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To: Stateaidgreffe@ec.europa.eu

DAA Comments on Draft Guidelines on State Aid to Airports and Airlines

This submission is provided to the European Commission (EC) in response to the publication on 3rd July 2013 of new proposed rules on state aid on the public financing of airports and start up aid to airlines.

DAA’s business profile means that it is well positioned to provide comments to the Commission on the proposed guidelines. The aviation landscape in Ireland also provides an interesting context for DAA’s consideration of the proposals. The company is very cognisant of the business model requirements of both large and small airports and of the expectations and requirements of a varied customer base.

- DAA is a state owned supplier of airport services, operating to a fully commercial mandate. Its principal activities include the operation, management and development of Dublin and Cork airports in Ireland. Dublin is a national gateway with a throughput in excess of 19m passengers in 2012. Cork serves a hinterland in the south of the country which includes the Republic’s second city and managed 2.3m passengers in the same year.

- DAA has a varied customer base – Ryanair, Europe’s largest low cost carrier and Aer Lingus a low fare/enhanced service carrier, are the largest airline customers at our airports delivering circa 40% of traffic each at Dublin. Some 20% of traffic is derived from full service airlines e.g. Lufthansa, SAS, Turkish and US carriers.

- Partly as a result of the country’s peripheral location on the edge of Europe and, until recently, its poor internal transport links, Ireland has traditionally had a much higher number of regional airports than in other (often much larger) European countries. The World Economic Forum’s recently published 2013 Travel and Tourism Competitiveness Report indicates Ireland has almost 5 times more airports per head of population than Germany and Belgium. It has more than twice the airport density of the UK and France and 8 times the density of Netherlands. Currently seven airports in the State have commercial operations; ten on the island of Ireland. The regional airports account for less than one million passengers per annum in total or circa 4% of the market. There are three Exchequer support schemes in operation - for capital expenditure grants (Capex), operational

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1 These are Dublin, Waterford, Cork, Kerry, Shannon, Knock, Donegal. The airports in Galway and Sligo no longer have commercial operations.
2 In addition to the seven airports located in the Republic listed in the footnote above; Derry, Belfast City and Belfast International are located in Northern Ireland.
3 Airports apart from the State owned Dublin, Cork and Shannon facilities
expenditure subvention (Opex) and a scheme for subventing PSO air services. In total, the Exchequer has provided in excess of €200m in funding to the regional airports and to supporting the PSO routes over the last decade. Significant challenges to profitability faced by the airports, the economic circumstances faced by the Exchequer and the substantial cost led to a Value for Money Review of Exchequer Expenditure on the Regional Airports Programme being undertaken by the Department of Transport Tourism and Sport, in 2010. Subsequent to this the Government has taken steps to reduce its funding for regional airports and encourage greater self-sufficiency, an approach that appears aligned with the intent of the new Guidelines.

DAA understands that the key components of the proposed Guidelines are as follows:

- Diminishing allowed intensities of investment aid for airports below 5mppa, with airports with between 3-5mppa obliged to return the aid with interest, if the project is a success. No investment aid will be allowed for airport with more than 5 million passengers per year.
- Operating aid allowed for airports with less than 3mppa, but to be phased out at a rate of 10% per annum, during a transitional period of no more than 10 years.
- No EC notification required for operating aid allowed as Service of General Economic Interest for airports with less than 200,000 passengers per annum.
- Focus on duplication of airports, with specific notification requirements for airports within 100km or 1 hours travel of other airports.
- Start-up aid to airlines only allowed in specific circumstances (allowed only for routes linking an airport with fewer than 3 million passengers per annum to another airport within the Common European Aviation Area), and limited to 50% of incurred start-up costs, for a duration of no more than 2 years.

While DAA supports many of the provisions contained in the proposed new Guidelines, there are some points within the proposal that could be further clarified or enhanced and our views are set out below.

- Before determining how aid should be monitored and overseen, there first needs to be a clear definition of what constitutes State Aid to airports and airlines. The test should be whether the transfer of funds from a State or its agencies to an entity has been undertaken with a commercial imperative i.e. in the expectation of a return, in compliance with the Market Economy Operator Principle (MEOP). Under the MEOP, an action by a public authority will not constitute State aid where a private investor operating under normal conditions of the market economy would have entered into same or similar commercial arrangements. The Guidelines and thresholds are a secondary consideration to this assessment in our view.

- The Guidelines do not make explicit reference to the position of smaller unprofitable airports within state owned airport networks/groups that have a commercial mandate. We are concerned, however, that there should be clarity of position. It would be inconsistent for the

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4 C-305/89 Italy v Commission at paragraph 20.
Guidelines to institute an approach to the airports industry that is contrary to that adopted for other sectors where varied levels of performance by different elements of business portfolios are routinely encountered. In this context, the Guidelines should explicitly recognise that smaller airports within self-financing state owned airport companies should not be impacted by the state aid guidelines as to do so would put them at a competitive disadvantage when compared to their privately owned competitors.

• If the Commission uses a benchmark of airport charges across comparator airports to establish adherence to the MEOP test in the future, care must be taken to ensure that this benchmark is appropriate. Careful attention must be paid to the impact of the following factors:
  ➢ Traffic volumes
  ➢ Type of traffic
  ➢ Service levels

  In addition there must be clarity that the airport charges that are being equated are truly comparable in terms of the definition of the charges being benchmarked.

• As proven by the ACI commissioned Economic Study on Airport Competition, airport managing companies are economic undertakings engaged in an economic activity and competing with one another across national and international boundaries: a level-playing-field among European airports must therefore be maintained and the same commercial principles should be applied as in other sectors. State aid potentially distorts this level playing field and should therefore be kept to a minimum.

• As a general principle, the Guidelines should stipulate that state aid to airports and to airlines should only be permissible in the presence of exceptional circumstances, namely to correct market failures, for example in case of small airports located in marginal, inaccessible regions, or in situations where a distortion of competition could not occur because no other airport operates in the same catchment area of the airport to which state aids are granted. State aid should only be provided for a transitional period and time limits should be set for its application.

• DAA agrees with the Commission that every aid measure should be subject to a justification test where the possible benefits to the common good of allowing such aid should be weighed against the potential negative effects such as distortions to the market. It should be verified that there are no other policy alternatives to the aid measure. This test must be clearly defined and the outcome of this test for individual aid measures should be made publicly available.
DAA makes the following comments regarding the circumstances that should apply once it has been established that state aid is being disbursed:

- The Commission categorises operating aid as “a very distortive form of aid”. As a consequence the Guidelines should prioritise operating aid for particular scrutiny, most especially if the benefitting airport is located in the same catchment area of another operating airport or is in direct competition with another airport. It does not appear that any specific form of control by the Commission is foreseen in the phasing out period, once the aids have been authorised. It would be preferable to have some oversight incorporated to ensure that the intended outcome is achieved within the timelines set.

- Investment aid to airports should not result in duplication of unprofitable airports and should not be permitted at airports that are in the presence of nearby other airport infrastructure with unused capacity. This will avoid the prospect of national over capacity and guard against creating false competition and a race to the bottom where no airport will be able to garner sufficient revenue to cover costs and a vicious circle ensues where state support of the airports will become increasingly necessary leading to a lack of capital for investment in more productive infrastructural projects.

- There are a number of references in the document to “medium term” prospects of generating a beneficial outcome as a consequence of investment aid (for example paragraphs 81,82). As timescales are an important component of the Market Economy Operator Principle (MEOP) tests, the guidelines should give a clearer indication of the timescales being considered, taking into account the long term nature of airport infrastructure.

- Investigations undertaken by the EC have established that a number of airports are offering non-published start-up aid. DAA welcomes the intention in the Guidelines to improve transparency in this area, however, disclosure provisions under paragraph 120 of the Guidelines appear ambiguous in that they seem to provide for publication to occur only after the event which would be insufficient. The Guidelines should require full disclosure of the start-up aid available to carriers, the justification for the aid and the conditions under which aid could be obtained, in advance of granting. This will help counter the potential for airlines to use unpublished start up aid to leverage additional market power relative to rival airlines and alternative airport locations thereby distorting the competitiveness of the market.

- Furthermore, there are many instances of regional governments and other state agencies (e.g. tourism bodies) providing start up aid to airlines, separately from airport sourced support. The Guidelines should explicitly address how such aid might be adjudged to be compatible or otherwise with the internal market.

- The granting of start-up aid to airlines should not be limited to routes linking airports with fewer than 3 million passengers to other European airports. Such a provision would seriously distort competition in favor of smaller airports damaging medium sized regional airports. This could also have long term negative effects for connectivity across Europe given that it could deter the development of new routes and services.