



## EUROPEAN COMMISSION

Brussels, 6.11.2015  
C(2015) 7569 final

<p>In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...].</p>		<p style="text-align: center;">PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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**Subject:**      **State aid SA.40433 (2015/N) – Austria. *Investment Programme Kärnten Airport, Klagenfurt***

Sir,

### 1 PROCEDURE

- (1) By letter of 5 January 2015, registered at the Commission on the same day, Austria pre-notified the Commission of planned public financing for the modernisation of *Kärnten Airport* in the Austrian *Land* Carinthia. Austria transmitted a revised version of the pre-notification by letter of 4 March 2015, registered on the same day.
- (2) By letter of 14 April 2015, registered at the Commission on the same day, Austria notified the measure to the Commission.
- (3) By letter of 25 June 2015, the Commission asked the Austrian authorities for complementary information on the intended aid measure. The Austrian authorities provided information on 29 July and 26 August 2015, registered on these

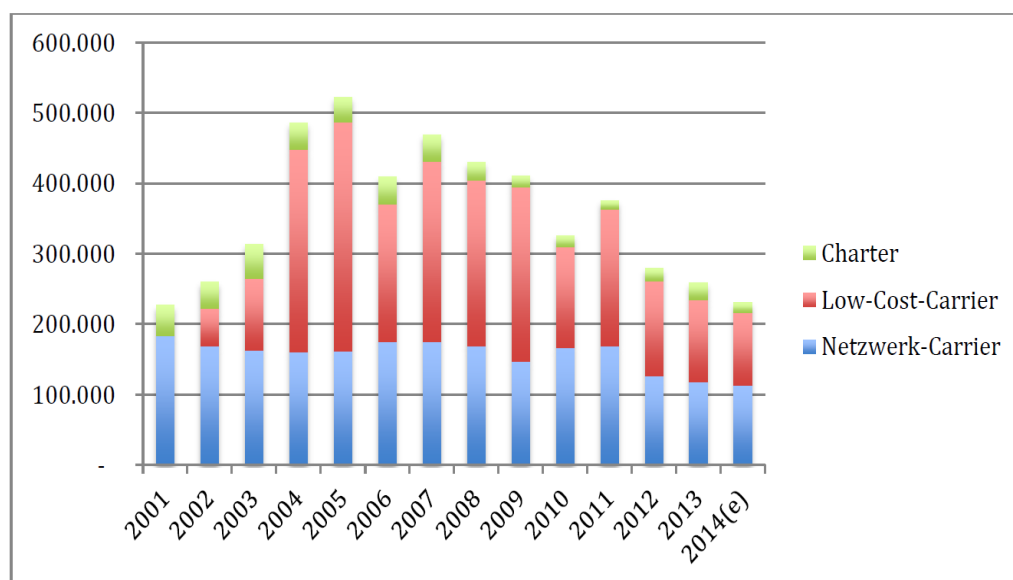
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respective days. By letter of 25 September 2015, registered at the Commission on the same day, the Austrian authorities supplemented its letter of 26 August.

## 2 DESCRIPTION OF THE MEASURE

### 2.1 *Kärnten Airport, Klagenfurt*

- (4) *Kärnten Airport* is located at the outskirts of the city of Klagenfurt, which is the capital of the Austrian Federal State Carinthia (*Bundesland Kärnten*). Carinthia is a mountainous region in the south of Austria. Klagenfurt is situated at the shores of Lake *Wörthersee*. The airport offers regular connections to Vienna airport, which is an international hub, and also to Berlin, Hamburg and Cologne. The airport is also used by charter flights.
- (5) The Airport has a basic capacity of 500,000 passengers per year but can handle up to 700,000 passengers per year if necessary. In 2005, the airport operated slightly above its basic capacity. Since then, passenger traffic has declined. Austria provided the following graph on passenger traffic development at the airport:



- (6) According to recent estimates, the airport is currently (2015) serving approx. 242,000 passengers. During the two preceding years, average annual passenger traffic was 241 634 passengers. In the 5-year period 2010-2014, the average was 312 710 passengers per year.

Year	Number of passengers
2014	224 846
2013	258 421
2012	279 045
2011	375 307
2010	425 933

- (7) According to the Austrian authorities, declining passenger numbers are mainly due to, firstly, low flight capacity utilisation and secondly the position of the airport as a low-cost basis, which would make retaining higher priced airlines difficult, and thirdly due to the withdrawal of one airline operator that underwent a restructuring process.
- (8) According to the Austrian authorities, the airport is the only passenger airport in Carinthia.
- (9) The nearest airport is Ljubljana in Slovenia. The shortest distance by road from Klagenfurt to Ljubljana airport is 71 km and crosses the *Karawanken* mountain range, via the *Loibl* mountain pass, at 1,068 metres above sea level. The Austrian authorities pointed out that a travelling time of less than 60 minutes by car or bus is unrealistic, firstly, as that road is narrow, winding and steep and is difficult to negotiate even under normal conditions and in particular in the winter season, and secondly, as that road is closed several times every year due to rock fall or mudslides. The shortest alternative would be the motorway to the city of Villach and through the *Karawanken* road tunnel, but that distance would be far above 100 kilometres. There is no high-speed train connection, and travelling time by train is between 2 hours 10 minutes and 2 hours 48 minutes.
- (10) As regards competition between Kärnten and Ljubljana Airports, the Austrian authorities pointed to *Kärnten Airport's* focus on tourism. A survey of incoming passengers on the Cologne service showed that 69% were tourists. A general survey of tourism in Carinthia and the neighbouring Austrian *Land* of Styria and in Slovenia shows that the numbers of German and Dutch tourists in Carinthia are far higher than the numbers of the other two regions combined. The Austrian authorities provided an overview of touristic destinations and their location per catchment areas. That overview shows that the majority of summer destinations is further away than one hour by car from Ljubljana airport; Carinthia's winter destinations are, with one exception, all clearly more than one hour per road from Ljubljana. The Austrian authorities concluded that while Ljubljana's overall development is limited by the larger Zagreb airport in its vicinity, there is little overlap and competition between Ljubljana and Klagenfurt Airports. The Austrian authorities provided the following overview of destinations served by Klagenfurt and Ljubljana airports:

Destination served by Klagenfurt	Served by Ljubljana
[...]*	Not served
[...]*	Served
[...]*	Not served
[...]* (planned)	Not served
[...]* (planned)	Not served

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\* Business secret

[...]* (planned)	Served
[...]* (planned)	Served

- (11) The airport of Graz, in Austria, is 130 km away by road, and the travelling time is approx. 1 hour 17 minutes by car under normal road conditions. Travelling time by public bus or train varies between 2 hours 35 minutes and 3 hours 41 minutes. High-speed train service is not available.
- (12) The other airports in the vicinity of *Kärnten Airport* are: Innsbruck (Austria), 322 km by road; Salzburg (Austria), 219 km by road; Maribor (Slovenia), 137 km by road; Venice (Italy), 277 km by road; Treviso (Italy), 273 km by road; Trieste (Italy), 199 km by road . High-speed train services between Klagenfurt and those airports are not available.
- (13) The Austrian authorities provided a map showing the catchment areas of *Kärnten Airport* and the above mentioned neighbouring airports.<sup>1</sup> The map indicates that the airport is located in an alpine basin so that the catchment area is in essence defined by mountain ranges. The map shows that the outer fringes of *Kärnten Airport's* catchment area are overlapping with the areas of Graz Airport to the east and of Ljubljana Airport in the South. The Austrian authorities explained that those areas are however not densely populated and that the Airports of Kärnten, Graz and Ljubljana are naturally located in the centres of the most densely populated areas of their respective alpine regions.
- (14) The airport is owned and operated by *Kärntner Flughafenbetriebsgesellschaft mbH* (hereinafter 'KFBG'). KFBG-shares are owned by the Federal State of Carinthia (80%) and the Municipality of Klagenfurt (20%). KFBG charges fees for the use of the airport's infrastructure, e.g. according to its business plan a fee per passenger, a landing fee, an infrastructure fee, a ramp handling fee. KFBG will be the recipient of the intended public funding.
- (15) The Austrian authorities declared that the airport is open to all potential users and is not dedicated to one specific user. According to the Austrian authorities, it is unlikely that the airport would exceed its physical limitation of capacity in the foreseeable future. The Austrian authorities nevertheless committed that in the event of restraints, capacity allocation will be done on the basis of pertinent, objective, transparent and non-discriminatory criteria.
- (16) The Austrian authorities informed the Commission that the main segments I and II of the runway date from 1960 and 1967, and that 74% of these segments show considerable damage. By letter of 2 October 2014, the Austrian Ministry of Transport, Innovation and Technology, in its capacity as Austria's Civil Aviation Authority, invited KFBG to completely refurbish the runway by 2015, so as to ensure air traffic safety for at least 20 years. The Civil Aviation Authority

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<sup>1</sup> For the purposes of that map, Austria used the definition of 'catchment area' pursuant to point 25 (12) first clause of the European Commission's Guidelines on State aid to airports and airlines, OJ C 99 of 4.4.2014, p3: " 'Catchment area of an airport' means a geographic market boundary that is normally set at around 100 kilometres or around 60 minutes travelling time by car, bus, train or high-speed train."

explicitly excluded any postponement beyond 2016 of the runway overhaul. Failure to comply will result in traffic restrictions and ultimately closure of the airport.

## 2.2 The investment project: modernisation of *Kärnten Airport*

- (17) According to the Austrian authorities, KFBG will have to invest an estimated EUR 26.342 million in the years 2016 to 2023, in order to ensure the safe and secure operation of the airport, as well as its sustainable development. The largest part of the investment will be for the refurbishment of the airport's landing strip, and will cost EUR 14 million in the course of 2016.
- (18) The owners of the airport, the Land of Carinthia and the municipality of Klagenfurt, intend to award public financing to support the modernisation project, to the amount of up to EUR 15 million, to be paid in several instalments, thus having a discounted value of 14.5 million as of 31 December 2015. The aid will be awarded only in 2016, when works will start, and only after the Commission has approved the aid.
- (19) The Austrian authorities assume that the modernised airport will be economically viable in the future and in that context pointed out the following: Firstly, the development of Carinthia's economy and of Carinthia as an investment location in the larger *Alpe-Adria* region is central in the regional government's economic development programme. The airport would thus be an important element in that programme, as it offers regular connections, in particular to hubs such as Vienna, where international flights depart. Secondly, Carinthia hopes that the trend towards short-trips would lead to greater capacity utilisation at the airport, as air travel would become more attractive than road trips. Carinthia has adopted a new tourism strategy that *i.a.* aims to cater to that trend year round, i.e. also in the winter sports season.
- (20) With the investment programme, the airport's existing capacity will not be increased but rather maintained. The Austrian authorities provided KFBG's *ex ante* business plan that covers the period 2016 – 2036. *Kärnten Airport* had commissioned two external evaluations of the plausibility of the initial assumptions underlying the business plan. While the first study had only looked at the short-term planning period until 2020, the second and more recent study evaluated the entire period up to 2036. KFBG revised its business to bring it in line with the second report's recommendations and thereby making it fully plausible, in particular by taking into account the risks identified by the expert.<sup>2</sup> In the following, an overview of the revised business plan's principal assumptions and objectives is given:

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<sup>2</sup> The Austrian authorities provided the initial version of the business plan, the first expert report, the second expert report and the subsequently revised business plan, together with an overview of the second expert's key recommendations and corresponding alterations to the initial business plan and investment costs. In essence, the first external evaluation concluded that the business plan is ambitious yet is based on plausible assumptions, that there is a risk of funding shortfalls in the years 2018/19, that the investment plan must be flexible in order to ensure the desired capacity use, that favourable external framework conditions are crucial, that aviation and non-aviation revenue had been calculated prudently, that there is further long-term potential, e.g. in air cargo, but also possible increasing competition from alternative transport. In essence, the second expert report confirmed the first report's findings within the 2020 time frame but concluded that certain risks were not yet adequately reflected in the business plan, in particular relating to a new second hub connection as from 2023.

- An average annual increase of passenger numbers by 4.4%, up to 578 000 passengers p.a. (from 2031) is possible and would ensure viable operations for airlines that serve the airport.
- The business plan is projecting a phase of strong passenger growth in the years 2016-2023; from then on, growth is expected to be moderate yet steady until 2031; then, passenger numbers would remain stable until 2036, well within the airport's capacity:

Year	2016	2023	2027	2031	2036
<b>Passenger numbers</b>	239 000	488 000	548 000	578 000	578 000

- KFBG expects its revenues to develop as follows (million EUR):

Year	2016	2023	2027	2031	2036
<b>Aviation-related</b>	5.6	8.5	10.0	11.0	12.0
<b>Non-aviation-related</b>	2.3	4.3	4.9	5.4	5.9
<b>Other</b>	0.2	0.2	0.2	0.2	0.2
<b>EBITDA</b>	0.2	2.2	2.6	2.7	2.6

- Based on traffic prognosis, KFBG expects that it will be able to finance investments from its operating cash-flow as from 2018, so that it would be able to obtain additional external financing. KFBG expects a 4.4% annual air traffic growth in the planning period 2016-2036. KFBG is aware that this is within the range of global forecasts but above the forecasts for the Austrian market<sup>3</sup>. KFBG is also aware that air travel growth in Austria has in the past largely been driven by the Vienna international airport, while Austria's smaller airports were lagging behind. KFBG nevertheless believes that it could achieve above-average growth if it implements its new business plan, and in particular the following general objectives: [...]\*
- KFBG also analysed tourist traffic and expects that during summer, outgoing traffic would not grow and incoming traffic would grow only slightly. Winter traffic is however expected to grow, with one additional service as from winter 2017 and one additional frequency per year, until saturation is reached with 16 frequencies.

<sup>3</sup> The Austrian authorities provided the growth rate forecasts used by KFBG and the external experts: 1. Passenger number forecasts: Airbus global market forecast (2014) 2014-2033: +4.7%; Boeing current market outlook (2014) 2014-2033: +5.0 %; ADV (2014) for Germany + 2.5% in 2015. 2. Passenger/kilometre forecasts: ICAO (2013) growth in 2016 + 6.5% globally and +4.4% in Europe in the period 2010-2030; 3. Forecasted number of aircraft movements: Eurocontrol forecast (2014) +2.5% for Europe 2014-2020 and +2.8% for Austria 2014-2020; ADV (2014) + 1.4% for Germany.

- According to the 20-year long term *ex ante* business plan of the airport (2016-2036), the difference between the positive and negative cash flows over the lifetime of the investment, which is 20 years at most, in net present value terms would amount to (minus) EUR -18,7 million as of 31 December 2015. This amount is then reduced by net cash (*Netto-Liquidität*) available at that date, being EUR 3.8 million. The discounted financing gap as of 31 December 2015 thus amounts to EUR 14.9 million. KFBG applies its weighted average capital costs (WACC) as the discount rate, being 5.3 %.
  - Under the assumption that the operating income of the airport would improve as the new business plan is being implemented, KFBG intends to obtain bank loans at market conditions in 2018, 2019 and 2022, in total amounting to EUR 4.2 million. That amount corresponds to the maximum debt burden KFBG could sustain, according to a cash-flow based debt capability analysis carried out by an independent expert. These loans will have a 20-year payback period.
  - KFBG had already negotiated immediate and complete external project financing with banks, *i.a.* its house bank. However, banks were not ready to fund the entire project, as they considered the future continuation of the airport as uncertain, at least until the main runway investments are made, which is the very basis for implementing the new business plan. Moreover, the banks doubted that KFBG would be able to generate the necessary cash-flow to repay a massive senior loan. KFBG then drew the conclusion that in order to obtain the above mentioned loans totalling up to 4.2-million EUR, it would have to provide additional collateral in the form of real estate, which KFBG would have to convert to non-aviation use.
  - As the expert who had made an overall analysis of the business plan’s entire duration 2016-2036 had found that the underlying assumptions are very ambitious and that certain risks were not adequately taken into account, KFBG revised its business plan in order to make it fully plausible. In particular, KFBG further reduced the investment costs<sup>4</sup> and assumes lower growth rates<sup>5</sup>, less margin to increase airport fees<sup>6</sup> and higher inflation rates for Austria<sup>7</sup>.
- (21) With the investment project, KFBG will modernise the airport’s infrastructure and equipment. Investments can be divided into the following general categories:

<b>Category</b>	<b>Investment costs - million EUR</b>
<u>Non-economic activities within the public remit: security control, police surveillance, firefighting, approach control</u>	7.515

<sup>4</sup> E.g. by closing the airport while the runway is overhauled, instead of carrying out works under normal operations, thus saving EUR 1.5 million.

<sup>5</sup> In particular as regards direct flights (origin-destination ‘O&D’) to Germany as from 2023.

<sup>6</sup> The expert found that fees in Austria are higher than in neighbouring Germany and Slovenia, that airlines are pursuing cost-reduction programmes so that higher airport costs cannot easily be passed on to airlines and that lower fees are usual in the ‘premium low-cost’ segment are plausible as regards the planned expansion on the UK and Germany services from *Kärnten Airport*.

<sup>7</sup> IWF prognosis, World Economic Outlook 2015; long-term rate for Austria expected to be 1.85% p.a.

<u>Aviation</u> : runway, core infrastructure (e.g. apron sweeping), aircraft movement area, approach lighting (including runway marking, engineer service vehicle), building above ground level (mainly heating, ventilation, air-conditioning, equipment storage hall structure, hangars)	16.781
Ground handling services equipment as described in the Annex to Directive 96/67/EC <sup>8</sup>	1.599
Non-aviation: Mainly shops, parking, video surveillance, lavatory equipment, company car, administrative software	0.447
<b>Total</b>	<b><u>26.342</u></b>

(22) On 9 May 2014, the airport operator submitted an application for aid to the competent national authority, *Kärntner Landes- und Hypothekenbank-Holding*. The overall investment project will start in 2016 and is expected to take 4 years, until end 2019, but some follow-up investments might be made until 2023. Of that overall project, complete refurbishment of the runway (*Pistengeneralsanierung*) will be the largest single investment, starting in 2016, with estimated costs amounting to EUR 14 million.

### 2.3 Public support, eligible costs, cumulation

(23) Public financing for the project will amount to up to EUR 15 million and will be awarded in the form of a direct grant, from the resources of:

- The Federal State of Carinthia (*Bundesland Kärnten*): EUR 12 million
- The Municipality of Klagenfurt (*Stadt Klagenfurt am Wörthersee*): EUR 3 million.

(24) The aid will be disbursed in several instalments: 2016 – EUR 13 million; 2017 – EUR 1.5 million; 2018 – EUR 0.5 million. The discounted value of these instalments at the valuation date 31 December 2015 is EUR 14.5 million.

(25) According to the Austrian authorities, the public financing will be allocated to non-economic investments as well as to aviation related economic investments. Investment in ground handling services equipment as well as in non-aviation related economic activities will not be supported by public financing.

(26) The aid intensity, expressed in percent of eligible investment costs, is 61.74%. The Austrian authorities guaranteed that KFBG's internal accounting system ensures that the aid will not exceed 75% of eligible investment costs. Moreover, KFBG will be obliged to regularly report to the Austrian authorities on fund allocation, in order to prevent any possible excess funding. Fund allocation will be as follows:

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<sup>8</sup> Council Directive 96/67/EC of 15 October 1996 on access to the ground handling market at Community airports, OJ L 272 of 25.10.1996, p. 36.



<b>Eligible costs</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>Total</b>
Non-economic investment (million EUR)	2.128	0.915	0.627	3.845	<b>7.515</b>
Investment costs Economic activities - aviation (million EUR)	15.267	0.675	0.614	0.225	<b>16.781</b>
<b>Total</b>	<b>17.395</b>	<b>1.590</b>	<b>1.241</b>	<b>4.070</b>	<b>24.296</b>

	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>Total</b>
Total public support (million EUR)	13.000	1.500	0.500	0	<b>15.000</b>

- (27) The Austrian authorities found that the airport's inability to find external financing and its low margin to sustain additional senior debt are preventing external investment above EUR 4.2 million. Therefore, the Austrian authorities concluded that a State loan to finance the investment, at an interest rate below market rates, would not be a viable alternative to a direct grant, as such loan would eventually be converted into a grant, given the airport's inability to sustain the debt burden on the long term.
- (28) The aid cannot be cumulated with any other aid from local, regional, national or Union sources in respect of the same eligible costs.

#### 2.4 Legal basis

- (29) Financing will be provided on the basis of decisions of general principle (*Grundsatzbeschlüsse*), enacted by the Federal State of Carinthia and the Municipality of Klagenfurt.

#### 2.5 Commitments

- (30) The Austrian authorities declared that the award of public financing is conditional on Commission approval.
- (31) The Austrian authorities committed to publish the following information on a comprehensive State aid website, at national or regional level:
- the full text of the approved individual aid granting decision and its implementing provisions;
  - the identity of the granting authority;

- the identity of the individual beneficiaries, the form and amount of aid, the date of granting, the type of undertaking (SME / large company), the region in which the beneficiary is located (at NUTS level II) and the principal economic sector in which the beneficiary has its activities (at NACE group level).
- (32) The Austrian authorities committed to make that publication after the decision to grant the aid has been taken and to keep it public for at least 10 years. They also declared that the information will be available to the interested public without restrictions.
- (33) The Austrian authorities further undertook to keep detailed records regarding the investment aid measure. Such records will contain all information necessary to establish that the compatibility conditions have been observed, in particular those regarding eligible costs and maximum allowable aid intensity, where applicable. Those records will be maintained for 10 years from the date on which the aid is granted and be provided to the Commission upon request.

### 3 ASSESSMENT OF THE MEASURE

#### 3.1 Existence of aid

- (34) By virtue of Article 107(1) of the TFEU "*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 internal market.*"
- (35) The criteria laid down in Article 107(1) of the TFEU are cumulative. Therefore, in order to determine whether the notified measures constitute State aid within the meaning of Article 107(1) of the TFEU all of the following conditions need to be fulfilled. The financial support must:
- be granted by the State or through State resources,
  - favour certain undertakings or the production of certain goods,
  - distort or threaten to distort competition, and
  - affect trade between Member States.

##### 3.1.1 Notion of undertaking and economic activity

- (36) According to settled case law, the Commission must first establish whether *Kärnten Airport* is an undertaking within the meaning of Article 107 (1) of the TFEU. The concept of an undertaking covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed<sup>9</sup>. Any

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<sup>9</sup> Case C-35/96 *Commission v Italy* [1998] ECR I-3851, paragraph 36; C-41/90 *Höfner and Elser* [1991] ECR I-1979, paragraph 21; Case C-244/94 *Fédération Française des Sociétés d'Assurances v Ministère de l'Agriculture et de la Pêche* [1995] ECR I-4013, paragraph 14; Case C-55/96 *Job Centre* [1997] ECR I-7119, paragraph 21.

activity consisting in offering goods and services on a given market is an economic activity.<sup>10</sup>

- (37) In its "*Leipzig-Halle airport*" judgement the Court of Justice confirmed that the operation of an airport for commercial purpose and the construction of airport infrastructure constitute an economic activity<sup>11</sup>. Once an airport operator 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 107(1) of the TFEU, and the Treaty rules on State aid therefore apply<sup>12</sup>.
- (38) The Airport's infrastructure and equipment are owned and operated by KFBG, the recipient of the notified public funding. Firstly, KFBG charges fees for the use of these infrastructures, and thus exploits the airport commercially. Secondly, KFBG uses its equipment for the commercial operation of the airport infrastructure. The envisaged public funding for the refurbishment of the runway and the modernisation of equipment and infrastructure such as de-icing and apron sweeping gear, approach lighting, runway marking and buildings will allow the airports to continue operating with improved safety. The costs of the improvement of the safety of airport operations however correspond to normal costs of an economic activity that cannot be considered to fall within the public policy remit.<sup>13</sup> It follows that KFBG, the entity exploiting the infrastructure in question, is an undertaking for the purposes of Article 107(1) of the TFEU.
- (39) The Court of Justice<sup>14</sup> has held that activities that normally fall under a State's 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 may include, for example, security, air traffic control, police, customs, etc. The financing has to be strictly limited to compensation of the costs to which they give rise and may not be used instead to fund other economic activities.<sup>15</sup>
- (40) However, public financing of non-economic activities necessarily linked to the carrying out of an economic activity must not lead to undue discrimination between airport managers. Indeed, it is established case law that there is an advantage when public authorities relieve undertakings of the costs inherent to their economic activities.<sup>16</sup> Therefore, when it is normal under a given legal order that civil airports have to bear certain costs inherent to their operation, whereas

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10 Case 118/85 *Commission v Italy* [1987] ECR 2599, paragraph 7; Case 35/96 *Commission v Italy* [1998] ECR I-3851, paragraph 36.

11 Joint Cases T-455/08 *Flughafen Leipzig-Halle GmbH and Mitteldeutsche Flughafen AG v Commission* and T-443/08 *Freistaat Sachsen and Land Sachsen-Anhalt v Commission*, (hereafter: "Leipzig-Halle airport case"), [2011] ECR II-01311, confirmed by the ECJ, Case C-288/11 P *Mitteldeutsche Flughafen and Flughafen Leipzig-Halle v Commission*, [2012], not yet published in the ECR; see also Case T-128/98 *Aéroports de Paris v Commission* [2000] ECR II-3929, confirmed by the ECJ, Case C-82/01P, ECR 2002 I-9297, and Case T-196/04 *Ryanair v Commission* [2008], ECR II-3643.

12 Cases C-159/91 and C-160/91, *Poucet v AGV and Pistre v Cancave* [1993] ECR I-637.

13 Commission decision of 20 February 2014 in State aid case SA.35847 – 2013/N – Czech Republic – Ostrava Airport, not yet published in OJ.

14 Case C-118/85 *Commission v Italy* [1987] ECR 2599, paragraphs 7 and 8, and Case C-30/87 *Bodson/Pompes funèbres des régions libérées* [1988] ECR 2479, paragraph 18.

15 Case C-343/95 *Cali & Figli v Servizi ecologici porto di Genova* [1997] ECR I-1547; Commission Decision N309/2002 of 19 March 2003; Commission Decision N438/2002 of 16 October 2002, Aid in support of the public authority functions in the Belgian port sector, OJ C 284, 21.11.2002.

16 See, amongst others, Case C-172/03 *Wolfgang Heiser v Finanzamt Innsbruck* [2005] ECR I-1627, paragraph 36, and case-law cited.

other civil airports do not, the latter might be granted an advantage, regardless of whether or not those costs relate to an activity which in general is considered to be of a non-economic nature.

- (41) The Austrian authorities provided a list of the activities that are in general considered as non-economic that Austrian airports are obliged to carry out, pursuant to Austrian law:
- Providing security (surface areas, premises, control equipment);
  - Firefighting;
  - Provision of premises for air traffic control.
- (42) The information provided by the Austrian authorities however did not show that the public financing of those activities that are necessarily linked to the carrying out of an economic activity does not lead to any discrimination between airport operators in Austria. In fact, the available information rather indicates that Austrian airports normally have to bear the costs of the equipment and premises mentioned above and that the public investment support in question relieves Kärnten Airport from part of these costs.

#### 3.1.2 Use of state resources and imputability to the State

- (43) The funding for the modernisation of the airport will stem from the resources of both the Austrian Federal State of Carinthia and the Municipality of Klagenfurt. The funding is thus attributable to the State and involves State resources.

#### 3.1.3 Economic advantage

- (44) The above-mentioned public funding reduces the investment costs which airport operator KFBG would normally have to bear in order to modernise the airport, improve its safety and ensure security, and thus confers an economic advantage on KFBG.

#### 3.1.4 Selectivity

- (45) Article 107(1) TFEU requires that a measure, in order to be defined as State aid, favours "*certain undertakings or the production of certain goods*". The Commission notes that the public funding in question will be granted to KFBG only. Hence, the measure is selective within the meaning of Article 107(1) of the TFEU.

#### 3.1.5 Distortion of competition and effect on trade

- (46) When aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in the internal market, the latter must be regarded as affected by that aid. In accordance with settled case law<sup>17</sup>, for a measure to distort competition it is sufficient that the recipient of the aid competes with other undertakings on markets open to competition.

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<sup>17</sup> Case T-214/95, *Vlaams Gewest*, [1998] ECR II-717.

- (47) Competition takes place between airports and between airport operators, which may compete between themselves to be entrusted with the management of a given airport. *Kärnten Airport* is to some extent competing with other airports in Austria and Slovenia. Public financing for the modernisation of *Kärnten Airport* will enable that airport to continue operating and will strengthen the airport's position vis-à-vis other airports, e.g. in Graz and Ljubljana. Hence, a potential effect on competition and trade as a result of the notified measure cannot be excluded.

### 3.1.6 Conclusion on the existence of State aid

- (48) For the reasons set out above the Commission concludes that the public funding for the modernisation of infrastructure and equipment at *Kärnten Airport* constitute State aid within the meaning of Article 107(1) of the TFEU. The Commission notes that Austria has respected the standstill obligation laid down in Article 108(3) of the TFEU and has not granted the aid prior to the Commission's approval.

## 3.2 Compatibility of the aid with the Internal Market

### 3.2.1 Basis for assessing the compatibility of the aid with the Internal Market

- (49) Article 107(3)(c) TFEU stipulates that aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest may be considered to be compatible with the internal market.
- (50) With the notified State aid, the Austrian authorities intend to fund an investment in infrastructure and equipment of *Kärnten Airport*. The Guidelines on State aid to airports and airlines 2014<sup>18</sup> (hereinafter 'the Guidelines') provide for principles to assess, among others, the compatibility of investment aid to airports with the internal market. Hence, the Commission assessed the notified aid on the basis of the Guidelines.
- (51) Point 79 of the Guidelines stipulates cumulative common principles that a State aid measure has to respect in order to be found compatible with the Internal Market:
- (a) contribution to a well-defined objective of common interest: a State aid measure must have an objective of common interest in accordance with Article 107(3) TFEU;
  - (b) need for State intervention: a State aid measure must be targeted towards a situation where aid can bring about a material improvement that the market cannot deliver itself, for example by remedying a market failure or addressing an equity or cohesion concern;
  - (c) appropriateness of the aid measure: the aid measure must be an appropriate policy instrument to address the objective of common interest;

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<sup>18</sup> OJ C 99 of 14.4.2014, p.3.

- (d) incentive effect: the aid must change the behaviour of the undertakings concerned in such a way that they engage in additional activity which they would not carry out without the aid or they would carry out in a restricted or different manner or location;
  - (e) proportionality of the aid (aid limited to the minimum): the aid amount must be limited to the minimum needed to induce the additional investment or activity in the area concerned;
  - (f) avoidance of undue negative effects on competition and trade between Member States: the negative effects of the aid must be sufficiently limited, so that the overall balance of the measure is positive;
  - (g) transparency of aid: Member States, the Commission, economic operators, and the public must have easy access to all relevant acts and to pertinent information about the aid awarded thereunder.
- (52) Pursuant to point 80 of the Guidelines, the Commission considers that above cited common principles are respected when State aid granted to airports meets all the conditions outlined respectively in sections 5.1 and 5.2 of the Guidelines. Point 5.1.1 of section 5.1 of the Guidelines outlines specific conditions applicable to investment aid to airports. Transparency conditions are set out in section 8.2 of the Guidelines.

### 3.2.2 Contribution to a well-defined objective of common interest

- (53) Under point 84 of the Guidelines, investment aid to airports will be considered to contribute to the achievement of an objective of common interest if it increases the mobility of Union citizens and the connectivity of the regions by establishing access points for intra-Union flights; or combats air traffic congestion at major Union hub airports; or facilitates regional development.
- (54) According to Austria, the following objectives were central for the decision of the airport's public owners to enable the airport to continue its operations and modernise its infrastructure and equipment, based on a new business plan:
- Due to Carinthia's topography, characterised by its location in an alpine basin surrounded by mountain ranges, air connections are important. The modernised airport would increase the mobility of residents of Carinthia and the connectivity of the region, in particular as regards outgoing traffic. For example, travelling time to the Austrian capital Vienna would be at least 4 hours by train and 3-4 hours by car.
  - The modernised airport would stimulate regional development, in particular as regards new industry investment and tourism.
- (55) Hence, the aid in principle contributes to objectives of common interest, in line with point 84 (a) and (c) of the Guidelines. In line with point 85 of the Guidelines, the Commission however has to assess whether the aid would contribute to the duplication of unprofitable airports or the creation of additional unused capacity, as in such cases the aid would not contribute to an objective of common interest.
- (56) First, the Commission notes that with the investment programme in question, no new capacity will be created. Rather, only the airport's existing base capacity of

500,000 passengers per year will be secured. As was explained in recital (8) above, the airport of Ljubljana, Slovenia, is the closest airport to the beneficiary airport. The Commission notes that although the shortest road distance between both airports is only 71 kilometres, the Austrian authorities have credibly explained that a travelling time of less than one hour by car is unrealistic even under normal weather and road conditions. The second nearest airport is Graz Airport, which is 127 km away from the beneficiary airport, and travelling time is approx.. 1 hour 17 minutes by car and at least 2 hours 35 minutes by train. The new investment thus concerns an airport which is important for the mobility of residents in the Klagenfurt catchment area.

- (57) The project aims at modernisation of the infrastructure by addressing deficiencies, in particular of the runway, and improving the safety, security and also the functionality of the airport (recital (21) above). Failing the refurbishment of the runway, which is the largest item in the investment programme, the airport would face traffic restrictions and eventually closure. The airport however is an element of Carinthia's overall economic strategy, both as regards tourism and industry investment, and also will meet the medium-term demand of airlines and passengers, according to sound traffic forecasts.
- (58) The Commission can therefore conclude that the modernisation and operation of the airport infrastructure meets a clearly defined objective of common interest.

### 3.2.3 Need for State intervention

- (59) Point 87, first sentence, of the Guidelines stipulates that in order to assess whether State aid is effective in achieving an objective of common interest, it is necessary to identify the problem to be addressed.
- (60) As was exposed in recital (20) above, the problem is that despite the plausibility of the revised business plan on a short-term horizon until 2020, and despite the prospect of sufficient operating cash-flow as from 2018, the immediate financing need in the period 2016-2019 cannot be financed from the airport operator's own resources. The refurbishment of the runway and core infrastructure will alone cost EUR 16.78 million, and is due at the latest in the course of 2016, as required by the competent supervisory authority. Without that investment, airport operator KFBG cannot implement its business plan. The market was however not ready to share the risks and revenues of the investment. KFBG, in turn, would not be able to finance a senior loan of the required amount at the conditions proposed by banks. Rather, KFBG can only reckon with intermediate market financing after the financing for the runway refurbishment is secured and additional collateral becomes available.
- (61) Hence, KFBG is exposed to a considerable funding gap in the initial phase of a project which, on the medium term, has plausible profitability outlooks, fully in line with the recommendations issued by external experts who had appraised KFBG's business plan.
- (62) The Commission further notes that *Kärnten Airport* is a small airport with on average 312 710 passengers per year in the years 2010-2014 inclusive, and a base capacity of 500 000 passengers per year. Pursuant to point 89 (b) of the Guidelines, airports with annual passenger traffic between 200 000 and 1 million are usually not able to cover their capital costs to a large extent.

- (63) Point 87, second sentence, of the Guidelines stipulates that State aid should be targeted towards situations where such aid can bring about a material improvement that the market itself cannot deliver.
- (64) The Commission notes that the terms of the investment aid in question will ensure that the investment risk is covered. The aid will thus enable KFBG to proceed with the runway refurbishment, in the absence of sufficient market financing. As described above in recital (20), penultimate indent, banks were not ready to fund the investment. Consequently, the aid is necessary to achieve a material improvement which the market alone would not have delivered.

#### 3.2.4 Appropriateness of the aid measure:

- (65) Pursuant to point 90 of the Guidelines, Member States must demonstrate that the aid measure is an appropriate policy instrument to achieve the intended objective or resolve the problems intended to be addressed by the aid. An aid measure will not be considered compatible with the internal market if other less distortive policy instruments or aid instruments allow the same objective to be reached.
- (66) The Austrian authorities have demonstrated that the above described funding is an appropriate instrument to cover KFBG's financial exposure. In particular, a loan at reduced interest rates, as a less distortive form of aid, cannot be borne by the airport, see recital (27) above.
- (67) The Commission concludes that the aid measure at stake is an appropriate policy instrument.

#### 3.2.5 Incentive effect

- (68) Aid has an incentive effect if it changes the behaviour of the undertakings concerned in such a way that they engage in additional activity which they would not carry out without the aid or they would carry out in a restricted or different manner or location.
- (69) Point 93 of the Guidelines specifies a formal incentive-effect condition, namely that works on an individual investment must not have started before an application has been submitted to the granting authority.
- (70) As was described above in recital (22), works on the project will start in the course of 2016, and thus after the date when the airport operator submitted its aid application. Hence, the formal criterion is fulfilled.
- (71) Point 94 of the Guidelines specifies a material incentive-effect criterion, namely that the investment would not have been undertaken or would not have been undertaken to the same extent without any State aid.
- (72) The Austrian authorities have demonstrated that airport operator KFBG could not undertake the investment project without the grant covering part of the project cost. Without the necessary financing to refurbish the runway, the airport would inevitably face closure, possibly after a period of restricted operations under which it cannot implement its business plan.
- (73) The airport's *ex ante* business plan shows a capital cost funding gap over the lifetime of the investment in terms of a difference between the positive and



negative cash flows in net present value terms, to the amount of EUR 14.9 million.

- (74) The Commission further notes that due to the long-term nature of the business plan and the large short-term funding gap, banks and private investors were not prepared to commit the level of funding that is necessary for this infrastructure project. Only at a later stage, and only if additional collateral is pledged, banks would provide a limited amount of loan financing.
- (75) In conclusion, the aid has an incentive effect on airport operator KFBG, as it would not undertake the modernisation of *Kärnten Airport* in the absence of the aid in question.

### 3.2.6 Proportionality of the aid amount (aid limited to the minimum):

- (76) Aid is proportional if its amount is limited to the minimum needed to induce the additional investment or activity in the area concerned. State aid to airports, as any other State aid measure, should be proportional in relation to the aimed legitimate objective in order to be cleared as compatible aid<sup>19</sup>. The aid is considered to be proportionate, only if the same result could not be reached with less aid. This means that the amount and intensity of the aid must be limited to the minimum needed for the aided activity to take place.
- (77) Point 97 of the Guidelines stipulates, firstly, that the maximum permissible amount of State aid must be expressed as a percentage of eligible costs (the maximum aid intensity) and secondly that the eligible cost are the costs relating to the investments in airport infrastructure, including planning costs, ground handling infrastructure (such as baggage belt, etc.) and airport equipment.
- (78) As was described in recitals (23) and (24) above, the total amount of public support will be EUR 15 million, with a net value of EUR 14.5 million at the valuation date 31 December 2015, i.e. the valuation date of the funding gap. The aid will be allocated to investments in airport infrastructure, ground handling infrastructure and airport equipment, as well as to investments in non-economic activities. Investment costs related to ground handling services equipment and non-aviation activities are excluded from public support.
- (79) Hence, State aid will exclusively be used to finance eligible investment costs in the sense of the Guidelines. Eligible costs amount to EUR 24.296 million (recital (21) above). The Commission notes that the Austrian authorities will monitor compliance with the maximum permitted 75-% aid intensity.
- (80) Point 99 of the Guidelines stipulates that in cases where no specific counterfactual is known, in order to be proportionate, the amount of the aid should not exceed the capital cost funding gap of the investment project. That gap is determined on the basis of an *ex ante* business plan as the net present value of the difference between the positive and negative cash flows (including investment costs) over the lifetime of the investment. For investment aid the business plan should cover the period of the economic utilisation of the asset.

<sup>19</sup>

It is constant case law that the Commission can declare an aid compatible only if it is necessary for achieving a legitimate objective (cf. case 730/79, *Philipp Morris*, paragraph 17; case C-390/06, *Nuova Agricast*, paragraph 68; case T-162/06, *Kronoply*, paragraph 65).

- (81) In order to calculate the funding gap, the business plan took into account all aeronautical and non-aeronautical revenues, investment costs and operating costs expected to be generated by the investment project over its presumed 20-year lifetime until 2036, calculated using an appropriate discount rate, namely KFBG's WACC. A counterfactual activity that would be undertaken in the absence of aid is not known, as the airport in the absence of the aid would face traffic restrictions and ultimately closure, as described above in recital (16). The discounted financing gap as of 31 December 2015 thus amounts to EUR 14.9 million. The envisaged aid's discounted value at that date, being EUR 14.5 million, does not exceed that funding gap.
- (82) Point 101 of the Guidelines specifies the maximum permissible aid intensities for airport investment aid, depending on the size of the airport as measured by the number of passengers per annum.
- (83) According to available information (recital (6) above), the actual average annual passenger traffic during the two financial years preceding that in which the aid is notified is 241 634 passengers. The airport thus falls in the category of airports with less than one million passengers per annum and is thus eligible for an aid intensity of up to 75% of eligible costs. The notified aid intensity, being 61.74%, is markedly lower than the permissible aid intensity.
- (84) As the aid amount is below the general funding gap over the lifetime of the project, and as the aid intensity below the permissible aid intensity, the notified investment aid can be deemed proportional.

### 3.2.7 Avoidance of undue negative effects on competition and trade between Member States

- (85) The negative effects of the aid must be sufficiently limited, so that the overall balance of the measure is positive.
- (86) Point 106 of the Guidelines specifies that in particular the duplication of unprofitable airports or the creation of additional unused capacity in the catchment area of existing infrastructure might have distortive effects.
- (87) As was described above in recital (20), the investment will not result in a capacity increase but is rather aimed at full utilisation of the airport's existing base capacity. *Kärnten Airport* is not located in the catchment areas of other airports, as was described in recitals (8) *et seq.* above. In particular, available information indicates that, firstly, *Kärnten Airport* with its new business plan will be focussing on Carinthia-bound tourism and secondly, that the airport's catchment area is defined by its geographic location in an alpine basin, which makes it difficult to reach the nearest airport, Ljubljana airport in Slovenia, in less than an hour by road.
- (88) Point 108 of the Guidelines specifies that in order to further limit any distortions, the airport, including any investment for which aid is granted, must be open to all potential users and must not be dedicated to one specific user. In the case of physical limitation of capacity, the allocation should be done on the basis of pertinent, objective, transparent and non-discriminatory criteria.

- (89) As was described above in recital (15), the airport will be open to all potential users, and is not dedicated to one specific user; in the unlikely event of physical limitation of capacity, the allocation will be done on the basis of pertinent, objective, transparent and non-discriminatory criteria.
- (90) On the basis of the above, the Commission concludes that investment aid in question has no undue negative effects on competition and trade between Member States.

### 3.2.8 Cumulation of aid

- (91) Pursuant to point 159 of the Guidelines, aid authorised under these guidelines may not be combined with other State aid, *de minimis* aid or other forms of Union financing, if such a combination results in a higher aid intensity than the one laid down in these guidelines.
- (92) As was explained above in recital (28), the investment aid in question cannot be cumulated with any other aid.

### 3.2.9 Transparency of aid; monitoring

- (93) Section 8.2 of the Guidelines specifies transparency requirements which ensure that Member States, the Commission, economic operators and the public have easy access to all relevant acts and to pertinent information about the aid awarded thereunder. Specific criteria for the publication of relevant information are set out in points 162 and 163 of the Guidelines.
- (94) The Commission notes that Austria will comply with these conditions, as was described above in recitals (30) and (32). The aid is therefore transparent in the sense of the Guidelines.
- (95) Section 8.3 of the Guidelines specifies that Member States must ensure that detailed records are kept regarding all measures involving the granting of State aid in accordance with these guidelines. Point 164 provides for detailed relevant criteria.
- (96) The Commission notes that Austria will keep records in compliance with all relevant criteria, as was described in recital (33) above.

### 3.2.10 Conclusion

- (97) In view of the above assessment, the Commission considers that the notified investment aid for the modernisation of *Kärnten Airport* is in accordance with the compatibility conditions set out in the Guidelines.
- (98) Hence, the aid measure is compatible with the internal market on the basis of Article 107 (3) (c) of the TFEU.

## 4 DECISION

The Commission has accordingly decided not to raise objections to the aid to finance the modernisation of infrastructure and equipment at *Kärnten Airport* as notified by the

Austrian authorities, on the grounds that the aid is compatible with the internal market pursuant to Article 107 (3) (c) of the Treaty on the Functioning of the European Union.

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Yours faithfully,  
For the Commission

Margrethe VESTAGER  
Member of the Commission