25 September 2013

European Commission
Directorate-General for Competition
State aid Registry
1049 Brussels
Belgium
Email: stateaidgreffe@ce.europa.eu

By email and post

Re: “HT 2635” – Ryanair response to consultation on draft Guidelines on State aid to airports and airlines

Dear Sirs,

1. Ryanair is pleased to have the opportunity to participate in the above consultation. We have spent the past eight years arguing as to the errors in the 2005 Aviation Guidelines, and we are pleased that the Commission is finally amending these rigid, at times legally flawed, and generally impractical and unworkable Guidelines.

2. We welcome the opportunity to contribute to the consultation so as to ensure the emergence of a legally and economically sound, industry-friendly set of Guidelines that will allow EU citizens access to more routes to more destinations at affordable fares. As Europe’s largest airline in terms of passenger numbers and also the single most investigated airline in the EU, we believe we can provide valuable input into the draft Guidelines.

3. In light of the importance of aviation to the EU economy, and the obvious problems caused by the 2005 Guidelines, it is vital that a robust cost-benefit analysis of the new Guidelines is undertaken before implementation. The low-cost aviation sector has been under a cloud of
State aid uncertainty for at least 10 years, starting with the Charleroi investigation. This uncertainty naturally hampers investment by both airports and airlines. The cost-benefit analysis should ask whether EU consumers would be best served with a straightforward regulatory framework, rather than the present situation of around 60 multi-year state aid investigations, of which Ryanair is a party to around 20. The aim of the new Guidelines should be to relieve legal uncertainty, close off the protracted investigations, and to allow the low-cost aviation sector to operate in a fully commercial manner. Given the complexity of the new Guidelines, we believe some revision and simplification is needed, starting with the point that rules on the compatibility of State aid are simply irrelevant to airport-airline deals which satisfy the MEIP test.

4. Our response to the current consultation should be read alongside our response to the questionnaire issued by the Commission in its review of the 2005 Aviation Guidelines in 2011.

**Introduction**

5. The most significant change in the air transport industry in Europe since the adoption of the 2005 Aviation Guidelines has been the continued success and rapid growth of low fares airlines and the resulting rebirth and growth of regional airports. Low fares airlines (LFAs) have continued to grow while traditional airlines that use high-cost airports have contracted. In 2005, when the Guidelines were published, low fares airlines had a market share of around 25% of total European seat capacity\(^1\). Recent work for the European Low Fares Airline Association (ELFAA) shows that by 2010, LFAs had achieved a market share of 38% of all intra-European passengers\(^2\). When only point to point traffic is included, this share rises to 43%. By 2020, based on current trends and airline fleet replacement plans, the share of LFAs is expected to rise to between 45% and 53% of intra-European air passenger journeys. For point to point journeys, the LFA market share is projected to rise to between 50% and 60%.

6. Hence, for intra-European air passenger travel, the low fares model is no longer a special case but the normal business model by which such routes are served, other than for hub connecting

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\(^1\) SRS Low Cost Monitor 2006.

purposes. We note that the Commission recognises this fact in paragraph 3 of the introductory section of the draft Guidelines.

7. LFAs have revolutionised EU aviation, bringing greater connectivity to citizens, more business opportunities to regions across Europe and reviving previously moribund airports. LFAs responded to the previously repressed market demand, unleashed by liberalisation of EU skies, much more actively than traditional airlines, which have essentially preserved their strong historical reliance on their home markets, a hub-and-spoke model and increasingly congested international hub airports. EU citizens wanted low fares, new routes, direct flights and better service. As a consequence, previously unused capacity at regional airports was required to respond to these market demands. Regional airports with limited market power were able to enter into growth deals with flexible, growth-focused LFAs, which helped to grow many of these airports into viability. A perfect example of the success of this model and the initial failure by the Commission to understand it is the case of Charleroi airport, which was in February 2004 wrongly accused of granting State aid to Ryanair. In December 2008, the EU Court of First Instance quashed the Commission’s decision. Charleroi airport has in fact continued to grow from strength to strength, with over 6.5 million passengers passing through the airport in 2012. Unhelpfully, in spite of conclusive evidence of Charleroi’s commercial success (attributable largely to the presence of Ryanair), the Commission maintains a State aid investigation into Ryanair’s arrangements at the airport.

Draft Guidelines

8. In this submission, we intend to comment on the draft Guidelines section by section, from the introductory section setting out the Commission’s policy goals in the aviation sector, through the Commission’s view on when State aid is present in the financial relationships between Member States and airports, and airports and airlines, through to the conditions for compatibility of different types of aid.

(i) Introduction (pp 2-6)

9. The introductory section to the draft Guidelines sets out a number of policy issues which Ryanair agrees with, but which must be reflected in the Guidelines in order to ensure their consistency with market reality. The Commission begins by setting out the vital role aviation
plays in terms of EU integration and competitiveness, as well as employment, before pointing out the rapid expansion of LFAs due to liberalisation of the skies. It is unclear from the draft Guidelines whether the Commission links the policy goals of further integration, competitiveness and employment to the continued success of the LFA model, but it is clear that LFAs like Ryanair have been key drivers of each of these policy goals. EU citizens can now travel to a wide choice of destinations, at low cost, for tourism and commerce reasons, as well as to take up education abroad or to visit friends and family. In a depressed economic environment, the continued expansion of LFAs and the resultant activity in other sectors of the economy contribute hugely to employment all over Europe, and not just in major cities where commercial activity is already present. LFAs create jobs in isolated regions where unemployment is high (especially amongst young people), while at the same time enhancing commercial opportunities in these regions.

10. The Commission also observes the growing involvement of private investors in airport ownership, but without stating the reasons for this trend. Private investment would not be flowing to airports without the foundations of a successful airport, i.e. passengers. Only when an airport displays a record of passenger growth will private investors be attracted to it as a potentially profitable investment. Airlines are obviously the only way in which airports can deliver passenger growth, therefore airports work hard to attract airlines with a record of delivering high passenger numbers. In the past decade, these high-growth airlines with capacity to expand have been LFAs (and this trend will continue given LFAs’ aircraft orders to 2020).

11. The rational commercial acts of airports in attracting airlines have led directly to increased private investment, increases in the value of airports and therefore good returns for the owners of these airports. Examples include Charleroi, where in December 2009 Aeroporto di Venezia (Marco Polo SpA, now SAVE SpA) acquired 27.65% of the share capital of Brussels South Charleroi Airport at a price of €11,200,000. More recently, Abertis, the Spanish infrastructure group, sold Stockholm Skavsta airport (along with Belfast International airport) to the privately-owned US airports operator ADC & HAS for €284 million. Both Charleroi and Skavsta airports are long-standing Ryanair bases (Charleroi since 2001 and Skavsta since 2003), and the private investment in both airports is largely down to the passenger

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3 Paragraph 4.
commitments Ryanair has given to these airports, and its successful record in actually bringing in large numbers of new passengers, which in turn have led to other airlines operating at these airports and increased non-aeronautical revenue potential.

12. Other recent examples include the sale of Abertis’ 90% stake in Luton Airport to a consortium consisting of Axa Private Equity and AENA for around €502m in early August 2013, which represents a multiple of 11 times enterprise value to earnings before interest, taxes, depreciation and amortisation. Luton Airport, where Ryanair is a long-standing customer, attracted significant interest: “Interest in Abertis’ prize airport, London Luton, is growing. Its attractiveness lies not just in its financials—its EBITDA and income are on a relatively sharp upward curve [...] The airport also has development capacity and last August Abertis and Luton Borough Council announced plans to expand the airport and runway to grow passenger capacity from around 10m per annum today to between 16.5m and 18m.” In December 2012, the French construction company Vinci acquired AeroPORTos de Portugal (ANA), the Portuguese-state owned airports operator, in a deal that is valued around €3.1bn. ANA operates airlines in Lisbon, Porto, Faro and Beja in mainland Portugal (Ryanair operates at Porto and Faro, and has recently announced the commencement of flights at Lisbon), as well as six other airports on the Portuguese islands of Madeira and Azores. As part of the privatisation process, ANA and the Portuguese state signed a new concession agreement for the eight airports in question on December 14th 2012, which covers a 50-year period.

13. The Commission observes that smaller airports display the greatest proportion of public ownership, and that profitability prospects for airports are highly dependent on passenger numbers. Ryanair observes this to be true. The Commission also believes that airports with fewer than 1 million passengers per annum (mppa) struggle to cover their operating costs. We are not in a position to comment on this point, although anecdotal evidence exists of airports with less than 0.5 mppa being able to cover their operating costs. In any event, the only way smaller airports can grow to viability, and deliver returns for their public owners through

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4 Financial Times (2013), ‘Luton Airport takes off from one Spanish owner to land at another’, August 1st.


7 Paragraph 5.
increased revenue from both aeronautical and non-aeronautical sources and possible sale to private investors, is to enter into growth deals with airlines offering significant passenger commitments.

14. The Commission is concerned with alleged overcapacity of airport infrastructure relative to what it believes to be passenger demand and airline needs.\(^8\) We believe that this concern is misplaced, and does not reflect reality or the policy goals of other parts of the Commission itself. Ryanair and other LFAs continue to grow, as evidenced by our recent order of 175 new Boeing 737-800 aircraft,\(^9\) easyJet’s order of 135 new Airbus aircraft\(^10\) and last year’s announcement by Norwegian Air Shuttle of the purchase of 222 new Boeing and Airbus aircraft.\(^11\) “Airline needs” clearly reflect the demand for additional capacity at EU airports, and in an environment of congestion at EU hub airports such as London Heathrow, Frankfurt Main and Paris Charles De Gaulle, the need for spare capacity at other EU airports is more relevant than ever.\(^12\) Clearly, Ryanair and the other airlines above envisage filling these extra aircraft with our usual high load factors, so it is inaccurate to say that there is overcapacity relative to passenger demand.\(^13\) LFAs stimulate passenger demand through extremely competitive fares, and we are confident that there are many growth opportunities at EU airports where we can continue delivering high load factors and new services to passengers previously not served by low cost air travel. Finally, the expansion of the EU and conclusion of “Open Skies” agreements continues to allow LFAs enter new markets and connect them with existing EU airports.

15. The mantra of DG COMP that there is overcapacity at EU airports runs counter to DG MOVE’s belief that there is a capacity crunch at EU airports. Viable regional and secondary airports provide a much needed safety valve to release demand from primary airports with

\(^8\) Paragraph 6.

\(^9\) [link](http://www.ryanair.com/ie/news/ryanair-and-boeing-finalise-firm-order-for-175-new-737-800-aircraft)

\(^10\) [link](http://www.bbc.co.uk/news/business-2294834)

\(^11\) [link](http://www.bbc.co.uk/news/business-16715245)

\(^12\) Eurocontrol (2013), ‘Challenges of Growth 2013, Task 4: European Air Traffic in 2035’, June 2013. The report shows that 12% of demand for air transport in Europe will be unmet due to insufficient airport capacity by 2035

\(^13\) For information on Ryanair’s load factor, see [link](http://www.ryanair.com/en/investor/traffic-figures), which shows that Ryanair’s average load factor has been 80%, or higher, since the first date when the data was published (2002).
capacity constraints, and a vital competitive constraint against excessive pricing by primary
airports. DG COMP’s apparent policy goal of shutting down some regional airports will just
mean directing traffic towards already congested hub airports, and severely restricting options
for EU passengers and airlines. In addition, the hub-and-spoke model multiplies take-offs,
which produce disproportionate greenhouse gas emissions.

16. Ryanair has observed with concern the Commission’s apparent view that public funding of
airports automatically channels through to airlines.\(^{14}\) As pointed out in previous submissions
to the Commission, there is no basis for any presumption of aid to airlines operating at an
airport which has been found to have received State aid.\(^{15}\) Ryanair hopes that the
Commission’s statement in paragraph 12 that “the mere fact that an airport operator receives
or has received State aid does not automatically imply that its customer airlines are also aid
beneficiaries” reflects the real view of the Commission. As the Commission correctly goes on
to state, if an airline deal at a particular airport complies with the MEIP (or the “MEO” as
referred to in these draft Guidelines), then the airline cannot be in receipt of State aid,
regardless of the funding arrangements between the Member State and airport.

17. Our comments will come back to the specifics regarding the proposed “transitional period”
for permissible operating aid to airports, but it is necessary to point out already at this stage
that the expected outcomes arising from the transitional period are unrealistic. The
Commission envisages airports in receipt of operating aid to adjust to a situation of full
operating cost coverage by increasing charges for airlines, but also at the same time attracting
new airlines to fill idle capacity. There is an obvious contradiction between attracting new
airlines to an airport and simultaneously increasing charges to airlines. An airport with spare
capacity will make the rational economic decision to lower charges to attract airlines, and
only when reaching full capacity will it be in a position to raise charges. Economic theory
supports unconstrained airports setting prices on the basis of incremental costs. If it is
expected to raise charges while operating well under its capacity, it will never attract the
airlines it needs to grow to viability. In this respect, an “anchor tenant” airline is often needed

\(^{14}\) This view is set out in paragraph 7. It is also apparent in the Commission’s 23 January 2013 decision (C(2013) 106
final) in Case State Aid SA.33983 (2013/C) (ex 2012/NN) (ex 2011/N) - Compensation to Sardinian airports for public
service obligations (SGEI).

\(^{15}\) Ryanair letter to Mr Alain Alexis of DG COMP dated 13 April 2012, in response to the Commission’s letter of 7
February 2012, section 5 (b).
to begin the process of filling idle capacity, and this anchor tenant airline can legitimately agree a lower cost deal to reflect the long-term strategic benefits it is bringing to the airport. The Commission ought to recognise that forcing regional airports with idle capacity to increase charges to airlines will lead in many cases to those airports losing instead of gaining passenger traffic (and hence non-aeronautical revenues), and that a more flexible approach is needed to reflect the “anchor tenant” principle and the long-term nature of airport investments.

18. Notwithstanding this concern, Ryanair acknowledges the proposed “amnesty” granted for operating support given to regional airports prior to the adoption of the new Guidelines. It would not be realistic to apply the new rules retrospectively to airports which have been in receipt of public support on a long-term basis. Such actions would be unfair, given that large hub airports previously received decades of financial support from Member States, and would lead to rapid closure of airports, which are (or have an opportunity of becoming) viable, through penal repayment orders.

(ii) Presence of State aid (pp. 7 – 15)

Notion of undertaking/economic activity

19. It is uncontroversial that, since the Aéroports de Paris and Leipzig-Halle airport judgments, the operation of an airport and the construction of airport infrastructure constitute economic activities, and therefore these activities come within the State aid rules. However, there are different ways the Commission can treat varying situations of State funding to airports to cover operating costs and infrastructure development depending on the effects of each measure on competition, regional development and other EU policy goals.

20. Ryanair recognises the efforts of the Commission to distinguish between the various situations of public support to airports, but would urge the Commission to be flexible in examining cases of public funding of airports, and not to apply the conditions of the new Guidelines with extreme rigidity to situations where, for example, other policy goals (e.g. alleviating the capacity crunch, unemployment, regional development) would be achieved by declaring the infrastructure/operating aid compatible with the internal market.
21. At paragraph 32, the Commission correctly points out that certain activities carried out at an airport (air traffic control, police, customs, safety) are non-economic and do not fall within the auspices of State aid rules. During the course of the various State aid investigations opened into Ryanair’s arrangements at EU airports, we have noticed an inconsistent approach by the Commission towards the identification of these non-economic activities.\textsuperscript{16} Ryanair encourages the Commission to clarify the list of definitively non-economic activities so as to afford \textit{ex-ante} certainty to airports and airlines as to what activities can be financed by the State without falling foul of State aid rules. Ryanair also invites the Commission to follow the applicable case law,\textsuperscript{17} and clearly state that the cost of infrastructure necessary for the performance of non-economic activities falls outside the scope of the State aid rules. The definition of “airport infrastructure” should be amended accordingly, and infrastructure necessary for the performance of non-economic activities should be added to the examples of infrastructure excluded from that definition.

\textit{State resources and imputability to the State}

22. Ryanair encourages the Commission to take a case-by-case approach in assessing the imputability of certain measures to the State as far as airport-airline arrangements are concerned. Often, public airports are operated at arms-length from their ultimate State owners, e.g., where they are operated on an autonomous commercial basis by local chambers of commerce (as is often the case in France), or operated by private operators under a concession given by the State. The Commission must apply the principles of the \textit{Stardust Marine} case in carefully examining each unique case.

\textit{Distortion of competition and effect on trade}

23. The Commission has concerns surrounding the public funding of airports and the charges being applied to airlines, specifically outlining the proposition that airport charges may be

\textsuperscript{16} For example, differing treatments of the costs of security in cases SA. 26494 – La Rochelle Airport and SA.26500 – Altenburg-Nobitz airport, and Cases SA.33962 – Carcassonne Airport and SA.33961 – Nîmes airport respectively.

\textsuperscript{17} T-443/08 and T-455/08 Freistaat Sachsen and others / Commission [2011] ECR 2011 p. II-1311, point 225.
maintained at “an artificially low level”. It is difficult to reconcile this statement with the position of the Commission, as expressed in paragraph 12, that one cannot presume that airlines operating at an airport that has received State aid have themselves received aid. As stated above in section (i), Ryanair has previously pointed out to the Commission that there is no basis for this presumption.

24. Paragraph 40 of the draft Guidelines seems to suggest that the Commission will use what it deems as “artificially low” charges as evidence of a distortion of competition. It is totally unclear how the Commission will decide whether charges at a particular public airport are artificially low. The Commission itself states in the draft (in the context of finding an “advantage” using the MEO test) that it is not possible in principle to find a private airport comparator for the application of the MEO test, as the private comparator airport’s charges may have been driven down to an artificially low level by publicly subsidised airports. It also points to the preponderance of publicly subsidised airports in the EU. We do not see how the Commission will be able to definitively find that charges at any airport are “artificially low” in an environment where, according to the Commission, both public and private airports are applying distortive prices. We suggest that this vague notion should be rejected.

Public funding of airports and the application of the MEO test

25. The key failing of the 2005 Guidelines was contained in paragraph 52, where the Commission effectively excluded the application of the MEIP to public airports entering into deals with airlines. Paragraph 52 states: “Applying the principle of the private investor, and therefore that there is no aid, presupposes the reliability of the whole economic model of the operator acting as an investor: an airport which does not finance its investments or does not pay the corresponding fees, or whose operating costs are partly covered by public funds, over and above a task undertaken in the general interest, cannot usually be considered as a private operator in a market economy, subject to a case-by-case assessment; it is therefore

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18 Paragraph 40.

19 Paragraph 56. It should be stated that Ryanair does not agree with this theory insofar as it presumes a market price benchmark cannot be found when applying the comparator limb of the MEO test.

20 Paragraph 53.
extremely difficult to apply this reasoning to such an operator."

26. We are pleased to see that the Commission has retreated from this untenable position in the draft revised Guidelines, but we are concerned at the restrictive manner in which it envisages the MEO test being applied.

27. We generally agree with the Commission’s view on the manner in which the MEO test ought to be applied, in that it should be based on an ex-ante view of the arrangement under investigation. However, ex-post data can provide a useful sense-check when applying the MEO test to ensure that absurd results are not reached by only applying an ex-ante perspective.

28. Ryanair agrees that the benchmark for passing the MEO test should be sound ex-ante profitability prospects for the entity granting the financing, on the basis of assessing the profitability of the agreements between airports and airlines, using the single-till approach. In line with the approach that would be adopted by a rational private sector investor, the profitability assessment should consider only the additional revenues gained, and the additional costs incurred, as a result of the agreements between the airport and the airline.

29. However, we disagree with the long-standing Commission fixation on the need for the financing entity to have a business plan projecting the profitability of the investment. We have, on a large number of occasions, pointed out to the Commission that private companies do not necessarily create business plans when making investment decisions. By stating in paragraph 48 that “the absence of a business plan constitutes an indication that the MEO test might not be met” the Commission is misapplying the MEO test by requiring that public airports comply with an artificial condition that their private competitors are not required to satisfy. We appreciate that an airport business plan will make it more straightforward for the Commission to find that the MEO test has been satisfied, and while we support the use of business plans by airports, the Commission should not conflate something that makes the application of the MEO easier with a condition precedent to the application of the MEO. The Commission should take a flexible approach to the presence/absence of a business plan, and in this regard we welcome the statement in paragraph 48 that analysis or internal documents

21 Paragraph 45.
provided by the public authority or airport can ensure compliance with the MEO test.

30. The Commission should acknowledge that, where business plan or internal analysis documents are incomplete or unavailable, it is appropriate to use other data to fill any gaps in the _ex-ante_ information in order to be able to assess the profitability of the agreements. For example, incremental aeronautical revenues can be derived from the charges specified _ex-ante_ in the contracts together with traffic targets set out in the contracts. Also, incremental non-aeronautical revenues and incremental costs specific to the agreements between the airport and the airline could be derived from either _ex-post_ information (as a last resort / sense-check), or _ex-ante_ data specific to other comparable airports with similar characteristics to the airport under investigation. This comment is mainly relevant to investigations of airport/airline agreements made in the past. Ryanair is not suggesting that airports should ignore the benefits of producing _ex-ante_ business plans for future agreements.

31. In this regard Ryanair would highlight that in its comments on the on-going state aid investigation at Angoulême Airport, the Commission notes that no _ex-ante_ information or business plan data is available in relation to the contracts with Ryanair. The Commission therefore uses _ex-post_ analysis to inform what may have been expected on an _ex-ante_ basis.\(^{22}\) Similarly, in its comments on the case at Alghero Airport, although it is implied that _ex-ante_ information would be preferable, the Commission gains insights from analysis of _ex-post_ information.\(^{23}\)

**Financial relationships between airports and airlines**

32. As mentioned above, while Ryanair welcomes the long overdue recognition by the Commission that the MEIP/MEO test can be applied to public airports, we are very concerned at the Commission’s position, as expressed in section 3.5.1 of the draft revised Guidelines, that the private comparator limb of the MEO test is not capable of being applied.

33. The Commission is of the view that the prices set by private airports for airport services

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throughout the EU do not provide suitable benchmarks for the market price of such services, because the prices set by private airports “might” be influenced by the prices set by publicly supported airports. Therefore, the Commission doubts that there are appropriate private airport benchmarks against which to compare public airport prices, and that this “polluted” market price situation will prevail for the entire length of the proposed transitional period (whereby operating aid to certain airports will be permissible).

34. Obviously, Ryanair (and other airlines) do not have access to the cost structures of any of the airports with which we deal. The only indicator to us of whether any airport, public or private, is charging a market rate is by benchmarking against the charges being applied to Ryanair at other comparable airports in our network. By dismissing the comparator approach, the Commission create huge legal uncertainty for Ryanair and other airlines in their dealings with public airports, and a strong disincentive to deal with such airports.

35. Oxera, Ryanair’s economic advisers, have provided a number of detailed analyses to the Commission regarding why this “pollution” argument is not valid in the application of the comparator limb of the MEO test. In essence, it is untenable to argue that private operators would charge below incremental cost in the long, or even medium, term. Rational private sector investors would not be willing to enter into contracts that reduce their long-term profitability. In addition to these economic analyses, there is the point that where a public airport has not been found to have received State aid, it is legally untenable for the Commission to maintain that airport’s funding structure to be a “polluter” of the prices charged by comparable private airports. It is not valid for the Commission to make a generalisation that since many public airports are publicly supported, then the prices charged by private airports are somehow not “market prices”. The Commission has made this assertion without robust evidence that public airports are in receipt of State aid, and without any recognition of the different extents to which given publicly subsidised airports in receipt of State aid may compete with and influence the charges of given private airports being used as comparators.

24 Paragraph 55.

25 See Annex 2 (response to Q 8a) of Ryanair’s letter to Mr Alain Alexis of DG COMP dated 13 April 2012, in response to the Commission’s letter of 7 February 2012;

36. Clearly, a nuanced case-by-case approach is demanded whereby the charges of private comparator airports are not immediately dismissed as “polluted” due to an unsupported hypothesis. Ryanair supports the indicators set out at paragraph 57, which help assess the suitability of private comparator airports for the purposes of applying the MEO test. These indicators should be applied as a first step, prior to any assessment of whether identified comparators are charging polluted prices.

37. Ryanair is generally in favour of the principles set out by the Commission for application of the ex-ante profitability limb of the MEO test.

(iii) Public Funding of Services of General Economic Interest (pp. 15-17)

38. Ryanair has no substantive comment on this section other than to note that Member States have traditionally been given a wide discretion to define services of general economic interest (SGEI), and the development and management of airports in some particularly isolated regions is likely to fall within any reasonable definition of an SGEI. However, the definition of airport development and management as an SGEI requiring compensation is unchartered territory, and the Commission should take a permissive approach to previous support granted to airports that theoretically operate as SGEIs, even where the strict Altmark conditions are not met.

39. Ryanair suggests the Commission may wish to clarify the economic logic of the final sentence of paragraph 66, which states: “...public service compensation granted to an airport manager for the costs incurred in discharging an SGEI should not alter its incentives to enter into commercial relationships with airlines.” It seems illogical that an airport manager could fulfil an SGEI purpose, such as connectivity for an isolated region, without having improved incentives to enter into agreements with the airlines which will be providing such connectivity. The compensation must presumably have an incentive effect in order to fulfil the SGEI purpose, and if there is no incentive effect, the compensation would be wasted.

(iv) Investment aid to airports (pp.19-23)

40. Ryanair accepts that, in some cases, the construction of airport infrastructure took place in recent years without regard to its viability. We have been engaged in disputes with certain airport operators over the expectation that users would have to pay for unnecessary infrastructure, constructed as vanity projects without consultation with the airlines that use the airport. For example, at Alicante airport in Spain, a new terminal was opened in 2011, which was unnecessary and resulted in Ryanair being forced to use expensive airbridges in breach of our standard walk-on/walk-off boarding procedure. Prior to the opening of the new terminal, Ryanair had been utilising a perfectly suitable pre-existing terminal building that was suitable for our low-cost operations. Likewise, over-specified investments in Dublin Airport’s Terminal 1 and the construction of Terminal 2 were made despite overwhelming opposition by the airport users and do not correspond to the level of traffic at Dublin Airport or the level of service / specification of facilities demanded by the vast majority of the users of the airport. In this respect, Ryanair supports the setting of clear rules for the compatibility of investment aid to airports. However, we have some concerns over the complexity of the rules set out in the draft revised Guidelines, and their potential inflexibility.

41. Capacity enhancing investment aid should be targeted towards projects that meet reasonably forecasted demand of potential users. However, it may be suitable to construct new infrastructure in the catchment area of an already-existing airport, for example if the new infrastructure enhances capacity for a certain type of demand which is not already being catered for, e.g., low cost carriers or freight forwarders. Aid for this type of infrastructure may contribute to a common interest of EU passengers, business and competition, and may not be possible via market delivery without some element of State aid. The Commission should therefore avoid strict prohibitions in this area, and examine each case with an open mind.

42. With regard to the identification of the eligible costs to which State aid may contribute, we note that investment costs related to non-aeronautical activities are excluded. We would urge caution on this point, as the concept of the “single till” is now commonly accepted across EU airports, and indeed non-aeronautical services usually determine the commercial

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27 Paragraph 88.
success of airports. The airport will treat the expected operating profits of the investment equivalently to the operating profits from the airport’s non-aeronautical activity. Given that the proportion of non-aeronautical revenue to overall airport revenue has been steadily climbing over the past 10-15 years, inclusion of the costs of non-aeronautical infrastructure in the definition of “eligible costs” in the new Guidelines may lead to the funding gap between the investment costs of a project and the NPV of the expected operating profits of the investment being narrowed. The consequence of this may be less State aid for a particular project, or at least better targeted aid leading to more efficient and competitive airports with a good mix of aeronautical and non-aeronautical sources of revenue.

43. Regarding the maximum aid intensities set out in paragraph 92, the concept that smaller airports are more in need of investment aid for infrastructure projects is largely correct. We would caution against strict prohibitions on aid intensities, as exceptions may occur where exceeding these thresholds may contribute to the connectivity of EU passengers, development of commerce and regional development, as well as increased competition in the long-term.

44. We have concerns over the treatment proposed for airports with between 3 and 5 mppa. The requirement that investment aid be paid as a repayable advance only, with detailed provision for repayment in case of a successful project outcome, may lead to significant complexities and grey areas. Manipulation by the Member State/airport of the internal rate of return (IRR) (by which the success of the project is measured) is inevitable, and the Commission is unlikely to be able to effectively monitor these acts. Paragraphs 95 and 96 incentivise Member States/airports to set an optimistic IRR, so that if the actual IRR does not exceed the previously defined IRR, the advance will not have to be paid back. It strikes us that by requiring aid to be paid to these types of airports as a repayable advance, the Commission may be incentivising non-compliance with the Guidelines, and more resource-consuming Commission investigations will follow. Instead, the Commission should simply allow aid in justified cases of airports with more than 3 mppa.

45. In contrast to the Commission’s proposals, it is not necessarily the case that airports with in excess of 5 mppa can finance their own investments without any state funding. In particular, typically, a long payback period is associated with infrastructural investments (with investments in infrastructure often taking several years to generate the sufficient level of returns required by investors), and there are often significant complexities and risks
associated with large projects. As highlighted in Oxera’s report for the Transport Select Committee, investments in infrastructure are unlikely always to be economically viable. Oxera’s analysis shows that the construction of a new hub airport in the South East of the UK would not be commercially viable without state funding, and implies that substantial state funding would be required, in the region of £10-£30bn, depending on passenger numbers.\textsuperscript{28} Therefore, the Commission’s current proposals may severely hamper airports’ ability to be able to undertake required investments.

(v) Operating aid to airports (pp. 23-25)

46. Ryanair is concerned that the Commission’s efforts to phase out operating aid to airports after a transitional period of ten years may lead to airport closures in situations where these airports are viable in the long-term or serve a valuable function to the areas in which they are located. There are situations where an airport (which is not an asset conducive to short-term returns) may not be in a position to fully cover its own operating costs within ten years, but it may well be able to in the longer term (for example, 15 or 25 years). The ten year period is too inflexible and may lead to potentially viable airports being shut.

47. The Commission, in an effort to set a “sunset clause” on operating aid to airports, risks triggering significant distortions in the competitive environment for airports. In addition, the manner in which the transitional period is proposed to work is impractical and most likely unworkable. It may result in an unwillingness of airports and airlines to enter into long-term deals, where these arrangements may need to be terminated / amended mid-term based on a need by the airport to increase its operating cost coverage by an average of 10% per annum. The incentives of market participants to enter into mutually beneficial MEOP-compliant arrangements may be distorted by the transitional period as set out by the Commission.

48. Allowing operating aid during the transitional period to airports under 3 mppa only is arbitrary, and discriminates between airports marginally under and marginally over this threshold, which may be in very similar circumstances in terms of their operating cost coverage. Allowing the airport under 3 mppa to avail of operating aid for a period of up to ten

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years, while its competitor over 3 mppa cannot receive any such aid, will lead to significant distortions of competition between airports and Member States. "Bright line" rules like this are rarely a good idea, and any airport not able to cover its operating costs should potentially be able to avail of the new rules on operating aid without being arbitrarily excluded due to historical passenger numbers.

49. Similarly, the requirement for operating aid to be fixed *ex-ante* as a lump sum over the transitional period, with any *ex-post* aid deemed automatically incompatible, is completely unworkable. It is unrealistic to expect an airport to be able to accurately project its operating cost needs over a (potentially) ten year period with no allowable margin for error. Inflexibility in the rules will only lead to major problems for these airports, and for the Commission, over the course of the transitional period, when inevitable errors will emerge in the business plans of some airports and more aid will be required. Perversely, this problem may be recognised by airports and Member States, and the operating cost gap may be overestimated in the *ex-ante* business plan so as to ensure a larger amount of aid is payable upfront to provide a buffer against these types of errors. In this way, the perceived problem the Commission is seeking to eliminate may actually be exacerbated. The Commission has also not provided any details on how to assess whether there is any over-compensation of operating aid fixed *ex-ante* as a lump sum.

50. The Commission envisages the business plan of the airport containing a progressive increase in the operating cost coverage of at least 10% per annum until full operating cost coverage is reached. While this may be possible for some airports, for many others it may be quite easy to increase their operating cost coverage in early years and very difficult in later years, or vice versa. A strict minimum of 10% fails to offer the flexibility needed for these airports to become viable. Also, it is likely an airport will find it relatively easier to move from, e.g. 20% to 30% operating cost coverage, than it will to go from 80% to 90%. Again, this strict condition may lead to the formation of unrealistic business plans by airports which comply with the Guidelines but will not reflect reality during the transitional period.

51. As regards the length of the transitional period, 10 years is too short and too inflexible in an industry where investments are often made on the basis of 15 or 25 year business plans.

52. Many of Europe’s regional airports are engines of economic development in local areas
where the broader economic benefit needs to be recognised. For example, in the Canary Islands and in Greece, airports play a crucial role in underpinning the regions’ main industry (tourism) which yields benefits which in any revenue/cost appraisal must be seen as accruing, in part at least, to the airport to justify further operational expenditure contribution by the State if necessary. There are numerous examples of these types of airports which foster not just tourism but also general economic growth, particularly in regional areas. In many cases the growth of these airports is thwarted by their seasonal nature but nonetheless they are crucially important and may have costs, particularly in the off season, without much or any corresponding revenue. A further example of this would be the smaller Balearic Islands like Menorca and Ibiza where the seasons are quite short but the activity is very intense, and yet costs are carried through the other 7-8 months of the year in which there is very little, if any, revenue to cover those costs. Their problems will not be solved within a short timespan and there may be a constant need for some cost support. We recognise that this support should be kept to a minimum, but these airports should not be condemned to closure after the transitional period without recognising the vital role played by these airports in the regions where they are situated.

53. It is sensible for the Commission to only apply the new rules on operating aid to airports on a forward-looking basis, and to allow an “amnesty” for such aid to the point where the new Guidelines will come into force. 29 However, the error in paragraph 112 of the draft revised Guidelines as to which conditions will be applicable to “old” operating aid is unfortunate, and we assume the error will be rectified in the new draft. 30 It would be helpful if this were clarified prior to the entry into force of the Guidelines.

(vi) Start-up aid to airlines (pp. 25-26)

54. Ryanair has always advocated a proper application of the MEIP/MEO test in assessing whether State aid exists in deals between public airports and airlines. We are encouraged by

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29 Paragraph 112.

30 Paragraph 112 provides that aid paid before entry into force of the proposed transitional period (including aid paid before entry into force of the new Guidelines) can be declared compatible to the full extent of uncovered operating costs provided the aforementioned new conditions b) and d) for compatibility of operating aid to airports are satisfied, and that new conditions a), c) and f) do not apply. However, the draft Guidelines only set out conditions a) – e). We assume this is a typographical error and that we can substitute “c)” for “f)” to capture the Commission’s intention. It would be extremely unfair (and contrary to common-sense) to apply condition c) to past operating aid.
the Commission’s (partial) acceptance of the fact that the MEO test must be applied to these arrangements, and are confident that the application of the MEO test to these arrangements will finally dispose of the plethora of State aid cases involving these airport-airline deals. In this respect, we acknowledge the sensible approach laid out in paragraph 125 whereby the Commission intends to apply the new Guidelines to the pending cases involving alleged aid to airlines.\textsuperscript{31}

55. The draft Guidelines thankfully correct the error of the 2005 Guidelines, which conflated all incentives granted to airlines with the idea that these airlines were receiving State aid. Private airports routinely give incentives to airlines, and it would be discriminatory and contrary to Article 345 TFEU to automatically classify incentives given by public airports as State aid.

56. Ryanair notes the revised conditions for compatibility of start-up aid to airlines, and that the conditions have effectively been made more restrictive in terms of the size of airport that is eligible to grant aid to airlines, and the duration of such aid. We are unsure as to the purpose of these restrictions, but would generally caution against overly prescriptive rules that may fail to capture cases where aid to an airline would be legitimate in terms of increased connectivity, regional development, tourism or aiding congestion at primary EU airports. Similar to the case of operating aid to airports, having an arbitrary threshold of 3 mppa over which start-up aid cannot be granted discriminates between airports marginally under and marginally over the threshold. Compatibility of this type of aid should be assessed on a case-by-case basis, once it is clear that the MEO test does not apply to a particular arrangement.

57. Our experience tells us that public airports are still going to be confused by the conditions for compatibility of start-up aid to airlines, and little will change in this regard, but the clarification of the MEO test should act as a counterpoint to this confusion. It would be helpful for the Commission to set out clearly in the Guidelines that once the MEO test is complied with in an airport-airline relationship, the conditions for compatibility of start-up aid are inapplicable and commercial incentives are not restricted (other than by the MEO test). Explicit clarification on this point would help airports in their negotiations with airlines, in terms of knowing precisely what they need to do to comply with the new rules.

\textsuperscript{31} Including 19 cases involving alleged aid to Ryanair.
58. We would also like to point out a contradiction between the revised draft Guidelines and the “Frequently asked questions” press release as to whether the revised Guidelines will apply to start-up aid granted to airlines prior to the entry into force of the new Guidelines. Paragraph 125 of the revised draft Guidelines suggests that the new Guidelines will be applied by the Commission to this type of aid, while the Commission’s answer to question 17 of the “Frequently asked questions” document states that the new Guidelines will not be applied to start-up aid to airlines granted prior to the entry into force of the new Guidelines. The Commission ought to clarify this contradiction.

Conclusion

59. Ryanair broadly welcomes the revised draft Guidelines as a necessary clarification of the previously opaque rules on State aid in the aviation sector. However, our submission presents some concerns with how the new rules would work in practice, and in particular the danger of substituting one inflexible and unworkable set of Guidelines for another.

60. We are particularly concerned about the apparent dismissal by the Commission of the comparator limb of the MEO test as it applies to airport-airline arrangements. We see no legitimate basis for the comparator test being rendered inapplicable during the proposed transitional period.

61. We are also concerned about the inflexibility of the new rules for investment and operating aid to airports leading to the closure of airports that will be viable in the long term, and/or which serve valuable economic and non-economic functions in the areas where they are situated. If an airport generates revenue for its surrounding region through tourism/commercial opportunities, leading to economic growth and greater tax revenues for the public body which owns the airport, then it would be extremely damaging if the new Guidelines were to lead to this airport being shut down. The non-economic benefits generated by an airport, which are consistent with overall EU policy goals, must also not be discounted, for example in terms of regional development, connectivity of citizens and decongestion of hub airports. Overall, a more holistic view of aid to airports is necessary that the one promulgated in the draft Guidelines.
62. We look forward to further engagement with the Commission on the development of the draft Guidelines. Should you have any queries on our submission, please do not hesitate to contact me.

Yours sincerely,

[Signature]

Juliusz Komorek

Director of Legal & Regulatory Affairs