

# Competition Policy supporting the Green Deal

## Call for contributions

### Introduction

easyJet is fully committed to reducing the impact of aviation on the environment and we see competition policy playing an important role in delivering innovation and change in support of environmental and climate goals.

We are the largest single investor in carbon offset projects globally, with our commitment to offset the carbon from the fuel used for every single flight that we operate. While we know that this is not a long-term solution, we believe it's the best way to address the carbon emitted from flying while we continue to champion the development of other technologies such as hydrogen and electric to support zero-carbon aviation.

Zero-carbon technologies are only just emerging and competition policy should ensure that innovation in this space is protected and encouraged.

### Summary of our views

- The enforcement of state aid should be more stringent to help support the Green Deal. There is a risk of state aid being used in a way which does not truly help the environment, such as funding fleet renewal for airlines.
- Current rules on antitrust and merger control are robust. We do not see a reason to change the rules at this time, as they provide sufficient flexibility to support the Green Deal. Loosening these rules could create risks to the Green Deal.

### 1. State aid control

#### Responding to Part 1, question 1

State support should benefit the entire aviation sector. Where the aim is to support the Green Deal, it should be technology neutral, with the aim of achieving significant emissions reduction.

State aid has recently been provided in a selective manner to a few airlines. As part of the state aid packages received by certain carriers amid the crisis caused by Covid-19, there have been commitments agreed with Member States on CO<sub>2</sub> reductions, with fleet renewal part of those plans. However, we are not convinced these commitments were stringent enough to tangibly contribute to the Green Deal.

State aid will be important to achieving the Green Deal for aviation. However, where state aid is used it should be to achieve CO<sub>2</sub> reductions that go beyond what is already reached in the rest of the sector. For example, remedying a market failure in a new zero-carbon technology.

As a rule, we would suggest that where state aid for airlines is considered in the context of the Green Deal, it should be acceptable where it develops an entirely new technology which is not already used extensively within the sector (remedying market failure). Where it would simply bring one airline up to the efficiency of its competitors (e.g. purchase of new kerosene-burning aircraft) this should not be permitted.

State aid can support efficient flying in a way which is non-discriminatory and open to all carriers. Such state support schemes should not only reward carriers which have yet to purchase CO2-efficient planes. They should also reward carriers which made investments in the past by rewarding the continual use of those aircraft, rather than only co-funding the purchase of new ones. This will protect competition and previous investments by competitors. It will also ensure all airlines maintain strong incentives to keep investing in greener fleets under the Green Deal.

There is a focus across Europe on the development of Sustainable Aviation Fuels, with partnerships for SAFs production involving state-owned companies seen in France and the Netherlands. These investments are necessary, but should be treated equally to technologies, particularly those which will be more effective in achieving carbon reduction or even zero emissions such as hydrogen and electric. SAFs are expected to benefit long-haul carriers the most in the long-run, so prioritising SAFs would favour certain carriers, while zero-carbon technologies would be expected to help other parts of the sector.

The development of alternative technologies will also require investment to support the adaption of existing infrastructure to accommodate their use, e.g. airport infrastructure. The availability of funding, including state funding, will influence their implementation so we caution that political decisions should not become a barrier to the development and adoption of certain technologies.

We see the EU taxonomy playing a role in identifying effective solutions by establishing the technical criteria which would be used as a benchmark for sustainable aviation investments. We note, however, that aviation is not yet included in the Taxonomy Regulation but that this should be addressed by the end of 2021.

## **2. Antitrust rules (anti-competitive agreements and abuse of dominance)**

### **Responding to Part 2**

Given the reliance on innovation to deliver the technological developments required to support climate action, we believe that the protection of existing rules on competition and prevention of abuse will be important.

We have outlined below the types of concerns which are addressed through existing rules. Any revision of the rules should continue to adequately tackle these types of situations:

- vertical arrangements between airlines and producers of SAFs which could give rise to barriers to accessing SAFs for other airlines, which could constitute abuse of dominance. Where governments own large shares of airlines, airports and also SAFs production facilities, there is room for discriminatory practices. We note that long-haul carriers, together with other state-owned enterprises, have invested in SAFs production facilities.
- with an EU SAFs mandate currently under consideration, which would make SAFs use mandatory for the sector, and the potential for limited supply and/or supplier, there are opportunities for anti-competitive practices. For example, the risk of abusive practices such as excessive pricing by SAF producers.
- the supply of SAFs by a limited number of providers which could, absent appropriate regulation, resulting in difficulty meeting mandate requirements set by EU law.

- the monopolisation at airports of environmentally friendly services where those services could be provided by third parties such as ground handlers and, importantly, offer choice and greater efficiency in terms of cost and environmental impact. Airports can, for example, define certain services as centralised infrastructure under the Ground Handling Directive where previously those services were offered on a competitive basis. This can result in the costs of those services being integrated into regulated airport charges which can lead to cross-subsidies between regulated activities and those which could be provided on a competitive basis. The result of this could be privileging the development of the airport's own services, or prioritising the needs of the national flag carrier, and hindering the development of competitive provision. This could result in abuse of dominance.

In addition, it has been suggested in some Member States that restrictions of domestic flights could be implemented to reduce the environmental impact of aviation, particularly where there is an alternative by rail. Such measures would not only limit choice for consumers, and potentially result in an increase in prices, but where Member States have a stake in train operators, they could effectively be handing these companies a monopoly on certain routes. Article 106 of the Treaty on the Functioning of the European Union (TFEU) should guard against such situations and would need to be considered in combination with Article 102.

For example, the French government has linked state support for one airline to a reduction in domestic flights<sup>1</sup>, while the Citizens Convention has called for an outright ban by 2025<sup>2</sup> where a low carbon alternative at a satisfactory price exists. These proposals could give the state-owned rail company a competitive advantage, while allowing for cooperation between the state-owned airline and state-owned rail company.

Article 20 of Regulation 1008/2008 requires that environmental measures are “non-discriminatory, shall not distort competition between air carriers, shall not be more restrictive than necessary to relieve the problems, and shall have a limited period of validity, not exceeding three years, after which it shall be reviewed” and we would highlight the need to maintain these protections.

The Dutch competition authority has been the first to issue [Guidelines](#) on the application of competition law to sustainability agreements. It describes sustainability as a “broad concept, lacking a clear definition” and follows the 2012 UN Resolution 66/288 which describes sustainable development as the development towards “an economically, socially and environmentally sustainable future for our planet and for present and future generations”. Again, we make reference to the EU taxonomy which will be used in the future as a benchmark for sustainable aviation investments.

### 3. Merger control

#### Responding to Part 3

We believe the current rules provide a robust basis for avoiding negative impacts on the Green Deal. Our concerns in this area would be related to the potential for innovative firms/technologies to be acquired by competitors or airlines, hindering the development of – or access to – new technologies.

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<sup>1</sup> <https://www.lesechos.fr/industrie-services/tourisme-transport/air-france-laide-de-letat-conditionnee-a-une-reduction-des-vols-interieurs-1199282>

<sup>2</sup> <https://propositions.conventioncitoyennepourleclimat.fr/objectif/limiter-les-effets-nefastes-du-transport-aerien/>

Any new set of rules should still adequately tackle the following types of concerns.

- the purchase of zero-carbon flight start-ups by larger aircraft manufacturers, in order to stifle the development of electric or hydrogen propulsion which could compete with kerosene-burning aircraft.
- the creation of very large carriers, or vertically integrated companies covering airlines, airports, and SAFs producers, which could be detrimental to competition within Europe.

#### **4. Green Deal Regulation and Competition**

An additional concern in relation to the Green Deal, given increased role of regulation within the sector, is:

- the dominance within EU and national policy discussions of certain carriers or business models.

This can lead to new Green Deal regulations which strongly favour certain technologies or interests (e.g. developing SAFs over zero-carbon flight; measures which only tackle emissions from short-haul flights; measures which mainly target certain business models; etc.).

This negatively affects competition and does not necessarily help achieve the aims of the Green Deal. We believe competition law can help achieve the aims of the Green Deal. Likewise we call for the principles of competition law to continue to be included in the design of Green Deal policies.