EUROPEAN COMMISSION

Comments submitted by Brussels Airlines on Commission’s Draft EU Guidelines on State Aid to Airports and Airlines

Deadline: 25 September 2013

Early July 2013, the Commission published its draft EU Guidelines on State Aid to Airports and Airlines (“Draft Guidelines”). Brussels Airlines SA (“Brussels Airlines”) shares the assessment of the European Commission (“Commission”) that in the past regional airports have been over-subsidized by public authorities, leading to substantial overcapacity of airport infrastructure and ultimately to market failure and waste of public resources. Hence Brussels Airlines welcomes the renewed attention to State interventions in the aviation sector and hopes that it will bring genuine added value to the sector and restore the level playing field through a strong enforcement practice.

The Draft Guidelines succeeded a regime that was characterized by under-enforcement of the State aid rules and this in a period characterized by massive subsidization. The Commission was therefore faced with two challenges: (i) how to deal with all the aid that was granted in the past 10 years or so and (ii) how to design a new framework that is more meaningful for the future. Unfortunately, the approach chosen by the Draft Guidelines is in this respect unsatisfactory.

Brussels Airlines’ comments below therefore seek to provide the Commission suggested adjustments with a view to strengthening a balanced approach between regional development and accessibility and protection of competition.

1. A strict and unambiguous implementation and enforcement of the State aid rules and policy is essential to restoring a level playing-field in the aviation sector, including for Brussels airlines:
   
   o The sector has known massive public financial interventions in favor of regional airports and low-cost airlines.
   
   o Despite the adoption of the 1994 and 2005 Guidelines, the aviation sector lacked a strict and coherent State aid policy.
   
   o This situation resulted in a distorted competitive environment which seriously hurts traditional airports and airlines (i.e. shift of activities to regional airports/low-cost airlines (“cannibalization”)).
   
   o The alleged gain obtained by the European citizen as a consequence of these measures has been (i) limited to those flying from publicly-financed airports and (ii) watered down by the costs to the taxpayer. Moreover, few of them contributed to regional development and employment. They sometimes even had a negative impact.
Brussels Airlines, as a direct competitor of Ryanair, is suffering from massive public interventions in Brussels South Charleroi Airport but also elsewhere in other regional airports, where both compete in routes from or towards Belgium. The Charleroi case is a clear example of abuse of the system, as it concerns an airport located in the catchment area of a pre-existing airport with unused capacity.

2. The Draft Guidelines do not respond properly to the Commission’s stated objectives and they consolidate the errors of the past:

- The Commission should not attach less importance to State interventions in favour of freight airports or airlines, as those interventions created substantial distortions of competition in the past.

- An abusive transfer of investment and operating aid received by airports to preferred airlines remains possible.
  
  - The relationship between publicly-supported airports and their customer airlines has to be strictly reviewed.
  
  - The Commission must apply a presumption of State aid for fees charged by long-term loss making airports.
  
  - The Commission, when applying the “market economy operator” (“MEO”) test, cannot disregard earlier provisions of (illegal/incompatible) State aid to the airports. An ex ante profitability analysis that is only based on costs incurred in relation to the airline’s activity is not acceptable in case of publicly-supported airports. A reasonable portion of general infrastructure costs has to be taken into account, provided the outcome is competitive with the fees offered by a benchmark airport located in the same catchment area.

- The approach adopted towards investment aid is too lenient:
  
  - The approach towards initial investment aid to airports located in the catchment area of a previously established airport with free capacity is not sufficiently clear. A presumption of incompatibility must apply in such case of manifest abuse of the system.

- The approach adopted towards operating aid raises questions of its legality:
  
  - While operating aid is in principle incompatible with the common market and therefore prohibited, the Draft Guidelines allow it under very broad and relaxed conditions.
  
  - The Guidelines must apply a presumption of State aid when in the same catchment area or in the same Member State, a certain service is considered as “non-economic”, and therefore subsidized, for one airport and as “economic” for another airport.
- Brussels Airlines' comments
- Non confidential version
- 25.09.2013

- Airports with 1 million passenger traffic must no longer benefit from operating aid.

- The transition period must be reduced from 10 to 5 years maximum for airports with less than 1 million passenger traffic; from 10 to 3 years for airports with less than 2 million passenger traffic; from 10 to 1 year for airports with less than 3 million passenger traffic. The transition period of 10 years should only apply to airports with less than 500 000 passenger traffic.

- A presumption of incompatibility of operating aid towards airports located in the catchment area of a previously established airport with free capacity must equally apply.
  - The approach towards start-up aid must be clarified:
    - The Guidelines must impose reimbursement of start-up aid, when the airline stops flying the route within or shortly after the 24 month period.
    - Start-up aid is no longer acceptable for airports with 1 million passenger traffic.
  - While the Guidelines should primarily aim at tackling future State interventions, the Commission cannot simply ignore or white-wash the past. Too much damage has been inflicted in violation of the Treaty. The outright retroactive application of the Guidelines to pending State aid cases, for which operating aid was awarded and even consumed before the entry into force of the new Guidelines, is objectionable. While it may be impossible to repair all errors of the past, it is however improper to apply even more relaxed criteria to wipe the slate clean.

3. Any State aid policy that disregards these inadequacies would simply ignore the negative effects on competition of the past and miss the opportunity to restore the goals of the Treaty to create a genuine internal market and undistorted competition.