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**Subject: State aid SA.40197 (2016/N) – Lithuania
Investment in infrastructure at Vilnius airport**

Sir,

1 PROCEDURE

- (1) On 31 December 2015, the Lithuanian authorities notified a measure concerning the modernisation of the Vilnius Airport's infrastructure (hereinafter “the measure”) after pre-notification contacts.
- (2) Between January and April 2016 several formal and informal contacts and information exchanges have taken place. The reply of the Lithuanian authorities to the Commission services' requests for information was received on 2 June 2016 and an update was received on 21 July 2016.

2 DESCRIPTION OF THE MEASURE

2.1 The beneficiary Vilnius airport/Lietuvos Oro Uostai

- (3) Since 1 July 2014, the operation of the three Lithuanian airports Vilnius, Kaunas and Palanga has been entrusted to the State-owned company Lietuvos Oro Uostai (LUO) ("Lithuanian Airports") under the control of the Ministry of Transport and Communications. The airport management company ensures account separation for the different airports.

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- (4) LOU is the direct beneficiary of the notified measure.
- (5) The three airports complement each other in destinations covered, airlines present and passenger groups served. Vilnius airport is the main capital gateway for business and tourist travel from and to the country, Kaunas airport is focused on facilitating travel at low cost of Lithuanian nationals working/living abroad and Palanga airport provides access to the Scandinavian region using premium Scandinavian airlines for tourists and for business to and around the port city of Klaipeda.
- (6) In the absence of high speed rail connections and given the large distance from other EU airports, Lithuania's airports are key access points to grant the large number of Lithuanian citizens studying and working abroad access to the EU single market. In order to accommodate increasing mobility of the Union citizens, evidenced by passenger traffic growth of in average over 10% per annum at Vilnius airport during 2000-2014, further important investments are necessary, in addition to those approved by Commission decision in State aid case NN9/2009¹.
- (7) Vilnius airport belongs to the North Sea-Baltic Core Network Corridor of the Trans-European Transport Network (TEN-T).
- (8) It serves the most populous region concentrated around the capital. It is the biggest airport in Lithuania and second biggest in the Baltics after Riga airport.
- (9) Currently the airport provides services to both full service and low cost airlines. Altogether, over 50 international destinations are served by 18 airlines. In addition, a number of additional destinations are offered during summer time.
- (10) As to cargo activities, these have a minor impact on the business performance of the airport which is explained by the fact that the airlines operating from Vilnius airport have a fleet which is currently mostly composed of aircraft with small cargo holds.
- (11) Vilnius airport is located 7 km south of the city of Vilnius and there are numerous residential areas around the airport, especially the southern runway header. Therefore noise and pollution reduction, as well as improvement of safety levels are essential to ensure that growth in air traffic is taking place in sustainable manner.
- (12) The average annual number of passengers served in the two years before notification was 2,802,269 (2,661,869 passengers in 2013 and 2,942,670 passengers in 2014). In 2014 it posted a profit of EUR 1.2 million, in 2015 of EUR 2.1 million.
- (13) According to the business plan, the annual passenger growth rate at Vilnius airport is expected at 3.5% during 2016-2020 and 2.3% during 2021-2035 with passenger levels reaching 4.44 million in 2035.
- (14) These figures are in line with EuroControl's latest forecast from 2013 which envisages a growth of 2,7% for the period 2012-35, showing that the airport operator does not expect any extraordinary growth rates or significant change in the competitive position of Vilnius Airport when compared to the main competitors.

¹ OJ C271, 12 November 2009, p. 4.

- (15) This is a conservative forecast, based on the assumption that growth rates for low-cost carriers at Vilnius airport (Ryanair and Wizzair) will decline substantially in the future. *Inter alia*, in addition to limitations of the terminal capacity, apron walk-on stand capacity restraints will prevent the cost minimisation possibilities which are of key importance to low-cost carriers.
- (16) The Lithuanian authorities claim that, even with the optimized use of the current airport capacity, at the mentioned rates of passenger traffic growth, even in the short term, increasing the capacity throughput of the passenger traffic in Vilnius will be necessary, as currently during peak periods bottlenecks can be observed: shortage of check-in desks, throughput of aviation and custom checks and shortage of contact stands. Also airside infrastructure is saturated during peak hours.
- (17) The distance and travelling time by land transport between Vilnius airport and the closest commercial passenger airports currently in operation in the region are indicated in table 1:

Table 1 - Data on distances/travel time between Vilnius airport and closest surrounding airports

Airports	Distance by land, in km	Travel time
Vilnius – Kaunas	100	1h 25 min
Vilnius – Palanga	330	3h 40 min
Vilnius – Riga	310	3h 55 min

- (18) Further international airports are Warsaw airport (more than 460 km away), Gdansk airport (560 km away) and Tallinn airport (600 km away).
- (19) The closest international airports outside the EU, notably Minsk (Belarus) and Kaliningrad (Russia), are 190 km and 340 km away, respectively, from Vilnius airport and the choice of these airports is rarely a real alternative given unpredictable travel time and administrative formalities related to crossing the EU's external border.
- (20) Currently no high-speed rail links exist in the Baltic States which could respond to increased demand for international travel. Construction of *Rail Baltica* - one of the priority projects of the EU under TEN-T program - is planned to start in 2020. The route Tallinn–Riga–Kaunas is planned to be finished in 2025 that is after the last disbursements under the notified measure. The connection with Warsaw will be finished in 2030. In any case, it should be noted that Vilnius is 100 km away from the future high-speed rail link.

2.2 The investment project and its financing

- (21) According to Lithuania, Vilnius airport should cater up to 4.5 – 5 million passengers per annum whilst at the same time meeting high safety and environmental standards.
- (22) Given the growth rates in passenger traffic increasing the capacity throughput of the passenger traffic is necessary even in the short term, as during peak periods bottlenecks can be observed already now, in particular shortage of check-in desks,

throughput of aviation and custom checks and shortage of contact stands. Also airside infrastructure is saturated during peak hours.

- (23) According to Lithuania, an appropriate infrastructure apt to satisfy both the needs in terms of passenger numbers and safety and environmental standards requires massive investment in airside infrastructure (including all areas accessible to aircraft, including runways, taxiways and ramps) and in terminal infrastructure. The total cost of the investments would amount to EUR 71.4 million.
- (24) Supported projects are classified into one of the 4 categories and are detailed in table 2:
- infrastructure for aircraft movement: rehabilitation of the runway, construction and renovation of taxiways and aprons;
 - ancillary infrastructure: construction of airfield maintenance buildings, procurement and installation of waste water treatment plants;
 - passenger related infrastructure: modernisation of passenger terminal and luggage handling system;
 - public remit infrastructure: installation of noise monitoring system, upgrading of aviation security checking equipment.

Table 2: Investment costs (indicative estimates, subject to results of public tenders) **and planned State aid**

No	Name of the project	Total Euros
1	Rehabilitation of the runway and the signal lights system; improvement in the nearby surface wastewater collection modernization of the telecommunication and engineering networks	27 940 222
2	Modernization of the luggage processing system (replacement of two separate luggage handling systems with a single system with adequate capacity and a 4-level aviation security screening system)	5 817 018
3	Taxiway F reconstruction, including its widening and extension ²	9 323 158
4	Construction of the new single building for the airfield maintenance group (currently airport maintenance group equipment and machines are in 4 separate locations).	1 928 869
5	Installation of new cleaning equipment to prevent soil and groundwater pollution, improvement of de-icing substance management and installation of a waste collection monitoring system.	2 984 245
6	Construction of the new taxiway Z which will be connected with the expanded northern apron and taxiway F	1 654 889

² The project also includes a limited cost related to dismantling of the old fire station after all the fire station operations have recently been moved to the new building.

8	Modernization of the passenger terminal (including construction of new departure processor gates and extension of the current baggage claim area)	5 903 904
9	Reconstruction/expansion of the northern apron (the current apron capacity will be extended by a total of 8 stands)	11 338 044
11	Reconstruction of the current taxiways A and B allowing increase in load-bearing capacity; installation of new signalling lights and enhancement of the ground- and wastewater collection systems	3 185 820
	Total eligible investments without public remit-related investments	70 076 170
	Including maximum State aid (49,5%³)	34 685 764
7	Acquisition of new aviation security checking equipment	839 898
10	Modernisation of the noise monitoring system	434 430
	Public remit-related investments, total	1 274 328

- (25) Thus, for the projects not constituting public remit projects, the total maximum aid amount is EUR 34 685 764. It will normally be coming from the Cohesion Fund⁴. The rest of the investment costs (at least EUR 35 390 407) will be financed by the beneficiary through loans without the guarantees of the Lithuanian State (normally, EUR 30 million loan from EIB) and airport's operational cash flows.
- (26) The aid will be disbursed over a period of five years in 5 installments.
- (27) The planned support will not exceed the funding gap as calculated by the Lithuanian authorities. Lithuania estimated the average economic utilisation period of the assets to be 22 years and used the weighted average cost of capital (7.95%) of the airport as discount rate. On the basis of these assumptions the difference between the positive and negative cash flows over the lifetime of the investment in net present value terms is EUR 33 million. Hence, the project presents a funding gap of EUR 33 million, as illustrated in table 3.

Table 3: Capital cost funding gap in million EUR

Operational cash-flows	160
Changes in working capital	-4
Capital expenditures	-196
Incremental cash flows	-40
Funding gap (NPV)	-33

³ The maximum aid intensity for individual projects will vary from 45% to 50%.

⁴ The Investments into Vilnius International Airport infrastructure are envisaged under the investment priority 6.1. "Supporting a multimodal Single European Transport Area by investing in the Trans-European Transport Network and the specific objective 6.1.1 "Improve interoperability between national multimodal transport system and trans-European transport networks" co-financed from the Cohesion Fund (category of expenditure 037: Airports (TEN-T): with maximum budget EUR 40.546.803 from the Cohesion Fund). Based on project selection criteria approved by the Monitoring Committee, projects 1, 3, 5-7, 9-11 have already been recognised as eligible.

Nominal investment aid	34.7
Investment aid (NPV)⁵	26
Funding gap with investment aid (NPV)	-7

- (28) The beneficiary would not be able to carry out the aforementioned investments on its own based on the business plan. In this respect it has to be noted that the project qualifies for the Cohesion Fund Financing because the Net Present Value of the project is negative and the beneficiary thus would not be able to obtain private financing to cover the entire cost of the project.
- (29) The remaining funding gap after State aid will result in decrease of the return on equity within the planning period (especially due to the front-loaded investment). However, in the long run the airport is expected to reach the market return on equity.
- (30) The proposed support is set out in Lithuania's Partnership Agreement⁶ and the "Operational Programme for the European Union Funds' Investments in 2014-2020" (the European Regional Development Fund, the European Social Fund and the Cohesion Fund).⁷ Regulation (EU) No 1300/2013 of the European Parliament and of the Council of 17 December 2013 on the Cohesion Fund⁸ allows EU support for investments in TEN-T infrastructure, including investment in airport infrastructure related to environmental protection or accompanied by investment necessary to mitigate or reduce its negative environmental impact (Articles 1 and 2). The total amount of financial support for the aviation sector in the Operational Program has been capped at EUR 40.5 million during 2014-2020.
- (31) Investments into runway, taxiways, apron system, airfield lighting will raise the peak hour capacity up to 26 flight operations per hour from the current level of 21. For instance, upgrading of taxiway system will shorten the backtracking time on the runway, and time of occupying the runway for manoeuvring and take-offs will shorten. Investments into the navigation system (including upgrading of the lighting system), in turn, will allow Vilnius Airport to provide service for all aircraft types in unstable weather conditions, including bigger aircraft. Investment in the runway will equally be important for the airport's ability to receive the bigger aircraft. It is also important to note that currently there is a lack of parking spaces for category D aircraft and there is no space for proper parking of category E aircrafts (they are parked on taxiway B). Current taxiway F allows taxiing only if aircraft wingspan is less than 36 meters, whereas reconstructed taxiways A and B would enable also category E aircrafts to move.
- (32) Similarly, investments in the terminal building, in particular construction of new departure processor gates and extension of the baggage claim area will cater for increasing passenger numbers. Positive effects are also expected from redesigning the

⁵ As aid will be disbursed over a five years' period its net present value will be smaller than nominal value.

⁶ http://ec.europa.eu/contracts_grants/pa/partnership-agreement-lithuania-summary_en.pdf

⁷ http://ec.europa.eu/regional_policy/en/atlas/programmes/2014-2020/lithuania/2014t16maop001

⁸ OJ L 347 of 12 December 2013, p. 287.

existing two separate baggage handling systems and the existing terminal spaces according to new functional, operational and aviation security requirements.

- (33) At the same time, the proposed investments will be important in terms of promoting sustainable development. This in particular concerns the construction of a new taxiway as well as reconstruction and extension of existing taxiways, which are required for reducing air, soil, and noise pollution (due to reduced time and distance of the aircraft taxiing); improvement of surface wastewater collection and processing systems; upgrading of airfield lighting system with a more energy-efficient system. The extension of the northern apron will optimize taxiing routes and will be further from residential buildings which will ensure reduction of noise and pollution. Finally, the proposed investment plan will enable better noise monitoring and subsequent follow-up.
- (34) Similarly, the extension of the airport will respect the need for ensuring high safety/security of operations. The later will *inter alia* be achieved through purchase of new aviation security checking equipment, investments in aprons, taxiways, rehabilitation of the runway and lighting systems as well as streamlining of airfield maintenance system. The implementation of projects listed in table 2 would also reduce number of additional procedures, streamline operations and eliminate possibility of fatal human error.
- (35) The financing will not be used for typical expansionary investments such as building new runways or terminals.
- (36) All works of the infrastructure project will be tendered out in an open and non-discriminatory procedure.
- (37) The airport's application for aid was submitted to the Ministry of Transport and Communications in January 2015. The conditional approval of aid was given by the Ministry on January 15, 2016, by means of the order of the Minister of Transport and Communications approving the Strategic action plan of LOU for 2016-2019. No works on the project have started before the conditional approval was received. So far, only public procurement procedures have been initiated for the first projects.
- (38) As regards financing with respect to public remit functions, including investments in security checking equipment and equipment for noise monitoring system modernisation, the Lithuanian authorities confirmed that this type of investments in all Lithuanian airports have always been funded from public funds.
- (39) Funding for the planned investments in security monitoring equipment and noise monitoring system which comes under the public remit will not exceed the estimated cost of the system and will not be used to finance any other activities. If the final costs are less than planned, the beneficiary will reimburse the difference. To ensure transparency, cost accounting with regards to noise monitoring and security equipment is carried out in separate accounts and can be extracted for audit any time.
- (40) The aid cannot be cumulated with any other aid from local, regional, national or Union sources in respect of the same eligible costs.

2.3 Legal basis

- (41) The legal bases for the financing of the investment project are *inter alia*:
- Resolution No. 1253 of the Lithuanian Government of 18 December 2013 approving the National Transport Development Programme for the period 2014-2022.
 - Resolution No 1090 of the Lithuanian Government of 03.10.2014 on investments during the programming period 2014-2020.
 - Order of Transport Minister of the Republic of Lithuania of 11 November 2015 No. 3-464 (1.5 E) on the preliminary transport project list under the national transport development programme 2014-2020.

3 ASSESSMENT OF THE MEASURE

3.1 Existence of aid

- (42) 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.*"
- (43) 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:
- 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.

Notion of undertaking and economic activity

- (44) According to settled case law, the Commission must first establish whether the operator of Vilnius airport 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 financed⁹. Any activity consisting in offering goods and services on a given market is an economic activity.¹⁰

- (45) In its "*Leipzig-Halle airport*" judgment the Court of Justice confirmed that the operation of an airport for commercial purposes and the construction of airport infrastructure constitute an economic activity¹¹. Once an airport operator engages in economic activities, regardless of its legal status or the way in which it is financed, it constitutes an undertaking within the meaning of Article 107(1) TFEU, and the Treaty rules on State aid therefore apply¹².
- (46) The airport's infrastructure and equipment are operated by the beneficiary which charges fees for the use of these infrastructures and exploits the airport commercially.
- (47) It follows that the beneficiary is an undertaking for the purposes of Article 107 (1) TFEU.

Public remit tasks

- (48) According to the 2014 Aviation Guidelines¹³ and case-law, 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. According to the 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 nature¹⁴.
- (49) 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 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 nature¹⁵.

⁹ Case C-35/96 *Commission v Italy*, ECLI:EU:C:1998:303, para 36; C-41/90 *Höfner and Elser*, ECLI:EU:C:1991:161, para 21; Case C-244/94 *Fédération Française des Sociétés d'Assurances v Ministère de l'Agriculture et de la Pêche*, ECLI:EU:C:1995:392, para 14; Case C-55/96 *Job Centre*, ECLI:EU:C:1997:603, para 21.

¹⁰ Case 118/85 *Commission v Italy* ECLI:EU:C:1987:283, para 7; Case 35/96 *Commission v Italy* ECLI:EU:C:1998:303, para 36.

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

¹² Cases C-159/91 and C-160/91, *Poucet v AGV and Pistre v Cancave*, ECLI:EU:C:1993:63.

¹³ Communication from the Commission, Guidelines on State aid to airports and airlines (OJ C 99, 4.04.2014, p. 3).

¹⁴ Point 35.

¹⁵ Points 36 and 37.

- (50) As already decided by the Commission in its previous decisions, including its decision concerning the airport of Pau¹⁶ the financing of security and noise monitoring equipment may legitimately be regarded as falling under the responsibility of the State in the exercise of its official powers as a public authority. This means that the relevant measures can be considered as non-economic, under the rules on State aid.
- (51) The State may therefore provide for public financing to compensate the costs incurred by airport operators in carrying out the relevant tasks in so far as these are entrusted to the latter by national law (or habitually financed by the State) and provided that this financing does not give rise to overcompensation or discrimination between airports. As described in recitals (38) and (39) the Lithuanian authorities respect these principles.
- (52) As regards investments to improve environmental protection and safety, the Commission observes that reduction and mitigation of environmental effects of the airport's activity and the improvement of the safety of the airport operation are costs normally borne by the budget from an undertaking and cannot be considered as falling within the public policy remit.¹⁷ The Lithuanian authorities accept this and therefore classify as falling within public policy remit only the investments in noise monitoring and security equipment.

Use of State resources and imputability to the State

- (53) The funding for the proposed investments will come partially from the Cohesion Fund. Funding from the Cohesion Fund is considered as State resources imputable to Member States based on well-established decisional practice given that they transit through national budget and the discretion the national authorities have in selecting projects to be supported¹⁸. The funding thus involves State resources and is imputable to the State.

Economic advantage

- (54) With the exception of the investments related to public remit functions, the notified measure reduces the investment costs that the airport operator of Vilnius airport would normally have to bear if it wanted to expand, modernise the airport and improve its safety or improve its efficiency, and therefore confers an economic advantage on the airport operator.

¹⁶ See recitals 101,188 and 495, Commission Decision of 23 July 2014 in case SA.22614 (C 53/07), OJ L201 of 30.07.2015.

¹⁷ See e.g. Commission decision of 20 February 2014 in State aid case SA.35847 – 2013/N – Czech Republic – Ostrava Airport, OJ C153 of 08.05.2015, Commission decision 10 November 2015 in State aid case SA.39315 concerning investments in Tallinn airport, OJ C426 of 18.12.2015.

¹⁸ The resources of the Cohesion Fund which are transferred to the relevant national authority or body designated for that purpose by the Member State before being paid to the beneficiary are considered to be at the disposal of the national authorities and therefore amount to State resources, see e.g. point 19 of decision of the Commission of 27.04.2010 in case SA.30358 (2010/N) Riga airport, OJ C147 of 02.06.2010, p.22; point 48, decision of the Commission of 22 February 2012 in case SA.30742 (2010/N) Klaipeda port, OJ C 121, 26.4.2012, p.1; point 38, decision of the Commission of 9.11.2011 in case SA.32632 (2011/N) ETGE, OJ C 82, 21.3.2012, p.2.

Selectivity

- (55) 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 the beneficiary only. Thus it is a selective measure within the meaning of Article 107 (1) TFEU.

Distortion of competition and effect on trade

- (56) 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 law¹⁹, for a measure to distort competition it is sufficient that the recipient of the aid competes with other undertakings on markets open to competition.
- (57) Indeed, the beneficiary competes to some extent with other airports in Lithuania and Latvia, even if competition is not very intense given the considerable distances between airports in the Baltic region. Public financing for the airport will enable that airport to continue operating and will strengthen the airport's position vis-à-vis other airports. Hence, the notified measure is liable to have an effect on competition and trade.

Conclusion

- (58) Financing of investment costs related to public remit tasks (investments in security equipment and noise monitoring equipment), indicatively amounting to EUR 1 274 328, does not constitute State aid within the meaning of Article 107 TFEU.
- (59) The public funding of other investments in infrastructure at Vilnius Airport, indicatively amounting to EUR 34 685 764, constitutes State aid within the meaning of Article 107(1) TFEU.
- (60) The Commission notes that Lithuania has respected the standstill obligation laid down in Article 108(3) TFEU and has not granted the aid prior to the Commission's approval.

3.2 Compatibility of the aid

- (61) 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 Guidelines²⁰ provide a framework for assessing whether aid for the financing of airport infrastructures may be declared compatible pursuant to Article 107(3)(c)

¹⁹ Case T-214/95, *Vlaams Gewest*, ECLI:EU:T:1998:77.

²⁰ Communication from the Commission, Guidelines on State aid to airports and airlines (OJ C 99, 4.4.2014, p. 3).

TFEU. They set out a number of criteria which the Commission takes into account when assessing the measure at stake.

- (62) According to point 79 of the Aviation Guidelines, the Commission has to examine whether the 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.

Contribution to a well-defined objective of common interest

- (63) Point 84 of the Guidelines stipulates that investment aid to airports will be considered to contribute to the achievement of an objective of common interest if it e.g. increases the mobility of Union citizens and the connectivity of the regions by establishing access points for intra-Union flights or facilitates regional development.
- (64) Vilnius Airport plays an important role in the Lithuanian transportation system and in Lithuanian economy as a whole, as it is the main international airport in Lithuania. As Lithuania is situated at the outskirts of the EU, it is essential to maintain the air connections, especially when taking into account that currently there are no high-speed rail connections.
- (65) The financing of the infrastructure project will maintain and improve the accessibility of the region in a sustainable way and therefore contributes to the mobility of Union citizens and the connectivity of the region.
- (66) Hence, the aid in principle contributes to objectives of common interest, in line with point 84 (a) of the Guidelines. In line with point 85 of the Guidelines, the Commission

however has to assess whether the aid would contribute to the duplication of unprofitable airports or the creation of additional unused capacity, as in such cases the aid would not contribute to an objective of common interest.

- (67) Even though Vilnius and Kaunas airports are located within 100 km and 1,5 hour drive by car from each other, both airports have only very little unused capacity, which is expected to be used within the next few years. Moreover, it is expected that there will be a gradual shift of low-cost traffic to Kaunas with capacity constraints at Vilnius airport being imminent. Through this strategy the existing infrastructure at the two airports will be used in the most efficient way.
- (68) The Lithuanian authorities have demonstrated on the basis of sound passenger forecasts that the infrastructure project meets medium-term demand from airlines and passengers and that the new investment is important for the mobility in the Vilnius catchment area.
- (69) The Commission therefore concludes that the construction and operation of the infrastructure meets a clearly defined objective of common interest.

Need for State intervention

- (70) Point 87, first sentence, of the Aviation Guidelines stipulates that in order to assess whether State aid is effective in achieving an objective of common interest, it is necessary to identify the problem to be addressed.
- (71) With annual passenger numbers below three million, Vilnius airport is of a size that makes it still difficult to ensure the full financing of investment projects without public funding. Point 89 of the Aviation Guidelines acknowledges potential difficulties in private funding of investments for such airports.
- (72) The results of the financial analysis show that the project's revenues will not be sufficient to cover its costs of capital.
- (73) Therefore, even though the airport is a financially sound undertaking, it would not be able to carry out the aforementioned investments on its own and the company would not be able to obtain private financing to cover the entire cost of the project given the significant funding gap of EUR 33 million.
- (74) The Commission concludes that the aid will bring a material improvement for the investment project that the market itself does not deliver and that therefore there is a need for state intervention.

Appropriateness of the aid measure

- (75) Given the type of the necessary investments and the high funding gap a direct grant is the most appropriate instrument to ensure implementation of the project.
- (76) Subsidised interest rates or credit guarantees would not be sufficient to ensure implementation of the project as the revenue generated by the project will not be sufficient even for covering the principal loan amount.

(77) The Commission therefore concludes that the aid measure at stake is an appropriate policy instrument.

Incentive effect

(78) The Commission must establish, whether the State aid granted to Vilnius airport has changed the behaviour of the beneficiary in such a way that it engages in an activity that contributes to the achievement of a public-interest objective that (i) it would not carry out without the aid, or (ii) it would carry out in a restricted or different manner.

(79) Point 93 of the Aviation Guidelines specifies a formal incentive-effect condition, namely that works on an individual investment must not have started before an application has been submitted to the granting authority.

(80) As described in recital (37), works on the project have not yet started. Hence, the formal criterion is fulfilled.

(81) Furthermore, the beneficiary could not undertake the investment project without the aid.

(82) Point 94 of the Aviation Guidelines specifies a material incentive-effect criterion, namely that the investment would not have been undertaken or would not have been undertaken to the same extent without any State aid.

(83) The financial analysis presented by the Lithuanian authorities (see recital (27)) demonstrates that the project is not financially profitable without the aid. The revenue generated by the project does not cover the expenses incurred. Accordingly, a private market investor would not undertake the project.

(84) In the absence of State aid, it is presumed the airport operator would be driven by profit maximisation considerations and would only proceed with minor investments in the coming years. These would include the basic renovation of runway and lighting system and minor modifications to the passenger terminal. The passenger flows would continue to grow until the maximum airport capacity of 3,5 million passengers per year is reached. Expansion of the airport that would need to be accompanied by very costly additional investments in safety and environmental measures would thus not be in the commercial interests of the airport operator.

(85) For all these reasons the Commission concludes that the aid has an incentive effect.

Proportionality of the aid amount (aid limited to the minimum needed to induce the additional investment or activity in the area concerned)

(86) Aid is proportional if its amount is limited to the minimum needed to induce the additional investment or activity in the area concerned State aid to airports, as any other State aid measure, should be proportional in relation to the aimed legitimate objective in order to be cleared as compatible aid²¹. The aid is considered to be

²¹ It is constant case law that the Commission can declare an aid compatible only if it is necessary for achieving a legitimate objective (cf. case 730/79, *Philipp Morris*, ECLI:EU:C:1980:209, paragraph 17; case C-390/06,

proportionate, only if the same result could not be reached with less aid. This means that the amount and intensity of the aid must be limited to the minimum needed for the aided activity to take place.

- (87) 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 costs 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.
- (88) The Commission notes that the notified aid will finance exclusively investment costs that are eligible under the Aviation Guidelines (see recital (24)).
- (89) According to point 101 of the Aviation guidelines the maximum permissible aid intensity for airports with less than 3 million passengers per annum is 50%. The eligible cost amount to EUR 70.076 million whilst the aid amounts to EUR 34.685 million which corresponds to an aid intensity of 49.5%. The maximum aid intensity is therefore respected.
- (90) Point 99 of the Aviation Guidelines stipulates that in cases where no specific counterfactual is known, in order to be proportionate, the amount of the aid should not exceed the capital cost funding gap of the investment project. That gap is determined on the basis of an *ex ante* business plan as the net present value of the difference between the positive and negative cash flows (including investment costs) over the lifetime of the investment. For investment aid the business plan should cover the period of the economic utilisation of the asset.
- (91) A no-aid scenario assuming minimum investments in airport infrastructure (see recital (84)) was not considered by the Lithuanian authorities as a robust counter-factual scenario as it would not meet the connectivity requirements of the country. Therefore the funding gap analysis is done on the basis of an *ex ante* business plan as the net present value of the difference between the positive and negative cash flows over the lifetime of the investment.
- (92) The Lithuanian authorities have demonstrated that the proposed investment aid will not exceed the funding gap of the investment project in question (see recital (27)).
- (93) The calculation of the funding gap takes into consideration all relevant revenues and costs, including costs and revenues linked to net additional revenue related to the expansion of the airport.
- (94) The calculation covers the period of 22 years which corresponds to the economic lifetime of supported investments.

Nuova Agricast, ECLI:EU:C:2008:224, paragraph 68; case T-162/06, *Kronoply*, ECLI:EU:T:2009:2, paragraph 65).

- (95) The funding gap of EUR 33 million corresponds to the difference between the relevant costs and revenues expected to arise, discounted with the weighted average cost of capital. The aid amount's discounted value of EUR 26 million in present value terms²²) does not exceed that funding gap.
- (96) The financial forecast of Vilnius airport demonstrates that the cash flow after operations and financing activities without applying State aid is not sufficient to repay debt over the economic life of the assets.
- (97) 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.

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

- (98) 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.
- (99) According to the Aviation 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*".
- (100) As explained in recital (17) there are no other airports reachable from Vilnius within a one-hour's drive. The closest international airports, but one, are more than 300 km away and require more than 3 hours driving time.
- (101) The closest airport is Kaunas airport which is located 100 km and 1,5 hour drive by car away. Both airports, Vilnius and Kaunas, have only very little unused capacity, which is expected to be used within the next few years, and both airports are operated by the same airport manager, LOU, which ensures optimisation of the use of the two airports.
- (102) As set out in recital (20) the increasing need for international transportation cannot be absorbed by rail as high-speed rail link Rail Baltica will not yet be operational during the duration of the investment period. In any case, Vilnius is 100 km away from the planned rail link.
- (103) For the above reasons the Commission considers that the investment project will not lead to the duplication of unprofitable airports or create additional unused capacity.
- (104) The Lithuanian authorities confirm that the airport will be continue to be open to all potential users, and is not dedicated to one specific user.
- (105) On the basis of the above, the Commission therefore concludes that the development of trade is not affected to an extent contrary to the common interest.

Transparency of aid

²² The aid will not be disbursed upfront but over 5 years, which reduces its net present value.

- (106) The Lithuanian authorities will respect the transparency obligations as set out in section 8.2 of the Aviation Guidelines, as amended by the "Transparency communication"²³. Notably Lithuania will 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 granted the date of granting; the size of undertaking and its location; the principal economic sector in which the beneficiary has its activities.

Conclusion

- (107) In view of the above assessment the considers that the notified investment aid for the Vilnius airport is in accordance with the compatibility conditions set out in the Aviation Guidelines.

4 CONCLUSION

The Commission has accordingly decided not to raise objections to the aid to finance the modernisation of infrastructure at Vilnius airport as notified by the Lithuanian authorities 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.

This Decision does not prejudice the future decision(s) on funding these projects from the Cohesion Fund.

Similarly, this Decision is without prejudice to the requirements of the Noise Directive²⁴ which stipulates that an airport which has more than 50 000 movements per year need to have a specific action plan to address noise issues.

²³ 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

²⁴ Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise; OJ L 189 of 18/07/2002, p. 12

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Yours faithfully,
For the Commission

Margrethe Vestager
Member of the Commission