EUROPEAN COMMISSION

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Subject: **State aid SA. 39757 (2015/N) – Ireland – Regional Airports Programme 2015 – 2019**

Sir,

1. PROCEDURE

(1) By electronic notification of 15 April 2015 the Irish authorities notified to the Commission, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (TFEU)[1], two aid schemes which aim to provide support for regional airports in Ireland. The notification was registered under case number SA.39757.

(2) The Commission asked the Irish authorities to provide additional information by letter dated 10 June 2015. The information requested was submitted by the Irish authorities on 24 June 2015.

2. DESCRIPTION OF THE AID

2.1. Regional Airports Programme

(3) The two notified schemes form part of Ireland's "Regional Airports Programme 2015 - 2019". One of the two notified schemes is the Core Airport Management Operational Expenditure Subvention Scheme ("OPEX Scheme"), the other is the

[1] OJ L 138 of 30.04.2004

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Regional Airports Capital Expenditure Grant ("CAPEX Scheme").

(4) A third scheme that also forms part of the Regional Airports Programme, for the support of airlines operating Public Service Obligation routes, did not form part of the notification.

2.2. Ireland's Regional Airports

(5) Four Irish airports will be eligible for the CAPEX scheme, namely Donegal, Waterford, Kerry & Ireland West Airport Knock ("IWAK"). However only Waterford and Kerry airports will also be eligible for the OPEX scheme. Ireland's largest airports, namely Dublin, Cork and Shannon, will not be eligible for either scheme.

(6) This following table shows the trends in yearly passenger numbers at the four airports involved:

Table 1 - Passenger traffic at Ireland's four regional airports

Airport	Number of passengers			
	2011	**2012**	**2013**	**2014**
IWAK	654,553	685,781	665,393	703,265
Kerry	310,905	286,442	305,822	295,238
Donegal	40,100	29,326	33,768	35,415
Waterford	81,521	76,554	28,169	34,607

(7) The four airports are spread out geographically, and none are less than 100km or 1 hour's drive from another airport on the island of Ireland. This information is demonstrated by the following table:

Table 2 – Distances and travel times by road between commercial airports on the island of Ireland

Airports	Distance by road (where appropriate) between airports[2]					
	State Airports			IWAK	Donegal	Northern Ireland
	Dublin	**Cork**	**Shannon**			**Derry**
Donegal	307kms	484kms	358kms	205kms	N/a	123kms

[2] Source: AA Route Planner. (http://www.theaa.ie/routes/).

	4hrs16mins	6hrs37mins	5hrs3mins	3hrs2mins		1hr52mins
Waterford	190kms 2hrs12mins	136kms 1hr59mins	167kms 2hrs28mins	292kms 3hrs59mins	N/a	N/a
Kerry	300kms 3hrs29mins	105kms 1hr32mins	117kms 1hr38mins	265kms 3hrs32mins	N/a	N/a
IWAK	214kms 2hrs48mins	274kms 3hrs46mins	158kms 2hrs5mins	N/a	206kms 3hrs2mins	202kms 2hrs52mins

(8) The possible beneficiaries of financial assistance under the CAPEX and OPEX Schemes are the regional airport companies:

- Kerry Airport plc (Farranfore, Co. Kerry)

- South East Regional Airport Waterford (Killowen, Co. Waterford)

(9) The possible beneficiaries of financial assistance under the CAPEX Scheme only are the regional airport companies:

- Connaught Airport Development Company Ltd. (Ireland West Airport Knock, Co. Mayo)

- Aerphort Idirnáisiúnta Dhún na nGall Teo. (Carrickfin, Co. Donegal)

2.3. Objective of the aid

(10) The proposed aid schemes aim to create net economic benefits for the Irish regions concerned.

(11) In this regard, given its island status and peripheral location in Europe, Ireland considers that its regional airports fulfil important intra-Union connectivity objectives for their citizens. Developed in the 1980s they were initially also important when rail and road connections in Ireland were still poor, but today are rather focused on bringing in tourism and ensuring international connectivity.

2.4. Duration of the aid

(12) The schemes will cover the period from 30 July 2015 to 31 December 2019, but the implementation of the proposed schemes will only start when approval of the European Commission has been obtained.

2.5. National legal basis

(13) The payments made under the proposed schemes will be based on the Article 28 of the Constitution of Ireland[3], and the Appropriation Act 2014[4], and

[3] http://www.irishstatutebook.ie/constitution.html

[4] http://www.irishstatutebook.ie/2014/en/act/pub/0035/index.html

Government Decision S22950D 16.12.13, and contracts to be signed under each of the two schemes by the airports concerned and the Department of Transport, Tourism & Sport, ("Department of Transport").

2.6. Budget

(14) The OPEX Scheme will have a maximum total budget of EUR 10 million over the duration of the scheme. The CAPEX Scheme will have a maximum total budget of EUR 32.5 million over the same period.

(15) The planned breakdown of the budget is estimated as follows:

Table 3 – Planned budgets for the OPEX and CAPEX Schemes

Scheme (€m)	2015	2016	2017	2018	2019	Total
OPEX	2.0	2.0	2.0	2.0	2.0	**10**
CAPEX	5.5	10.5	5.5	5.5	5.5	**32.5**

2.7. Eligible costs

(16) Eligible expenses for subvention under both the OPEX and CAPEX Schemes are limited to those that form part of the economic activities of the airport as defined in section 3.1 of the EU Guidelines on State aid to airports and airlines[5] (hereinafter the "guidelines"). Non-economic activities that form part of the public policy remit may be subsidised by other instruments.

(17) In this regard, all eligible airports will be required to maintain separate cost accounting distinguishing between economic and non-economic activities. The Department of Transport has undertaken to closely monitor the airports' accounts to ensure that public funding for non-economic activities is not used to compensate the airports in question in respect to any economic activities such as those that may be subsidised under the OPEX or CAPEX Schemes.

2.8. Study

(18) The Irish government commissioned a study into the viability of its regional airports, focussing in particular on IWAK. The Minister for Transport, Tourism & Sport presented the IWAK Study Group Report to Government on 16 December 2013.

(19) Key recommendations and findings of the Study Group include the following:

- It is reasonable to expect that, in line with draft EU Guidelines[6],

[5] Communication from the Commission Guidelines on State aid to airports and airlines (OJ C 99, 04.04.2014, p.3).

[6] At that time the guidelines had not yet been adopted.

Ireland's regional airports should be financially viable within at most a 10 year period.

- However, a policy position which would see Exchequer support terminate at the end of 2014, would leave a situation whereby IWAK, and likely all regional airports, would face closure within a short timeframe.

- Given the contribution that regional airports make to their local economies, as illustrated in the case of IWAK, they should be given an opportunity beyond 2014 to grow to a viable position.

2.9. OPEX Scheme

(20) As mentioned in recital (5), only Waterford and Kerry airports will also be eligible for the OPEX scheme.

(21) Ireland has undertaken that the OPEX Scheme will be operated in compliance with section 5.1.2 "Operating aid to airports" of the guidelines.

(22) The following stages will apply to the implementation of the OPEX scheme:

1. Invitation to each airport to submit proposals, together with relevant financial projections, including a five-year *ex ante* business plan demonstrating the airport’s ability to be commercially viable within a maximum period of five years. This plan should also include the details and level of support to be provided by Local Authorities and local business interests.

2. Subvention application

3. Appraisal of proposals received from each airport

4. Payment process

5. Monitoring (ex-post monitoring and evaluation of effectiveness of scheme by reference to identified performance indicators)

(23) Expenditure on commercial activities not directly linked to the airport’s core activities, including the construction, financing, use and renting of land and buildings for offices, ground handling, storage, hotels, industrial enterprises, shops, restaurants and car parks will not be regarded as eligible expenditure for the purpose of assessing the level of subvention under the OPEX Scheme. However, airport operators will be encouraged by the Irish authorities to generate revenues from such activities to enhance commercial performance and profits of the regional airport concerned and thereby minimise and, if possible, remove the requirement for subvention.

2.9.1. Aid intensity

(24) The maximum amount of operating aid for the period 30 July 2015 to 3 April 2019 inclusive in respect to eligible activities that will be available to the airport will be established as an *ex ante* fixed sum of up to 80% aid intensity, based on the average of the airport’s operating funding gap during the five years 2009 to

2013. For the period 4 April 2019 to 31 December 2019 the aid intensity, calculated on the same basis, will have a lower maximum of 50%.

(25) The amount of aid to be paid to qualifying airports in respect of any particular year (during the period 30 July 2015 to 31 December 2019) will be set out in a contract between the Department of Transport and the airport and will be subject to the overall amount of funds available in respect of that year being sufficient to pay the amount due to all airport operators who have contracts under the OPEX Scheme.

(26) Where sufficient funds are not available to pay the full amount otherwise due to all airport operators under such contracts, the total amount paid to each airport operator shall be determined by allocating the total funds available on a pro rata basis to each airport operator.

(27) Any overpayments arising from the submitted projected operating costs and the airport's subsequent annual audited financial statement for that year will be offset against the following year's submission. Any over-payment in 2019 must be returned to the Department of Transport as soon as practicable following the completion of the airport's annual audited financial statements for that year.

2.10. CAPEX Scheme

(28) As mentioned in recital (5), all four of Ireland's regional airports, namely Donegal, Waterford, Kerry & IWAK, are eligible for the CAPEX scheme.

(29) Ireland has undertaken that the CAPEX Scheme will be operated in compliance with section 5.1.1 "Investment aid to airports" of the guidelines.

(30) The CAPEX Scheme has its origins in a previous scheme approved by Commission decision N 353/2006[7] "Regional Airports – Capital Expenditure grant Scheme", which covered the years 2006-2010. A prolongation of this previous scheme to cover the years 2011 to 2014 under the same conditions was approved by Commission decision SA.33538 (2011/N)[8].

(31) The CAPEX Scheme differs in certain respects from the previous scheme of 2006 to 2014, notably in the reduced number of airports that it covers.

(32) Since a Value for Money review published in 2011, financial support has only been provided to the four regional airports that are the subject of the present notification, (Donegal, IWAK, Kerry and Waterford). Under the previous scheme, support for Sligo and Galway airports was also authorised.

(33) The Department of Transport will invite proposals from each of the four eligible regional airports based on a 5-year planning framework. Where a proposal is successful, the approved project(s) would be eligible under the CAPEX Scheme for the period 2015-2019.

(34) Airports will be required to provide the following information in respect of each

[7] OJ C 280 of 18.11.2006.

[8] OJ C 12 of 14.01.2012.

proposal:

- A business plan covering the period of the proposed investment, from planning to completion of the project(s)

- An economic evaluation of airport's contribution to the region

- Statement identifying the airport's path to viability with clear measurable targets for delivery

- Recent audited accounts and financial statements

- Statement on access to and availability of additional sources of funding

- Airport charges strategy

- Corporate structures in place for project management and cost control

- Specific information in respect of proposed projects, including:

    - Description of project, including timelines

    - Estimated cost

    - Amount being provided from local funding sources

    - Safety or security case supporting project

    - Recommendation of the Irish Aviation Authority (IAA) and the Aviation Services Division of the Department of Transport (ASD) as appropriate

    - Consideration of alternative approaches to compliance with IAA/ASD recommendations

(35) The business plan will include a detailed description of the proposed project(s), including:

- Duration of planned works

- Costs – cost/benefit analysis

- Funding Gap Calculations

- Funding Sources – private sector etc

- Tendering of suppliers

- Statement regarding meeting medium term prospects for use

(36) The eligible costs are limited to the costs relating to the investments in airport infrastructure, including planning costs, ground handling infrastructure and airport equipment. Investment costs relating to non-aeronautical activities or to the provision of ground handling services are ineligible.

(37) Project appraisal and selection will be carried out by the Department of Transport.

(38) Works on individual investment projects can only commence following approval from the Department of Transport, and this restriction must be explicitly acknowledged by bidders for support under the CAPEX Scheme.

2.10.1. Aid intensity

(39) Support under the CAPEX Scheme for regional airports for capital projects, is limited to 75% of the total eligible costs, with the airport covering at least 25% of the funding. The Irish authorities have confirmed that all public funding, including that from local government will be included in the calculation of the contribution of the State.

(40) In addition, the funding under the CAPEX Scheme may not exceed the actual capital costs funding gap of the investment project.

2.11. Annual Reports, monitoring, evaluation and transparency

(41) The full text of Ireland's Regional Airports Programme 2015 – 2019, along with detailed information relating to each of its component schemes, will be made available on the Department of Transport's website.

(42) This information will be kept for a period of at least 10 years and will be updated every 6 months and will be available to the interested public without restrictions.

(43) Ireland will allow the Commission to monitor the progress of the phasing out of operating aid to airports and its impact on competition. In this regard, Ireland will submit an annual report to the Commission on such progress by the airports concerned. This report will be made available on the Department of Transport's website.

(44) These reporting, transparency and monitoring requirements will also be reflected in the contracts between the Department and the airports under both the OPEX and CAPEX Schemes.

3. ASSESSMENT OF THE AID

3.1. Existence of aid within the meaning of Article 107(1) TFEU

(45) According to Article 107(1) 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"*.

(46) The criteria laid down in Article 107(1) are cumulative. Therefore, in order to determine whether the notified aid constitutes State aid within the meaning of Article 107(1) TFEU, all the above mentioned conditions need to be fulfilled. Namely, the financial support should:

(a) be granted by the State or through State resources,

(b) favour certain undertakings or the production of certain goods,

(c) distort or threaten to distort competition,

(d) affect trade between Member States.

(47) State resources: Since the notified aid involves financing granted by the Irish authorities, it involves the use of State resources and is imputable to the State.

(48) Selective economic advantage: The proposed schemes will consist of grants from State resources allocated to the airports in question by the Irish authorities. The subsidies in question will give the beneficiaries a competitive advantage over other operators on the same liberalised market, reducing costs normally borne by the beneficiaries for the expansion of their activity. As the public financing is directed to certain eligible airports, to the exclusion of competitors, it is therefore selective.

(49) Distortion of competition and impact on trade: When aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in intra-Union trade, the latter must be regarded as affected by that aid[9]. It is sufficient that the recipient of the aid competes with other undertakings on markets open to competition[10]. Support by the Irish authorities of airports distorts or threatens to distort competition between airports and affect trade between Member States as airport services is a fully liberalised activity in the internal market, in which many undertakings from different Member States compete against each other.

(50) On the basis of the above, the Commission concludes that the notified aid schemes involves aid within the meaning of Article 107(1) TFEU. By having notified the planned aid to the Commission and not having put it into effect before its approval by the latter the Irish authorities have observed the stand-still obligation under Article 108(3) TFEU.

3.2. Compatibility of the aid

(51) The Commission will examine the compatibility of the proposed schemes in the light of the guidelines.

3.2.1. OPEX Scheme

(52) The guidelines set out in points 112 to 137 several cumulative conditions to be complied with, in order for operating aid to airports to be found compatible with the internal market under Article 107(3)(c).

(53) Operating aid granted to airports under an aid scheme will be considered compatible for a transitional period of 10 years provided that the six cumulative conditions described in point 79 of the guidelines are met:

9 See, in particular, Case 730/79 Philip Morris v Commission [1980] ECR 2671, paragraph 11; Case C-53/00 Ferring [2001] ECR I-9067, paragraph 21; Case C-372/97 Italy v Commission [2004] ECR I-3679, paragraph 44.

10 Case T-214/95 Het Vlaamse Gewest v Commission [1998] ECR II-717.

3.2.1.1. Contribution to a well-defined objective of common interest (points 113-115 of the guidelines):

(54) The guidelines allow that *"…operating aid to airports will be considered to contribute to the achievement of an objective of common interest for a transitional period of 10 years, if it:*

> *(a) increases the mobility of Union citizens and the connectivity of the regions by establishing access points for intra- Union flights; or*
>
> *(b) combats air traffic congestion at major Union hub airports; or*
>
> *(c) facilitates regional development."*

(55) The Irish authorities intend that regional airports be given the opportunity beyond 2014 to grow to a viable, self-sustaining position, particularly considering the contribution that they make to the development of regional and local economies, and as stated in recital (10), the objective of the OPEX Scheme is to create net economic benefits for the regions involved..

(56) Moreover, as stated in recital (11), given its island status and peripheral location in Europe, Ireland considers that its regional airports fulfil important intra-Union connectivity objectives for their citizens, particularly in terms of ensuring some degree of international connectivity of those regions.

(57) However points 114 and 115 make clear that the duplication of unprofitable airports does not contribute to an objective of common interest. Where an airport is located in the same catchment area[11] as another airport with spare capacity, the business plan, based on sound passenger and freight traffic forecasts, must identify the likely effect on the traffic of the other airport located in that catchment area.

(58) Accordingly, the Commission will have doubts as to the prospects for an unprofitable airport to achieve full operating cost coverage at the end of the transitional period, if another airport is located in the same catchment area.

(59) In this regard, Waterford Airport is located 136km and 1 hour 59 minutes' travelling time by car from the nearest other commercial airport. Kerry Airport is located 105km and 1 hour 32 minutes' travelling time by car from another commercial airport, (see Table 2).

(60) In the case of Kerry Airport, the distance of 105km to Cork Airport, is only slightly above the 100km limit set in the guidelines. Notwithstanding this, the Commission notes that the 1 hour 32 minutes' travelling time by car is significantly above the 60 minute limit, and that according to the Irish authorities the majority of the passengers using these two airports tend to be from within

[11] See point 12 of the guidelines: *"'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; however, the catchment area of a given airport may be different and needs to take into account the specificities of each particular airport. The size and shape of the catchment area varies from airport to airport, and depends on various characteristics of the airport, including its business model, location and the destinations it serves;"*

their respective counties. Moreover, apart from the significant number of connections to London which both airports have, the airports largely serve different markets, with the much smaller Kerry Airport relying on a public service obligation subsidised connection to Dublin Airport, while the much bigger Cork Airport has no connection to Dublin, but offers a wide range of European destinations.

(61) Therefore, the Commission considers that none of the eligible airports is within the same catchment area as defined by the guidelines[12].

(62) Therefore the OPEX Scheme contributes to a well-defined objective of common interest.

3.2.1.2. Need for State intervention (points 116-119 of the guidelines):

(63) The guidelines state (point 118) that the need for public funding to finance operating costs will, due to high fixed costs, vary according to the size of an airport and will normally be proportionately greater for smaller airports.

(64) Both Waterford and Kerry airports have less than 700,000 passengers, and Waterford has less than 200,000. In Point 118 (a) and (b) of the guidelines, the Commission has specified that airports of this size may not, or not to a large or substantial extent, be able to cover their operating costs under current market conditions.

(65) In the absence of aid, the IWAK study[13] suggests that all four regional airports in Ireland would face closure within a short timeframe. In this regard, the operating aid to be granted under the proposed OPEX scheme is aimed at giving Waterford and Kerry airports an opportunity beyond 2014 to grow to a viable size, where they will be able to cover their operating costs under market conditions.

(66) The Commission concludes that the notified scheme fulfils the criterion on the need for State intervention.

3.2.1.3. Appropriateness of State aid as policy instrument (points 120-123 of the guidelines):

(67) The guidelines allow that :

> *"[…] 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.*
>
> *121. In order to provide proper incentives for efficient management of an airport, the aid amount is, in principle, to be established ex ante as a fixed sum covering the expected operating funding gap (determined on the basis of an ex ante business plan) during a transitional period of 10 years. For these reasons no ex-post increase of the aid amount should, in principle, be considered compatible with the internal market. The Member State*

[12] Ibid.

[13] See section 2.8.

may pay the ex-ante fixed amount as an up-front lump sum or in instalments, for instance on an annual basis."

(68) Ireland regards the proposed support under the OPEX Scheme as the most appropriate form of aid to achieve the objective desired. Ireland states that other options (i.e. other than a grant) available were considered (including loans, guarantees or repayable advances) but that the eventual 'repayment' of such monies by the regional airport would be likely too burdensome in the context of their aim to become self-sufficient after the transitional period.

(69) Ireland has committed to providing proper incentives to airports by establishing the aid amount *ex ante* as a fixed sum for each airport covering the expected operating funding gap until 31 December 2019, determined on the basis of the *ex ante* business plans of each airport (see recital (22)).

(70) The amount of aid to be paid to qualifying airports in respect of any particular year (during the period 2015 to 2019) will be set out in a contract between the Department of Transport and the airport and will be subject to the overall amount of voted Exchequer funds available to the Minister in respect of that year being sufficient to pay the amount due to all airport operators who have contracts under the OPEX Scheme.

(71) The possibility of a lesser amount being paid in a situation where there are insufficient funds available in a given year to pay the full amount does not imply the 80% maximum aid intensity threshold will be breached, (see recital (82) and point 130 of the guidelines).

(72) Ireland has confirmed that there can be no *ex post* increase of the aid amount.

(73) The Commission concludes that the notified scheme fulfils the criterion on the appropriateness of State aid as policy instrument.

3.2.1.4. Existence of incentive effect (point 124 of the guidelines):

(74) The guidelines stipulate that operating aid has an incentive effect if it is likely that, in the absence of the operating aid, and taking into account the possible presence of investment aid and the level of traffic, the level of economic activity of the airport concerned would be significantly reduced.

(75) The Irish authorities intend to ensure, by examining the financial data, the airport's traffic, the presence of any investment projects, and the strategic justifications provided in the project bids, that the requirements for the incentive effect will be respected.

(76) Moreover, the IWAK study shows that in the absence of operating aid, the level of economic activity would be seriously endangered.

(77) The Commission considers that for the reasons given above the aid to be granted under the proposed OPEX Scheme will have an incentive effect, and therefore concludes that the scheme satisfies this condition.

3.2.1.5. Proportionality of the aid amount (aid limited to the minimum necessary) (points 125-130 of the guidelines):

(78) The guidelines state that:

> *"126. The business plan of the airport must pave the way towards full operating cost coverage at the end of the transitional period. The key parameters of this business plan form an integral part of the Commission's compatibility assessment.*
>
> *[…]*
>
> *128. In any event, the maximum permissible aid amount during the whole transitional period will be limited to 50 % of the initial funding gap for a period of 10 years. For instance, if the annual average funding gap of a given airport over the period 2009 to 2013 is equal to EUR 1 million, the maximum amount of operating aid that the airport could receive as an ex-ante established fixed sum would be EUR 5 million over ten years (50 % x 1 million x 10). No further operating aid will be considered compatible for that airport.*
>
> *129. By 10 years after the beginning of the transitional period at the latest, all airports must have reached full coverage of their operating costs and no operating aid to airports will be considered compatible with the internal market after that date, with the exception of operating aid granted in accordance with horizontal State aid rules, such as rules applicable to the financing of SGEIs.*
>
> *130. Under the current market conditions, airports with annual passenger traffic of up to 700 000 may face increased difficulties in achieving the full cost coverage during the 10-year transitional period. For this reason, the maximum permissible aid amount for airports with up to 700 000 passengers per annum will be 80 % of the initial operating funding gap for a period of five years after the beginning of the transitional period. For instance, if the annual average funding gap of a small airport over the period 2009 to 2013 is equal to EUR 1 million, the maximum amount of operating aid that the airport could receive as an ex-ante established fixed sum would be EUR 4 million over five years (80 % x 1 million x 5). The Commission will reassess the need for continued specific treatment and the future prospects for full operating cost coverage for this category of airport, in particular with regard to the change of market conditions and profitability prospects."*

(79) As described in section 2.9.1, the Irish authorities intend to require that a business plan be submitted by the airport with each request for funding, and that the business plans should show full operating cost coverage at the end of the transitional period.

(80) The two airports eligible for the OPEX Scheme, namely Kerry and Waterford, have average traffic of below 700 000 passengers per annum, (see Table 1).

(81) The Irish authorities will ensure that the level of support is not disproportionate to the airport operations in question, and that the level of support of public

authorities is subject to the maximum intensity defined in section 2.9.1 above, is limited to what is necessary to cover the operating costs of the airport services as defined by guidelines and as specified in section 2.7 above on eligible costs.

(82) The Irish authorities intend to limit the proposed operating aid to the period from 30 July 2015 to 31 December 2019. The intensity of the aid between 30 July 2015 and 3 April 2019 will be capped at 80% of the initial operating funding gap as calculated from the average operating funding gap of the airport during the period 2009-2013. The intensity of the aid between 4 April 2019 and 31 December 2019 will be capped at 50% of the same initial operating funding gap. The Commission's assessment relates to the whole period of 4 April 2019 to 31 December 2019, regardless of the duration of contracts concluded under the scheme. For contracts expiring between 4 April 2019 and 31 December 2019, this means that the Irish authorities will submit where necessary a notification of changes to this plan to reflect any revised treatment of airports with less than 700,000 passengers per annum, (as per the commitment of the Commission in point 130 of the guidelines to reassess the need for continued specific treatment for this category of airport).

(83) The Irish authorities commit to asking airports for annual reports of the evidence of progress towards their being viable without operating support. These reports should subsequently be transmitted to the Commission.

(84) The Commission notes that the reported monitoring provisions as described in recital (22) and section 2.11 above comply with the principles recalled in points 160-168 of the guidelines relating to annual reports, transparency of aid, monitoring and evaluation. The Commission also notes that the list of eligible costs described in section 2.7 are in accordance with the guidelines and the decisional practice of the Commission.

(85) The Commission therefore concludes that the notified scheme fulfils the criterion on the proportionality of the aid.

3.2.1.6. Avoidance of undue negative effects on competition and trade (points 131-134 of the guidelines):

(86) The guidelines state:

> *"131. When assessing the compatibility of operating aid the Commission will take account of the distortions of competition and the effects on trade. Where an airport is located in the same catchment area as another airport with spare capacity, the business plan, based on sound passenger and freight traffic forecasts, must identify the likely effect on the traffic of the other airports located in that catchment area.*
>
> *132. Operating aid for an airport located in the same catchment area will be considered compatible with the internal market only when the Member State demonstrates that all airports in the same catchment area will be able to achieve full operating cost coverage at the end of the transitional period.*
>
> *133. In order to limit further the distortions of competition, the airport must be open to all potential users and 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."

(87) According to the Irish authorities, neither eligible airport under the proposed scheme is located in the same catchment area as another Irish airport, as defined by the guidelines. Both eligible airports are located at least 105km, or 1 hour 32 minutes' drive from another commercial airport, (see Table 2 and recitals (59) to (61)).

(88) According to the Irish authorities, the airports concerned are all open to all potential users without discrimination. Moreover non-discriminatory access is provided for in the contracts to be entered into between the Department of Transport and the airports.

(89) The Commission therefore finds that the notified scheme complies with the provisions of the guidelines on the prevention of unwanted negative effects on competition and trade.

3.2.1.7. Annual Reports, monitoring, evaluation and transparency

(90) In addition to the six cumulative criteria above that are fulfilled, the proposed scheme must also fulfil points 160-168 of the guidelines which contains requirements relating to annual reports, transparency of aid, monitoring and evaluation.

(91) In section 2.11 is a description of how the schemes aim to respect those requirements.

(92) The Commission considers that these requirements will allow the Irish authorities to fulfil their own obligation to collect the data needed for:

a) Publication on the website of the suitable information required by the guidelines,

b) Production of annual reports to be submitted to the Commission,

c) Demonstration by Ireland of monitoring the progress of the process of phasing out operating aid granted to airports.

3.2.1.8. Conclusion

(93) It follows from the above that the notified OPEX Scheme meets all of the cumulative conditions set by the guidelines for determining the compatibility of the scheme with the internal market under Article 107, paragraph 3, c) TFEU.

3.2.2. **Subvention scheme for regional airport capital expenditure**

(94) The other notified scheme is the Regional Airports Capital Expenditure Grant ("CAPEX Scheme").

(95) The guidelines set out in points 83 to 111 several cumulative conditions to be complied with, in order for investment aid to airports to be found compatible with the internal market under Article 107(3)(c) TFEU:

3.2.2.1. Contribution to a well-defined objective of common interest (points 84-86 of the guidelines):

(96) The guidelines state that:

> *"Investment aid to airports will be considered to contribute to the achievement of an objective of common interest, if it:*
>
> > *(a) increases the mobility of Union citizens and the connectivity of the regions by establishing access points for intra-Union flights; or*
> >
> > *(b) combats air traffic congestion at major Union hub airports; or*
> >
> > *(c) facilitates regional development."*

(97) The Irish authorities state that they support their regional airports because of the contribution that they make to the development of regional and local economies.

(98) However point 85 of the guidelines make clear that *"the duplication of unprofitable airports or the creation of additional unused capacity does not contribute to an objective of common interest. If an investment project is primarily aimed at creating new airport capacity, the new infrastructure must, in the medium-term, meet the forecasted demand of the airlines, passengers and freight forwarders in the catchment area of the airport."*

(99) Point 86 of the guidelines clarifies *"Accordingly, the Commission will have doubts as to the medium-term prospects for use of airport infrastructure at an airport located in the catchment area of an existing airport where the existing airport is not operating at or near full capacity."*

(100) In this regard, none of the eligible airports, under the proposed scheme are located less than 105km, or less than 1 hour 32 minutes' drive, from another commercial airport, (see Table 2 and recitals (59) to (61)), and therefore, the Commission considers that none of the eligible airports is within the same catchment area as defined by the guidelines[14].

(101) Therefore the CAPEX Scheme contributes to a well-defined objective of common interest.

3.2.2.2. Need for State intervention (points 87-89 of the guidelines):

(102) The guidelines set out that the need for public funding for investment in infrastructure will vary, due to high fixed costs, depending on the size of the airport.

(103) All four Irish regional airports eligible for the CAPEX Scheme count less than 1,000,000 passengers per annum, and two count less than 200,000 per annum. In Point 89 (a) and (b) of the guidelines, the Commission has specified that airports of this size may not be able, or are usually not able, to cover their capital costs under current market conditions.

[14] See footnote 11.

(104) In the absence of aid, as the IWAK study[15] suggests, all four regional airports in Ireland would face closure within a short timeframe. In this regard, the aid to be granted under the proposed scheme is aimed at giving the eligible airports an opportunity beyond 2014 to grow to a viable size, where they are able to cover their investment costs under market conditions.

(105) With all the projects to be funded under the CAPEX Scheme, the Irish authorities intend to examine the particular situation of the airport concerned, the level of traffic, its environment, the availability of alternative modes of transport and the airport's financial data, and to verify that the investment project envisaged corresponds to a real need and cannot be financed by own resources from the airport or by the market.

(106) The Commission concludes that the notified CAPEX Scheme fulfils the criterion on the need for State intervention.

3.2.2.3. Appropriateness of State aid as policy instrument(points 90-92 of the guidelines):

(107) The guidelines allow that:

> *"90. […] 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.*
>
> *91. The Member States can make different choices with regard to the use of different policy instruments and forms of aid. In general, where a Member State has considered other policy options and the use of a selective instrument, such as State aid in the form of a direct grant, has been compared with less distortive forms of aid (such as loans, guarantees or repayable advances), the measures concerned are considered to constitute an appropriate instrument."*

(108) Ireland regards the proposed support under the CAPEX Scheme as the most appropriate form of aid to achieve the objective desired. Ireland states that other options (i.e. other than a grant) available were considered (including loans, guarantees or repayable advances) but that the eventual 'repayment' of such monies by the regional airport would be likely too burdensome in the context of their aim to become self-sufficient after the transitional period.

(109) The Commission therefore concludes that the notified scheme fulfil the criterion on the appropriateness of the State aid as an instrument of intervention.

3.2.2.4. Existence of incentive effect (points 93-96 of the guidelines):

(110) The guidelines dictate that:

> *"93. Works on an individual investment can start only after an application has been submitted to the granting authority. If works start before an application is submitted to the granting authority, any aid awarded in respect of that individual investment will not be considered compatible*

[15] See section 2.8.

with the internal market.

[…]

95. The incentive effect is identified through counterfactual analysis, comparing the levels of intended activity with aid and without aid.

96. Where no specific counterfactual is known, the incentive effect can be assumed when there is a capital cost funding gap, that is to say, when on the basis of an ex ante business plan, it can be shown that there is a difference between the positive and negative cash flows (including investment costs into fixed capital assets) over the lifetime of the investment in net present value terms."

(111) The Irish authorities explain that for projects to be funded under the notified scheme, work can begin only after obtaining permission from payment of aid to the competent authority, (see recital (38)). Moreover, an explicit undertaking is required from the beneficiaries that this condition of funding is accepted by them.

(112) The Irish authorities intend to ensure, by examining the airport's financial data, traffic, and the strategic justifications provided in project bids, that the requirements for the incentive effect will be respected. The business plan, as described in recital (35), must include a counterfactual scenario to analyse the difference with and without the proposed aid.

(113) The Commission considers that the controls built into the CAPEX scheme are adequate to demonstrate compliance by Ireland of the incentive effect of the scheme as described in section 2.10. The Commission therefore concludes that the plan satisfies the test for the existence of an incentive effect within the meaning of the Guidelines.

3.2.2.5. Proportionality of the aid amount (aid limited to the minimum necessary) (points 97-105 of the guidelines):

(114) The guidelines state that:

"97. The maximum permissible amount of State aid is expressed as a percentage of eligible costs (the maximum aid intensity). Eligible costs are the costs relating to the investments in airport infrastructure, including planning costs, ground handling infrastructure (such as baggage belts, etc.) and airport equipment. Investment costs relating to non-aeronautical activities (in particular parking, hotels, restaurants, and offices) are ineligible.

98. The investment costs relating to the provision of ground handling services (such as buses, vehicles, etc.) are ineligible, insofar as they are not part of ground handling infrastructure.

99. In order to be proportionate, investment aid to airports must be limited to the extra costs (net of extra revenues) which result from undertaking the aided project/activity rather than the alternative project/activity that the beneficiary would have undertaken in the counterfactual scenario, that is to say, if it had not received the aid.

Where no specific counterfactual is known, in order to be proportionate, the amount of the aid should not exceed the funding gap of the investment project (so-called 'capital cost funding gap'), which 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.

100. […] The aid intensity must not exceed the maximum permissible investment aid intensity [as defined in the table below] and should, in any case, not go beyond the actual funding gap of the investment project.

Size of airport based on average passenger traffic (passengers per annum)	*Maximum investment aid intensity*
>3-5 million	*up to 25 %*
1-3 million	*up to 50 %*
<1 million	*up to 75 %*

[…] 102. The maximum aid intensities for investment aid to finance airport infrastructure may be increased by up to 20 % for airports located in remote regions irrespective of their size.

103. Airports with average traffic below 1 million passengers per annum should contribute at least 25 % to the financing of the total eligible investment costs. However, investment projects at certain airports with average traffic below 1 million passengers per annum located in peripheral regions of the Union may result in a funding gap which is higher than the maximum permissible aid intensities. Subject to a case-by-case assessment and depending on the particular characteristics of each airport, investment project and the region served, intensity exceeding 75 % may be justified in exceptional circumstances for airports with traffic volume below 1 million passengers per annum.

104. In order to take account of the specific circumstances regarding the relocation of an existing airport and cessation of airport activities at an existing site, the Commission will assess, in particular, the proportionality, the necessity and the maximum aid intensity of the State aid granted on the basis of the funding gap analysis or the counterfactual scenario of each specific case, regardless of the average passenger traffic of that airport."

(115) The Commission considers that:

a) The scheme defines the maximum amount of aid allowed by explicitly referring to the definitions in point 25 of the guidelines for the capital costs funding gap and does not include any provision derogating from the aforementioned calculation method.

b) The eligible costs described in recital (36) are in accordance with the guidelines and the decisional practice of the Commission.

c) The proposed CAPEX Scheme includes a requirement that bidders submit a business plan, as described in recital (35), and notes that this business plan must include a counterfactual and a differentiated analysis of the two scenarios for the airport both with and without the infrastructure to be funded.

d) The aid intensities provided for in the notified scheme as presented in recital (39), are consistent with those set by the guidelines.

(116) The Commission therefore finds that the notified scheme complies with the provisions of the guidelines on the proportionality of the aid amount, and its limitation to the minimum necessary.

3.2.2.6. Avoidance of undue negative effects on competition and trade (points 106-108 of the guidelines):

(117) The guidelines stipulate that:

> *"106. […] the Commission will, in principle, have doubts as to the compatibility of investment into airport infrastructure at an airport located in the catchment area of an existing airport where the existing airport is not operating at or near full capacity.*
>
> *107. […] investment aid to airports with traffic of up to 5 million passengers can be granted either as an upfront fixed amount to cover eligible investment costs or in annual instalments to compensate for the capital cost funding gap resulting from the business plan of the airport.*
>
> *108. […] 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."*

(118) According to the Irish authorities, none of the four eligible airports under the proposed scheme are located in the same catchment area as another Irish airport, as defined by the guidelines. All four eligible airports are located at least 105km, or 1 hour 32 minutes' drive from another commercial airport, (see Table 2 and recitals (59) to (61)).

(119) According to the Irish authorities, the airports concerned are all open to all potential users without discrimination. Moreover non-discriminatory access is provided for in the contracts to be entered into between the Department of Transport and the airports.

(120) As confirmed in recital (40), the funding under the CAPEX Scheme may not exceed the actual capital costs funding gap of the investment project.

(121) The Commission therefore finds that the notified scheme complies with the

provisions of the guidelines on the prevention of unwanted negative effects on competition and trade.

3.2.2.7. Annual Reports, monitoring, evaluation and transparency

(122) Section 3.2.1.7 sets out how both the OPEX Scheme meets the requirements of points 160 to 168 of the guidelines. As set out in section 2.11, since both schemes are designed in the same way in this regard, the same assessment applies *mutatis mutandis* to the CAPEX Scheme.

3.2.2.8. Conclusion

(123) It follows from the above that the notified scheme meets all of the cumulative conditions set by the guidelines for determining the compatibility of the scheme with the internal market under Article 107, paragraph 3 (c) TFEU.

3.3. Conclusion

(124) In view of the foregoing, the Commission concludes that the compatibility criteria laid down by the guidelines for investment and operating aid are complied with and the notified aid schemes are compatible with Article 107(3)(c) TFEU.

(125) The Irish authorities are reminded of the transparency obligations with regard to publication of details of aid granted, as outlined in section 8.2 of the guidelines.

4. DECISION

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union.

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/competition/elojade/isef/index.cfm.

Your request should be sent electronically to:

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Yours faithfully,

For the Commission

Margrethe VESTAGER
Member of the Commission

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION