



EUROPEAN COMMISSION

Brussels, 23.X.2007

C (2007) 4316 final

**Subject: State aid No N 303/2007 – United Kingdom
Newquay Cornwall Airport Development**

Sir,

I. Procedure

1. On 31 May 2007 DG TREN received an electronic notification from the United Kingdom authorities regarding the above-mentioned measure concerning the re-development of Newquay Cornwall Airport. This measure was registered on 1 June 2007 under number N 303/2007. By e-mail dated 18 July 2007 (registered on 18 July 2007 with reference TREN A/37917) the UK authorities agreed to extend the time period allowing the Commission to take a position on this notification to 25 September 2007. On 24 September 2007 the Commission requested additional clarifications of the UK authorities in relation to certain matters and a reply to these questions was furnished by letters dated 5 October 2007 and 15 October 2007.

II. Detailed description of the measure

2. The notification which is the subject of the present decision concerns public investment for the infrastructure development and the land acquisition necessary to developing Newquay Cornwall Airport (IATA code - NQY), a small regional airport located close to the town of Newquay on the north coast of Cornwall.
3. The public investment under examination is designed to ensure the commercial viability of NQY airport after the departure of the Royal Air Force (RAF), which currently provides essential services to the airport, by financing the implementation of a development plan aiming to achieve the airport's transition from a partially military to a fully civilian airport and to increase the airport's passenger capacity so that it can progress towards long term commercial sustainability.

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4. The airport is operated by Cornwall Airport Ltd¹ ("CAL") trading as "Newquay Cornwall Airport", a company wholly owned by Cornwall County Council ("CCC"). The airport currently forms a civil enclave within a Royal Air Force base (RAF St Mawgan). In November 2005, the British Ministry of Defence announced that military flying operations at RAF St Mawgan would cease. The announcement of the Ministry of Defence included a commitment to work with the CCC to secure a "smooth transition" from military to civilian airfield operations, enabling civilian operations at NQY to continue.
5. In 2006, NQY airport handled 360,000 passengers. In 2007, it is expected to handle around 440,000 passengers. This makes NQY airport a "small regional airport" (so-called "category D"), for the purposes of the "Community guidelines on financing of airports and start-up aid to airlines departing from regional airports"² (hereinafter the 2005 guidelines).
6. Following the statement of the Ministry of Defence, CCC expressed their interest in purchasing the freehold of the RAF St Mawgan airfield from the Ministry of Defence on the ground that this purchase is in the public interest. The Secretary of State for Defence has now agreed to sell the airfield at market value through private contract to CCC. The key requirement in achieving the transition from partially military to fully civilian use of the airport is the need to secure a Civil Aviation Authority (hereinafter CAA) operating licence for civilian operation (the airport currently operates under a military license) before the RAF finally withdraw in the summer of 2008.
7. Currently, airfield services at the airport (runway/taxiway maintenance and patrols, airfield security, bird scaring, Fire and Rescue, and air traffic control) are provided by the RAF. CCC has an operating agreement with the Ministry of Defence covering the provision of these services. In 2006/2007 the contract price paid to the Ministry of Defence was £0.82 (€1.21) million. In 2007/2008 it is anticipated to be close to £1 (€1.47) million (although the exact figure is still under negotiation). The provision of these services will be terminated when the RAF depart in the summer of 2008.
8. On 22 June 2006, the Cornwall County Council committed itself to a development strategy for the Newquay Cornwall Airport comprising four principal components:
 - securing a transition from military to civilian operations by October 2007 and purchasing the site of the RAF St Mawgan base;
 - continuing to develop the civilian airport by developing new services, expanding existing services and developing other aviation-related revenue sources;
 - investing in new airport capacity and introducing new technology to create operating cost efficiencies;
 - preparing a long-term "Master Plan" and investment strategy for the airport, which envisages private sector participation through contracting out and future capital investment in return for equity.

¹ Newquay Cornwall Airport Ltd. was established in April 2007, prior to this the airport was managed by Serco Group under a contract from CCC, Serco Group took over the contract to run the airport from Sutton Harbour Holdings in 2003

² OJ C312/1 of 9.12.2005

9. CCC has drawn up a wide ranging programme for the proposed development of the airport over the next five years. This Airport Development Plan sets out the objectives and the various types of action that need to be undertaken for the development of the airport and the structure that is intended to be put in place for the management thereof.
10. The broad objective of the Airport Development Plan is:
 - to achieve an increase in the number of passengers at the Newquay Cornwall Airport to 800,000 per year by 2011 and to above 1.2 million passengers per year after the opening of the new airport terminal in 2011; and
 - to break-even by 2013–14 and ensure long-term commercial viability thereafter.
11. In accordance with its articles CAL will operate NQY Airport and may carry out any ancillary business that is necessary for, or expedient to maintaining an airport. CCC has appointed CAL's Board and may use its role as sole shareholder and its appointed representatives on the Board of CAL under the articles of association of CAL in order to exercise full control over CAL's activities. In the opinion of the UK authorities the arrangements entered into between CCC and CAL are in practice an "in-house" operation within the full control of CCC, fulfilling the criteria established by the European Court of Justice in its judgment in Teckal³ given that CAL is (i) a wholly owned subsidiary and under the sole control of CCC and (ii) carries out the essential the essential parts of its activities with CCC.
12. The notification concerns public funding required to cover the costs arising under four different headings.

(i) Airport transition infrastructure

13. The first heading of investment is the airport **transition infrastructure** development works. In this regard a number of safety related civil works and equipment are needed to meet CAA licensing requirements before such a licence is granted. The estimated total cost of these safety-related civil works and equipment equates to £23.5 (€34.55) million. Of this cost, £1.16 (€1.71) million will be spent on improving security fencing.
14. All spending under the heading of transition infrastructure is security and safety related. These works will be part-funded by the European Regional Development Fund (ERDF) under the Objective 1 / Convergence objective and by national funding from the South West England Regional Development Agency (SWERDA) and the Local Transport Plan (LTP). SWERDA is the main regional fund provider for the airport. It receives its funding from the UK Department for Trade and Industry and the UK Treasury. LTP is a "block" of funding which the UK Government invites local authorities in the UK to bid for in order to support "local transport" schemes.

(ii) Airport Interim Development Strategy

15. The second heading of investment is the airport **Interim Development Strategy**. The existing passenger terminal building at the airport causes a number of problems, in particular congestion. The maximum capacity of the existing terminal building is 400,000 passengers per year or 360 passengers per hour. In 2006, NQY airport handled 360,000 passengers. In 2007, it is expected to handle around 440,000

³ Case C-107/98 [1999] ECR I-8121 paragraph 50

passengers. Currently the terminal handles 400 passengers per hour at peak times and will need to be able to cater for up to 650 passengers per hour by 2011.

16. This congestion problem is exacerbated by poor internal building layout, by short check-in queue depths, manual check-in procedures and inadequate and obsolete hold baggage security screening equipment and facilities. NQY airport currently has the highest passenger throughput per square metre of any UK airport.
17. Detailed design and costing work is underway to improve the terminal's current defects. The total cost of the Interim Development Strategy is estimated to be £6 (€8.8) – 6.5 (€9.6) million, which covers the purchase of essential operating equipment (ramp and airfield vehicles as well as a range of capital works to the terminal apron and surface access. This cost will be covered partly by State aid comprising a grant by SWERDA and LTP funding, and partly by the airport's own borrowing based on forecast improved revenue streams.
18. Out of this total cost, approximately £4.5 (€ 6.62) million will be spent on terminal capacity works and £1.7 (€2.5) million will be spent on new technology and equipment. The terminal capacity works include:
 - the extension and reconstruction of the existing terminal building⁴;
 - the construction of a relocated arrivals hall, which will allow the departures area to expand;
 - improvements in the airport grounds layout⁵;
 - drainage and power supply enhancements;
 - the construction of additional stands;
 - the construction of temporary/permanent office accommodation for airport staff, immigration, other statutory services, airlines, contractors and the Newquay Cornwall Airport Project Office; and
 - possibly the construction of further hangars space (temporary and permanent).
19. These works will increase Newquay Cornwall Airport's capacity from 400,000 to 700,000 passengers per year and improve service level standards.
20. The temporary nature of some of these works reflects the intention to build a new southern terminal, which on current estimates would open in April 2011 but could be delayed until April 2012. However, the existing terminal will remain in use by business and general aviation operations after the new terminal opens. Various options are being explored for the existing terminal including a flying school, business or pleasure flights, air taxi services, private pilot flying, flying related "sports". In addition, part of the terminal may be converted for an associated business centre for meetings, training and small conferences. These "legacy" activities at the existing terminal will help to improve the long-term commercial viability of the airport and make an important contribution to the economic value of the airport to Cornwall.

⁴ Including the addition of a second baggage carousel, the increasing of the size of the departure lounge, the increasing of the size and configuration of security search areas, the lengthening of check-in queuing areas, the redesigning of terminal facades and internal decoration, etc.

⁵ Including landscaping and relocating drop off and pick-up areas, taxi ranks and bus stops required for security zoning reasons

21. Over half of the £1.7 (€2.5) million allocated for new technology will be spent on new hold baggage screening equipment and the rest will be spent to improve passenger information, to automate passenger handling processes, to relocate CCTV cameras and to reposition the Police Monitoring Centre.

(iii) Civil Aviation Authority license compliance works

22. The third heading for infrastructure investment related to **CAA licence compliance purposes**. If the CAA grants a civil operating licence to Newquay Cornwall Airport in October 2007, this licence is expected to be conditional upon the completion of a range of "compliance" works, in addition to the ones already carried out as part of the Transition Project, to be carried out within 2 -3 years after the grant of the CAA licence. These "compliance" works will be required to meet safety requirements and are expected to include:

- a new control tower;
- a new fire station; and
- an additional taxiway widening and re-surfacing to serve the new terminal.

23. These works will be carried out between October 2007 and December 2011. The cost of these works is estimated to be £11 (€16.17) million. This cost is expected to be part-funded by the ERDF under the Convergence objective, which will be matched by a national contribution comprising a grant from the SWERDA and LTP funding.

(iv) Land purchase

24. Additional to the infrastructure investments detailed above will be the public funding required to **purchase the land** of the RAF St Mawgan site from the Ministry of Defence.

25. CCC needs to purchase the RAF St Mawgan airfield from the Ministry of Defence because other funding providers will not release funding until Newquay Cornwall Airport has ownership or established rights to the land necessary in order to carry out its proposed development works.⁶

26. The exact value of the Ministry of Defence land will be agreed by the District Valuer⁷. The estimated cost of this land is £3.5 (€ 5.2) million. The actual cost is not likely to be much higher than this estimate as the only alternative use for this land would be for agricultural purposes. Land acquisition costs will be met by LTP funding.

27. Taking all of the headings listed above a total amount of approximately £44 (€65) million is estimated to be required for funding the various actions envisaged in the Airport Development Plan. A provision for possible overspend of just over £5 million has also been taken into consideration.

⁶ When closing down a base, the Ministry of Defence is normally required to dispose of it on the open market for the best value. Cornwall County Council has submitted an application to the Ministry of Defence asking it to sell the land used by RAF St Mawgan to Cornwall County Council in the "public interest". This has now been agreed by UK Government Ministers.

⁷ The Valuation Office Agency is an executive agency of HM Revenue & Customs, its main roles are to value property in England, Wales and Scotland for the purposes of taxes and to provide statutory and non-statutory property valuation services in England, Wales and Scotland

28. Under the Commission guidelines on national regional aid for 2007-2013, the NUTS 2 level region of Cornwall and the Isles of Scilly has been designated as an area eligible for national regional aid under the derogation of Article 87(3)(a) of the EC Treaty for the whole period 2007-2013 at an aid ceiling of 30% gross grant equivalent.⁸
29. Of the £44 million, a total of £19.5 (€28.6) million will be provided through the ERDF, including £12 million as part of the Objective 1 programme with a further £7.5 million coming from the Convergence objective programme. The present decision concerns the assessment of the notified aid measure under Community rules on State aid and is without prejudice to decisions regarding the adoption of the Convergence Operational Programme for Cornwall and the Isles of Scilly and financial contributions from the ERDF.
30. A further £15.25 million will be granted to the airport from public funding agencies. This will be made up of £8 million of direct grants by SWERDA and a further £7.25 million of direct grants by LTP.

	Transition	Interim Development Strategy	Post Transition Licence	Land Acquisition	Total
Expenditure	£m	£m	£m	£m	£m
2006-2007	1.75	2.3			4.05
2007-2008	22.75	3.9	4.0	3.5	33.2
2008-2009			3.0		3.0
2009-2010			2.0		2.0
2010-2011			2.0		2.0
Total Expenditure	23.5	6.2	11	3.5	44.2
Funding	£m	£m	£m	£m	£m
EC Objective 1	12.0				12.0
EC Convergence			7.5		7.5
SWERDA	3.0	2.9	2.1		8.0
LTP	3.6	1.6	1.0	1.0	7.25
Borrowing	5.85	1.7	0.4	2.5	9.5
Total Funding	23.5	6.2	11	3.5	44.2

⁸ National regional State aid map: United Kingdom, OJ C 55, 10.3.2007, pp.2-12.

31. It is also intended that Cornwall Airport Ltd will contribute to the development by borrowing the sum of £9.5 million to meet part of the investment costs, this borrowing will be funded by the airport's revenue. This borrowing will be guaranteed by CCC.
32. The amounts set out above as being required for the investments have been gradually defined following a consultancy study commissioned by CCC and verified by two further consultants. Following open competitions framework contracts have been put in place for all aspects of the proposals. Designs are now close to finalisation allowing more accurate cost estimation and will be subject to fixed price controls.
33. The need to carry out the infrastructure investments listed above has been verified by the CAA as far as safety works are concerned. The CAA has confirmed that these works are required in order to secure a civil operating licence. In relation to the security related work the UK transport security agency - Transec - has also confirmed that the security related works are required to meet the statutory guidelines.
34. The need for the investments in internal capacity and layout to be carried out as part of the Interim Development Strategy has also been verified by CCC's funding partners against IATA service standards.
35. CCC has transferred to CAL all functions to enable CAL to discharge its obligations to operate the airport as a commercial undertaking. This transfer includes CCC's right and functions under CCC's agreement with the Ministry of Defence. CCC has not transferred the land to CAL but has leased certain facilities to CAL on a commercial basis. The lease terms are on an arm's length basis determined on the basis of an agreed "base" which takes into account the number of passengers at the date of the lease, the lease also makes provision for an increase in the rent in the event that the passenger numbers rise, in effect allowing CCC to take account of its investments in the airport.
36. The "base" rent for the lease is £606,000 (905,603 EUR) per annum and in the opinion of the UK authorities and is a market rate as it has been calculated on the basis of the following
 - the term of the lease (5 years),
 - commercial rates for comparable facilities and buildings,
 - the assumption that the lease rates for commercial aviation purposes would be higher than in case these assets were to be leased for other (non-aviation) purposes, taking into account that the airport is located in a rural area and that some of the facilities would not be suitable for alternative (non-aviation) use.
37. The "base" rent may be adjusted upwards in the amount of £2 per passenger over and above the number of passengers at the airport in 2006.
38. The UK authorities submit that their primary motivations in making the investments in NQY airport are the desire to improve connectivity and regional development. It is also their intention to provide Cornwall with a modern, safe and viable airport. They state that the public investment is necessary to meet the general interest objective of developing transport and communication links via the airport which is situated in one of the most remote areas of the UK. They point out that Cornwall and the Isles of Scilly, are one of the two NUTS 2 level regions in the UK which have been designated as eligible for national regional aid under the derogation of Article

87(3)(a) of the EC Treaty for the whole period 2007-2013 at an aid ceiling of 30% gross grant equivalent

39. They submit that four studies looking at different aspects of the Cornish economy have each confirmed Newquay Cornwall Airport's importance to the county's economic growth agenda as supported by EU structural funds, national and local funding agencies. The investment work which is the subject of the present decision will preserve £25 (€36.75) million General Value Added (GVA) per annum and some 750 direct, indirect and induced jobs in Cornwall, which by 2006 were dependent on Newquay Cornwall Airport. They note that a further 250-500 jobs could potentially be at risk in Plymouth and South Devon if the planned Interim Development Strategy works at NQY airport are not undertaken. This is because the airport at Plymouth depends on joint services with NQY airport for its commercial viability.
40. The UK authorities point out more generally that the plans to develop the airport should create a further 650 jobs, in addition to the 750 existing jobs, and £30m (€44.5m) GVA by 2015. The number of 750 jobs excludes new additional jobs in freight, business aviation, aerospace, maintenance repair and overhaul which will be provided based on the airport securing a civil license.
41. Even without such catalytic benefits, the authorities contend that the development of NQY airport will have significant wider benefits in terms of business connectivity and productivity which other modes simply cannot provide; the important role of NQY airport to Cornish business is regularly reflected in business surveys. The airport is also fundamentally important to Cornwall's largest economic sector, tourism, because it will help to develop new high value tourism markets (international inbound, domestic short break and events related) and seek to extend the tourist season by lengthening the "shoulder" periods (the periods before and after the "peak" summer period) so as to increase revenue and seasonal employment and facilitate a small but important year round tourism market.

III. Assessment of the notified measures

42. By virtue of Article 87(1) of the EC Treaty "any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market." Such State aid may however be declared compatible with the Common market, in particular pursuant to Article 73, Article 87(2) or (3), or Article 86(2), or their implementing provisions.

Existence of aid

i Legal Framework for appraisal

43. The criteria laid down in Article 87(1) are cumulative. Therefore, in order to determine whether the notified measures constitute State aid within the meaning of Article 87(1) of the Treaty all of the following conditions need to be fulfilled. Namely, the financial support:

- is granted by the State or through State resources,
- favours certain undertakings or the production of certain goods, that is to say, provides an advantage that is granted selectively to certain undertakings or the production of certain goods;
- distort or threatens to distort competition, and
- affects trade between Member States.

44. In relation to the financing by public authorities of airports the Commission has put in place the previously mentioned 2005 guidelines. These guidelines are designed to provide a framework for determining if public financing of airports gives rise to issues of state aid concern.
45. In particular, the 2005 guidelines highlight the importance of determining whether the beneficiary is engaged in an economic activity⁹.
46. In assessing whether the operation of an airport is such an activity the European Court of Justice ruled in the “*Aéroports de Paris*” case¹⁰, that airport management and operation activities consisting in the provision of airport services to airlines and to the various service providers within airports are economic activities because they consist in the provision of airport facilities to airlines and the various service providers, in return for a fee at a rate freely fixed by the manager, and when the latter is public, do not fall within the exercise of its official powers as a public authority and are separable from its activities in the exercise of such powers. Thus, the airport operator, in principle, is engaged in an economic activity within the meaning of Article 87(1) of the EC Treaty, to which the rules on State aid apply. Therefore once an airport engages in economic activities, regardless of its legal status or the way in which it is financed, it constitutes an undertaking within the meaning of Article 87(1) of the EC Treaty, and the Treaty rules on State aid therefore apply¹¹.
47. However, independently of its legal status not all the activities of an airport operator are necessarily of an economic nature. It is therefore necessary to distinguish between its activities and to establish to what extent they are of an economic nature¹².
48. The European Court of Justice has held that activities that normally fall under State responsibility in the exercise of its official powers as a public authority are not of an economic nature and do not fall within the scope of the rules on State aid. Such activities include security, air traffic control, police, customs, etc. Generally speaking, the financing of these activities must be strictly limited to compensation of the costs to which they give rise and may not be used instead to fund other economic activities¹³. As explained by the Commission in its Communication of 10 October 2001¹⁴ following the attacks of 11 September 2001, “*It goes without saying that, if certain measures are imposed directly on airlines and other operators in the sector such as airports, suppliers of groundhandling services and providers of air navigation services, the financing of such measures by the public authorities must not give rise to operating aid incompatible with the Treaty.*”

⁹ According to Court of Justice case law, any activity consisting in offering goods and services on a given market is an economic activity. See Case C-35/96 *Commission v Italy* [1998] ECR I-3851 and Cases C-180/98 to 184/98 *Pavlov* [2000] ECR I-6451.

¹⁰ Case T-128/98, *Aéroports de Paris v Commission of the European Communities* [2000] ECR II-3929, confirmed by Case C-82/01 [2002] ECR I-9297, points 75-79.

¹¹ Cases C-159/91 and C-160/91, *Poucet v AGF and Pistre v Cancava* [1993] ECR I-637.

¹² Case C-364/92 *SAT Fluggesellschaft v Eurocontrol* [1994] ECR I-43.

¹³ Case C-343/95 *Calì & Figli v Servizi ecologici porto di Genova* [1997] ECR I-1547. Commission Decision N309/2002 of 19 March 2003, Aviation security - compensation for costs incurred following the attacks of 11 September 2001, see also Commission Decision N438/2002 of 16 October 2002, Aid in support of public authority functions in the Belgian port sector.

¹⁴ COM (2001) 574 final of 10 October 2001.

49. Therefore the practice of the Commission¹⁵ is that in relation to functions falling within the public policy remit, the financing of these functions or of infrastructure directly related to these functions does not constitute State aid.
50. Accordingly, in as much as the measures being financed fall within the ambit of the public policy remit, these will not be considered as giving rise to issues of State aid concern and are not considered to be State aid.
51. A further heading of public expenditure relates to the purchase of the RAF St Mawgan site by CCC and the way in which CCC as landlord leases on to CAL the land and facilities in question. The Commission would need to establish if and to what extent this transactions includes any element of State aid.
52. In relation to the purchase by CCC of the land, as has been previously described, the estimated value of this land £3.5 (€ 5.2) million and it is not expected that this value will significantly change due to the limited alternative uses for the land (i.e. agricultural).
53. In the present case the exact value of the land will be established by an appropriate independent valuer; the Valuation Office which as an executive agency of H. M Customs and Excise is completely independent of either the vendor or purchaser. On this basis the Commission can accept that the price to be paid by CCC for the land will reflect the market price and that the transaction in question is free from any state aid elements.
54. In relation to the lease by CCC to CAL of the land and facilities of the airport, the UK authorities have demonstrated to the Commission that this lease is at a market price taking into account the facilities involved, the lease rates paid for comparable facilities and the possible alternative uses that the land and facilities (given their rural location) could be put to. On this basis the Commission can accept that the lease rate to be paid by CAL to CCC will reflect the market price and that the transaction in question is free from any state aid elements.
55. This decision will therefore confine its analysis to the public expenditure that will be used to transform and adapt the airport for civilian use.

ii Assessment

56. The concept of State aid applies to any advantage, granted directly or indirectly, financed out of State resources, granted by the State itself or by any intermediary body acting by virtue of powers conferred on it. In this context the decisions of the United Kingdom government and of CCC to grant investment aid to and to guarantee the borrowing of Newquay Cornwall Airport to finance infrastructure improvements would appear to constitute a grant of State resources.
57. The Commission can therefore conclude that State resources are involved.
58. It is also clear from the notification which is the subject of the present decision that this grant of State resources relates also to activities that are of an economic nature, and relate to the development and expansion of the airport. In the short term the plan is to manage the transition from a partially military to a fully civilian airport while in the medium to longer term the funding will be used to increase the airport's passenger capacity so that it can progress towards long term commercial sustainability..

¹⁵ Commission Decision N309/2002 of 19 March 2003 Aviation security - compensation for costs incurred following the attacks of 11 September 2001

59. Paragraph 53 of the 2005 guidelines provide that, in relation to the financing of airports and airport activities these activities can be categorised as follows¹⁶:

"i. construction of airport infrastructure and equipment (runways, terminals, aprons, control tower) or facilities that directly support them (fire-fighting facilities, security or safety equipment);

ii. operation of the infrastructure, comprising the maintenance and management of airport infrastructure;

iii. provision of airport services ancillary to air transport, such as groundhandling services and the use of related infrastructure, fire-fighting services, emergency services, security services, etc; and

iv. pursuit of commercial activities not directly linked to the airport's core activities, including the construction, financing, use and renting of land and buildings, not only for offices and storage but also for the hotels and industrial enterprises located within the airport, as well as shops, restaurants and car parks. As these are not transport activities, public financing of them is not covered by these guidelines and will be assessed on the basis of the relevant sectoral and general rules."

60. As set out above almost all of the expenditure which is the subject of the present decision involving most of the work to be carried out falls within the category described in point 53(i) of the 2005 guidelines.

61. The grant of State resources is directed to an individual regional airport, and is therefore selective.

62. The 2005 guidelines recall that, in assessing whether the selective grant of State resource to economic activities constitutes an advantage that is liable to fall within the scope of Article 87(1), regard must be had to Article 295 of the Treaty, pursuant to which the Treaty in no way prejudices the rules in Member States governing the system or property ownership.¹⁷ As such, their behaviour must fulfil the "*principle of the private investor in a market economy*". According to the Court of Justice, this principle means that public financing will not amount to state aid where "*in similar circumstances a private shareholder, having regard to the foreseeability of obtaining a return and leaving aside all social, regional-policy and sectoral considerations, would have subscribed the capital in question*"¹⁸. The 2005 guidelines go on to provide that any "*airport operator engaging in an economic activity*" "*should finance the costs of using or building the infrastructure it manages from its own resources. Consequently, the provision of airport infrastructure to an operator by a Member State (including regional or local authorities) not acting as a private investor without adequate financial consideration or the granting to an airport operator of public subsidies intended to finance infrastructure can give that airport operator an economic advantage over its competitors and must therefore be notified and examined in the light of the rules on State aid*".¹⁹

¹⁶ Cf footnote 1 Point 53

¹⁷ Cf footnote 1 Point 42

¹⁸ Case 40/85 *Kingdom of Belgium v Commission* [1986] ECR I-2321.

¹⁹ Cf footnote 1 Point 57

63. In this case it cannot be said that the public authorities concerned are "*acting as a private investor*" in a market economy. Although it is the intention of the public owners of the airport that the airport be capable of reaching break-even by 2013–14 and ensure long-term commercial viability thereafter the public authorities do not have any expectation of a financial return on the investment in question and, although it is their intention to make the airports more attractive to users and therefore more profitable they are not exclusively guided by prospects of profitability in the longer term²⁰. Rather the stated aim of the public financing is to redevelop and transform the former airbase from a connectivity and regional development perspective.
64. As regards the presence of a distortion of competition or an effect on trade, the 2005 guidelines define four categories according to volume of passengers *per annum*, which "*can provide an indication on the extent to which airports are competing with one another and therefore also the extent to which public funding granted to an airport may distort competition*".²¹ As previously indicated, NQY airport is a Category D airport for the purposes of the 2005 Guidelines. In relation to Category D airports which are "*small regional airports*" with a passenger volume of less than one million passengers per year, the 2005 Guidelines state that²² "*funding granted to small regional airports (category D) is unlikely to distort competition or affect trade to an extent contrary to the common interest*".
65. The UK authorities have submitted that NQY's population catchment area is almost exclusively within the County of Cornwall, although a small number of passengers (5%) come from South Devon.
66. The UK authorities have argued that due to its remote location and key tourism role, NQY does not compete strongly with its three closest airports (the airports of Plymouth, Exeter and Bristol), in particular as far as outbound traffic is concerned. The UK authorities note in particular that:
- The closest airport to NQY is Plymouth airport (PLH), which is one hour and 15 minutes away by road from NQY airport. Its premium route to London Gatwick (LGW) is operated as a joint service with NQY in a triangular pattern²³. PLH and NQY both serve LGW, Manchester airport (MAN), Bristol International Airport (BRS) and Leeds/Bradford Airport (LBA). PLH serves Jersey whereas NQY does not, and NQY serves Edinburgh, Durham Tees Valley, Cardiff, Dublin, Cork, Isles of Scilly, Luton and Stansted, none of which are served from PLH. Air Southwest's services to a range of destinations therefore combine the Newquay Cornwall Airport and PLH traffic. The two airports do not therefore compete.
 - Exeter International Airport (EXT), which is the second closest airport to the Newquay Cornwall Airport, is approximately two hours away by road from the Newquay Cornwall Airport. Its traffic is predominantly outbound traffic originating from Devon and Somerset. Only a small proportion of the total traffic of Exeter

²⁰ Case C-305/89 *Italy v Commission* ("*Alfa Romeo*") [1991] ECR I-1603, point 20. Case T 228/99 *Westdeutsche Landesbank Girozentrale v Commission* [2003] ECR II-435, points 250-270.

²¹ Cf footnote 1 Point 38

²² Point 39 thereof

²³ The aircraft flies three legs of a triangular route linking these three airports, for example, from LGW it flies to PLH, then to NQY, then back to LGW and so on. This optimises aircraft loadings and yields which is more efficient than having separate LGW – PLH and LGW - NQY routes; it also addresses slot limitations at LGW, by allowing both airports in the far South West to be served.

International Airport originates from or has a destination in Cornwall. The maximum on any route is 15%, and even that 15% relates to routes not presently served from the NQY. On routes served by both airports the percentage is even lower. Effectively the North Devon/Somerset market served by Exeter and the Cornish market served by NQY are distinct markets with only insignificant overlap.

- The third closest airport to Bristol Airport (BRS) is over three hours away by road from NQY and therefore it cannot realistically be considered as a competing airport with NQY.
 - Unlike the airports of Plymouth, Exeter and Bristol which have strong outbound traffic, Newquay Cornwall Airport is an airport which is currently used predominantly for inbound flights. Only 40% of Newquay Cornwall Airport passengers live in the county of Cornwall and have their departing leg outbound from Cornwall. 60% of Newquay Cornwall Airport passengers live outside the county of Cornwall with their departing leg being outbound from a third destination and flying into Cornwall. This is unusual for a UK regional airport and is a result of the NQY's tourism role.
67. Although First Great Western operates a train service from London Paddington to Newquay it is questionable whether this constitutes a competitive alternative to air transport. The journey takes approximately 5 hours. The Commission can therefore conclude that there are no comparable competing transport systems to the region which NQY services.
68. However, the UK authorities do not deny that there remains some residual scope for competition between NQY and its neighbouring airports as regards outbound traffic. As such and on the basis of the information available to the Commission, the threat of distortion of competition cannot be entirely dismissed.
69. Therefore, although the notified measure only affects competition and trade between Member States to a very limited extent, if at all, there remains the possible threat of distortion and effect on trade and therefore the measure must be considered State aid within the meaning of Article 87(1) of the EC Treaty.

Compatibility with the Common Market

70. The 2005 guidelines provide the Commission with a number of factors which it should take into account in determining compatibility of infrastructure aid to airports. The Commission must in particular examine whether:
- construction and operation of the infrastructure meets a clearly defined objective of general interest (regional development, accessibility, etc.);
 - the infrastructure is necessary and proportional to the objective which has been set;
 - the infrastructure has satisfactory medium-term prospects for use, in particular as regards the use of existing infrastructure;
 - all potential users of the infrastructure have access to it in an equal and non-discriminatory manner;
 - the development of trade is not affected to an extent contrary to the Community interest.

i. construction and operation of the infrastructure meets a clearly defined objective of general interest (regional development, accessibility, etc.)

71. As previously described, the primary motivations of the public authorities in granting the financial support provided for in this scheme are connectivity and regional development. It is also their intention to provide Cornwall with a modern, safe and viable airport. In the opinion of the UK authorities the public investment is necessary to meet the general interest objective of developing transport and communication links via the airport which is situated in one of the most remote areas of the UK (Cornwall). The UK authorities point out that Cornwall and the Isles of Scilly, are one of the two NUTS 2 level regions in the UK which have been designated as eligible for national regional aid under the derogation of Article 87(3)(a) of the EC Treaty for the whole period 2007-2013 at an aid ceiling of 30% gross grant equivalent
72. NQY airport represents the only point of access to commercial air transport in Cornwall (with the exception of commercial helicopter services from Penzance to the Isles of Scilly). The five daily flights from NQY airport to the Isles of Scilly also provide a key lifeline/social function for the Isles of Scilly. It should also be noted that Cornwall is not linked to other parts of the UK by means of a high speed rail service. Average train speeds from other parts of the UK to Bristol/Exeter are approximately 160 kph (100 mph), but beyond these destinations they slow to 100 kph (60 mph).
73. In the light of the above, the Commission can conclude that the public funding provided for by the present measure for the redevelopment of this military airbase into a fully civilian airport meets the clearly defined objectives of improving connectivity and regional development policy and or improving safe and viable transport infrastructure.

ii. the infrastructure is necessary and proportional to the objective which has been set

74. The UK authorities argue that the infrastructure investment and development in question is manifestly necessary and proportional bearing in mind the objective to redevelop the airport to full civilian usage and to increase passenger throughput at the airport from 330,000 in 2005 to approximately 700,000 by 2011 (when the new terminal building with capacity of around 1 million passengers per year will be opened).
75. They point out that the current infrastructure could not support this level of activity. This level of activity is considered necessary if the airport is to diversify in route networks, including adding routes to near Europe and play a significant role as a regional airport providing transport access to and fast communication links with one of the most remote areas of the UK (Cornwall), which also lies within the peripheral "Atlantic Arc" zone of the EU.
76. Moreover, the investment is required in order to perform works necessary for obtaining the civil operating licence from the CAA. Currently the airport operates under the RAF's military licence. Obtaining the civilian licence is critical to the continued operation of the airport. Without such licence the airport will be forced to close to commercial traffic.
77. The Commission can agree with the UK authorities and therefore conclude that the infrastructure investment in question is both necessary and proportional to the objective that has been set.

iii the infrastructure has satisfactory medium-term prospects for use, in particular as regards the use of existing infrastructure;

78. The UK authorities point out that demand for air travel is rising strongly across all UK airports. Even allowing for the restrictions inherent in dual civilian/military usage NQY Airport has shown strong growth in numbers without material infrastructure investment: 70,000 passengers in 2000; 330,000 passengers in 2005; an estimated 400,000 passengers in 2006 and an estimated 440,000 by the end of 2007.

79. Given the absence of geographically close competing airports and the absence of alternate high speed means of travel, it is to be expected that the infrastructure will be fully utilised in the medium term.

80. The Commission can agree with the UK authorities and therefore conclude that this requirement is satisfied.

iv all potential users of the infrastructure have access to it in an equal and non-discriminatory manner;

81. All potential users of the airport infrastructure and land (aircraft owners and operators) will have access to the infrastructure and facilities on an equal and non-discriminatory manner. The risk that infrastructure will be financed and constructed for the exclusive benefit of one or more operators is thereby eliminated. All development work carried out to improve the infrastructure will be developed in full compliance with EC public procurement rules.

82. The Commission can therefore conclude that this requirement is satisfied.

v the development of trade is not affected to an extent contrary to the Community interest.

83. As set out in paragraph 55 to 57 above and given the fact that the airport is a Category D airport for the purposes of the 2005 guidelines, it can be concluded that the development of trade is not affected to an extent contrary to the Community interest.

vi. Conclusion: Aid compatible with the common market

84. In light of the above considerations, the Commission concludes that the notified measures falling under the scope of Paragraph 53(i) of the 2005 guidelines are compatible with the Common Market.

85. This decision does not however cover the other financing sources related to the same project nor does it prejudice other possible State aid issues arising from other operations than the one which was notified by the U.K authorities and which has been assessed above – such as for example the question of whether an advantage could be conferred through State resources at the moment of the initial incorporation of the airport..

86. The Commission underlines once more that the present decision only concerns the assessment of the notified aid measure under Community rules on State aid and is without prejudice to decisions regarding the adoption of the Convergence Operational Programme for Cornwall and the Isles of Scilly and financial contributions from the ERDF.

Decision

The European Commission has therefore decided not to raise any objections to the measure in question on the grounds that the aid is compatible with the Common Market under Article 87(3)(a) of the EC Treaty.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: http://ec.europa.eu/community_law/state_aids/index.htm;

Your request should be sent by registered letter or fax to:

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Yours faithfully,
For the Commission

Jacques Barrot
Vice-president of the Commission