



EUROPEAN COMMISSION

Brussels, 27.1.2010
C(2010) 454

**Subject: State aid NN 65/2009 – United Kingdom
City of Derry Airport – Additional costs**

Sir,

1. PROCEDURE

1. On 2 December 2009 the Commission received an electronic notification from the United Kingdom authorities regarding the public funding of infrastructure at City of Derry Airport.
2. On examination of the notification the Commission learned that certain of the infrastructure had already been undertaken to allow the airport to continue operations. Although the public funding had been notified to the Commission, as part of the state support involved has been put in place before the Commission could take a position on its compatibility with the common market, the measure has been registered as an un-notified aid measure as NN 65/2009.

2. DESCRIPTION

2.1. Background

3. On 16 May 2006 the Commission adopted a decision¹ considering that public investment for the infrastructure development and the land acquisition necessary to developing City of Derry Airport (IATA code – "LDY") constituted state aid which was compatible with the common market. This decision was communicated to the UK authorities by letter dated 26 May 2006 with reference C (2006) 1843 final.
4. The notification which is the subject of the present decision concerns changes to the original investment plan, resulting in a further investment of some GBP 19.3 million in infrastructure.
5. A full description of the investment project and a detailed assessment of the State aid aspects are set out in the Commission's decision of 16 May 2006. Section 2.2. of the present decision contains a summarised description of the original investment plan and

¹ OJ C 272 of 09.11.2006, p. 13

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the way it has developed until now, while section 2.3. describes the notified changes. The Commission's assessment in the present decision concentrates on the new elements that have been notified by the UK authorities.

2.2. The investments already approved

6. City of Derry Airport (hereinafter "CoDA") is a small sub -regional airport (439,000 passengers in 2007) owned and operated by Derry City Council , a public authority; it is located in the North–West of Northern Ireland close to the Irish border.
7. The 2006 decision concerned developments plans at the airport which were expected to cost approximately GBP 14 million (EUR 20.5 million).
8. The United Kingdom and Irish governments agreed to provide over GBP 10.4 million (EUR 15.2 million) of financial assistance to Derry City Council, the owner and operator of the airport. The two governments provided a grant of 75% of eligible capital expenditure shared equally between them, each government paying 37.5%, approximately GBP 5.2 million (EUR 7.6 million), of the expenditure while Derry City Council contributed the remaining 25%, approximately £3.48 million (EUR 5 million).
9. The State aid approved in the 2006 Decision was used to finance investments under two main headings:
 - Runway improvements
10. The main runway at CoDA (Runway 08/26) had an official published length of 1852 metres; however, unless wind conditions are favourable, only 1230 metres were usable. This restricted the types of aircraft that can use the airport and the payloads that can be carried, and, as such, hindered safe use and future commercial development. The runway improvements involved the removal of encroachments to the runway, and ancillary works.
11. At the western end of the runway, obstructions (collectively referred to as the “obstacle environment”) in the form of high ground, fences, houses and trees mean that there was a restriction to the amount of usable runway (the “Declared Distance Available”). The length also imposed limitations on the aircraft that can use the runway. The obstacle environment at this end of the runway also prevented the operation of a safe precision approach procedure with the aid of an Instrument
12. The eastern end of the runway also presented operational limitations caused by the obstacle environment. A previous runway extension project in 1998/99 was not completed by CoDA because of the environmental sensitivity associated with permitting a full Runway End Safety Area (RESA) incursion onto land designated as a Nature Reserve. Additionally, a single -track railway line transects the eastern end of the runway.
13. The runway improvements were designed to enable the re-configuration of the existing 1852 metre long runway by removing all encroachments at the western end of the runway; establishing a full RESA at the eastern end of the runway; and installing a new automated railway safety control system, to ensure the safe control of aircraft arriving and departing the runway, and trains transecting the RESA.

14. The indicative cost of the runway improvements was assessed at approximately GBP £11 million (EUR 16 million).

- Cost Overruns and Compliance Scheme.

15. This part of the 2006 decision related to expenditure which Derry City Council has already incurred in three capital investment projects related to the airport and its infrastructure. Derry City Council, as owner and operator of the airport, has already financed a number of improvements at a total cost of around GBP 3 million (EUR 4.4 million).

16. The expenditure related to the following headings;

- Cost overruns in respect of a previous runway extension;
- necessary equipment, and,
- Computer upgrade for passenger information display (all flights and airlines).

2.3. The notified changes

17. The notification which is the subject of the present decision concerns changes to the original investment plan, namely an increase in the investment amount and in the contribution from public sources. The underlying scope and objectives of the Airport Development Project remain unchanged.

Runway Improvements – Additional Costs

18. Subsequently to the Commission's approval of the investment project, certain unforeseen technical and engineering issues arose in relation to the runway improvements. These were accompanied by increases in the value of lands that had to be vested. The additional costs amount to some GBP 5.14 million.

19. The costs of the runway improvements approved by the Commission in 2006 were based on 2005 estimates. Over the two years, costs of civil engineering and equipment had risen by some 13%. This mean that the cost of the civil engineering and runway equipment increase from GBP 5.0 million to GBP 5.65 million. In addition technical and engineering issues identified during the detailed design stage of the Railway Signalling Project led to a cost increase of approximately GBP1.4 million. .

20. Furthermore, revised property valuations carried out by Government valuers in July 2007, prior to the acquisition of land, identified an increase in property costs of over GBP3 million.

	Original Cost Estimate	Revised Cost	Cost increase
Property Acquisition	£5.0m	£8.095m	£3.095m
Civil Engineering and Runway Equipment	£5.0m	£5.65m	£0.65m
Railway Signalling Project	£0.775m	£2.17m	£1.395m
Total			£5.14m

21. To this must be added a total of some GBP 14.2 million of capital expenditure in order to comply with a Civil Aviation Authority (CAA) safety audit or necessary to facilitate the future safe operation of the airport.

Capital expenditure resulting from the CAA audit

22. These works were unforeseen in the planning of the Runway Improvements. Following the inspection and audit of CoDA by the CAA in May 2007, the operating licence at the airport was suspended for 4 days. Following this closure, a comprehensive audit report was submitted to Derry City Council by the CAA. This audit made up of 45 items, was addressed by the Council as a matter of urgency and works of a value of GBP10.1 million have been completed or committed to date.
23. The works completed or committed included the making safe of structures and paved areas within the clear and graded area of the runway and the treatment of runway edge drainage. The report also highlighted the need for the removal of further obstacles, the installation of additional drainage and the installation of a standard approach lighting system for the runway.
24. Subsequent testing concluded that key elements of the airport's infrastructure did not comply with current CAA design standards and were of insufficient standard to maintain current operational capability. The existing apron and taxiways were of inadequate strength and size to facilitate the safe operation of the short haul jet aircraft using the airport.
25. Concern was expressed in the CAA Audit report regarding the runway and while short terms remedial action will allow the runway to continue operations, the runway surface has now reached the end of its operational life. The runway needs to be resurfaced and lighting replaced as a matter of urgency to maintain current operations.
26. In the opinion of the UK authorities it was necessary to carry out these works to avoid the imposition of restrictions on the operation of the airport facilities, resulting in sub-optimal use of the existing runway and related infrastructure.
27. Furthermore and so as to ensure that CoDA remains fit for purpose, Derry City Council has determined that it is essential that key elements of infrastructure be upgraded. These include runway, taxiways and aprons to facilitate operations at the airport. The total costs for these elements amounts to £4.110 million.
28. A decision from the UK and Irish governments on a grant application to fund the GBP 14.2 million capital expenditure is expected in due course.

3. ASSESSMENT

29. By virtue of Article 107(1) of the Treaty on the Functioning of the European Union (hereinafter 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 common market." Such State aid may however be declared compatible with the Common market, in particular pursuant to Article 107(3) or its implementing provisions.

3.1. Existence of aid

30. The criteria laid down in Article 107(1) TFEU are cumulative. Therefore, in order to determine whether the notified measures constitute State aid all of the following conditions need to be fulfilled. Namely, the financial support:
 - Is granted by the State or through State resources;
 - Favours certain undertakings or the production of certain goods, that is to say, provides an advantage that is granted selectively to certain undertakings or the production of certain goods;
 - Distorts or threatens to distort competition, and
 - Affects trade between Member States.
31. The measure will be financed by the Northern Ireland Executive, the Irish government and/or Derry City Council and therefore involves state resources.
32. It favours a given undertaking, City of Derry Airport by reducing the costs it should normally bear.
33. Although the measure only affects competition and trade between Member States to a very limited extent, if at all, there remains the possible threat of distortion of competition and effect on trade.
34. The Commission is therefore of the opinion that the measure constitutes State aid within the meaning of Article 107(1) TFEU.

3.2. Compatibility with the common market

35. The 2005 guidelines provide the Commission with a number of factors which it should take into account in determining compatibility of infrastructure aid to airport operators. In accordance with paragraph 61 of the 2005 guidelines, the Commission must in particular examine whether:
 - Construction and operation of the infrastructure meets a clearly defined objective of general interest (regional development, accessibility, etc.);
 - The infrastructure is necessary and proportional to the objective which has been set;
 - The infrastructure has satisfactory medium-term prospects for use, in particular as regards the use of existing infrastructure;
 - All potential users of the infrastructure have access to it in an equal and non-discriminatory manner;
 - The development of trade is not affected to an extent contrary to the Community interest.

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

36. As previously described the primary motivation of the public authorities in granting the financial support to CoDA is to enable the airport to be fully compliant with current and known future regulatory requirements and to make better use of the existing infrastructure. The secondary motivation of the authorities is to improve accessibility and connectivity to what is an isolated region located in the North West of the island of Ireland.
37. Although the catchment area serviced by the airport straddles a border it is poorly served by transport infrastructure. The stated policy of the United Kingdom government in relation to this airport as set out in the Air Transport White Paper of 2003 is that the *“airport is regarded as having an important role in facilitating access to the north west of the Province and Donegal in the Republic of Ireland, and in contributing to the development of the area.”*
38. It is also submitted by the public authorities that the sub -regional economy of the North West (Counties Londonderry and Donegal) is weak and the airport has an important role to play in the restructuring of the economy of the area. It should also have an important role to play in increasing the competitiveness and marketability of the sub-region in attracting visitors.
39. This approach is in line with the Commission's 2007 Action Plan for Airport Capacity², where the Commission emphasises the importance of regional airports to the development of an integrated European air transport network³. The Action Plan further acknowledges the necessity to unlock existing latent capacity at regional airports provided that Member States respect Community legal instruments relating to State aid, i.e. Articles 107 and 108 TFEU and the 2005 Guidelines.
40. Moreover, according to the Action Plan, connectivity stands at the basis of economic competitiveness, social and regional cohesion and cultural development⁴. The Action Plan underlines the need for a more efficient use of existing runways and support for new infrastructure in regional airports. It puts forward key actions to this end, among which to make better use of existing airport capacity, as well as a consistent approach to air safety operations at aerodromes⁵.
41. As already concluded by the Commission in its decision of 16 May 2006, the public funding provided for by the present measure meets the clearly defined objectives of improving safe and viable transport infrastructure and of increasing connectivity and fostering regional development. The notified changes do not change this assessment.

(ii) The infrastructure is necessary and proportional to the objective which has been set

² Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, "An action plan for airport capacity, efficiency and safety in Europe", COM(2006)819 Final, 24 January 2007.

³ Point 12 thereof.

⁴ Point 3 thereof.

⁵ Point 12 thereof.

42. The public authorities consider that the infrastructure investment and development in question is manifestly necessary and proportional bearing in mind the objective of improving safe and viable transport infrastructure and of increasing connectivity and fostering regional development
43. The need for the original runway safety scheme was established in the 2006 decision and has not changed. The necessity of the additional safety works at CoDA originates in the CAA Audit of May 2007 that resulted in the suspension of the Airport's Aerodrome Licence. The Audit Report identified a number of safety issues relating to the physical condition of the aerodrome, which were required to be addressed as a matter of urgency.
44. If these works were not implemented, CoDA will be in breach of the CAA Licensing Requirements and will likely face restrictions on the operation of commercial aircraft. The planned investments are similarly necessary to make the best use of existing infrastructure.
45. The works, therefore, are essential to maintain the current operational capability and are proportional to the objective improving safe and viable transport infrastructure and of increasing connectivity and fostering regional development.
46. The Commission therefore confirms the assessment made in its decision of 16 May 2006 that the infrastructure is necessary and proportional to the objective which has been set.

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

47. Since the previous Commission decision in 2006 and notwithstanding the regulatory problems which it has encountered CoDa has experienced growth over the last years. In 2006 the airport had a passenger through-flow of 341,719 passengers, this rose to 427,586 in 2007 and 438,996 in 2008.
48. This trend is expected to continue despite the current economic crisis. The UK authorities estimate traffic to go up to 1.1 million passengers per annum by 2018 and that profitable operation of the airport could be attained by 2013.
49. Given the absence of geographically close competing airports and the absence of alternate high speed means of travel, the UK authorities still expect that the infrastructure will be fully utilised in the medium term.
50. The Commission considers that, despite the current economic downturn, the infrastructure still has satisfactory medium-term prospects for use.

(iv) All potential users of the infrastructure have access to it in an equal and non-discriminatory manner

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

(iv) The development of trade is not affected to an extent contrary to the Community interest

52. As mentioned in paragraph 6 above, CoDA is a category D, "small regional airports" as provided for in point 15 of the 2005 Guidelines, with a through-flow of 439,000 passengers in 2007.
53. In relation to Category D airports which are airports with a passenger volume of less than one million passengers per year, the 2005 Guidelines state that "funding granted to small regional airports (category D) is unlikely to distort competition or affect trade to an extent contrary to the common interest"⁶.
54. The airport is located in an area which is poorly serviced by transport infrastructure, particularly with links to mainland Europe. The two main competitor airports for CoDA are located near Belfast and, as such, share only a small level of overlap in the 60 minute isochrone catchment area of CoDA.
55. Survey data carried out by the regulatory authorities (CAA) for 2006 showed that, of the origins and destinations of CoDA passengers, 55% were in Derry City Council or surrounding local government districts and 37% in County Donegal. While there is another regional airport at Carrickfinn on the west coast of Donegal this is very small in comparison with CoDA (48,000 passengers in 2005) and provides scheduled services only to Dublin (under compensated PSO) and to Prestwick in Scotland.
56. It is therefore considered that the competitive situation of CoDA will not be altered significantly as a consequence of the publicly financed infrastructure improvements.

(iv) Conclusion

57. In light of the above considerations, the Commission concludes that the notified measures are compatible with the common market.

4. DECISION

58. The European Commission has therefore decided not to raise any objections to the measure in question on the grounds that the aid is compatible with the Common Market under Article 107(3)(c) TFEU.

⁶ Paragraph 39 thereof.

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Yours faithfully,
For the Commission

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