**30 May 2016**

# ACI EUROPE Input to European Commission Consultation on Draft Amendment to Regulation (EU) No 651/2014

ACI EUROPE welcomes the European Commission's (EC) initiative to incorporate Europe's airports into a General Block Exception Regulation (GBER), which declares certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty. ACI EUROPE also welcomes the opportunity to input into this initiative.

**Optimal Balance**

The wider positive economic externalities associated with air connectivity (greater trade, tourism & investment, as well as wider productivity gains) means that it is essential that the right balance is struck between preserving competition within the aviation sector, while also allowing those wider economic benefits of connectivity to be realised by regional communities to the maximum extent possible.

The EC's 2014 '*Guidelines on State aid to airports and airlines'* ('the Guidelines') go a long way in finding this balance – with ACI EUROPE in agreement with both the framework as well as many of the rules contained within the framework.

However as the EC has made clear, sufficient case experience is essential to ensure an informed policy on State aid, and so if additional expertise and insight has been amassed, then this should allow a finessing of the rules. This in turn should ensure that a more optimal balance is found between the need to protect competition and the need to support economic activity in regional areas.

It must also be remembered that the relevant risks are asymmetric. Very restrictive rules which 'overshoot' and impose overly tight obligations will result in lost potential economic activity which will be difficult if not impossible to identify (as this would require a comparison against a non-visible counterfactual). This means that it would be difficult to subsequently correct policy. In contrast, overly flexible rules will lead to distortions of competition which should be readily visible – therefore making possible further policy responses to address and correct any outstanding distortions. A cautious & incremental approach towards any restriction of public funding should therefore be adopted.

In addition, ACI EUROPE eagerly anticipates the EC's 2018 review of the current thresholds for operating aid. ACI EUROPE believes that the approach laid out in the Guidelines (all operating aid phased out over 10 years for airports with more than 200,000 passengers per annum) does not reflect the structural unprofitability of smaller airports. Refinements in 2018 are essential to avoid undue damage to regional communities and their economies.

**Optimal Enforcement**

This balance between the protection of competition and the support of regional economic activity will be best realised by combining the right rules with the optimal enforcement of these rules.

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Even if the rules do find the optimal balance, regional communities will be adversely impacted, if the time taken to make decisions on individual notifications creates unnecessary uncertainty and deters investment. Small airports often depend upon individual airlines to deliver significant proportions or indeed all of their traffic, and often these airlines are not prepared to wait long periods of time while regulatory uncertainty is being resolved. ACI EUROPE members have reported incidences where decisions are being awaited, almost a year after they have first been notified to the EC.

In addition, given the small size of both the airports in question and the investment sums involved, there is also the risk that 'red tape costs' could represent a significant proportion of the overall cost of individual projects

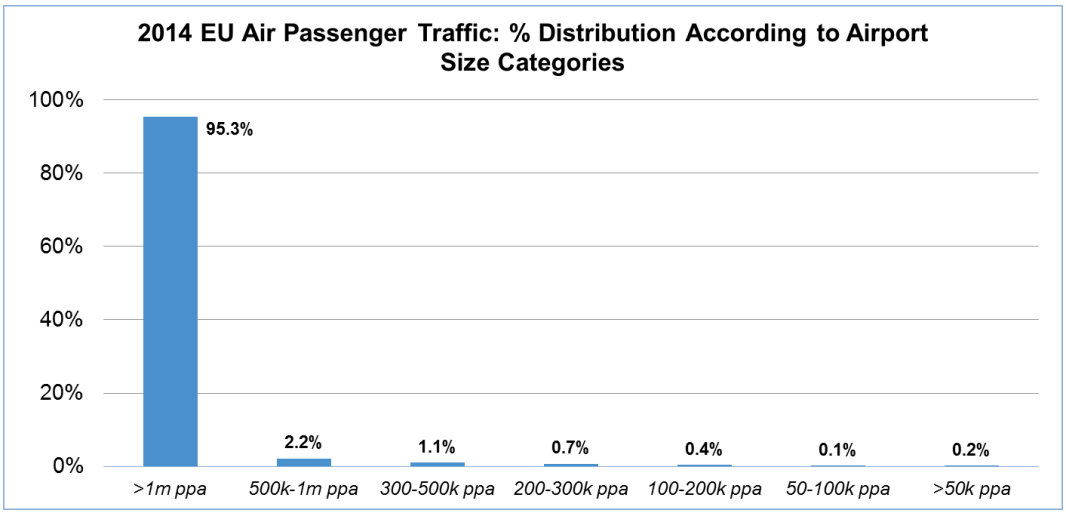
In the past 2 years there have been a limited number of formal notifications to the EC, under the new Guidelines. If significant delays are already being experienced, then the administrative burden and associated waiting times are only likely to worsen, as more and more individual notifications are made to the EC.

This challenge is compounded by the fact that, other than France and Ireland, Member States have not put forward national schemes. The EC encourages such an approach, as these frameworks '*reduce the administrative burden on smaller granting authorities and accelerate the implementation of individual aid measures'*.[1]

Many EU airports have limited volumes of annual passenger traffic, and therefore represent a very small fraction of the overall EU market for commercial passenger transport. Collectively:

- *those airports with less than **1,000,000** passengers per annum (ppa) account for less than **5%** of the market;*
- *those airports with less than **500,000** ppa account for **2.5%** of the market;*
- *those airports with less than **200,000** ppa account for **0.7%** of the market;*
- *those airports with less than **50,000** ppa account for **0.2%** of the market.*[2]

Yet under the current approach the EC is still required to treat many of these airports in the same manner as much larger airports – which have far more significant proportions of the market.




[1] Para. 92, 2014 State Aid Guidelines
[2] Based on 2014 passenger traffic from a sample of 513 EU airports

The tiny proportion of the overall market that smaller airports occupy, combined with the above challenges in terms of enforcement, mean that the EC should be empowered to concentrate upon those areas in the market where there are real threats of distortions '*in so far as it affects trade between Member States'* – as stated in Article 107 of the Treaty.

In practice at an EU level this primarily concerns the phenomenon whereby an airline – often a Low Cost Carrier - bases aircraft at an individual regional airport, and dramatically increases passenger traffic at that airport in a short period of time. This is a very difference phenomenon from an airport which serves a regional airline providing a single connection to a capital city airport, for example.

ACI EUROPE therefore considers that if the GBER can preclude tracts of aviation activity which fall below this general conceptual threshold, then it will strengthen the practical application of competition policy to the European aviation sector.

ACI EUROPE has proposed below a range of possible criteria for inclusion in the GBER based on this general approach.

In line with the need to focus not only on the right rules but also the right enforcement of those rules, ACI EUROPE has proposed criteria for the GBER which are also readily verifiable. The GBER still requires parties to communicate exempted measures to the EC. ACI EUROPE proposed criteria for exemptions can, in the main, be subsequently verified by consulting publically-available data such as airline schedule data, national statistical agencies, national Civil Aviation Authorities, etc.

Finally, ACI EUROPE considers that, in the event of a more limited GBER being adopted, the EC should strongly consider modifying its internal procedures to accelerate the consideration of cases. In particular, informal criteria could be used to categorise cases according to their significance, with the least serious cases being 'fast-tracked' by EC staff.

**ACI EUROPE Proposals for the EC's General Block Exemption Regulation**

1. **Airports with less than 500,000 ppa**

Analysis of passenger traffic data from 2014 shows that, while there are a significant number of airports with less than 500,000 ppa in the EU, these account for just 2.5% of the overall market for passenger traffic in the EU.

Exempting all airports with less than 500,000 ppa from the need to notify investment or operating aid would enable to the EC to better focus its enforcement efforts – while still allowing the vast majority of the EU market to remain firmly within the scope of its efforts.

Any such exclusion would be on the condition that any aid would not lead to these airports increasing their traffic beyond 500,000 ppa in the two financial years following the granting of the aid. So any investment aid would be necessary solely to ensure on-going day-to-day operations ( 'gross maintenance') and not to expand capacity.

Any such exclusion would also be on the condition that airports have business plans to reduce their operating aid to 80% of their initial operating funding gap over a period of 5 years – in line with Para. 130 of the Guidelines. A final and fully informed decision on the treatment of operating aid for these airports could then be made in 2018, as already envisaged by the EC for those airports with less than 700,000 ppa.

The exemption from notification should not however be applicable to those airports within 100km/1 hour's travel of another airport with scheduled air services – notification would be required (except in cases where the airport has less than 50,000 ppa – see next point).

Should this exemption be considered too wide by the EC, additional qualifying requirements for exemption could be added. For example, that operating aid should not exceed €1,000,000 per annum, or that investment aid should not exceed €10,000,000 in total.

**2. Operating aid for those airports with less than 50,000 passengers per annum located within 100km / 1 hour's travel time of another airport with scheduled air services**

The EC's proposed GBER amendment allows airports with less than 50,000 ppm to receive investment aid without the requirement to notify the EC – even if the airport is located within 100km or 60 minutes travel time from an existing airport with scheduled air services. The exemption is conditional upon the investment in question not increasing the airport's annual passenger throughput above 50,000.

ACI EUROPE believes that the same criteria could equally be applied to operating aid for these same airports.

Currently airports with less than 200,000 ppa are not required to notify the EC of operating aid, under Para. 75 (a) of the Guidelines – however Para. 135 (b) makes clear that this exemption is currently not applicable if the airport in question is located within 100 km or 60 minutes travel time of another airport.

Given the very small size of those airports with less than 50,000 ppa, and their limited possibility to distort competition at an EU level (collectively carrying just 0.2% of EU passenger traffic), ACI EUROPE considers that those airports which are within 100km/1 hour's travel of another airport should benefit from an exemption of notification of operating aid.

This is particularly the case as operating aid – unlike investment aid – is unlikely to directly lead to the airport breaking the threshold of 50,000 ppa.

**3. Airports with no Commercial Scheduled or Charter Traffic**

There are many small airports across Europe, which cater exclusively for activities which could not be considered as 'commercial' at an EU-level. Examples of these include:

- General aviation;
- Pilot schools;
- Organ transplants.

While these activities are 'commercial' in the strictest sense of the word, the businesses are small and local in nature, and often play wider social roles. These activities are not concerned with the mass transport of people and cargo across the EU and therefore do not represent a threat of distortions to this market.

To ensure that the EC is free to focus its attention upon those airports where there is a real threat of distortion to competition on an EU level, it may be helpful to place all airports with no scheduled commercial or charter traffic within the scope of the GBER. The exemption could be applicable for both investment and operating aid.

Again, such an exemption would be subject to the condition that no scheduled commercial or charter traffic be anticipated at the airport in the two financial years following the granting of aid. In practice this would mean that investment aid was for 'gross maintenance'.

**4. Airports which Exclusively Fulfil a Clear Regional Connectivity Role**

Airports which only cater for Public Service Obligation (PSO) routes[3] or for feeder flights to the capital city of a country/another single large hub airport may also benefit from exclusion under the GBER. The exemption could be applicable for both investment and operating aid.

As with the EC's proposals in draft text for the GBER amendment, exemptions from notification could only occur on the basis that no additional routes would be opened at the airport within two financial years following the granting of the aid (unless these were additional PSO routes or if a service to a single large hub airport was replaced with another equivalent service to another single large hub)

**5. Clarity on the definition of 'Peripheral Regions'**

The Guidelines provide additional flexibility for airports in 'peripheral regions' (investment aid may exceed 75% for airports with less than 1,000,000 ppa on a case by case basis – Para 103). However, unlike 'remote regions' or 'sparsely populated areas' there is no clear definition of 'peripheral regions' in the Guidelines. ACI EUROPE is not aware of any such definition in any other EC documentation.

This creates uncertainty. Combined with the long waiting times for approval of notifications, this uncertainty is likely to discourage the use of this element of the Guidelines – including national authorities which might otherwise incorporate into national schemes. Given the small size of both the airports in question and the investment sums involved, there is also the risk that 'red tape costs' could represent a significant proportion of the overall cost of individual projects.

ACI EUROPE therefore proposes that this existing flexibility in investment aid to airports in peripheral regions with less than 1,000,000 ppa be enshrined in the GBER. This exemption could be complimented with a definition of 'peripheral regions' which is both sufficiently clear, but also sufficiently restrictive – to ensure that the overall objectives of the EC are still protected.

A definition could refer to or a list of specific regions in Europe, or specific population densities of NUTS regions (similar to the definition of 'sparsely populated areas') or other specific regional characteristics.

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[3] As legislated for under Regulation (EC) No 1008/2008