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**ERA Position on the European Commission consultation on new draft
“EU state aid rules on the public financing of airports and start-up aid to airlines”**

Introduction

This paper summarises the views of the European Regions Airline Association (ERA) on the European Commission’s consultation on the EU Guidelines on state aid to airports and airlines.

About ERA

Founded in 1980, the European Regions Airline Association is a non-profit trade association representing some 51 intra-European airlines which annually carry 70.6m passengers on 1.6m flights to 426 destinations in 61 European countries. ERA also represents and supports more than 120 Associate and Affiliate members including airframe and engine manufacturers, airports, suppliers and service providers from all over Europe.

Background

In 2005, the European Commission (EC) issued the draft “*Community guidelines on the financing of airports and start-up aid to airlines departing from regional airports*”. This non-binding document lays down detailed provisions and conditions on the granting of public funds to regional operators and airports in order to ensure compliance with general EU state aid rules.

The European Commission launched a consultation process in 2011 to revise the 2005 Guidelines. ERA participated in this consultation and highlighted the importance of ensuring that regional operators’ interests and regions’ growth are safeguarded as well as the need to improve transparency and to prevent distortions of competition.

The final EC revised draft guidelines were issued on 3rd July 2013 and opened for consultation.

ERA’s general position on the subject of state aid

ERA’s general position on the subject of State Aid is for a clear EU strategy and framework that focuses on EU regions and their socio-economic development. To achieve this, future plans, including all aspects related to State aid, should give careful consideration to regional economic needs and development.

Any development and modernisation of state aid regulations should reflect regional needs and ensure regional operators are fairly treated; failure to do so may result in potentially denying adequate access to the regions through unfair policy and regulation, with harmful unintended consequences including potential distortions of competition and loss of jobs in the regions.



State aid is an important, and in some geographic locations, critical aspect of the EU transports strategy, without which the very survival of some regional areas would be jeopardised. It is however imperative that any State aid must always be granted in such a way that distortions of competition are avoided.

ERA believes that the current State aid guidelines strike the right balance between meeting socioeconomic needs and providing State aid to support infrastructure growth in cases when private funding might not be available in the free-market economy.

However, in some cases, compliance with the rules is not being enforced and ERA therefore believes that oversight of implementation and fair enforcement of the rules should be a priority. To support this, a simple, effective and expeditious complaints procedure should be developed in order to investigate and handle complaints more effectively, transparently and efficiently.

From a regional perspective, where the vast majority of airlines operate to airports that have a volume below 5 million passengers a year, ensuring that state aid guidelines are complied with requires transparency in the costs and charges applicable at EU Airports. Currently this only applies to major airports¹, thereby undermining smaller aircraft operators by removing their ability to compete fairly and equally with other operators who may be receiving special treatment in the form of lower charges at those same regional airports.

In summary, ERA is seeking a revision of the rules where it can provide the following:

- Simplification and increased transparency (at all EU airports, irrespective of size/volume of passengers) on costs and charges
- More just and consistent enforcement of the existing State aid rules to airports and airlines
- Consideration for regional, remote and/or smaller airports to ensure that regional development and accessibility is guaranteed. It is critical to ensure support for regional local economies, jobs and quality of life through the provision of access to hub economies and air travel that connects European regions to each other and to the world.
- A simple, effective and expeditious complaint handling process that allows operators or airports to challenge possible breaches of the guideline. In order to allow operators to assess whether breaches are taking place it is essential that they have access to data on costs and charges being levied at airports.

Finally, ERA is concerned that aviation infrastructure has been, to a large extent, excluded from EU public funding. Any guidelines or future initiatives should seek to ensure the inclusion of aviation infrastructure in all opportunities for public funding, fairly and equally, as with other modes of transport

Considerations on the new draft Guidelines:

ERA considers the Commission's new draft guidelines a "missed opportunity", as they do not establish an efficient complaint-handling procedure that would allow operators or airports to challenge guideline breaches.

The newly proposed guidelines have dismissed the fundamental request for more transparency at all EU airports and they haven't improved the sensitive issue of inconsistent enforcement of State Aid rules across Europe.

ERA considers some of the recurring statements in the new draft text rather discriminatory, with potential distortions of competition. This is particularly true for the "special treatment" granted to the high-speed rail (HSR) connections, whereas the guidelines confirm that no start-up aid to airlines is

¹ In accordance with EU Directive 2009/12 on Airport Charges



allowed on routes already covered by HSR routes without mentioning the heavy subsidies HSR operators receive. As far as ERA is aware, a similar restriction is not applicable to the construction of a rail line where commercially profitable air links already operate in the same catchment area **(paragraphs 65, 82, 113a of the new Guidelines)**.

The more restrictive regime applicable to operating aid granted to regional airports, notably the 10-year transitional period after which no aid will be allowed, does not seem to be consistent with the reality of consumers' need whereby 90% of EU citizens live in the regions **(paragraphs 15, 107 and 109)**.

Curbing regional mobility by restricting access to public aid to smaller airports is not justified on passengers' demand reasons: in fact, in the decade 2001-2010, airports with less than 1 million annual passengers have registered the highest traffic growth (+81%), followed by airports with less than 5 million annual passengers (+32%). Demand for regional connections should be accommodated rather than reduced.

The draft Guidelines suggest smaller airports to become commercially viable by increasing the level of charges to airlines. This simplistic solution disregards the extremely tiny profit margins of the industry and, where adopted, would simply force airport users out of business and airports to cease operations **(paragraphs 14 and 15)**.

Small and Medium-sized airports play an invaluable role to regional cohesion, they boost local development, attract investment, provide employment, improve tourism and provide accessibility and mobility. Any reduction in public state aid to investment and operating costs at regional airports should be carefully assessed by a sound cost-benefit analysis, demonstrating the net economic and social benefits to all European citizens.

ERA welcomes the attempt by the new Guidelines to increase transparency **(paragraphs 75, 110, 111)**; however the obligation on public authorities to disclose information on aid schemes is required after aid has already been granted, whilst the key issue is to have a clearly advertised notice of aid available and accessible to all potentially interested recipients and containing transparent criteria of allocation before aid is granted **(paragraphs 119 and 120)**.

Any revision to State Aid rules should consider the importance of the existing legislation aimed at preventing undertakings that hold a dominant position in a market from abusing that position by applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage.

Some of the ERA members have been heavily affected by discriminatory treatments regarding airport charges at specific airports that have ultimately resulted in heavy restriction to competition, limited provision of air services and in a net negative outcome for consumers and airport revenues as well.

The new Guidelines are a missed opportunity insofar they do not specifically cover the Treaty's provisions regarding the abuse of dominant position (Article 102 of the Treaty on the Functioning of the European Union). More specifically, ERA believes that the application of the Market Economy Operator Principle must be accompanied by a parallel "test of non-abuse of dominant position", the failure of which means that the revenues acquired by the public authority granting the aid are a consequence of the unlawful abuse of dominant position. In this case, the legitimacy of the investment has to be contested under State Aid rules irrespective of the fact that the Market Economy Operator Principle has apparently been complied with.

Moreover, the new Guidelines are a missed opportunity as they do not impose any detailed and transparent breakdown of costs in order to justify the calculation of airport charges to airports below 5 million passengers per annum.



On a more positive note, regional development and accessibility are considered vital to Europe (**paragraph 65**) and full compliance with Regulation 1008/2008 on Public Service Obligations as well as with Directive 12/2009 on airport charges has been reaffirmed (**paragraph 19**).

Conclusion

ERA welcomes a meaningful review of the State Aid Guidelines to ensure any new Guidelines provide consistent implementation, guarantee reasonable accessibility to the regions and provide transparency for regional operators. Regulation 2009/12 on Airport Charges currently does not require all EU airports with commercial transport movements, including smaller regional airport operators to be transparent on costs and charges.

In essence, any State aid granted must benefit all users of the infrastructure equally without discrimination and must not provide a competitive edge to any one individual or specific sector /group of operators.

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