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Sent by email

European Commission
DG Competition
State Aid Register
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Dear Sir

STATE AID REFORM

Introduction

British Airways welcomes the publication of the Commission's State Aid Action Plan and the proposals for a comprehensive reform of state policy. We would like to offer the following brief comments in response to the consultation and would like to participate in any future discussions as the road map for reform moves ahead.

British Airways has a specific interest in how state aid control is applied in the air transport industry. As para I.1.12 of the consultation recognises, specific rules apply to the transport industry because of the special nature of the rules governing it. This leads to state aid cases in Brussels being dealt with by DG TREN rather than DG COMP. British Airways submits that state aid cases in the European aviation industry should be carried out by DG COMP and not DG TREN. A consistent and robust state aid policy, free from political intervention from national governments, is required across all sectors of industry and that is best delivered by DG COMP dealing with all cases.

State subsidies distort competition. They encourage inefficiencies by shielding firms from market forces. Consumers suffer from higher prices and a lower quality of goods and services. In the airline industry they prevent inefficient companies from exiting the market and the much needed consolidation of the industry. An effective state aid policy is required, therefore, to ensure that the industry can operate in a way that is free from distortion and does not discriminate unfairly between competing companies.

British Airways does not intend in this note to comment on all of the issues raised in the Commission's consultation document. Nor do we respond in detail to some of the questions posed. Rather, we restrict our comments to matters of general policy development. British Airways welcomes the broad thrust of the roadmap and the way that the Commission will address state aid cases in future. We strongly support the proposals for a reassessment of the state aid policies and procedures to achieve the key objectives set out in the Lisbon Strategy.

Rationale for state aid policy

British Airways endorses the views expressed in section I.1 of the consultation paper: the rationale for state aid policy. In particular:

- state aid control must ensure a level playing field for all undertakings throughout the Single European Market
- it must not deprive the most competitive firms of success or decrease overall European competitiveness
- it is not a miracle cure for all problems – indeed it often prevents adequate measures from being imposed
- it can only be permitted when it fulfils objectives of common interest and does not distort intra-community competition.

The main issues

British Airways supports the Commission's proposals to develop a comprehensive and consistent package of reforms based on less and better targeted aid, a refined economic approach and more effective procedures, better enforcement, higher predictability and enhanced transparency. These would need to be addressed with the full support and endorsement of the member states.

Further, British Airways fully supports plans to introduce a more consistent, uniformly applied set of rules throughout the European Union. Those rules should be monitored and enforced rigorously to ensure that member states do not abuse the system. State aid may be permissible in some precisely and narrowly defined circumstances but the Commission must be vigilant to ensure that only those examples will be permitted.

British Airways is very concerned about how the market economy investor principle is applied to state aid cases in the airline industry when combined with the 'first time-last time' rule. A number of large European airlines received substantial amounts of state aid in the 1990s. Some have developed without recourse to additional state support but some have used the market economy investor principle to circumvent the rules and receive more aid. A supposedly independent investor is found to put money into an ailing carrier when it is difficult to imagine that a rational investor would do so without government persuasion and guarantees. This is a loophole that has been exploited already, may be copied by others, and must be closed off. The process surrounding these transactions is extremely opaque with little information being made available to effected third parties.

Governments have exerted excessive political influence in forcing through these deals. We look to the Commission to withstand that pressure.

The Commission should spend less time on relatively small schemes and should concentrate on the most significant cases which have an effect on cross border trade. Such cases should be prioritised and the appropriate level of Commission resources allocated to deal with them. The process should be transparent and understood by all parties.

More emphasis should be given to the economics of state aid cases and we welcome the 'refined economic approach' set out in the consultation. Economic analysis is crucial in defining the effects on inter state trade and the resulting market distortions. Greater weight should be given to the economic evidence submitted by third parties as they are often best placed to explain the effects of state aid in a given market. Third parties play a central role in Article 81/82 enforcement and should have a similar role in Article 87 state aid cases as the effects on a market can be just as significant. Indeed, in the airline industry the amounts of aid provided to some of the European 'flag' carriers has had a profound effect on the structure of the industry as well as being felt on a wide range of routes and markets.

Conclusion

To reiterate, British Airways fully supports the Commission's proposals as set out in the consultation. State aid policy is a key element of competition policy and its effective enforcement is vital to the optimal economic development of Europe for both business and consumers.

British Airways has suffered badly because of substantial amounts of state aid being provided to some its largest competitors in Europe (and indeed all over the world - this is not just a European phenomenon but that is not a reason to soften the line against aid in Europe). We believe that there is no place for such huge sums to be paid in a highly competitive industry like aviation. They have acted against the best interests of European air passengers and penalised unfairly Europe's more efficient and better managed airlines. In particular, we would welcome state aid cases (aid for airlines and airports) being performed by DGCOMP as this would lead to better and more independent decisions being taken.

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