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Case handler: Mihalis Kekelekis

EFTA SURVEILLANCE AUTHORITY

European Commission
Directorate – General Competition
State aid Registry
1049 Brussels

Dear Sir/Madam

Subject: Comments on the proposal from the Commission to amend the GBER

Recently the European Commission ("the Commission") launched a public consultation on the inclusion of exemption provisions for ports and airports in the General Block Exemption Regulation ("the GBER"), and invited stakeholders to submit comments.

The EFTA Surveillance Authority ("the Authority") welcomes the proposal and invites the Commission to consider the following comments.

Airports – Definitions

The proposed Regulation contains a number of terms and definitions which do not correspond to similar concepts used in other EU acts in the field of transport. To facilitate better understanding of the proposed regulation, it would be desirable, if the same definitions and or terms could be used (to the extent possible).

(145) 'airline' means any airline with a valid operating licence issued by a Member State or a Member of the Common European Aviation Area pursuant to Regulation (EC) No 1008/2008 of the European Parliament and of the Council;*

'Airline' is not a term widely used in EU legislation. The definition used in Regulation (EC) No 1008/2008 is: 'air carrier' which means an undertaking with a valid operating licence or equivalent.

Suggestion: 'air carrier' means an undertaking with a valid operating licence or equivalent issued by a Member State or a Member of the Common European Aviation Area pursuant to Regulation (EC) No 1008/2008 of the European Parliament and of the Council.

(146) 'airport' means an entity or group of entities performing the economic activity of providing airport services to airlines;

Suggestion: 'airport' means an entity or group of entities performing the economic activity of providing airport services to ~~airlines~~ air carriers and aircraft operators;

Note: The term 'aircraft operator'[1] here includes also those potential recipients of airport services that are not air carriers, i.e. do not provide their services for remuneration or hire. This would include general- and business aviation.

[Regulation (EU) No 139/2014 defines 'aerodromes' to mean a defined area (including any buildings, installations and equipment) on land or water or on a fixed, fixed offshore or floating structure intended to be used either wholly or in part for the arrival, departure and surface movement of aircraft.

Directive 96/67/EC refers to 'airports' to mean any area of land especially adapted for the landing, taking-off and maneuvers of aircraft, including the ancillary installations which these operations may involve for the requirements of aircraft traffic and services including the installations needed to assist commercial air services.[2]]

Note: In the definitions part there is no reference to the term 'regional airport'. This is defined in the RAG. It would be advisable to have this definition incorporated also in this text.

(147) 'airport services' means services provided to airlines by an airport or any of its subsidiaries, to ensure the handling of aircraft, from landing to take-off, and of passengers and freight, so as to enable airlines to provide air transport services, including the provision of ground handling services and the provision of centralised ground handling infrastructure.

Suggestion: 'airport services' means services provided to air carriers and aircraft operators by an airport or any of its subsidiaries, to ensure the handling of aircraft, from landing to take-off, and of passengers and freight, so as to enable air carriers and aircraft operators users to provide air transport services, including the provision of ground handling services and the provision of centralised ground handling infrastructure.

[The term 'airport user' is defined in Directive 96/67/EC as 'any natural or legal person responsible for the carriage of passengers, mail and/or freight by air from, or to the airport in question'.[3]]

(148) 'centralised ground handling infrastructure' means infrastructure which is normally operated by the airport manager and put at the disposal of the various providers of ground handling services active at the airport in exchange for remuneration, excluding equipment owned or operated by the providers of ground handling services;

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[1] See also definition of 'aircraft operator' as laid down in Regulation (EC) 785/2004 as amended, meaning: 'the person or entity, not being an air carrier, who has continual effective disposal of the use or operation of the aircraft; the natural or legal person in whose name the aircraft is registered shall be presumed to be the operator, unless that person can prove that another person is the operator;
- with regard to passengers and unchecked baggage, the period of transport of the passengers by aircraft including their boarding and disembarkation,
- with regard to cargo and checked baggage, the period of transport of baggage and cargo from the moment the baggage or cargo is handed to the air carrier until the moment of delivery to the entitled recipient,
- with regard to third parties, the use of an aircraft from the moment when power is applied to its engines for the purpose of taxiing or actual take-off until the moment when it is on the surface and its engines have come to a complete stop; additionally, it shall mean the moving of an aircraft by towing and push-back vehicles or by powers which are typical for the drive and the lift of aircraft, particularly air streams.'.

[2] Note: Same definition as used in Directive 2009/12/EC on airport charges.

[3] Note: Same definition as used in Directive 2009/12/EC on airport charges.

Centralised ground handling infrastructure at airports is not always operated by the airport operator. If its operation were delegated to a separate management entity or a service provider, would that warrant the exclusion thereof from the definition? Wouldn't it still need to be included?

The current Directive 96/67/EC on ground handling distinguishes between centralised infrastructure and airport installations (neither is defined in the Directive).

The proposal for a Regulation on ground handling services (COM(2011)824 final, which was withdrawn) proposed a definition of 'centralised infrastructure' meaning specific installations and/or facilities at an airport which cannot, for technical, environmental, cost or capacity reasons, be divided or duplicated and whose availability is essential and necessary for the performance of subsequent ground handling services.

Suggestion: 'centralised ground handling infrastructure' means installations and or facilities at an airport, which cannot, for technical, environmental, cost or capacity reasons, be divided or duplicated, and whose availability is essential and necessary for the performance of ground-handling services.

(151) Suggestion: Change 'airlines' to 'air carriers and aircraft operators'.

Article 56a Investment aid for regional airports

Paragraph 5: One presumes here that the calculation of passengers is done in accordance with the Eurostat ref. manual on air transport statistics.

"The aid shall not be granted to airports with average annual passenger traffic of more than three million passengers …"

How is a 'network of airports'[4] to be handled with average annual passenger traffic above 3 million passengers? Should each airport be considered as one undertaking or should this definition be done at network level?

Paragraph 7: Could paragraphs 4 and 7 not be combined?
How will this work with airport networks?

Ports - Definitions

There are several EC Directives and Regulations addressing the legislative framework of ports and port facilities. Each of these instruments contain their own definition of port (i.e. Directive 2005/65 on port security, Directive 2000/59 on port reception facilities, etc.). This proposal lays down yet another definition which does not seem to be harmonized with any of the previous definitions and that could pose challenges. Several issues that remain unclear based on the current definition:

[4] The airport charges Directive 2009/12/EC refines 'airport network' as: means a group of airports duly designated as such by the Member State and operated by the same airport managing body. Under the directive, Member States may allow the airport managing body of an airport network to introduce a common and transparent airport charging system to cover the airport network. Furthermore, under Article 5, Member States may allow an airport managing body to apply a common and transparent charging system at airports serving the same city or conurbation, provided that each airport fully complies with the requirement on transparency set out in Article 7 of the Directive.

- What is meant by “land or water”? What about ports including only land and/or only water?
- Who is responsible to define what a port is in accordance with the Regulation? What happens if the boundaries of the ports are redefined?
- What are waterborne vessels and how are they defined?
- Is the definition of the activities that could be done at a port exhaustive?
- Are offshore activities included in the scope?

Maritime port and inland port: Unclear the difference between these two terms. What is “open sea” in this respect? Why is there a need to differentiate these two types of ports?

Article 56b Investment aid for maritime ports

Paragraph 2(a): It appears to be contradictory that cranes fall within the scope of the definition of “port superstructure”, but when it comes to eligible costs of investments, mobile equipment is specifically excluded.

Ports may have different services offered within their perimeter: would all areas of the port fall within the GBER? (e.g. cargo ports).

Please do no hesitate to contact the responsible case handler, Mihalis Kekelekis (02 2861840) in case of queries regarding those comments.