### Annex 2: Specific Comments on the Draft Text

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<th>Issue</th>
<th>ACI EUROPE Comments</th>
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<td>Externalities</td>
<td>In Paragraph 2, the European Commission (EC) has emphasised that, amongst other considerations, the ‘internalisation of externalities’ is a priority within the context of the Europe 2020 Strategy and its ‘Roadmap to a Single Transport Area’ White Paper. Within this context it is important to remember that there are many positive economic externalities generated by aviation. Even if the EC is not minded to take a fully symmetric approach to both positive and negative externalities, then at least due account should be taken of the positive economic impact of aviation.</td>
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<td>Airport Ownership</td>
<td>The EC is correct to note the growing involvement of private undertakings within the European airport industry. However this is not the full picture. 74% of European airports in public ownership are run as corporatized, commercial and profit-driven enterprises, operated at arms-length from the State. Such profit-oriented airports by their nature abide by the market economy operator principle (MEOP), and compete against privately-owned counterparts, and should be afforded the maximum possible commercial freedom to operate. Their situation should be explicitly referenced in the Guidelines, and subsequent enforcement should reflect this. See below point on ‘Use of State Resources’ and ‘Start-Up Aid to Airlines’.</td>
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<td>Operating Aid: Financial Viability of Smaller Airports</td>
<td>The EC notes in Paragraph 5 that airports with fewer than 1 million passengers per annum (&lt;1mppa) typically struggle to cover their operating costs. ACI EUROPE agrees with this assertion, but considers that the EC’s proposed response (an attempt to eliminate operating aid over a 10 year transitional period) does not resolve the issue. This structural problem requires a structural policy response. The issue of smaller airports and financial viability seems to be a global one, and not just limited to the EU. Therefore it is not realistic to believe that changes to EU State Aid guidelines will somehow allow airports with between 200,000 and 1,000,000 passengers per annum (mppa) to fully cover their operating costs, irrespective of any transitional period. Paragraph 8 refers to the EC ‘Communication on State Aid Modernisation’ statement that State Aid policy should focus on facilitating well-designed aid, and that State Aid measures can, under certain conditions correct market failures, and thus enhance competitiveness. ACI EUROPE believes that the issue of operating aid falls into this category, and that an alternate proposals to the problem can indeed enhance competitiveness. Please see Analysis Paper for further material on this point.</td>
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### Operating Aid: Distortions to Incentives Facing Smaller Airports

The EC’s current proposals, after the transition period, envisage a strict cut-off of operating aid once an airport surpasses 200,000 passengers per annum. As well as being unrealistic (see above point) this proposal risks undermining smaller airports’ incentive to grow. Smaller airports, when faced with the prospect of foregoing all public operating support, will consider whether they can realistically expect to reach financial viability (i.e. sufficient traffic) before their resources are exhausted. If there are prospects for growth, but not immediate growth, such airports may be incentivised to avoid the risk of a ‘race against the clock’, and instead choose to remain below the 200,000 threshold.

In this case the Guidelines will have the perverse impact of discouraging growth where it had otherwise been possible, and thus undermining the potential of smaller airports to reach financial viability. Ultimately this could lead to a situation where the restrictions on operating aid could actually lead to a situation where MORE aid was entering the industry, than would have been the case otherwise.

ACI EUROPE has proposals for the treatment of operating aid which would avoid such a scenario. Please see Analysis Paper for further material on this point.

### Airport Overcapacity

The proposed Guidelines make several references to airport ‘overcapacity’. A distinction must be made between overcapacity within a region (a region being served by multiple airports, which could be served by a lesser number of airports in the medium term) and overcapacity within an individual airport. Given the fixed nature of airport infrastructure investment, an airport can either be overcapacity or undercapacity but very rarely exactly matching demand. Indeed overcapacity at an individual airport-level is far preferable to undercapacity given the long-lead times to deliver extra capacity, and the associated efficiency, environmental and financial costs associated with congestion.

Ultimately, overcapacity is necessary for an airport to attract airlines – without excess capacity the airport has nothing to sell.

Indeed, overcapacity can occur within a day (airlines all want to depart at a specific time) or within a year (airlines want to arrive and depart during a particular season only). Indeed this ‘peakiness of demand’ can be associated with specific positive economic externalities. Where there is demand for use of a runway at a specific time, it is often the case that an airline (or airlines) has aircraft based at that airport – with additional economic activity associated with the servicing, maintenance, staffing and supplying of those aircraft. Where there is demand for use of an airport during specific seasons, this often corresponds to significant tourism activity, boosting an area which would otherwise lack other substantial economic activity.

### Start-Up Aid to Airlines

Regardless of the specific proposals the Guidelines make concerning start up aid to airlines, it should be made explicitly clear that any limitations apply solely to those situations where State Aid is being channelled via the airport to the airline. The large majority of airports in Europe are commercially-driven (and therefore satisfy the MEOP). They are operating in a competitive environment and are incentivised by market forces to provide discounts, incentive and risk-sharing schemes to current and prospective airline customers. This is a positive development in the European aviation sector and should not be discouraged. The Guidelines should explicitly reaffirm the commercial freedom of airports to undertake such initiatives, where the MEOP is satisfied. Please see ‘Airport Ownership’ and ‘Use of State Resources’ for more on this point.
| **Non-Economic Activities** | The Guidelines offer an opportunity for the EC to clarify what it considers to be ‘non-economic activities’ and which therefore do not fall under the scope of State Aid rules. Further clarity would provide regulatory certainty, and thus facilitate investment by private interests and expenditure by States. However the proposed Guidelines do not go into detail on this point.

In particular ACI EUROPE considers that investment in safety should be explicitly considered as a non-economic activity, in the same manner as airport traffic control, police, customs, etc. Specifically investment required to comply with the incoming EASA rules, should be specifically referenced within the Guidelines as non-economic activities. It cannot be considered that such expenditure will give airports any commercial advantage.

In addition, fire protection services were explicitly stated as being non-economic activities by the Court of Justice of the EU in the Leipzig-Halle case. Within this context the Guidelines should reaffirm the Court’s decision.

ACI EUROPE also believes that the Guidelines position on non-economic activities offers an opportunity to further the integration of the European transport network. See also below section on ‘Intermodality’.

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| **Use of State Resources** | ACI EUROPE respects the Courts ruling concerning States’ control/dominant influence over public entities, as referenced in Paragraph 36 of the draft Guidelines. As stated above, 74% of publically-owned European airports are run in a completely commercial manner. Given the predominance of this ownership model, the Guidelines should reference the position of these airports, and reaffirm that the application of the MEOP will allow these airports the commercial freedom they need to operate as commercial business in their own right. This should be followed by enforcement which is fully cognisant of the position of these companies. Excessive regulatory burden for these operators will put them at a competitive disadvantage to their privately-owned counterparts.

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| **Intermodal Competition** | The proposed Guidelines make much reference to rail, and in particular high speed rail. Specifically the EC references the possibility that distortions to intermodal competition may arise from public funding of airports or airlines. Given the massive public spending bias towards rail, the reality is that public support to aviation will in many cases actually go some way towards remedying some of the damage from intermodal competition distortions.

The Guidelines state that public funding of aviation will require extra scrutiny, or will not be allowed, if there are alternative travel modes such as High Speed Rail. ACI EUROPE believes that there should be a symmetrical approach towards rail – where a transport need can be met in a more cost-effective way by aviation, public funding of rail projects, and in particular expensive High Speed Rail projects, should be treated with equivalent caution.

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| **MEOP** | Application of the MEOP should take full account of the long timeframes which can be required to deliver a return on airport investment, given the high capital costs, and the need to deliver capacity in excess of current demand (It is impossible to invest in ½ a runway, and modular expansion of terminal facilities may induce more expense than larger once-off investments. See previous point on ‘airport overcapacity’) Application of the MEOP test should take into account a discount rate which reflects this – if a project requires a longer
timeframe to deliver an appropriate return, this should not be taken as evidence that the project was not a commercially-oriented, profitable endeavour.

The application of the MEOP should take into account the seasonality of demand, particularly for airports with a high proportion of inbound traffic serving tourist destinations. Such airports may still have reasonable prospects of an appropriate return, however the timeframe for achieving this will be longer than for counterparts with year-round traffic.

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<th>Airport Charges Benchmarking</th>
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<td>ACI EUROPE agrees in principle with the approach of benchmarking of airport charges to establish adherence with the MEOP. However, ACI EUROPE does not share the confidence of the EC that an application of the proposed Guidelines will allow a general market price for smaller airports (&lt;1mppa) to emerge over time. In particular, ACI EUROPE does not consider that forcing airports to cover their operating costs via a transitional period will deliver this. Either airports will shut down, or full enforcement of the operating aid rules will be impossible, as indeed has been acknowledged by the EC as being currently the case. In either case, there will be no credible market price to benchmark against. There may be grounds for benchmarking against those commercially-operated airports with &gt;1mppa, and which are not part of wider airport networks, as these airports would not be incentivised to charge at a rate which was not sustainable in the longer-term. However, any benchmarking exercise should take into account local circumstances when choosing comparator airports. In particular the level of capacity utilisation, the level of service being provided, and the business model of the airlines being served should all be considered. These variables can have significant impact on airports’ finances and subsequent ability to charge. The EC should ensure that there is a sufficient number of commercially-operated, non-network smaller airports to allow credible comparator groups to be formed, which take into account the variables referenced above.</td>
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<th>Incremental Pricing</th>
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<td>There are several issues with the application of marginal/incremental pricing to industries with high levels of fixed costs (both operating and capital expenditure) such as airports. Since marginal costs are lower than average costs, such a pricing policy does not allow a full recovery of costs. It is for this reason that where pricing levels are externally determined via economic regulation, a price cap model is often applied which uses average cost pricing rather than marginal cost pricing. Marginal pricing makes economic sense for such industries, but only where long-run marginal pricing is used. In the context of State Aid to airlines, approving an airport-airline deal on the basis of short-term marginal pricing implies that users other than that airline may well be shoudering the full fixed costs associated with the airport, or that the airport is making an economic loss on its overall operations. ACI EUROPE considers that the necessary commercial freedom should be afforded to airports to make pricing decisions – this is necessary to deliver the best use of capacity. Within this context, ACI EUROPE supports the EC’s approach of using incremental cost pricing tests to determine whether the MEOP has been reflected, but cautions that any such assessment should take account of the longer term marginal costs associated with any deal. If it can be reasonably expected that subsequent traffic increases resulting from a bilateral deal are likely</td>
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to require infrastructural development at a future date, this should be factored into the assessment of the deal.

Finally, an ‘incremental pricing’ approach should be sense-checked where possible with some form of airport charges benchmarking, as proposed by in the Guidelines, subject to the cautions referenced above. This would allow the EC to determine whether the marginal pricing really equates to a long-term market outcome in the airport industry.

| Services of General Economic Interests | Paragraph 68 of the proposed Guidelines state that airports with less than 200,000 passengers per annum are exempt from notification, if they fulfil the requirements of the SGEI decision. ACI EUROPE considers that this should be amended to a system of reduced operating aid intensities, decreasing as airports decrease in size, and limited to airports with <1mppa, in line with the proposals in the Analysis Paper. See also ‘Operating Aid: Financial Viability of Smaller Airports’ section. |
| Investment Aid | The Guidelines should make provision for multi-year investment programmes, and within this allow aid intensity for individual projects to deviate from the proposed threshold limits, so long as the overall aid intensity of the programme stayed within those limits. This would afford more flexibility to operators to respond to financial and aviation market conditions, while not undermining competition. Such flexibility would also allow such aid to be spent in a more effective and efficient manner. |
| Investment Aid for Airports with 3-5mppa | Airports with 3-5mppa face some of the financial disadvantages that their smaller counterparts do. What limited investment aid is allowed in the Guidelines (25%) should be allowed fully, with no requirement to repay. At a minimum any repayment should exclude interest costs – otherwise the ‘aid’ afforded to these airports may well just be a standard load which provides limited real support.  

See Analysis Paper for further information. |
| Investment Aid for Airports with >5mppa | ACI EUROPE agrees in principle with the proposal to allow airports with >5mppa to be precluded from receiving operating aid. However the Guidelines make no allowance for the development of once-off large scale airport project, such as the various proposed London Gateway airport projects. Such projects typically require some degree of public funding, and will not happen if EU State Aid Guidelines do not at all make allowance for this. For large hub airport access, Europe is competing in a global market, where public funding of such projects is an unquestioned norm.  

Currently State Aid rules concerning Research & Development & Innovation contain a ‘matching clause’ which allows the restoration of a level playing field in situations when non-EU competitors are receiving public support in excess of allowed intensities under EU rules. The December 2012 EC ‘Issues Paper on the Revision of the State Aid rules for research and development and innovation’ states that this clause has never been used, but that it seemed suitable to maintain the provision. Given the very limited circumstances in which airports with > 5mppa would need investment aid, and given the evidence that the Research & Development & Innovation ‘matching clause’ has not opened the door to abuse or excessive use, it may well be that a similar clause for aviation would avoid closing the door to major airport expansion in Europe, without undermining the protection of competition.  

For more information and argumentation concerning large airport projects, see Analysis Paper for more information. |
### Cumulation

In some instances, independent of the airport, local authorities provide support to airlines as part of wider activities to boost tourism & economic growth. So long as the airport is abiding by the MEOP, and other support activities are within the scope of the Guidelines, this situation should be allowed to continue.

### Transparency

ACI EUROPE welcomes attempts by the EC to deliver increased transparency.

### Application

ACI EUROPE welcomes the provision to apply the elements of the Guidelines concerning investment aid only to such aid which has been notified or granted after the entry into force of the Guidelines. Such an approach facilitates investor certainty. To continue this approach, the EC could signal that the review in 7 years’ time will adopt a similar approach where possible, thus allowing investor certainty to be maintained going forward.

### Review

ACI EUROPE welcomes the proposal to review of the Guidelines within a maximum of 7 years.

If the EC is minded to adopt ACI EUROPE’s proposals concerning operating aid, a review after 7 years would also be appropriate, as it would allow a reassessment of the situation, and an analysis as to whether full coverage of operating costs by airports with <1mppa is actually a viable expectation, without risking the unnecessary prior closure of individual regional airports.

### Intermodality

The Guidelines should clearly facilitate the public funding of airport access projects (e.g. people-movers, light rail, metro connections, road) by specifying that the EC considers such projects to be ‘non-economic activities’. The EC’s 2011 White Paper on transport policy states that swift action should be taken to integrate all modes of transport - supportive State Aid Guidelines are a prerequisite for this.

### Initial Investment

In the Guidelines ‘Initial Investment’ is defined as ‘an investment in airport infrastructure provided the airport had been closed, or would have been closed, if the investment had not been pursued’. This definition includes investment required to fulfil compliance in areas such as security or safety – if an aerodrome does not meet minimum standards in these fields then it must be closed.

Yet Paragraph 81 of the Guidelines states that ‘Any initial investment, which does not have satisfactory medium-term prospects for use or deteriorates the medium-term prospects for use of existing infrastructure in the catchment area, cannot be considered to serve an objective of common interest’.

This means that funding of essential compliance areas for society’s benefit, and which do not provide a competitive advantage, boost capacity or improve service levels, could be de facto considered as inappropriate, despite such investment having no discernible impact upon competition.

To clarify this point, the definition of ‘Initial Investment’ in Annex 1 should exclude that which is necessary to meet regulatory compliance requirements.

Alternatively this situation could be avoided via a clearer definition of non-economic activities is required. See section on ‘Non-economic activities’.

### Enforcement

In its 2010 Position Paper on State Aid, ACI EUROPE called for clear and simple rules, to allow full and consistent enforcement, which is necessary to allow both public and private investor certainty. In parallel to clear and simple rules, investor certainty would be further increased if there was an expedient process in place to consider both State Aid notifications and
complaints. No matter how clear and simple the final Guidelines are, there will still be some degree of uncertainty as to decisions of the EC on individual cases. The major positive economic benefits associated with investment in aviation should not be postponed or abandoned due to a backlog of State Aid decisions backing up, and long waiting times before the granting of approval.

Therefore the EC should consider the issuing of the Guidelines as an opportunity to examine how the process for the consideration of complaints and notifications could be speeded up. This could encompass additional provisions within the Guidelines, or internal process changes and resource-reallocation within the EC.

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<th>Treatment of Freight Airports</th>
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<td>The proposed Guidelines acknowledge that at present the EC does not have sufficient expertise in this area - ACI EUROPE considers it may be overly restrictive to require individual notification by pure or mixed passenger -freight airports with &gt;200,000 tonnes of freight, or freight airports wishing to expand capacity. A better approach would be to adopt a flexible approach towards such circumstances, rather than an automatic strict approach. Assessing circumstances on a case-by-case basis will allow the EC to build up expertise in this area, which can then inform the planned review of the Guidelines, which will occur at most 7 years subsequently.</td>
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