POSITION PAPER ON
DRAFT STATE AID GUIDELINES TO AIRPORTS AND AIRLINES
(REF.: "HT 2635")

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General remark

In July 2013, the EU Commission published Draft Guidelines for Airports and Airlines. The airlines of the Lufthansa Group highly welcome that the Commission is tackling the issue of state aid to airports and airlines, as such aids have in the past substantially influenced and in many markets massively distorted competition in the EU internal market. They have effectively prevented the implementation of an internal market as envisaged by the legislator, where air fares should be determined freely by market forces. The unprecedented growth of low cost airlines in the past decade, obtaining a market share of more than 40% offering services at fees which other EU carriers operating from hubs and larger decentralized airports cannot match, is largely due to state aid. These carriers operate from smaller airports which are - despite often being located in the catchment of existing, larger airports - mostly unable to cover their costs and are only able to survive with substantial support from public funds, year after year. As a matter of fact, millions of European passengers are flying - especially from those secondary airports - only because their trips are heavily subsidised. Such a fundamental structural deficiency of the internal aviation market clearly needs to be corrected. Experience has shown that the current legal framework and its execution to control such aid are insufficient.

Further, state aid as a tool used to selectively support and stimulate air travel seems to contradict the priorities both at EU and national level, namely sustainable mobility. Consequently, state aid, especially in the form of operating aid, is generally viewed as unacceptable.

The airlines of the Lufthansa Group thus fully support the Commission in its endeavor to complete the internal market by establishing new Guidelines on subsidies for airports and airlines, and ask the Commission to implement an effective tool in order to control these – in many cases arbitrary – practices. In order to fully achieve this goal of an undistorted internal market however, the current draft still requires some modifications with respect to the pre-requisites of granting state aid to airports and airlines. Consequently, the modifications proposed in the following are a condition to making the draft guidelines an efficient tool in the future. Further, it is suggested that additional and more comprehensive facts and figures concerning the current magnitude of state aids within the EU be provided, in order to establish a more resilient basis for future discussions. It is assumed that these insights will work to support the amendments to the guidelines as proposed in the following.

Proposal for modifications of the current draft

Based on the current draft, LH Group asks the Commission to introduce the following modifications to the draft. These amendments are considered to be of major importance. However, we are also prepared to discuss further modifications that are not included in this document.
- **Operating aid - Transition period:** There is no justification to grant such an extensive transition period as proposed by the Commission. The lack of a level playing field in the internal aviation market has been going on for far too long (see above) and too many low cost airlines have already profited far too long from the lack of effective control of state aids to airports and airlines. Thus, only airports with a capacity of less than one million passengers p.a. should be granted a maximum of three additional years of operating aid.

- **Investment Aid - Change criterion for thresholds (capacity instead of number of passengers):** The criterion applied for thresholds to distinguish certain conditions for state aid is not warranted. It is highly arbitrary and allows airlines to steer traffic in accordance with the threshold. Further, analogous to the MEOP test logic applied to the general granting of state aid, the decision made by airports to invest into a certain capacity increase is of an economic and entrepreneurial nature, meaning airports must be held accountable and measured against this capacity instead of the actual number of passengers achieved later on. It is believed that this amendment is also important with regards to preventing overly optimistic capacity planning and hence overspending at the expense of taxpayers. The criterion for the granting of aid should therefore be changed to consider an airports’ maximal capacity.

- **Retroactive application of the new Guidelines:** The proposed retroactive application of the guidelines in effect again supports airports and airlines which for years have – partly even intentionally – exceeded the framework set by the guidelines of 2005 and hence profited from most likely illegal state aid. Similarly, a retroactive application of the new guidelines would “penalize” and negatively affect all market players that adhered to the former framework which was released by the Commission in 2005 as the current “rules of the game”. Besides this, the retroactive application of the new Guidelines would violate European rules of law and contradict the judicature of the European Court of Justice (C-74/00 P, C-75/00 P and T-92/11), since the mandatory legal requirements for a retroactive application are not met. LH therefore asks to delete the respective provision (cif 126).

- **Public financing of non-economic activities and extra EU, international competition:**
  A clearer and uniformly applied definition of activities that are considered “non-economic” is necessary within the EU or at least within the various individual Member States. Thus, in order to avoid competitive distortions, activities for which no uniform definition or treatment as ‘non-economic’ exists between the Member States shall generally be deemed non-economic. Such activities should either be supported in the same manner across the various airports, or not at all.

Furthermore, analogous to the specifications within Articles 107 & 108 of the TFEU, whereby aid may be granted outside the regular scope and conditions of their respective provisions, special circumstances beyond the control of airport operators or airlines, such as insolvency of a construction company, high interest rates due to economic crises, etc., which lead to an increase of the investment costs beyond the initial investment plan, should be considered and aid under such special circumstances not be categorically declared as incompatible with the internal market for airports larger than 5 million passengers p.a.. Clearly, constellations exist whereby the financing of certain activities at some airports may have the effect of counterbalancing detrimental develop-
ments or economic/political measures taken elsewhere, thereby contributing to the strengthening of European hub airports.

- **Promoting sustainable mobility within Europe**: Contrary to the aims pursued under the ETS framework, the granting of state aids to airports and airlines compromises the efforts of the Commission in promoting sustainable and demand-oriented air travel.

**Additional facts and figures needed to define the effect of the new Guidelines:**

The following facts and figures should also be included in the Guidelines in order to properly address the content and the purpose of the Guidelines.

- Quantify the amount of state aid granted to airports served by Ryan Air and EasyJet in the past 10 years.
- Quantify the number of jobs created by low cost carriers in the past 10 years vs. the numbers employees which lost their jobs with network carriers in the same period. Quantify the average salary of the jobs that were created in comparison to those that were lost. Establish a list of airports served by low cost carriers (Ryan Air, EasyJet), their size (capacity and actual numbers of passengers) and the market share of the three major airlines serving that airport. According to available numbers, a vast majority of airports served by Ryan Air is below the 3 mio passenger threshold. If the Guidelines allow for more generous aid to airports below the 3 mio threshold, they set the framework for continuing the existing distortion of competition.
- Establish an overview on distances of regional airports to hubs and other airports and their catchment area; compare the situation to aviation market/airports in the US. Especially with regards to the consideration of catchment areas it is worth noting that – in order to truly ensure no duplication of infrastructure exists within a 100km or 90 minute driving-time radius around an existing airport – the minimum distance between airports should theoretically be set at twice this distance, i.e. 200km or 180 minutes, so as to ensure that residents located between these airports may not face a situation whereby both airports are accessible within 50km / 45 minutes.
- List the number of destinations Ryanair and EasyJet have given up due to the fact that public aid to the respective airport was reduced or cut (past 10 years).