United Kingdom’s response to the European Commission on its proposed new Guidelines on State aid to airports and airlines (EC Ref: HT-2635)

Summary

1. The UK Government welcomes the opportunity to respond to the European Commission’s draft ‘Community guidelines on State aid to airports and airlines’ that follow the previous consultation on the review of the ‘Community guidelines on financing of airports and start-up aid to airlines departing from regional airports’ in 2011.

2. Overall the UK welcomes the updated guidance and its aim to safeguard fair competition and to ensure a level playing field for airlines and airports irrespective of their business model. The UK believes that it is for airport operators and airlines to determine and fund airport operations and air services respectively. However we also believe that State aid could be appropriate towards the delivery of a large one off airport development, where significant investment is required and where the private sector is unwilling or unable to finance such projects in their entirety.

3. The UK also recognises that aviation plays an important role in connecting peripheral and development regions and the UK accepts that State aid for both investment and operating aid may be necessary where local economic conditions cannot support basic airport and airline services.

4. More detailed comment on these points and the rest of the guidance is provided in the rest of this document. We are content for the views contained in this response to be made public and for these views to be attributed to the UK Department for Transport.

Section 1 - Introduction

5. It is important that application of the guidance on State aid protects against the distortion of competition. The UK agrees with the Commission that in the first instance, it is for airport operators and airlines to determine and fund airport operations and air services respectively, based on market conditions. However, we recognise that aviation plays an important role in connecting peripheral and development regions, and accepts that State aid may be necessary where local economic conditions cannot support basic airport and airline services. In such circumstances, State aid provides a legitimate tool to subsidise vital air connections and economic and social development in peripheral regions or islands.
6. We therefore welcome the provision in paragraph 15 that ‘compensation for uncovered operating costs of service of general economic interest (SGEI) would remain possible for small airports to allow for connectivity of all regions’. We understand that the guidelines do not prevent assistance to airports being considered by reference to established principles relating to SGEI.

7. The UK considers it important that any new guidelines are applied in a consistent way across Europe. The excessive or inappropriate use of State aid has significant potential to distort competition.

Section 2 - Scope of application

8. No comment

Section 3 - Presence of State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union (TFEU)

9. We support the useful guidance regarding the Market Economy Operator Principle.

Section 4 - Public funding of Services of General Economic Importance (SGEI)

10. The UK welcomes the Commission’s view ‘that it is possible for the overall management of an airport in well-defined cases, to be considered an SGEI.’

11. In paragraph 65 we believe there is a mistype at the end of the second sentence. We suggest that it should read:

‘… isolated from the rest of the EU to an extent that it would prejudice its social and economic development.’

12. The guidelines allow for public authorities to define certain economic activities that are carried out by airport managers or airlines as SGEI. We suggest that it would be useful if the guidelines made clear the airport activities that would be eligible under an SGEI, as there is no reference to these within the SGEI guidelines or Regulation 1008/2008. The 2005 guidelines at Section 4 (53) made clear the differing eligible activities and the SGEI staff working document makes direct reference to this section when discussing compatibility costs.
Section 5 - Compatibility of aid under article 107(3)(c) of the TFEU

Infrastructure aid for airports

13. In relation to the provision of State aid for the development of airport infrastructure, the UK Government believe it is for airport operators to determine and fund airport developments required, based on market conditions.

14. We therefore welcome the compatibility criteria set out in paragraph 92 which sets out the maximum permissible aid intensity depending on the size of the airport as measured by the number of passengers per annum. We believe that these guidelines will help to protect against the distortion conditions.

15. We agree with the Commission’s view that airports which typically handle more than 5 million passengers per annum are usually able to self finance expansion. However the delivery of larger one-off developments – such as the transformation of an existing airport or the development of a replacement major international airport – where significant investment is required, could still need or justify investment aid from the State.

16. The reasons for this could encompass the fact that the length of time and risk associated with such a large project mean that the private sector is unwilling or unable to finance such projects without adequate financial support from the State. Alternatively, the rationale for transformation or development may not be (in whole or part) commercial reasons of the current or prospective airport operator.

17. Restrictions on State aid of this kind would also expose the European airport sector as a whole to an uneven competitive playing field with regards to countries outside of the EU, such as Turkey and countries in the Middle East (e.g. Dubai and Doha) and Far East (e.g. Hong Kong and Kuala Lumpur), where no equivalent public financing limitations apply and where, consequently, state funding has been used. A blanket ex ante prohibition on any such aid could prejudice a potential driver for growth across the EU or a substantial part of it.

18. The key point is that there are certain types of transformative airport project which can be envisaged where the existence of Aid, and the issue of whether or not any Aid is compatible with the internal market, are so fact-dependent that we should not preclude consideration of these questions in the absence of the facts.

19. We would therefore like the guidelines to acknowledge that where one-off transformational developments require significant investment questions as to the existence or compatibility with Aid would not be prejudged. Obviously any such questions would require appropriate consideration and discussion if and when they arose.
20. Paragraphs 78 to 82 define the airport categories to be used for State aid with regards to investment and infrastructure aid to airports. This is currently contained within the section relating to investment aid. For clarity we recommend these paragraphs are moved to a new section before ‘5.1.1. Investment aid to airports’.

21. The guidelines state that state aid provision for infrastructure, investment and start-up aid should be based on an ex ante business plan. We would welcome further clarification on what the Commission would like to see in such a plan.

Operating aid for airports

22. In relation to the funding of airport operating costs, it is important that the guidelines protect against the distortion of competition. The majority of the major UK airports are now either wholly or partly under private ownership. Consequently, the UK strongly agrees with the European Commission’s consideration that an airport operator, like any other business, should meet the normal costs of operating and maintaining the airport infrastructure from its own resources.

23. However, the UK also acknowledges that there are exceptions where operating aid may be justified under certain conditions in disadvantaged regions and if it is necessary for the operation of a service of general economic interest.

24. As the European Commission sets out in the guidelines, the Altmark decision provides conditions under which aid to an undertaking performing a service of general economic interest does not constitute State aid.

Start-up aid airlines

25. In relation to start-up aid, it is important that the guidelines protect against the distortion of competition. Airlines operate in a competitive, commercial environment and it is for individual airlines to determine the routes that they operate. However, the UK recognise that aviation plays an important role in connecting disadvantaged regions and accepts that start-up aid may be necessary to establish air services to airport located in peripheral and development areas where local economic conditions prove unattractive to airlines.

26. The UK therefore supports the Commission’s use of strict and extensive compatibility criteria set out paragraph 113 as they are conducive to limit start-up aid to appropriate circumstances and routes, which would minimise the risk of distortions to competition. However, following the use of airport size categories in paragraph 113(a) as initial indicator, it remains important that a full analysis of competitive constraints is performed in each case, as this would more fully take into account the potential for distortion to competition.
27. However, the proposed guidelines may not be providing sufficient scope to support the establishment of routes to peripheral regions in the EU such as Northern Ireland, Scotland and Wales.

28. In peripheral regions of the EU where there is no high speed rail alternative, there is a greater reliance on air travel to access existing and developing markets. Airport passenger bases are potentially smaller and the risk inherent in starting up new air services is therefore correspondingly greater. Also the UK is also not a single landmass, for example over 1.8 million of the population live in Northern Ireland and therefore have no land based alternative, in respect of access to the rest of the UK. The provision of start-up aid allows the risk inherent in the start up of new routes to be shared by airlines and local public authorities - a risk which is greater for peripheral regions of the EU.

29. We are therefore disappointed that the dispensation for “disadvantaged regions” (including sparsely populated regions) for a duration up to 5 years with higher levels of aid intensity has been removed.

30. Separately, the current EU guidelines are silent on connectivity with airports outside the EU. For peripheral regions of the UK, the development of such links may assist the development and support of business connections with existing and emerging markets and the direct economic benefits these can deliver. We would like the guidelines to be supportive of routes that connect from the EU to airports outside. Greater scope within the guidelines would offer an opportunity for the aviation sector to contribute to economic regeneration of those regions, increasing inward investment and higher value-added employment whilst increasing tourism opportunities.

31. The existing guidelines restrict support to EU carriers only. The new guidelines however, appear to have lifted that restriction. We would appreciate clarity on this point as we believe real benefits will be had by allowing aid to non-EU carriers to develop routes with EU Member States as this would increase the scope and competition for new services to be developed in peripheral regions by providing a larger pool of eligible airlines who may be enticed to provide links to their hub airports.

32. Finally, in a scenario where there is no displacement of services or distortion of competition, nor any strong sustainable economic growth and increased connectivity across Europe and beyond, the annual volume of an airport’s passengers may be immaterial to the assessment of potential State aid. The current categorisation system, with its emphasis on annual passenger volume, effectively rules out the possibility of start-up aid from certain airports prior to the assessment of any potentially distortive effect. As a result, the guidelines could be ruling out support for services that would not distort competition. It is therefore important to analyse all the relevant competitive constraints on the airport and route in question for each case of potential State aid.
33. Regardless of scope, it is important that any start-up aid support mechanisms are transparent, non-discriminatory and time-limited. Such start-up aid schemes should only support routes where there is an identifiable economic benefit in terms of improving business connectivity, encouraging inward investment and making the region more accessible for inbound tourism.

Section 6 - Aid of a social character under article 107(2)(A) of the TFEU

34. The UK suggests that cross reference should be made between the different EU regulations, as the text makes no reference to the fact that this provision is now exempted under the revised General Block Exemption Regulations (GBER) and notification should be made via that regulation.

Section 7 - Cumulation

35. No comment

Section 8 - Final provision

36. Regardless of scope, it is important that any start-up aid support mechanisms are transparent, non-discriminatory and time limited. Such start-up aid schemes should only support routes where there is an identifiable economic benefit in terms of improving business connectivity, encouraging inward investment and making the region more accessible for inbound tourism.

37. We support the Commission’s position that all aid should be transparent to ensure best value however, we feel that the suggestion that all aid awarded is entered into a central website will be an additional administrative burden on Member States and could be of high cost and resource intensive. As this appears to be a requirement across the majority of revised state aid rules we would suggest that the Commission develop a central database or website, similar to the SARI system, that is available, at no cost, to all Member States. This would ensure consistency of information and reporting and would relieve Member States of the burden of the set up cost such a system build would require.

38. The UK is concerned that transparency requirements for fiscal awards do not respect the principle of tax confidentiality. This is a cornerstone of tax policy which must be considered if fiscal schemes are to remain effective. We would welcome an opportunity work with the Commission on alternative provisions for fiscal schemes.
Annex 1

39. We suggest that it would be helpful if the Commission could provide a definition of “non-economic activity” that is mentioned in Section 3 paragraph 33.

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