 2014, the European Commission ordered two low-cost airlines to repay amounts equivalent to the benefits under service contracts concluded between the airlines and regional airports that would have unjustifiably distorted competition.

Motorway network management is set to improve in the long term

France has a well-developed, good-quality motorway network, but it would appear to be too expensive (Autorité de la Concurrence, 2014f). There are 11 882 km of motorway, of which more than three-quarters are operated under concession schemes, and seven large businesses account for over 90% of turnover in the sector. The concessionaires have developed as monopolies in certain geographical areas, and most of them were privatised in 2006. Since then, changes in concessionaires' turnover have become divorced from their costs, owing in particular to the sustained increase in traffic and toll rates, calling into question regulation in the sector (Autorité de la Concurrence, 2014f). Moreover, some concessionaires are also large public works businesses, which is not conducive to ensuring fair competition in public works tenders and investment. Like the Court of Auditors (Cour des comptes, 2013a), the Competition Authority (Autorité de la Concurrence, 2014f) has therefore recommended a review of regulation in the sector, in particular the manner in which tariffs are set, and for that task, currently provided by the State, to become the role of an independent authority, with responsibility for the various modes of land transport. The "growth, activity and equal economic opportunity" law fortunately gives such responsibilities to the new road and rail regulator. Yet significant improvements are likely to occur only in the long term when current concession contracts will be renewed.

Intermodal competition for access to maritime ports is poor

Over the past 10 years, French ports have lost substantial market share in freight, and haulage to ports is dominated by road transport, while passenger transport is sometimes dominated by local monopolies. Between 2003 and 2012, French maritime freight tonnage fell by 8.2%, whereas it rose by 6.7% in the Europe of 15 (Eurostat, 2014b). All port facilities are owned and operated by French publicly owned companies. The 2008 port reform allowed modernisation of port governance and, in principle, permitted privatisation and opening of merchandise handling to competition, but it has failed to stem the downward trend in activity. Disputatious labour relations undermine the reliability of ports and act as a brake on the entry of new maintenance businesses (Cour des comptes, 2011b; Revet, 2011). Poor interconnections between ports and rail and inland waterway networks also constrain ports' catchment areas and profitability. In 2012, road haulage accounted for over 75% of transport to and from the major maritime ports, and rail and river freight for around 12% each. The 2009 Grenelle Environment Forum planned a doubling of the share of non-road freight in that market between 2009 and 2015. Achieving that target will

require significant infrastructure investment, including in river ports (Blum, 2010), but multimodal competition is also hampered by the current tax system, which does not internalise the full external costs of road haulage. Where maritime transport of passengers is concerned, poor industrial relations and the importance of former local monopolies, sometimes in receipt of state aid, are not conducive to the development of competition (Autorité de la Concurrence, 2013; European Commission, 2013c), resulting in continued inefficiency in the organisation of some services.

Reforms in the energy sector

Regulated electricity and gas tariffs are being progressively phased out

Competitive markets are also essential in the energy sector to stimulate cost control and entrepreneurial dynamism, even if marginal cost pricing in markets for non-storable goods such as electricity creates an issue for the long-term financing of fixed costs. In addition, the authorities have reason to intervene in order to protect the most vulnerable users and to ensure that market prices reflect generally recognised and measurable environmental costs such as carbon emissions. While competition can reduce costs in certain sectors of the market, such as daily dispatch, it is impracticable in others, such as the operation of high-voltage lines or distribution systems, which are natural monopolies. Nevertheless, even in these sectors, competitive tendering for multi-year concessions for infrastructure management could be considered. Additionally, competition in sales to final consumers provides retailers with incentives to purchase energy on the wholesale market at the lowest price, which increase pressure on producers while ensuring low-cost supply for the final users.

Competition has increased since the liberalisation of the energy market and the introduction of an independent regulator. Between 2000 and 2004, businesses gradually acquired the freedom to choose their energy suppliers, and since July 2007 all households have been free to choose their natural gas and electricity suppliers. Separation in accountancy and legal terms of distribution networks became a reality at the beginning of 2008 when the incumbent operators, EDF and GDF, established energy distribution subsidiaries. However, the market shares of alternative suppliers have developed differently for electricity and gas. At the end of the first quarter of 2014, penetration of alternative electricity suppliers was only 8% of sites and 15% of the retail consumption in the market for businesses and households, whereas it stood at 15% of sites and 40% of consumption for gas (CRE, 2014a). The preponderance of regulated tariffs, especially for households and the current low price of electricity sold at existing plants' historic costs rather than at replacement plants' full costs go some way to explaining the situation in terms of both the generation and the supply of electricity to households and businesses.

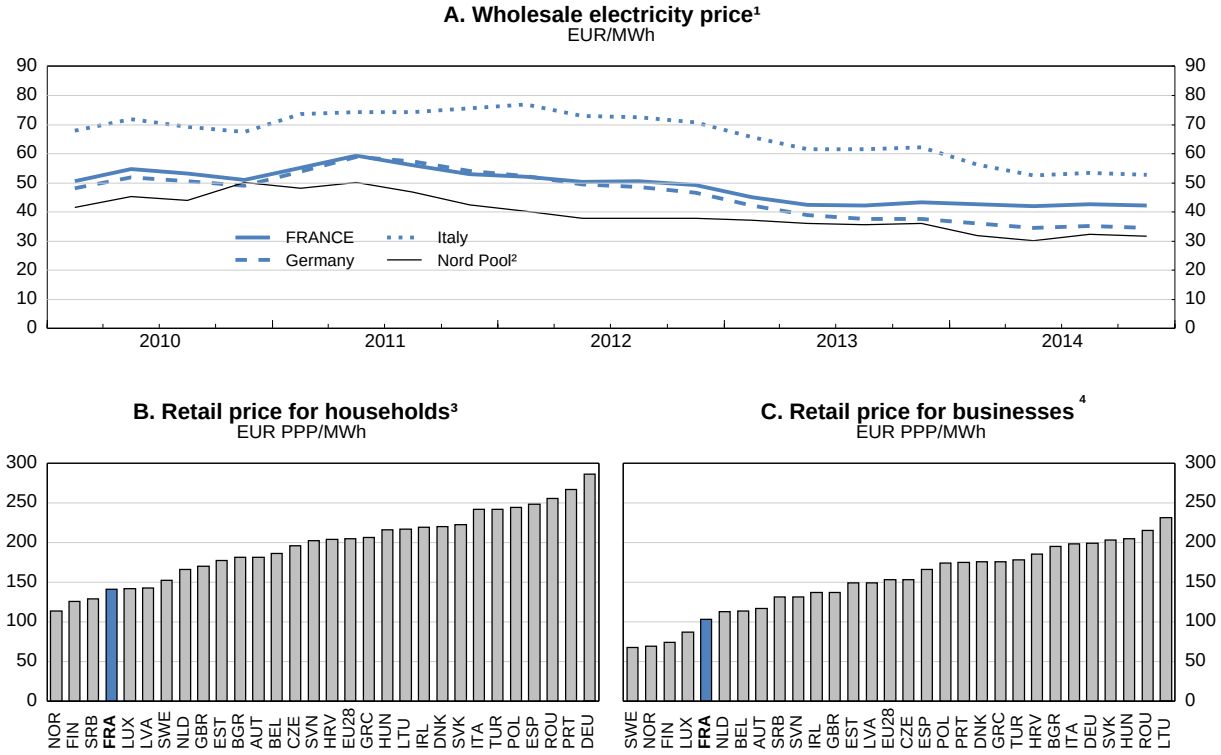
In order for competition to develop among generators, potential entrants must be able to produce electricity at competitive costs. However, at the current level of overcapacity and the resulting low wholesale electricity prices, no new investment is forthcoming. Indeed, France is benefiting today from the nuclear investments it made in the 1970s, which has put it in a relatively advantageous situation as far as electricity generation costs are concerned. Moreover, stable or falling demand and the availability of significant amounts of subsidised electricity from renewable sources, stemming both from domestic production and imports, explain why in France, as elsewhere in Europe, wholesale electricity prices are declining (Figure 18, Panel A). The current wholesale prices do not cover the generating costs of new facilities that range from 40 to more than 200 EUR/MWh depending on technology and assumptions (OECD/NEA, 2010). The energy component of the regulated tariffs on offer in the retail market to small businesses and households from the incumbent supplier is only somewhat higher than wholesale prices but does not cover the costs of electricity generation from a future power plant, whether powered by nuclear or fossil fuels. Current regulated tariffs are close to the sum of historic investment costs in nuclear and current variable costs, including costs of waste treatment and decommissioning (Cour des comptes, 2014b),

although some of those costs are not fully known. Retail electricity prices are relatively low compared to other EU countries (Panels B and C).

Unless wholesale and retail prices cover a higher share of the full costs of future production, the only option that will maintain current generation levels will be to extend the life of existing nuclear power stations. This is not compatible with the 2014 draft energy bill, which foresees reducing nuclear energy's share in electricity generation to 50% in 2025, compared to 75% today. The construction of new renewables capacity (excluding possible subsidies) and new fossil fuel or nuclear plants would require significant revision of the current level of regulated tariffs. The 2010 Law on the New Organisation of the Electricity Market (NOME) will create a market for all peak-load capacity. Certification of facilities will begin in 2015, allowing trades between providers and demanders of certified capacities for the winter 2016-17. Each supplier will have to prove it has reliable sources of capacity during peak hours. The expected additional payment for such capacity could improve the returns from new power stations and encourage investment in both peak-load generation and demand management, including load shedding during critical hours. This is particularly important in France where the widespread use of electrical heating can lead to substantially increased capacity needs during cold snaps. However, risks for wholesale market fragmentation should be closely monitored, as such national schemes may limit import competition.

France has taken other significant steps towards retail competition with the 2010 NOME Law, but the partial persistence of regulated sales tariffs (TRVs) remains an obstacle to introducing genuine retail competition. From July 2011, alternative suppliers have had "regulated access to existing nuclear power" (ARENH) by purchasing up to 100 TWh of power from EDF, roughly 25% of France's nuclear production, at a regulated price until 2025. In line with OECD recommendations (2009a), the mechanism whereby non-residential customers who had previously opted for market prices could revert to administered rates, known as "transitional regulated market adjustment tariffs" (TaRTAM), ended with the introduction of ARENH. In principle, this partly neutralises EdF's historic advantage in the production of low-cost base-load electricity, while allowing competition in the other areas of power supply to the end consumer, namely peak power and retail services. In 2014, the sectoral regulator, the Energy Regulation Commission (CRE) came to the view that regulated tariffs allow alternative suppliers to challenge those price packages (CRE, 2014b), though this was not the case in 2013 (CRE, 2013a). The power sector is therefore still dominated by the incumbent supplier: at the end of the third quarter of 2014, 71% of all power consumption and 93% of household consumption was supplied at regulated tariffs.

Figure 18. **Electricity prices by international comparison**



1. Futures price at one-year horizon.
2. Nord Pool is a voluntary Scandinavian market.
3. Price in the first semester of 2014 for annual use of 2 500 - 5 000 kWh.
4. Price in the first semester of 2014 for annual use of 500 - 2 000 MWh.

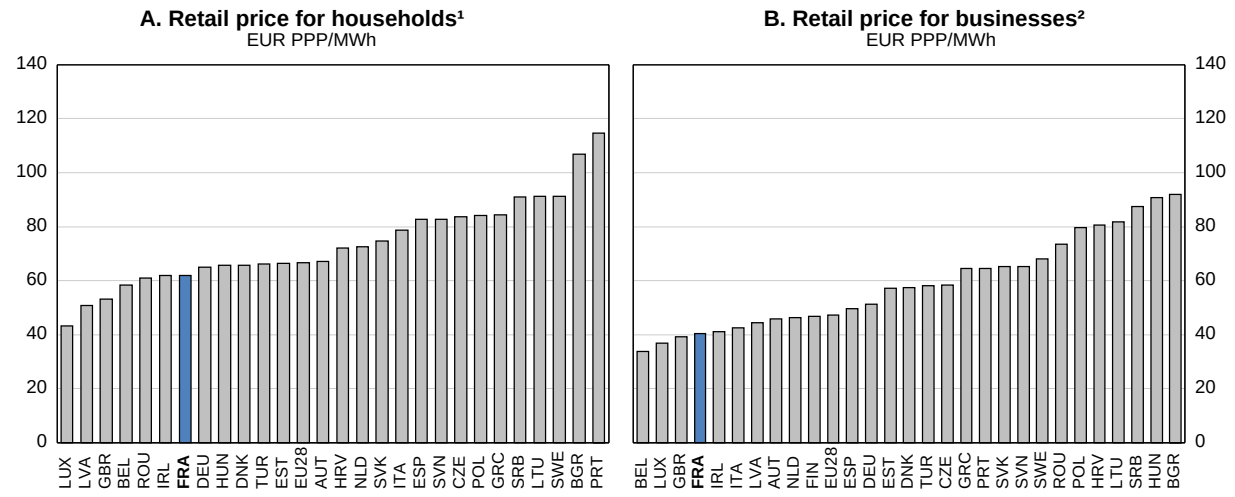
Source: CRE (2014), *Wholesale Markets*, Observatory for the Electricity, Gas and CO_2 Markets, fourth quarter 2014 (Panel A). Eurostat (2014), *Energy Price Statistics* (Panels B and C).

Several other welcome measures have been taken to phase out and limit the effect of TRVs. Under the NOME Law, TRVs will disappear for businesses with connections above 36 kV and local authorities by end-2015. Additionally, the remaining regulated tariff will be fixed by stacking costs, including ARENH, to enable structuring of competitive market price packages. The CRE will also become responsible for setting regulated tariffs, whereas hitherto tariffs have been set by government acting after consulting the CRE. The government, however, will always have to approve the regulated tariffs, a factor that could lead to implementation difficulties, as illustrated by the June 2014 electricity price dispute (Feitz, 2014). All regulated tariffs should gradually be withdrawn, as should the existing targeted transfers towards poor households, which could be replaced by greater redistribution through the tax/transfer system and competitive tendering for production capacity. This would help foster competition among producers and innovation, which would support the competitiveness of French businesses in the long term.

Competition is slightly more developed in the gas sector. Problems are similar to those in the electricity sector but lesser in degree. French retail prices are relatively low both for households and businesses (Figure 19). Regulated tariffs play a minor role for businesses (0.4% of consumption), although they still accounted for over 70% of household consumption in September 2014. Gas release programmes have boosted competition in some regions. In the event that gas sales conditions by private contract did not make it possible to develop competition, the programmes required certain suppliers in a dominant position to release a share of their gas resources to alternative suppliers by auction for a given period (CRE, 2007). However, lack of access to customer consumption histories has partially obstructed the development of

alternative suppliers; the distribution of such data to all operators became compulsory only in September 2014. The incumbent operator is therefore still in a dominant position.

Figure 19. **International comparison of gas prices**



1. Price in the first half of 2014, for annual use of 5 600 - 56 000 kWh.
2. Price in the first half of 2014, for annual use of 2 778 - 27 778 MWh.

Source: Eurostat (2014), Energy Price Statistics.

Barriers to competition persist in production and distribution

Other barriers to the development of competition persist in both the commercialisation and generation of electricity. First, on the retail market only 53% of consumers are aware that they can change suppliers (CRE, 2013b). Confusion between distribution system operators and suppliers explains part of the poor uptake of alternative suppliers. This may well be reinforced by the fact that the meters are in the incumbent operator's name, as well as the difficulty that alternative suppliers face in providing services that they can differentiate from those of the incumbent. For example, where load-management services enabling consumers to reduce their costs are concerned, the old historic monopoly has advantages such as customer data that can help to identify the potential for savings, although the recently improved access to consumer data is a move in the right direction (Autorité de la Concurrence, 2014a; CRE, 2014c).

Second, where generation is concerned, the hydroelectric concessions renewal programme (hydropower generation represents 13% of France's electricity production), which the government has agreed should be subject to the principle of open competition, has barely got off the ground: existing concessions were extended in May 2014, although this may provide the incumbent with substantial advantages over alternative producers and prejudice state revenue (Cour des comptes, 2013b; Le Billon, 2014). Finally, staff in the electricity and gas industries enjoy a special pension scheme that, by imposing higher labour costs, may hinder the development of low-cost customer packages.

Wholesale market integration in European markets has made great progress in the past three years due to the price-coupling of regions driven, in particular, by the European market maker EPEX Spot, allowing integration of day-ahead markets from Norway to Portugal, including France and Germany. Nevertheless, better interconnection and the completion of the project of the European Commission to integrate the European internal electricity market by the end of 2014 would offer even more liquid and efficient wholesale markets to develop for electricity and gas, as well as allowing renewable energies to develop. For the latter, unification of implicit and explicit carbon prices would also help to increase competition and

achieve emissions targets more efficiently. Moreover, until mid-2014, the purchase price of solar power depended on whether the solar panels were produced in the European Economic Area, which put off certain foreign manufacturers and fitters, while they still depend on the type of installation (inserted into the roof or superimposed upon it), a factor that may increase installation costs. More generally, for mature technologies, using tendering procedures suited to the local context rather than buyback tariffs that have little to do with the investment cost could help producers to compete more effectively (CRE, 2014d).

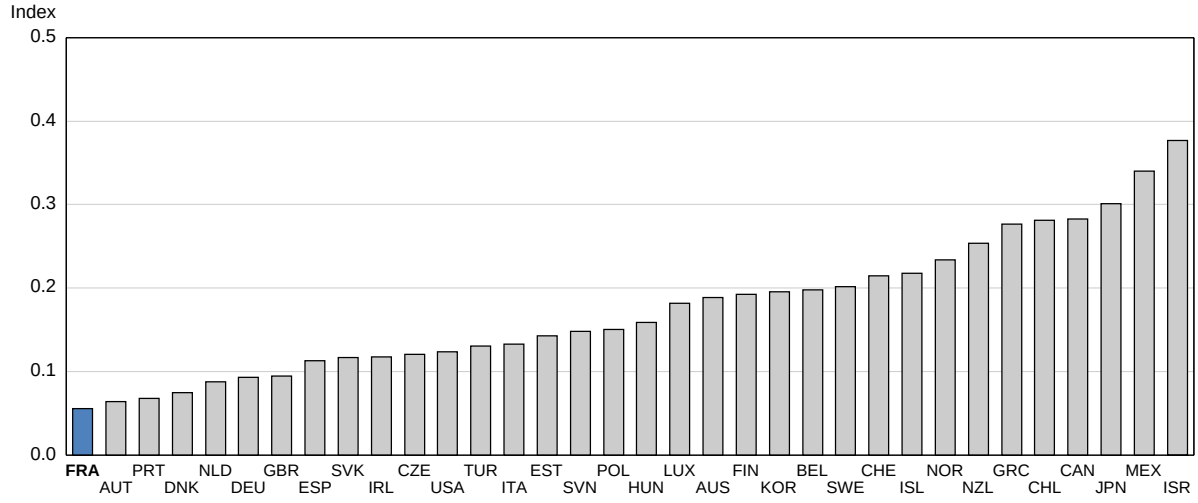
Competition in telecommunications has grown

Clear progress has been made in the telecommunications sector. There are no barriers to investment, and regulations efficiently organise competition among operators, as evidenced by the services trade restrictiveness index, which is the lowest in the OECD (Figure 20). All European directives have been transposed since 2004, and the level of competition is now high, while the prices of fixed and mobile telephony services and Internet services are low when compared internationally.

Consumer prices for mobile telephony have fallen sharply since operators were penalised by the Competition Authority in 2005 for operating an illegal cartel. The introduction of a fourth mobile operator, Free Mobile (an existing broadband provider), in 2012 resulted in significant benefits to consumers. This operator introduced commitment-free packages, including unlimited national and international calls and SMS, without bundling of mobile phones. France is also one of the few countries where international mobile roaming services in selected countries have been included in domestic plans (OECD, 2014h). As a result, other operators introduced similar offers, and the use of commitment-free packages is now over 45%. Operators' revenues fell sharply from 2011, and activity grew significantly (Figure 21, Panel A), but service quality is now very heterogeneous (ARCEP, 2014a). Additionally, in the medium term at the aggregated level of telecommunication services, growth in competition among operators has had no apparent negative effect on employment. Indeed, employment has stabilised at a time when it has been falling in neighbouring countries, resulting in substantial sectoral productivity gains (Panel B; OECD, 2013e). Apart from the effect on sectoral employment and rising consumer purchasing power, competition among telecommunications technologies has benefited all the other sectors that make use of such technologies in their production processes.

Figure 20. **Regulation of the telecommunications sector**

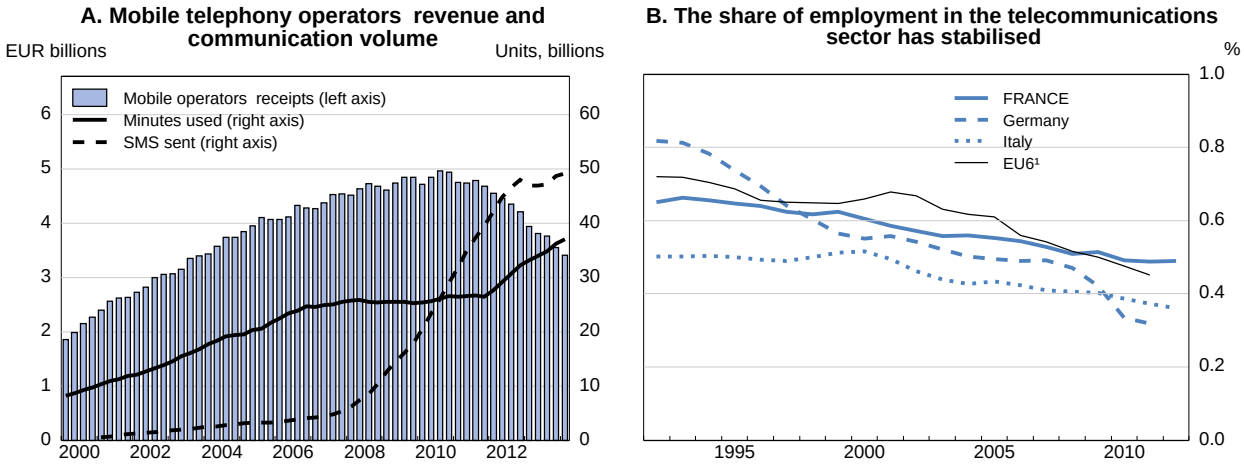
Index scale from 0 to 1, from least to more restrictive[1]



1. Average of the market structure indicator as measured in three sectors in 2013: fixed line, mobile and fixed network services.

Source: OECD (2014), Services Trade Restrictiveness Index (STRI).

Figure 21. **Activity has grown with competition in mobile telephony**



1. EU6 shows the unweighted average for Germany, Austria, Denmark, Finland, Italy and Norway.

Source: ARCEP (2014), Observatoire des marchés des communications électroniques en France, second quarter 2014 (Panel A); Eurostat (2014), National Accounts Database, classification into 64 sectors (Panel B).

Competition is also significant in fixed telephony and broadband Internet access, although delivery of superfast broadband packages poses several challenges (ARCEP, 2014b). The success of unbundling (allowing third parties access to the network) after 2000 and deployment of ADSL allowed the entry of several operators with innovative and competitive packages (OECD, 2009a). However, deployment of superfast fixed and mobile packages (fibre optics and 4G) requires substantial investment that is forcing the sector towards pooling and merging. So far the Competition Authority has taken a case-by-case approach, except for the mobile network. For example, it imposed a guarantee of non-discriminatory access to the cable network and several asset sales to authorise the ongoing merger between the second largest mobile operator (SFR) and a cable operator (Altice-Numericable) in October 2014. The main challenge for the authorities is thus to establish a regulatory approach that can reproduce ADSL's success, namely avoiding the establishment of local monopolies while retaining investment incentives and minimising the cost to the public purse, including local governments. The sectoral regulator (ARCEP) has implemented a framework to connect the optical fibre network to individual customers. It distinguishes several areas: high-density areas where infrastructure competition is the preferred solution (except for connections within high-rise buildings); areas where private companies may register their interest for investment and where joint-investment between private companies is the preferred solution; and areas where public investment would be needed. At the same time, pooling fixed and mobile packages and the development of multi-product packages tends to increase the switching costs incurred by users if they change supplier. Indeed, France is one of the only OECD countries where fixed-mobile offers play an important role: all major broadband operators include mobile services in quadruple-play bundles.

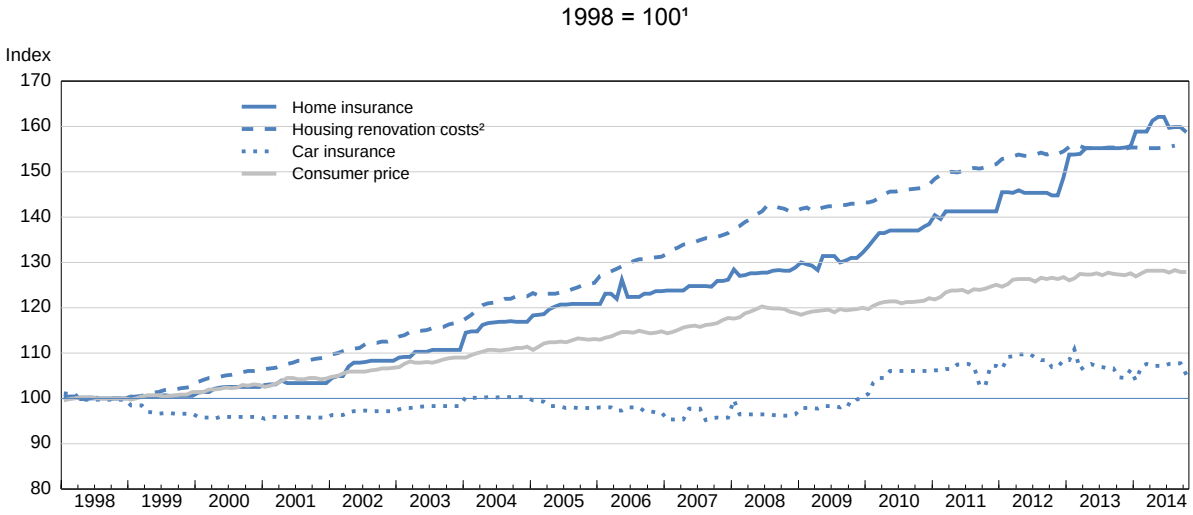
Looking to the future, further telecommunication liberalisation to enable private and public organisations to issue SIM cards would support the development of the "Internet of Things", that is the connection of devices, sensors and systems to the Internet, providing large potential efficiency gains to sectors, such as transport, health and energy. At present, only telecoms service providers are allowed to issue SIM cards, providing an element of "lock-in" for large-scale users. For example, a French road toll company has cited the 15-20 year lock-in with a single mobile operator as one of the significant challenges it has in introducing new services based on mobile networks. The Netherlands has already changed its regulation, and Germany started a consultation on possible regulatory changes in this area in 2014.

The financial system is generally competitive

The banking system is concentrated, and the five major French banking groups accounted for 46% of assets in the sector in 2013 (European Central Bank, 2014). However, any increase in competition here should also be assessed in the light of potential consequences for financial stability (OECD, 2011b). The powers of the supervision and resolution authority (the ACPR) were beefed up in 2013 (IMF, 2014). In the retail banking market interbank transactions were, as in the rest of Europe, dominated by MasterCard and Visa, and high fees were passed on to consumers (European Commission, 2013d). The strengthened regulation of commissions for debit and credit card transactions and their partial abolition go in the right direction (Autorité de la Concurrence, 2013). For example, fees for on-line money transfers were abolished in 2012, and merchant service charges paid to card providers were capped at 0.30% in 2013. However, it remained rare for customers to change banks, partly because they frequently turn down new customers (GfK, 2012), despite the 2014 Law on Consumer Affairs, which made mandatory services to ease customer mobility.

The Lagarde Law (2010), the Law on the Separation and Regulation of Banking Activities (2013) and the Law on Consumer Affairs (2014) have encouraged competition on insurance markets. There is either a legal obligation to take up, or in any case *de facto* widespread take-up, of home, car and borrower insurance, the latter in the case of a home loan. There is therefore a partly captive market. Home insurance prices have risen faster than overall inflation and, in particular, faster than car insurance prices (Figure 22), though this also reflects the evolution of construction, repair costs and disasters. Joint sale of property loans and insurance is significant but falling (Gissler et al., 2013). In a welcome move, commissioning fees that banks were able to invoice if a rival insurer was chosen have been prohibited, and, since July 2014, borrowers have been able to change their loan insurance, with the lender's agreement, within one year of taking out a home loan, provided the alternative insurance offers similar guarantees. Additionally, home and car insurance policies can now be terminated at any time after the end of the first year. The resulting increase in competition will probably improve the operation of the insurance system and result in more efficient allocation of resources within the rest of the economy (Bertrand et al., 2007), in an environment where insurance companies are being encouraged to diversify their portfolios (see above).

Figure 22. **Change in car and home insurance premiums**



1. For all households in France, products are classified according to the purpose of consumption (COICOP Nomenclature).
2. Index of production costs in the construction sector - renovation and servicing.

Source: Insee (2014), Indices des prix à la consommation et BT50 - Rénovation - Entretien tous corps d'état.

The system of supplementary health insurance does not encourage competition between care providers. Many reports acknowledge the good quality of French health care, but costs would appear to be disproportionate (OECD, 2010c). Social Security covers 78% of health spending. Additionally, employers have the option of providing additional insurance (*mutuelles*) to their employees, and this will become compulsory from 2016; workers can also take out such policies individually. Joint cover using Social Security and *mutuelles* is a source of inequalities. Moreover, it does not make for efficient management of the care network or therefore for competition among providers (Dormont et al., 2014). In particular, the quality of hospital and clinic management appears poor when compared internationally (Bloom et al., 2014). The initial requirements would be to close smaller hospitals and facilitate patient mobility and reduce information asymmetries between patients, care providers and funders, by setting up mobile personal medical records and organising broader dissemination of information on service quality. The 2015 draft law on Health plans some measures to address this issue. It would organise a new system of personal medical records' transfers between health practitioners and define the information included in personal records.

Recommendations to improve competition

Improve competitiveness and the environment for doing business

- Engage an independent institution to conduct a thorough review of all existing and proposed regulations affecting firms, applying the OECD Competition Assessment Toolkit's principles.
- Implement the measures advocated by the Streamlining Council concerning existing standards. Review the consequences of reforms to *auto-entrepreneurs*, and make plans to reduce administrative constraints on micro-enterprises.
- Continue to liberalise the regulated professions by: reducing entry requirements to those needed to protect the public; narrowing areas where professions have exclusive rights; eliminating regulated tariffs in potentially competitive activities; and gradually abandoning quotas.
- Facilitate access to external sources of capital by allowing third-party capital investment in certain professional practices (e.g. lawyers, veterinary surgeons).
- Reduce the number of taxation thresholds and permanently ease social thresholds. Expand and stabilise the business tax base by closing certain tax loopholes and reducing the nominal corporation tax rate. Rationalise public aids to business by streamlining the allocation process and beefing up assessment.

Reform the regulatory framework surrounding competition

- Evaluate the impact of the new class actions procedure. Consider providing SMEs and local authorities with the option to make use of them when they are the victims of anti-competitive activities and loosening the condition for class action standing.
- Improve public procurement purchasers' professional skills. Encourage joint procedures for small local authorities.

Specific recommendations for certain sectors

Retail trade and distribution

- Streamline burdensome permit procedures for large new stores.
- Eliminate the prohibition on loss-leader selling, and stop setting dates for discount sales.
- Liberalise Sunday opening hours together with negotiated offsetting time-off and salary compensation.
- Ease the mobility of individual shops contracting with superstore chains.

Network industries

- Ensure free competition between the regional coach and rail services, while internalising potential externalities, especially those related to the environment.
- Ensure non-discriminatory access to the rail network. In particular, modernise the process of allocating service slots for rail freight and separate the rail infrastructure manager from the station manager.
- Eliminate, as planned, regulated tariffs on the electricity and gas retail markets for non-residential customers as of 2015, and reconsider these tariffs for residential customers. Ensure that the financing of new generating capacity preserves competition among power producers and suppliers alike.

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