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**Subject: State aid SA.46378 – Hungary  
Modernisation of Debrecen International Airport**

Sir,

## 1. PROCEDURE

- (1) On 28 July 2017, the Hungarian authorities notified to the Commission investment measures concerning the infrastructure of Debrecen International Airport (the "Airport" or "Debrecen Airport"), according to Article 108(3) of the Treaty on the Functioning of the European Union (the "TFEU") (the "Measure").
- (2) The notification was registered under the State aid case number SA.46378.

## 2. DESCRIPTION OF THE MEASURE

### 2.1. Debrecen International Airport

- (3) The Airport is located 7 km from the city of Debrecen, situated in the Northern Great Plain region, which is a lesser developed region in Hungary. Debrecen is the largest city in the region and the second largest city in Hungary by population.
- (4) The Airport is a former Soviet military base transformed gradually into a commercial passenger airport after the end of communist rule.<sup>1</sup>
- (5) The owner of the Airport is Cívis Ház Zrt (the "Owner" or the "Cívis Ház") which is held by the company Debreceni Vagyonkezelő Zrt. (the "DVRT"), an asset

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<sup>1</sup> In May 1991, Soviet troops vacated the Airport and handed it over to the Hungarian State.

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management company of Debrecen Municipality. DVRT is 100% owned by the Debrecen Municipality.

- (6) The Airport is operated by Airport Debrecen Kft. (the "Operator" or the "Airport Operator") since 2012. [Approximately 75%]\* of the Operator's shares are owned by the Xanga Group and [approximately 25%] by DVRT. The Xanga Group was selected following an open transparent public tender procedure in 2011.
- (7) Under the terms of the concession agreement, the Owner puts the infrastructure of Debrecen Airport at the disposal of the Operator at a state that is suitable for use by airlines.
- (8) The Hungarian authorities submitted that the concession fee includes two components related to the renting of the assets and the permission for the operation of the Airport, explaining that the concession fee is based on a methodology which includes an automatic indexation mechanism.
- (9) The concession agreement identifies investments of HUF 200 million to be carried out by the Airport Operator which have all been already done. The Hungarian authorities also confirmed that there is explicit reference in the concession agreement that all other investments are to be funded by the Owner. Even if such other investments were carried out by the Airport Operator, they are to be funded by the Owner (point II/13 of the concession agreement).
- (10) In 2012, scheduled flights started to depart from Debrecen to various European cities and the supply of charter flights was expanded. The Airport has several destinations, out of which the busiest route is the London Luton route, which takes off approximately ten times a week, followed by Eindhoven in the Netherlands. Other destinations include Milano-Bergamo, Paris-Beauvais, Brussels-Charleroi, Malmo and Munich.
- (11) The Airport receives charter flights seasonally. The most popular destinations are Bulgaria, Turkey (Antalya), Greece (Heraklion and Corfu). Services on those routes are mostly available in the summer period between June and September and generally serve touristic purposes.
- (12) According to passenger traffic data in 2016, the Airport had 284,965 passengers per year and the number of passengers was increasing year by year since its operations started in 2012.

Table 1: Traffic data of the Airport (actual figures - Passenger number, Take-off/landing number)

Year	2012	2013	2014	2015	2016
Passenger Traffic	47,746	129,231	145,706	172,363	284,965
Aircraft	1,437	1,473	1,315	1,554	

Source: *Cívís Ház Business plan, [...], 2017.*

\* Confidential information.

(13) The expected development of passenger traffic up to 2022 is as follows:

Table 2: Annual passenger traffic forecast

Year	2018	2019	2020	2021	2022
Passenger number/annum	[...]	[...]	[...]	[...]	[...]

## 2.2. Other airports in the vicinity

- (14) The closest airport to Debrecen is the Airport of Oradea located in Romania. The distance from Debrecen Airport by car is 80 km<sup>2</sup> and takes approximately 1 hour and 20 minutes. There are no other airports within a radius of 100 km or 60 minutes of travel time by car.
- (15) The travel involves a crossing of an external Schengen border. Due to this crossing the actual travel time between the two airports varies and might at times be significantly longer than the 1 hour and 20 minutes.
- (16) According to the Hungarian authorities, the Airport of Oradea is not a direct competitor to Debrecen Airport, for the following reasons:
- There is only one daily direct train which departs from Debrecen and stops in Oradea. The travel time is 2 hours and 46 minutes. This line is not a high-speed rail system and the external Schengen border control might further increase the travel time.
  - The travel time by bus is 3 hours and 20 minutes according to the line provider.<sup>3</sup> This bus departs only once a day.
  - Furthermore, according to the Hungarian authorities, Debrecen Airport costumers mainly come from Debrecen and the 4 neighbouring Hungarian counties focusing on international (mainly Western European) destinations only. On the other hand, the Airport of Oradea is mainly as a regional airport and serving its Romanian regional population. It is expected to still be classified as a regional airport until 2025.<sup>4</sup> Located 585 km away from the capital, Bucharest is its main flight destination (with around 13 flights weekly).
- (17) The Hungarian authorities therefore argue that its passenger forecasts are not affected by Airport of Oradea.<sup>5</sup> Hungary also takes the view that the flights operating from Debrecen Airport attract travellers who otherwise would not have travelled by plane.

## 2.3. The investment project and its financing

(18) The modernisation of the Airport (the “Project”) consists of:

<sup>2</sup> Google Maps transport information.

<sup>3</sup> Website of Eurolines:<http://webelin.volanbusz.hu/nemzetkozi/elovetel/xticmain?lang=en>

<sup>4</sup> Romanian General Transport Master Plan (July 2015).

<sup>5</sup> This is also in line with Commission Decision of 27.05.2013 in State aid case SA.35979– Romania, Start-up aid to airlines departing from Oradea Airport, OJ C of 10.08.2013, p. 4.

- Setting up of an ILS category II landing system. This requires improving the accuracy of landing signals and, as a result, the installation of additional antenna groups and the replacement of the existing (NORMARC 7000B) control units (LLZ, GP). New lighting equipment will have to be implemented as well;
  - Development and upgrades of the runway, taxiways and the apron (including the pavement tracks, the rainwater drainage channels, markings, expansion of the apron);
  - Connecting the new terminal section and the main building (construction of a connecting bridge, improvement of the IT system); and
  - Building a facility protection fence (the area to be secured will be reduced and a new line of fencing will be built).
- (19) The main objective of the Project is related to the improvement of the safety and security at the Airport. The current landing system ILS I allows aircrafts to land with a cloud base of 60 meters and a runway visible range not less than 800 meters. This means that in very bad weather conditions, aircrafts cannot land at the Airport. The Airport cannot then be used as a back-up landing airport.
- (20) The investments amount to 1,600,000,000 HUF (approximately EUR 5 million) and will be financed partially through public funding and partially through the income of Debrecen Airport. The investment costs are demonstrated in the business plan as follows:

Table 3: Main project elements (in HUF, EUR figures approximate)

<b>Main project elements</b>	<b>Investment cost (HUF)</b>	<b>Investment cost at present value at 31 December 2016 (HUF)</b>
ILS II	[...]	[...]
Runway, taxiways and the apron reconstruction	[...]	[...]
Terminal Corridor	[...]	[...]
Fence	[...]	[...]
<b>Total</b>	<b>1,600,000,000 (approximately EUR 5.14 million)</b>	<b>1,544,038,462 (approximately EUR 4.96 million)</b>

*Source: Cívís Ház Business plan, [...] 2017.*

- (21) The planned support will not exceed the funding gap as calculated by the Hungarian authorities. Hungary estimated the average economic utilisation period of the assets to be 20 years and used the weighted average cost of capital ([...])% as the discount rate. The difference over the lifetime of the investment in net present value terms is negative.

The project presents a funding gap of HUF 1,305,465,483 million (approx. EUR 4.3 million), as illustrated in Table 4.

Table 4: Funding gap calculation

Investment cost	(1,554,038,462) <b>(approx. EUR 5 million)</b>
Net incremental income	[...]
Residual Value	[...]
Funding gap	(1,305,465,483) (approx. EUR 4.3 million)

Source: *Cívis Ház Business plan*, [...], 2017.

- (22) Hungary submits that the calculations show that the Project would not be feasible and, Cívis Ház alone would not be able to cover all the investment costs

#### 2.4. Legal basis

- (23) The legal basis is the Government Resolution 1038/2016.<sup>6</sup>

#### 2.5. Form and duration

- (24) Cívis Ház applied for aid on 29 December 2015. Until July 2017 only preparatory steps have been taken. The planned date for launching the Project (the public procurement related to the construction works) is Q3 2017 and the planned date for start of works is Q4 2017. The requested grant would be financed from the general budget. The Project is conditional upon a no objection decision of the European Commission.

### 3. ASSESSMENT OF THE MEASURES

#### 3.1. Existence of aid

- (25) By virtue of 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."*
- (26) The criteria laid down in Article 107(1) TFEU are cumulative. Therefore, in order to determine whether the notified measures constitute State aid within the meaning of Article 107(1) TFEU, all of the following conditions need to be fulfilled. The financial support must:

<sup>6</sup> 1038/2016. (II. 10.) Korm. Határozat a Modern Városok Program keretében Magyarország Kormánya és a megyei jogú városok önkormányzatai között első ütemben kötött együttműködési megállapodásokkal összefüggő intézkedésekről.

- 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.

(27) In the following sections, the Commission will assess whether the measures described above meet these cumulative criteria and thus constitute aid within the meaning of Article 107 (1) TFEU.

### 3.1.1. Notion of undertaking and economic activity

(28) According to settled case law, the Commission must first establish whether the Owner is an undertaking within the meaning of Article 107 (1) 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>7</sup> Any activity consisting in offering goods and services on a given market is an economic activity.<sup>8</sup>

(29) It is settled case law that the operation of an airport, including the provision of airport services to airlines and to the various service providers within airports, is an economic activity.<sup>9</sup> In the *Aéroports de Paris* judgment the General Court clarified that the operation of an airport had to be seen as an economic activity. More recently, the *Leipzig-Halle* judgment<sup>10</sup> confirmed that the construction of a commercial airport infrastructure is an economic activity in itself. It is the future use of the infrastructure, i.e. its economic exploitation or not, which determines whether the funding of the construction of such infrastructure falls within the scope of EU State aid rules.

(30) The Project concern works on the infrastructure of Debrecen Airport, which is commercially exploited by the Owner through the concession agreement with the Airport Operator. The Airport Operator further provides airport services to end-users against remuneration.

(31) Therefore, Cívis Ház must be considered to constitute an undertaking for the purposes of Article 107(1) TFEU.

(32) It must be recalled that not all the activities of an airport owner are necessarily of an economic nature.<sup>11</sup> Activities that normally fall under the responsibility of the State in the exercise of its official powers as a public authority are not of an economic nature and in general do not fall within the scope of the rules on State aid.<sup>12</sup> According to the

<sup>7</sup> Judgment in case *Commission v Italy*, C-35/96, ECLI:EU:C:1998:303, para 36; judgment in case *Höfner and Elser*, C-41/90, ECLI:EU:C:1991:161, para 21; judgment in case *Fédération Française des Sociétés d'Assurances v Ministère de l'Agriculture et de la Pêche*, C-244/94, ECLI:EU:C:1995:392, para 14; judgment in case *Job Centre*, C-55/96, ECLI:EU:C:1997:603, para 21.

<sup>8</sup> Judgment in case *Commission v Italy*, C-118/85, ECLI:EU:C:1987:283, para 7; judgment in case *Commission v Italy*, C- 35/96, ECLI:EU:C:1998:303, para 36.

<sup>9</sup> Judgment in case *Aéroports de Paris v Commission* ECLI:EU:T:2000:290, T-128/89, confirmed by judgment in case C-82/01, ECLI:EU:C:2002:617.

<sup>10</sup> Judgment in case *Mitteldeutsche Flughafen and Flughafen Leipzig-Halle v Commission*, C-288/11, ECLI:EU:C:2012:821; see also judgment in case *Aéroports de Paris v Commission*, C-82/01, ECLI:EU:C:2002:617, and judgment in case *Ryanair v Commission*, T-196/04, ECLI:EU:T:2008:585.

<sup>11</sup> Judgment in case *Fluggesellschaft v Eurocontrol*, C-364/92 SAT, ECLI:EU:C:1994:7.

<sup>12</sup> See also Recital (35) of the Communication from the Commission, Guidelines on State aid to airports and airlines (OJ C 99, 4.04.2014)

2014 Aviation Guidelines, activities such as air traffic control, police, customs, firefighting, measures designed to protect civil aviation from acts of unlawful interference, and investment in the infrastructure and equipment needed for such activities are regarded, as a general rule, as not being economic in nature.<sup>13</sup>

- (33) The Aviation Guidelines also stipulate that, so as not to constitute State aid, the public financing of such non-economic activities must be strictly limited to compensating the costs to which they give rise and must not lead to undue discrimination between airports. The Aviation Guidelines clarify with regard to this second condition that, when it is normal under a given legal order that civil airports have to bear certain costs inherent to their operation, whereas 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.<sup>14</sup>
- (34) In the absence of a legally binding regime which confirms non-discriminatory financing of protection fences of certain qualitative level at all airports in Hungary or a formal commitment that the legal regime has now changed compared to the past or an individual commitment vis-à-vis each of the other Hungarian airports, it is not possible to conclude that the financing of the security fence would not grant an advantage to the Debrecen Airport.
- (35) Consequently, the investment project in full relates to economic activities that may come under the scope of the State aid rules.

#### *3.1.2. Use of State resources and immutability to the State*

- (36) The grant in favour of the Owner is financed out of the budget of the Hungarian government, hence it involves State resources. The notified measure is directly taken by the Hungarian authorities, thus it is imputable to the State.

#### *3.1.3. Economic advantage*

- (37) The notified measure reduces the investment costs that an airport owner would normally have to bear if it wanted to modernise its assets and improve their safety. It therefore confers an economic advantage on the Owner.
- (38) The Hungarian authorities submitted that the Project will not give any benefit to the Airport Operator.
- (39) In this respect, they noted that under the concession agreement, the Owner is obliged to make available the infrastructure in a state suitable for the use of airlines (recital (7)). The Project is considered necessary to do so from a safety and security point of view.
- (40) Hungary further pointed out that the concessionaire has fulfilled all of its investment obligations under the concession agreements concerning the Airport. The concession agreement explicitly provided that the concessionaire must ensure specific investments and carry out all maintenance related works for the leased infrastructure (recital (9)). According to the concession agreement, the concessionaire had to invest at least HUF

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<sup>13</sup> Recital 35, *supra*.

<sup>14</sup> Recitals 36 and 37.

200M in the assets/ infrastructure and in a warehouse. The investments took place and were realized by Xanga Group. Therefore, Hungary argued that the concessionaire has fulfilled all its investment obligations.

- (41) The Hungarian Authorities confirmed that there is explicit reference in the concession agreement that all other investments (apart from the investments specified in recital (40)) are to be funded by the Owner (recital (9)).<sup>15</sup>
- (42) Furthermore, Hungary also submitted that, in any case, the concession agreement provides for a form of an automatic indexation mechanism of the concession fee depending on the level of passenger traffic (recital (8)) and therefore did not need to be renegotiated.
- (43) On the basis of the information submitted by Hungary, the Commission considers that the investment Project takes place in the context of the obligations of the Owner as set out in the concession agreement. The concession agreement provides that the infrastructure has to be made available to the Airport Operator by the Owner in a state suitable for the use of airlines, including meeting the safety and security requirements. The Project includes only investments necessary to improve the safety and security of the infrastructure (recitals (18) and (19)). The Commission also takes into account that, at the time when the concession fee was set, the provisions of the concession agreement already detailed the obligations of the Airport Operator and the Owner respectively. The Commission therefore concludes that there is no advantage to the Airport Operator.

#### 3.1.4. *Selectivity*

- (44) 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 above-mentioned economic advantages would be granted to Cívis Ház only. Thus it is a selective measure within the meaning of Article 107 (1) TFEU.

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

- (45) 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>16</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.
- (46) Also relatively small airports compete to attract airlines. As mentioned in point 44 of the 2014 Aviation Guidelines, it is not possible to exclude even smaller airports from the scope of application of Article 107(1) of the TFEU. In any case, the forecast in terms of passenger traffic at Debrecen shows an increase in traffic over the coming years (of up to about [...] passengers in 2025).
- (47) In view of the above, the measures at stake are capable of affecting competition between airports.

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<sup>15</sup> Point II/13 f the Concession Agreement

<sup>16</sup> Judgement in case *Vlaams Gewest*, T-214/95, ECLI:EU:T:1998:77.

### 3.1.6. Conclusion on the existence of state aid and the lawfulness of the aid

- (48) For the reasons set out above the Commission concludes that the public financing of the infrastructure measures at Debrecen Airport involves State aid within the meaning of Article 107 (1) of the TFEU.
- (49) The Commission notes that Hungary has respected the standstill obligation laid down in Article 108(3) TFEU with regards to the investment funding and has not granted the aid prior to the Commission's approval.

### 3.2. Compatibility of the aid

- (50) 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. In this regard, the 2014 Aviation Guidelines provide a framework for assessing whether aid for the financing of airport infrastructures may be declared compatible pursuant to Article 107(3)(c) TFEU. They set out a number of criteria which the Commission takes into account when assessing the measure at stake.
- (51) According to point 79 of the 2014 Aviation Guidelines, the Commission has to examine whether following cumulative conditions are met:
  - (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;
  - (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.

- (52) Investment aid granted to airports will be considered compatible with the internal market pursuant to Article 107(3)(c) TFEU provided that the above-mentioned cumulative conditions as set out in points 84 to 108 of the Aviation Guidelines are met.
- (53) The Transparency criteria in points 162 and 163 of the 2014 Aviation Guidelines have been amended by the Transparency Communication.<sup>17</sup> Compatibility with these amended criteria will be assessed below (recitals (94)-(96)).

### 3.2.1. *Contribution to a well-defined objective of common interest*

- (54) Under point 84 of the Aviation Guidelines, 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.
- (55) According to the Hungarian Authorities, the modernized Airport is expected to further increase the mobility of residents of the Northern Great Plain region as well as the regions connectivity due to mitigating reliance on weather conditions. The introduction of an ILS category II system would enable the Airport to receive flights even under bad weather conditions. Accordingly, the development would reduce the days on which the flights have to be redirected.
- (56) Given the above, the Commission considers that the measures increase the mobility of Union citizens and the connectivity of the regions, in line with point 84 (a) of the Aviation Guidelines.
- (57) In line with point 85 of the Aviation 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 in the same catchment area. Any investment should have satisfactory medium-term prospects for use and should not diminish the medium-term prospects for use of an existing infrastructure in the catchment area.
- (58) The Hungarian authorities have demonstrated on the basis of sound passenger forecasts that the infrastructure meets medium-term demand from airlines and passengers and that the new investment is important for ensuring the mobility in the catchment area in a sustainable way.
- (59) A catchment area is defined in point 25 (12) of the Aviation Guidelines as *'a geographic market boundary that is normally set at around 100 kilometres or around 60 minutes travelling time by car, but, 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.'*

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Communication from the Commission amending the Communications from the Commission on EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, on Guidelines on regional State aid for 2014-2020, on State aid for films and other audio-visual works, on Guidelines on State aid to promote risk finance investments and on Guidelines on State aid to airports and airlines of 21.5.2014, OJ C 198 of 27.6.2014, p 30.

- (60) The closest airport to Debrecen is the Airport of Oradea located in Romania. The distance from Debrecen Airport by car is 80 km<sup>18</sup> and takes approximately 1 hour and 20 minutes (recital (14)).
- (61) Furthermore, the travel to the Airport of Oradea involves a crossing of an external Schengen border. Due to this crossing the actual travel time between the two airports varies and might at times be significantly longer than the 1 hour and 20 minutes (recital (15)). The Hungarian authorities also submitted that there is a single daily direct train connecting the cities with travel time of 2 hours and 46 minutes. A bus trip would take up to 3 hours and 20 minutes (recital (16)).
- (62) There are no other airports within a radius of 100 km or 60 minutes of travel time by car (recital (14)).
- (63) The Hungarian authorities further listed a set of supporting arguments to confirm that the Airport of Oradea is not a direct competitor to Debrecen Airport (recitals (16)-(17)).
- (64) Given the travelling time by car, train and bus, the Commission concludes that for the purposes of this decision, Debrecen Airport and Oradea Airport are not considered to be in the same catchment area. There is therefore no duplication of unprofitable airports or creation of additional unused capacity in the same catchment area.
- (65) The Commission therefore concludes that the aid measures meet a clearly defined objective of common interest.

### *3.2.2. Need for State intervention*

- (66) Point 87 of the Aviation 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. Point 89 of the Aviation Guidelines also establishes the categories of airports that have more difficulties in securing financing for their investments without public funding.
- (67) With annual passenger numbers of around 280 000 passengers in 2016, the Debrecen Airport falls within point 89 (b) of the Aviation Guidelines under which airports between 200 000 and 1 million annual passenger traffic are usually not able to cover their capital costs to a large extent. The Commission notes that the Debrecen Airport is within the lower threshold of this band.
- (68) As mentioned above in Recital (21), the funding gap of the project is negative, which means that proposed investment activities cannot generate net economic revenue to offset the capital investment costs during the life time of fixed assets.
- (69) On this basis, it can be concluded that there is a need for state intervention.

### *3.2.3. Appropriateness of the aid measure*

- (70) Pursuant to point 90 of the Aviation Guidelines, Member States must demonstrate that the aid measure is an appropriate policy instrument to achieve the intended objective or

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18 Google Maps transport information.

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.

- (71) Considering the fact that incremental operating revenues do not cover incremental investment and operating costs, a direct grant from public resources is the most appropriate instrument to ensure implementation of the notified measures. Subsidised interest rates or credit guarantees would not be sufficient to ensure implementation of the notified measures as the revenue generated by them will not be sufficient even for covering the principal loan amount.
- (72) The Commission therefore concludes that the aid measure at stake is an appropriate policy instrument.

#### 3.2.4. *Incentive effect*

- (73) Point 93 of the Aviation Guidelines requires that works on an individual investment have not have started before an application has been submitted to the granting authority. Point 94 of the Aviation Guidelines requires that it needs to be verified that the project is not economically attractive in its own right and that the investment would not have been undertaken or would not have been undertaken to the same extent without any State aid.
- (74) As described in Recital (24), works related to the notified measures have not yet started. Hungary has made the granting of the aid conditional on the Commission's approval.
- (75) Furthermore, the Hungarian authorities have demonstrated that Cívis Ház could not undertake the investment measures without the aid. The *ex ante* business plan they presented (recital (21)) demonstrates that the investment measures are not financially profitable without the aid. The additional revenues and cost savings generated by the notified measures over the lifetime of the investment (compared to the counterfactual scenario of no investment) do not cover the investment expenses to be incurred. Accordingly, a private market investor would not undertake the notified measures. This shows that the investment is not economically attractive in its own right.
- (76) In conclusion, the aid has an incentive effect for Cívis Ház as it would not undertake the investments without the aid in question.

#### 3.2.5. *Proportionality of the aid amount (aid limited to the minimum)*

- (77) Aid is deemed to be 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> This means that the

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<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. judgment in case *Philipp Morris*, 730/79, ECLI:EU:C:1980:209, paragraph 17; judgment of ... in case *Nuova Agricast*, C-390/06, ECLI:EU:C:2008:224, paragraph 68; judgment in case *Kronoply*, T-162/06, ECLI:EU:T:2009:2, paragraph 65). [Please put all references to the case-law in exactly this format: Judgment of the Court of Justice of 17 September 1980, *Philip Morris v Commission*, C-730/79, EU:C:1980:209.]

amount and intensity of the aid must be limited to the minimum needed for the aided activity to take place.

- (78) Point 97 of the Aviation 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 whilst investment costs relating to non-aeronautical activities (including car parks, hotels, restaurants and offices) are ineligible.
- (79) The Commission notes that the notified aid will be used exclusively to cover investment costs that are eligible under the Aviation Guidelines (recital (20)).
- (80) According to point 99 of the Aviation Guidelines, in order to be proportionate, the amount of the aid should not exceed the funding gap of the investment project. As explained above, the funding gap of the project was calculated based on the counterfactual analysis comparing “situation with project” to “situation without project”. The recalculated funding gap (NPV) is minus 4.3 million in EUR. The analysis was made for the period of economic utilisation of fixed assets (recital (21)).
- (81) According to point 101 of the Aviation Guidelines the maximum permissible aid intensity for airports with less than 1 million passengers per annum is 75%. The eligible costs amount to HUF 1,544,038,462 (approx. EUR 5 million) whilst the aid amounts to HUF 1,165,528,846 (approx. EUR 3.8 million) which corresponds to an aid intensity of 75%. The maximum aid intensity is therefore respected.
- (82) The calculation covers the period of 20 years which appears to be a reasonable assumption as regards economic life-time of supported investments.
- (83) The funding gap of the project corresponds to the difference between costs and revenues expected to arise because of the project, calculated using an appropriate discount rate.<sup>20</sup>
- (84) The Hungarian authorities have demonstrated that the proposed investment aid will not exceed the funding gap of the investment project in question (see recital (21)).
- (85) As the aid amount does not exceed the funding gap over the lifetime of the Project and as the aid intensity is below the permissible aid intensity, the notified investment aid is deemed proportional.

### *3.2.6. Avoidance of undue negative effects on competition and trade between Member States*

- (86) The negative effects of the aid must be sufficiently limited, so that the overall balance of the measure is positive.

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<sup>20</sup> Financial discount rate is 4% recommended in Directorate General for Regional and Urban Policy Guide to Cost-Benefit Analysis of Investment Projects, 2014 methodology.

- (87) According to point 106 of the Aviation Guidelines 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.
- (88) As explained in recital (14), there are no other airports reachable from the Debrecen Airport within a one-hour's drive. The closest international airport is Oradea Airport in Romania which is 80 km away, with a driving time of 1 hour and 20 minutes. The Commission therefore concluded that Oradea Airport is not in the same catchment area as the Debrecen Airport (recital (64)).
- (89) Therefore, the Commission considers that the investment project will not lead to the duplication of unprofitable airports or create additional unused capacity in the same catchment area.
- (90) The Hungarian authorities confirm that the Airport will continue to be open to all potential users, and is not dedicated to one specific user.
- (91) On the basis of the above, the Commission therefore concludes that the aid will not have undue negative effects on competition and trade.

#### *Cumulation of aid*

- (92) Pursuant to point 159 of the Aviation Guidelines, aid authorised under the Aviation Guidelines may not be combined with other State aid, *de minimis* aid or other forms of Union financing, if such a combination results in higher aid intensity than the one laid down therein.
- (93) The Hungarian authorities have confirmed that the aid granted under the Aviation Guidelines will not be cumulated with any other aid.

#### *Transparency of aid*

- (94) Section 8.2 of the Aviation Guidelines, as amended by the "Transparency communication"<sup>21</sup> specifies transparency requirements which shall 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 point 162 of the Aviation Guidelines. Point 163 requires Member States to ensure that such information must be published after the decision to grant the aid has been taken, must be kept for at least 10 years and must be available to the general public without restrictions.
- (95) Hungary committed to comply with these conditions. It committed to ensure the publication of the following information on its State aid website: full text of the aid granting decision and its implementing provisions, or a link to it; the identity of the granting authority; the identity of the aid beneficiary; the form and amount of aid

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<sup>21</sup> Communication from the Commission amending the Communications from the Commission on EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, on Guidelines on regional State aid for 2014-2020, on State aid for films and other audiovisual works, on Guidelines on State aid to promote risk finance investments and on Guidelines on State aid to airports and airlines, OJ L 15, 22.1.2015, p. 103.

granted the date of granting; the size of undertaking and its location; the principal economic sector in which the beneficiary has its activities.

(96) The aid is therefore transparent in the sense of the Aviation Guidelines.

#### **4. CONCLUSION**

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.

The Commission notes that, by letter dated 19 September 2017, Hungary exceptionally agreed to have the present decision adopted and notified in the English language.

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:

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Yours faithfully,  
For the Commission

Margrethe Vestager  
Member of the Commission