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C(2019) 4990 final

<p>In the published version of this decision, some information has been omitted, pursuant to articles 30 and 31 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...]</p>		<p style="text-align: center;">PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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**Subject: State Aid SA.46373 (2019/NN) – Germany
Operating Aid to Dortmund airport**

Sir,

1. PROCEDURE

- (1) By letter dated 30 October 2018, Germany notified the Commission of its intention to grant operating aid to Dortmund airport.
- (2) The Commission requested further information on 29 November 2018, 21 January 2019, 7 March 2019 and 12 April 2019, which Germany provided on 20 December 2018, 1 February 2019, 4 February 2019, 13 February, 28 March 2019 and 14 May 2019.

2. DETAILED DESCRIPTION OF THE MEASURE

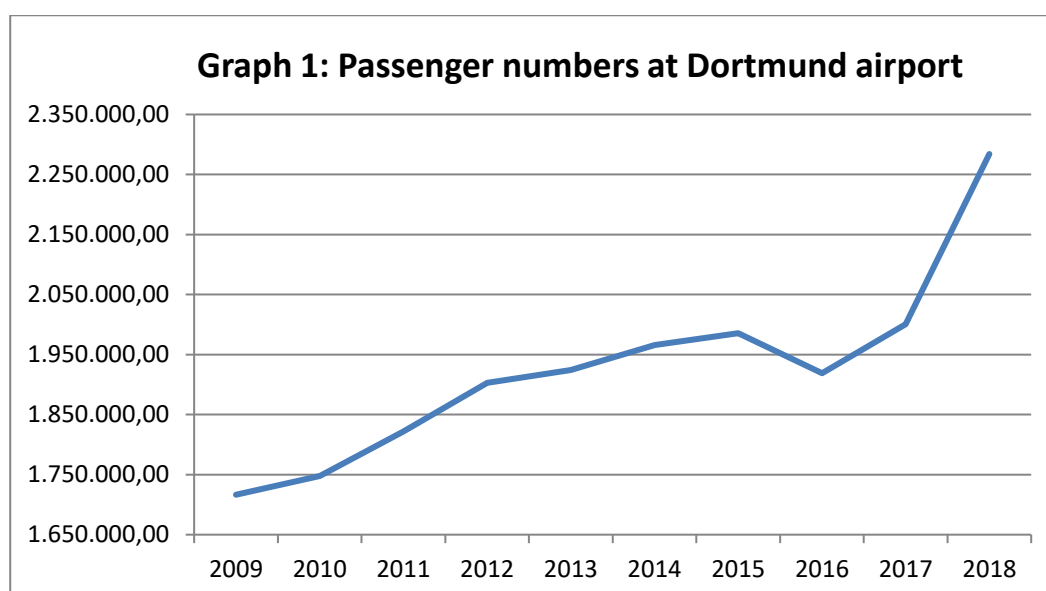
2.1. The beneficiary Dortmund airport

- (3) *Flughafen Dortmund GmbH* (“*Dortmund airport*” or “the airport”) is located in the German *Land* of North-Rhine Westphalia, approximately 14 km east of the city of Dortmund. It is at the heart of the Rhine-Ruhr metropolitan region, the largest metropolitan area in Germany with over 10 million inhabitants. Apart from Dortmund, large cities in the area include Düsseldorf, Essen, Duisburg and

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Wuppertal. The airport is well connected via road and rail to the Rhine-Main area and to major cities and metropolitan areas in the Netherlands and Belgium.

- (4) Dortmund airport is owned by the city of Dortmund (26% share) and the *Dortmunder Stadtwerke AG* (“*Dortmunder Stadtwerke*”), a public utility provider (74% share) that is fully-owned by the city of Dortmund.
- (5) The airport has been open for civil aviation at its current location since 1960. In 2000 a new terminal and the extension of the runway to 2000 metres were completed. Since then Dortmund airport has had the capacity to handle approximately 2.5 million passengers per year.
- (6) The airport currently has around two million passengers per year (see Graph 1 below). Passenger numbers have grown steadily since 2009, with the exception of 2016, when, as in other European airports, traffic to Turkey dropped by 40.7% due to the terrorist attack at Atatürk Airport in Istanbul. In 2018 Dortmund airport had 2 284 176 passengers, which is a considerable increase compared to the 2 000 695 passengers in 2017.



- (7) Passenger traffic from Dortmund airport is principally made up of low-cost flights. Currently, ten airlines operate from Dortmund airport. Wizz Air is the main airline accounting for over half the passengers, followed by Eurowings, Ryanair and easyJet.
- (8) The airport serves more than 35 destinations. The vast majority of flights connect Dortmund to cities in the east of Europe, including Katowice, Krakow, Bucharest, Sofia, Cluj-Napoca, Gdansk and Belgrade, but there are also connections to, for example, London, Munich and Palma de Mallorca.
- (9) The airport employed 200 people in 2014; employment has gone down to 174 persons in 2017.
- (10) The nearest airports to Dortmund airport¹ are:

¹ All distances in road kilometres are based on the fastest route. The travel time is based on car travel time based on average of several searches on maps.google.com, accessed in May 2019.

- (a) Paderborn/Lippstadt airport² (approximately 73 km, or 51 minutes by car). The airport has had between 700 000 and 800 000 passengers annually over the past five years.
 - (b) Düsseldorf airport (approximately 72 km, or 68 minutes by car). The airport has had between 20 and 25 million passengers annually over the past five years.
 - (c) Münster/Osnabrück airport³ (approximately 76 km, or 53 minutes by car). The airport has had between 800 000 and 1 000 000 passengers annually over the past five years.
 - (d) Niederrhein-Weeze airport (approximately 123 km, or 95 minutes by car). The airport has had between 1 800 000 and just over 1 900 000 passengers annually over the past four years.
 - (e) Kassel-Calden airport (approximately 138 km, or 91 minutes by car). The airport has had between 45 000 and 70 000 passengers annually over the past five years.
- (11) Germany submitted that car traffic in the Land of North-Rhine Westphalia is very dense and that this is the German region where most traffic jams occur. Especially the highways surrounding Dortmund are very congested. According to Germany the travel time by car from Dortmund airport to the airports of Paderborn, Münster and Düsseldorf is well over an hour. Whereas the Commission has been able to verify this for Düsseldorf airport, it cannot confirm this throughout the entire day for the airports of Münster and Paderborn.

2.2. Description of the measure

- (12) According to Dortmund airport's *ex ante* business plan *Zukunftskonzept 2023* public grants by Dortmunder Stadtwerke AG should cover the operating losses of the airport for the period 4 April 2014 to end 2022 in an amount of EUR 27 285 000 in total. The Dortmunder Stadtwerke would cover the operating losses through annual grants.
- (13) According to the *Zukunftskonzept 2023* Germany projects a passenger increase of 2.3% per annum, leading to the passenger numbers set out in table 1:

Table 1: Expected passenger numbers (pax in mio)

Year	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
PAX (in mio)	1.950	1.997	2.045	2.094	2.145	2.197	2.250	2.304	2.359	2.416	2.474

- (14) The passenger growth rate on which the business plan is based is in line with the *Bundesverkehrswegeplan* (German Transport Infrastructure Plan) which is drawn up by the German Ministry of Transport and Digital Infrastructure. For the period

² Hereafter referred to as Paderborn airport.

³ Hereafter referred to as Münster airport.

2010 to 2030 that plan estimates an average air passenger growth of 2.3% per annum.

- (15) Passenger numbers at Dortmund airport have increased over the last years. Whilst they were slightly below the projected numbers for a few years, they were well above the expected 2 145 000 passengers in 2018.
- (16) The *Zukunftskonzept 2023* also contains an overview of the cost saving measures that the airport intends to take to improve its economic performance, such as [...].
- (17) The airport has already started implementing the measures to improve its economic performance and monitors the efficiency of the measures on an annual basis. It adapts the plan when necessary and has added additional measures in order to achieve the desired savings.
- (18) The *Zukunftskonzept 2023* provides for the following operating results in the transitional period set out in table 2:

Table 2: Expected operating deficits

Year	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Deficit (in mio euro)	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	0	0

- (19) In total the amount of operating losses the airport expects amount to EUR 27 285 000 for the transition period 2014 to 2024. As shown in table 2, Dortmund airport expects to cover its operating costs with the revenues generated by its operations after 2022. Therefore, no operating aid will be paid after 2022.

2.3. Previous Commission decision concerning Dortmund airport

- (20) In 2014, the Commission adopted a decision ("*the 2014 Decision*") regarding the financing arrangements at Dortmund airport and the schedules of airport charges NERES ("*New and Existing Routes Expansion Scheme*") and NEO ("*Neue Entgeltordnung*")⁴.
- (21) The Commission investigated the following four measures: state guarantees for loans to Dortmund airport, a profit and loss transfer agreement between Dortmund airport and its majority shareholder, the public utility company Dortmunder Stadtwerke, and two measures concerning the lowering of airport charges for certain airlines, NERES and NEO.

⁴ Commission Decision of 23 July 2014 in cases SA.22030, SA.29404 and SA.32091 - Germany - Financing arrangements regarding Flughafen Dortmund GmbH and the schedules of airport charges NERES and NEO, OJ L 302, 9.11.2016, p. 1–61.

- (22) The Commission came to the conclusion that the state guarantees which ran from 1987 to 2000 were granted before the *Aéroports de Paris* judgment⁵ and did thus not further investigate these guarantees. The investment and operating aid granted to Dortmund airport through the profit and loss transfer agreement between 1 June 2007 and 4 April 2014 was declared compatible with the internal market and the schedules of airport charges were found not to contain aid.
- (23) It is relevant to note that the operating aid declared compatible by the 2014 Decision was granted before 4 April 2014. The operating aid notified in the present case concerns the period from 4 April 2014 onwards, and therefore there is no overlap or duplication of aid.

2.4. Commitments by Germany

- (24) Germany confirms that no operating aid will be granted for operating losses suffered during the transitional period apart from the notified aid covering the expected operating losses in accordance with the *Zukunftskonzept 2023* listed in Table 2 of this Decision.
- (25) Costs related to activities that normally fall under the responsibility of the State in the exercise of its official powers as a public authority will be covered by Germany. Germany may also continue public funding in relation to investment aid that was declared compatible under the 2014 Decision and measures that were granted before the *Aéroports de Paris* judgment.
- (26) Any other aid will be notified to the Commission.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of aid

- (27) By virtue of Article 107(1) of the TFEU "*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.*"
- (28) The criteria laid down in Article 107(1) TFEU are cumulative. Therefore, for a measure to 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.

⁵ Judgment of the General Court of 12 December 2000, *Aéroports de Paris v Commission*, T-128/98, ECLI:EU:T:2000:290, confirmed by the Judgment of the Court of Justice of 24 October 2002, *Aéroports de Paris v Commission*, C-82/01P, ECLI:EU:C:2002:617.

- (29) In the following sections, the Commission will assess whether the measure as described in Chapter 2.2 meets these cumulative criteria and thus constitutes aid within the meaning of Article 107(1) TFEU.

3.1.1. *Notion of undertaking and economic activity*

- (30) According to settled case law, the Commission must first establish whether Dortmund 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 financed⁶. Any activity consisting in offering goods and services on a given market is an economic activity⁷.

Notion of undertaking

- (31) In the *Aéroports de Paris* judgment, the General Court stated 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. This was confirmed by the Court of Justice on appeal, and in the judgment in *Leipzig-Halle airport*, where it found that the operation of an airport for commercial purposes and the construction of airport infrastructure constitute an economic activity⁸. 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 apply⁹.
- (32) The Commission notes that the airport infrastructure and equipment are operated by Dortmund airport, which is the beneficiary of the notified public funding. Dortmund airport charges fees from airlines for the use of its infrastructure, generating aeronautical revenues, and also receives revenues from its non-aeronautical activities, and thus exploits the airport commercially. It follows that Dortmund airport constitutes an undertaking for the purpose of Article 107(1) TFEU.

Economic activity

- (33) While Dortmund airport is considered to be an undertaking for the purpose of Article 107(1) TFEU, it must be recalled that not all the activities of an airport operator are necessarily of an economic nature¹⁰.

⁶ Judgment of the Court of Justice of 18 June 1998, *Commission v Italy*, C-35/96, ECLI:EU:C:1998:303, para. 36; Judgment of the Court of Justice of 23 April 1991, *Höfner and Elser*, C-41/90, ECLI:EU:C:1991:161, para. 21; Judgment of the Court of Justice of 16 November 1995, *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 of the Court of Justice of 11 December 1997, *Job Centre*, C-55/96, ECLI:EU:C:1997:603, para. 21.

⁷ Judgment of the Court of Justice of 16 June 1987, *Commission v Italy*, 118/85, ECLI:EU:C:1987:283, para. 7; Judgment of the Court of Justice of 18 June 1998, *Commission v. Italy*, C-35/96, ECLI:EU:C:1998:303, para. 36.

⁸ Judgment of the Court of Justice of 19 December 2012, *Mitteldeutsche Flughafen and Flughafen Leipzig-Halle v Commission*, C-288/11P, ECLI:EU:C:2012:821; see also Judgment of the General Court of 17 December 2008, *Ryanair v Commission*, T-196/04, ECLI:EU:T:2008:585.

⁹ Judgment of the Court of Justice of 17 February 1993, *Poucet v AGV and Pistre v Cancave*, C-159/91 and C-160/91, ECLI:EU:C:1993:63.

¹⁰ Judgment of the Court of Justice of 19 January 1994, *SAT Fluggesellschaft v Eurocontrol*, C-364/92, ECLI:EU:C:1994:7.

- (34) As explained in point 35 of the Commission Guidelines on State aid to airports and airlines¹¹ (“the Aviation Guidelines”), activities that normally fall under State responsibility in the exercise of its official powers as a public authority are not of an economic nature and do not fall within the scope of the rules on State aid.
- (35) Whilst Germany provides financial support for such non-economic activities at Dortmund airport, the notified funding is intended to cover the operating losses of the airport. Those operating losses are generated in particular by the economic activities of the airport. The funding therefore finances the economic activities of the airport operator.

3.1.2. Use of State resources and imputability to the State

- (36) Any advantage granted through State resources by the State itself or by any intermediary body acting by virtue of powers conferred on it may be State aid¹². Resources of local authorities are, for the application of Article 107 TFEU, State resources¹³.
- (37) The funding is granted by the Dortmunder Stadtwerke AG from its budgetary resources. The Dortmunder Stadtwerke AG is a holding of utility companies and companies managing the infrastructure of the city of Dortmund. It is fully owned by the city of Dortmund, which can direct it how to use its resources, and forms a public undertaking within the meaning of Article 2 (b) of Commission Directive 2006/111/EC¹⁴. Consequently, its resources can be qualified as State resources.¹⁵
- (38) The city of Dortmund’s decision made in 1992 to transfer a stake in Dortmund airport to the Dortmunder Stadtwerke, was accompanied by a commitment to compensate for the losses that would be incurred by the airport in future. Germany confirmed that the city of Dortmund was involved in the decision of Dortmunder Stadtwerke to compensate the losses of the airport and approved it.
- (39) The Commission therefore concludes that the funding is imputable to the State and involves State resources.

¹¹ OJ C 99 of 4.4.2014, p. 3.

¹² See, for instance, Judgment of the Court of Justice of 16 May 2002, *France v Commission (Stardust)*, C-482/99, ECLI:EU:C:2002:294, paragraph 24; Judgment of the General Court of 5 April 2006, *Deutsche Bahn AG v Commission*, T-351/02, ECLI:EU:T:2006:104, paragraph 103.

¹³ Judgment of the General Court of 12 May 2011, *Région Nord-Pas-de-Calais and Communauté d’agglomération du Douaisis v Commission*, T-267/08 and T-279/08, ECLI:EU:T:2011:209, paragraph 108.

¹⁴ The concept of public undertakings can be defined by reference to Commission Directive 2006/111/EC, of 16 November 2006, on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (OJ L 318, 17.11.2006, p. 17). Article 2(b) of this Directive states that ‘public undertakings’ means any undertaking over which the public authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it’.

¹⁵ Judgment of the Court of Justice of 16 May 2002, *France v Commission (Stardust)*, C-482/99, ECLI:EU:C:2002:294, paragraphs 34 to 38.

3.1.3. *Economic advantage*

- (40) An advantage within the meaning of Article 107(1) TFEU is any economic benefit which an undertaking would not have obtained under normal market conditions, that is to say in the absence of State intervention¹⁶.
- (41) The funding in question will compensate Dortmund airport's operating losses for the period 2014 to 2022 and will thus relieve the airport from the burden of covering its own operating losses. The granting authority notified the measure, as they consider that it would confer an advantage onto Dortmund airport. Germany has provided no element suggesting that Dortmunder Stadtwerke may expect from this funding any return. The funding period stipulated in the business plan runs from 2014 to 2022. Throughout this period the airport will incur operating losses. a profit-driven. Therefore, the Commission considers that no market economy operator would consider financing the airport for such a lengthy period without receiving any return. Therefore, those contributions confer an economic advantage to the airport.

3.1.4. *Selectivity*

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

3.1.5. *Distortion of competition and effect on trade*

- (43) 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 law¹⁷, for a measure to distort competition it is sufficient that the recipient of the aid competes with other undertakings on markets open to competition.
- (44) There is competition between airports in the internal market to attract airlines. The Commission notes in this respect that the main carriers operating at Dortmund airport are Wizz Air, Ryanair and easyJet, airlines operating across the Union. Compensation for the airport's operating losses might enable Dortmund airport to continue operating to the detriment of other Union airports that could otherwise attract these airlines' capacity currently allocated to Dortmund. Hence, the notified measure distorts or is liable to distort competition and affect trade between Member States.

3.1.6. *Conclusion on the existence of State aid*

- (45) The Commission concludes that the notified measure constitutes State aid within the meaning of Article 107(1) TFEU.

¹⁶ Judgment of the Court of Justice of 11 July 1996, *SFEI and Others*, C-39/94, ECLI:EU:C:1996:285, paragraph 60; Judgment of the Court of Justice of 29 April 1999, *Spain v Commission*, C-342/96, ECLI:EU:C:1999:210, paragraph 41.

¹⁷ Judgment of the General Court of 30 April 1998, *Het Vlaamse Gewest v Commission*, T-214/95, ECLI:EU:T:1998:77.

3.2. Lawfulness of the aid

- (46) Germany notified the operating aid to Dortmund airport to the Commission on 30 October 2018. Pursuant to Article 108(3) TFEU, Member States shall not put into effect plans to grant aid before the Commission has taken a final decision. Article 3 of the Procedural Regulation¹⁸ provides that notifiable aid shall not be put into effect before the Commission has taken, or is deemed to have taken, a decision authorising such aid.
- (47) Since part of the contributions at stake have been granted without prior approval by the Commission, Germany has not respected this standstill obligation set out in Article 108(3) TFEU and Article 3 of the Procedural Regulation.

3.3. Compatibility of the aid

3.3.1. Basis for assessing the compatibility of the aid with the internal market

- (48) 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.
- (49) With the notified State aid, Germany intends to compensate operating losses of Dortmund airport. The Aviation Guidelines provide for principles to assess, among others, the compatibility of operating aid to airports with the internal market.
- (50) Point 79 of the Aviation Guidelines provides the following cumulative conditions that a State aid measure has to respect in order to be found compatible with the internal market:
- a. contribution to a well-defined objective of common interest;
 - b. need for State intervention;
 - c. appropriateness of the aid measure;
 - d. incentive effect;
 - e. proportionality of the aid (aid limited to the minimum);
 - f. avoidance of undue negative effects on competition and trade between Member States;
 - g. transparency of the aid.

3.3.2. Compatibility assessment of the operating aid

- (51) Point 112 of the Aviation Guidelines states that operating aid granted to airports after 4 April 2014 will be considered compatible with the internal market pursuant to Article 107(3)(c) TFEU for a transitional period of 10 years starting from 4 April

¹⁸ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (codification), OJ L 248, 24.9.2015, p. 9–29 (the "Procedural Regulation").

2014 provided that the cumulative conditions mentioned in recital 51 are fulfilled, as set out in points 113 to 134 of those guidelines. Compatibility with these criteria will be assessed below.

Contribution to a well-defined objective of common interest

- (52) Under point 113 of the Aviation Guidelines, during a transitional period of 10 years operating 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.
- (53) The operating aid contributes to maintain and increase steady flows of air traffic, which, according to a study prepared by Münster University, contributes to the development of the surrounding region, and in particular, of the Ruhr area, the economy of which is still affected by the structural changes due to the move away from heavy industry and mining¹⁹. Moreover, the airport provides for an important number of direct and indirect jobs in the region²⁰, which is an important factor given the fact that the Ruhr region has the highest unemployment rate in Northrhine-Westphalia and also one of the highest rates in Germany²¹.
- (54) The operating aid also contributes to the accessibility of the region. Dortmund airport is located in the Rhine-Ruhr metropolitan area, the largest metropolitan area in Germany and one of the most densely populated areas in Europe with over 10 million inhabitants. Most of the passengers departing from Dortmund airport come from the Rhine-Ruhr metropolitan region. In this context, it is to be noted that there are three other airports with regular traffic within 100 km from the Dortmund airport: Düsseldorf, Paderborn and Münster airports.
- (55) However, Dortmund airport pursues a different strategy than the neighbouring airports. It concentrates its activities on low-cost connections, most notably to destinations in eastern and south-eastern Europe as outlined in recital (8) above. These destinations cover the vast majority of all flights departing from Dortmund airport. None of the neighbouring airports offers these routes as regularly as Dortmund airport. There are only few overlapping destinations between Dortmund airport on the one hand and Münster and Paderborn airports on the other, most notably Palma de Mallorca and Munich – destinations for which there is generally a high demand. The Commission therefore considers that the airport improves the mobility of EU citizens.
- (56) Also, the operation of Dortmund airport contributes to decongesting Düsseldorf airport which is currently operating at its capacity limit of 24 million passengers with 24.62 million passengers in 2017.

¹⁹ See for example the study commissioned by the German Federal Ministry for Economic Affairs and Energy, "Lehren aus dem Strukturwandel im Ruhrgebiet für die Regionalpolitik", 2015, available at <https://www.bundesregierung.de/breg-de/suche/lehren-aus-dem-strukturwandel-im-ruhrgebiet-fuer-die-regionalpolitik-endbericht-727672>.

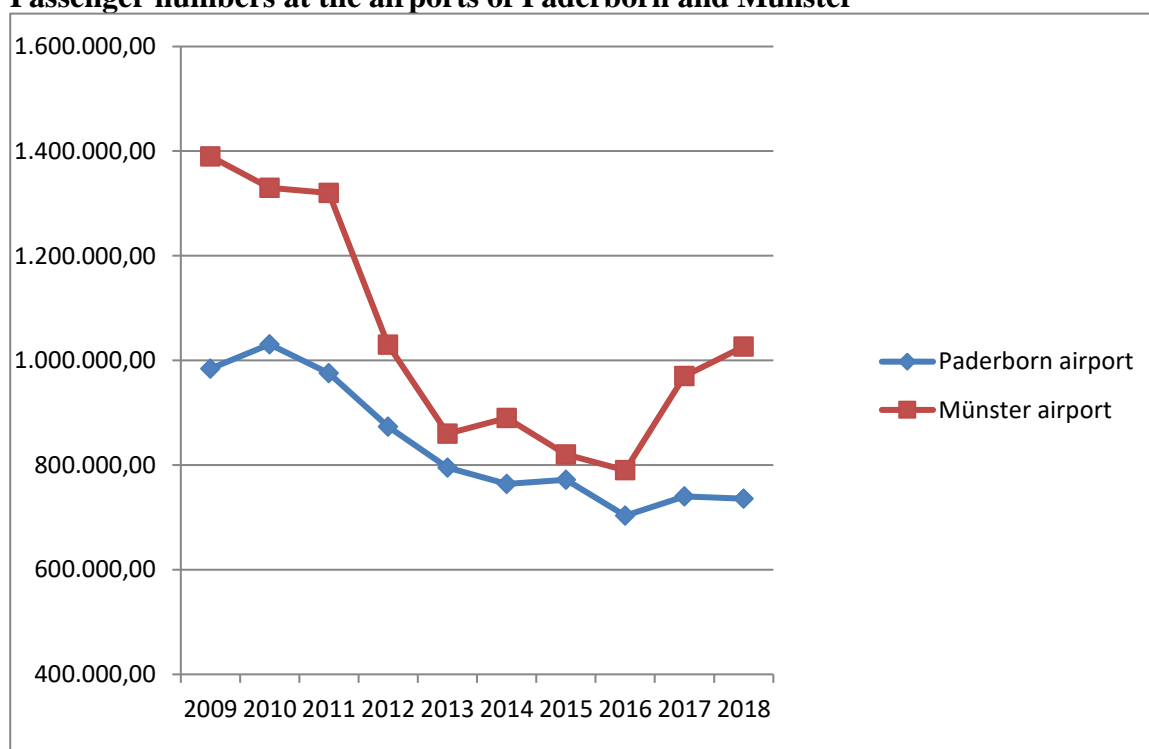
²⁰ "Prognose der Regionalwirtschaftlichen Effekte des Flughafens Dortmund für das Jahr 2025". Studie im Auftrag der Flughafen Dortmund GmbH. Institut für Verkehrswissenschaft der Westfälischen Wilhelms-Universität Münster, Februar 2010.

²¹ See for example for 2018 <https://statistik.arbeitsagentur.de/Navigation/Statistik/Statistische-Analysen/Analyse-in-Grafiken/Arbeitsmarkt-nach-Regionen/Arbeitsmarkt-nach-Regionen-Nav.html>.

- (57) Therefore, the Commission considers that the aid to Dortmund airport increases the mobility of Union citizens and the connectivity of the region, combats air traffic congestion at a major Union hub airport, and facilitates the regional development, in accordance with point 113 of the Aviation Guidelines.
- (58) Point 114 of the Aviation Guidelines stipulates that the likely effects on traffic at airports with spare capacity within the same catchment area have to be identified by the business plan in order to prevent the duplication of unprofitable airports. Point 115 stresses that the Commission will have doubts as to whether an unprofitable airport, which is located in the same catchment area as another airport will be able to achieve full operating cost coverage at the end of the transition period.
- (59) In this respect, the Aviation Guidelines define the catchment area as a geographic market boundary that is normally set around 100 km or around 60 minutes travelling time by car, bus, train or high-speed train. At the same time, the Aviation Guidelines allow to deviate from the standard definition of the catchment area of a given airport in order to take into account the specificities of each particular airport. In this respect, the size and shape of the catchment area may vary from airport to airport, and depend on various characteristics of the airport, including its business model, location and the destination it serves.
- (60) As described in recital 10, there are three airports within the standard catchment area of Dortmund airport (1 hour travelling by car or 100 km distance), namely Paderborn/Lippstadt airport (approximately 73 km, or 51 minutes by car), Düsseldorf airport (approximately 72 km, or 68 minutes by car) and Münster/Osnabrück airport (approximately 76 km, or 53 minutes by car).
- (61) All four airports are situated in the Rhine-Ruhr metropolitan area which counts over 10 million inhabitants and which is one of the most densely populated areas in Europe. The overall population density is over 300 inhabitants/km² with areas with over 2000 inhabitants/km². It is common in such an urban concentration to have several airports.
- (62) Whilst the Ruhr region around Dortmund is characterized by high unemployment, the GDP per capita in the catchment area is above the Union average and the catchment area is one of the richer regions in Europe. Traffic at all four airports is predominantly outbound with a mixture of leisure and business travel.
- (63) Dortmund airport itself expects to be able to cover its operating costs by the end of the transition period as outlined in its *ex ante* business plan described in recitals (15) *et seq.* The Commission considers that overall the business plan is credible (see recitals (90) *et seq.*). Despite the doubts expressed in point 115 of the Aviation Guidelines, the Commission's assessment of the business plan leads it to expect that Dortmund airport will be able to cover its operating costs at the end of the transition period.
- (64) As regards the impact of the operating aid on traffic at airports located in the same catchment area, the Commission notes that Düsseldorf airport has reached its maximum passenger capacity in 2017, as described in recital (56). The operating aid to Dortmund airport would, therefore help combat traffic congestion at this airport.

- (65) Also, due to heavy traffic and frequent congestion the travel time between the airports of Düsseldorf and Dortmund is often above 60 minutes, even though the airports are only 72 km apart. Also the travel time by train exceeds 60 minutes. It may be argued, therefore, that the airports are strictly speaking not in the same catchment area.
- (66) As regards airports with spare capacity (Paderborn and Münster airports) the Commission notes that Dortmund airport's business plan is based on the average growth rates projected for German airports (see recital 14) and therefore assumes not to grow to the detriment of other airports.
- (67) Passenger numbers at the airports of Münster and Paderborn have evolved as illustrated in Graph 2 below.

Graph 2:
Passenger numbers at the airports of Paderborn and Münster



- (68) Passenger numbers at the airport of Münster have decreased over a number of years, before increasing again significantly (by 23.3% between 2016 and 2018) in 2017. In its annual reports Münster airport attributes these losses to competition, in particular from Düsseldorf airport and the declining passenger numbers of Air Berlin, which was the dominant airline at Münster airport. At its peak, Air Berlin was responsible for up to 1 million passengers at Münster airport and with Air Berlin's decline passenger numbers decreased steadily until Air Berlin's insolvency in 2017.
- (69) Münster airport has started to compensate for these losses by attracting airlines which have opened additional routes, mainly to holiday destinations.
- (70) Passenger numbers at the airport of Paderborn have also decreased over a number of years, before increasing again slightly in 2017. The airport attributes these losses to the fact that many of the airlines at Paderborn airport are focused on holiday

destinations such as Turkey, Egypt and Tunisia which suffer from political instability which has led to the cancellation of numerous flights. It also mentions as a cause for decreasing passenger numbers the, at first, declining traffic of Air Berlin and its subsequent bankruptcy, as Air Berlin was the most important carrier at Paderborn airport for numerous years. The positive developments in 2017 were attributed to new connections to the Mediterranean region and the fact that Lufthansa took up additional inner-German destinations.

- (71) Whereas Dortmund airport is focused on destinations in the east and south-east of Europe, Münster and Paderborn airport concentrate mainly on holiday destinations in the Mediterranean region, as well as the connection to hubs (Frankfurt, Munich and Istanbul). With Munich and Palma de Mallorca airport overlapping destinations are very limited. Also, Dortmund has mainly attracted low-cost carriers, whereas airlines departing from Münster and Paderborn airport are mainly legacy carriers and charter flights. Only Sun Express and Eurowings serve all three airports, Dortmund, Paderborn and Münster airport, and their contribution to the total number of passengers at Dortmund airport is below 20%.
- (72) The Commission therefore notes based on the airport's business plan and on information submitted by Germany that the profiles and airlines as well as destinations served of Dortmund, Paderborn and Münster airport are, therefore, divergent. When analysing the decreasing passenger numbers at Münster airport, flight schedules for the years 2012 – 2015 show no evidence of routes being discontinued at Paderborn and Münster airport whilst being opened at Dortmund. All three airports lost passengers in 2016 and were able to grow in 2017 for example. Also, the passenger growth rate on which Dortmund airport has based its business plan is in line with the German average. The growth in passenger numbers at Dortmund airport is therefore not likely to have a detrimental effect on the traffic levels at Münster or Paderborn airport.
- (73) The Commission therefore concludes that the compensation of operating losses contributes to a well-defined objective of common interest without leading to the duplication of unprofitable airports in the same catchment area.

Need for State intervention

- (74) According to the Aviation Guidelines, 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. It should be targeted towards situations where such aid can bring about a material improvement that the market itself cannot deliver. According to points 118 *et seq.* of the Aviation Guidelines, airports like Dortmund airport with less than 3 million passengers per year are eligible to receive operating aid during the transitional period.
- (75) The *ex ante* business plan submitted by Germany shows that Dortmund airport will not be able to cover its operating costs until 2023. Despite the fact that Dortmund airport's business plan foresees cost reductions and increased revenues going forward, it will take some time to implement changes and achieve these positive effects. These improvements cannot be delivered by the market itself. Therefore, the Commission considers that State intervention is necessary in order to ensure that Dortmund airport will be able to continue its operations until the positive developments foreseen by the business plan are achieved.

Appropriateness of the aid measure

- (76) Point 120 of the Aviation Guidelines requires that the aid to the airport must be an appropriate policy instrument to achieve the intended objective of common interest. The Member State must, therefore, demonstrate that no other less distortive policy instruments or aid instruments could have allowed the same objective to be reached.
- (77) According to the German authorities, the aid measures at stake are appropriate to achieve the intended objectives of common interest, which could not have been achieved by other, less distortive policy instruments. Given the delicate financial situation of Dortmund airport, it is not likely that it could have obtained and reimbursed loans to cover the operating funding gap. Furthermore, despite the fact that the *ex ante* business plan shows positive prospects for the profitability of the airport in the long term, it will take time to implement the measures the airport intends to take to improve the airport's economic performance (as described above in recitals (16) and (17)) and to achieve the envisaged positive effects. This is why the coverage of operating costs will not be reached before 2023. The Commission therefore considers that no other, more appropriate policy or aid instrument is available to achieve the common objective.
- (78) In accordance with point 121 of the Aviation Guidelines the aid amount is, in principle, to be established *ex ante* as a fixed sum covering the expected operating funding gap (determined on the basis of an *ex ante* business plan).
- (79) As described above in recitals (12) *et seq.* Germany presented an *ex ante* business plan (*Zukunftskonzept 2023*) which projects a total operating funding gap of EUR 27 285 000 for the years 2014 to 2022, which periods falls within the transitional period 2014-2024.
- (80) The expected operating funding gap in the *Zukunftskonzept 2023*, was based on a projected increase in passenger numbers in line with the average air passenger growth expected in Germany by the Ministry of Transport and Digital Infrastructure (see recitals (13) and (14)), as well as cost saving measures the airport has started to put in place to improve its economic performance, as described in recital (16). The annually expected operating deficits are outlined in Table 2 above. These expected operating deficits are paid out in instalments between 2014 and 2022.
- (81) Furthermore, Germany has confirmed that no operating aid will be granted for operating losses suffered during the transitional period apart from the notified aid.
- (82) Therefore, the Commission considers that the operating aid in question is appropriate to reach the desired objective of common interest.

Incentive effect

- (83) Pursuant to point 124 of the Aviation Guidelines operating aid has an incentive effect if it is likely that, in the absence of the operating aid, and taking into account the possible presence of investment aid and the level of traffic, the level of economic activity of the airport concerned would be significantly reduced. Germany submits that without the operating aid the scale of the operations at Dortmund airport would be severely impacted and reduced. The *ex ante* business plan indeed demonstrates that the airport would not be able to cover its operating

costs without aid until the end of 2022. Without the aid a significant reduction of airport activities would be necessary in order to finance its day-to-day activities, probably eventually leading to the closure of the airport.

- (84) In view of the above, the Commission considers that the aid measure has an incentive effect.

Proportionality of the aid amount (aid limited to the minimum)

- (85) Point 125 of the Aviation Guidelines stipulates that, in order to be proportionate, operating aid to airports must be limited to the minimum necessary for the aided activity to take place. Furthermore, point 128 of the Aviation Guidelines stipulates that the aid amount for airports with more than 700,000 passengers per year may not exceed 50% of the "initial operating funding gap" observed in 2009-2013 calculated for a period of 10 years. Moreover, according to point 126 of the Aviation Guidelines, the business plan should demonstrate that the airport is expected to become viable without needing further operating aid at the end of the transitional period in 2024. Point 129 of the Aviation Guidelines affirms that no operating aid should be paid out after the end of the transitional period.
- (86) Beyond 2022, the *ex ante* business plan indicates that the airport will be able to cover its own operating costs, so that no further operating aid is expected to be necessary in conformity with point 129 of the Aviation Guidelines.
- (87) Points 126 and 127 of the Aviation Guidelines require the Commission to assess the key parameters of the *ex ante* business plan, which should lead to full operating cost coverage at the end of the transitional period.
- (88) As described in recitals (13) *et seq.* Dortmund airport's business plan is based on the assumption that passenger numbers will increase by 2.3%, which is the average passenger increase expected for airports across Germany by the Federal Transport Ministry. Even though the business plan was established *ex ante* and the Commission should assess its robustness from an *ex ante* perspective, it can be noted that whilst passenger numbers were slightly below the projections until 2017, they exceeded projections in 2018. The Commission considers that there are no indications that the average passenger growth rate expected for German airports at the time the business plan was elaborated would be too high for Dortmund airport and, therefore, considers that it was reasonable at the time to expect this passenger growth rate.
- (89) The *ex ante* business plan also contains a plan with measures the airport intends to take to improve its economic performance, as described in recital (16) above. It expects aeronautical and non- aeronautical revenues to increase, by [...].
- (90) The Commission notes that the airport has already started implementing the measures to improve its economic performance in place and monitors the efficiency of the measures on an annual basis. It furthermore takes note that the airport adapts the plan when necessary and in this respect has already added additional measures in order to achieve the envisaged savings.
- (91) Again, the Commission is to assess the key parameters of the business plan on an *ex ante* basis. The airport is expecting to reach operating cost coverage by [...]. [...].

- (92) As mentioned above, Dortmund airport is planning cost saving measures in parallel. The Commission considers the cost saving measures ambitious, but necessary to reach operating cost coverage. The fact that the business plan includes annual monitoring and plans for revisions of the cost saving measures when necessary also adds to the likelihood that the airport will be able to cover its operating costs as of 2023.
- (93) Overall the Commission considers that the business plan is credible, paving the way towards full operating cost coverage at the end of the transitional period, as required by points 126 and 127 of the Aviation Guidelines.
- (94) Point 128 of the Aviation Guidelines stipulate that the maximum permissible aid amount during the whole transitional period will be limited to 50% of the initial funding gap for a period of 10 years.
- (95) On the basis of the figures provided by Germany, the initial operating funding gap over the period of five years preceding the beginning of the transitional period (2009-2013) amounts to EUR [...]. Table 3 provides the figures per year:

Table 3: Initial operating funding gap (in mio euro)

Year	2009	2010	2011	2012	2013	Average 2009-2013
Operating Losses	[...]	[...]	[...]	[...]	[...]	[...]

- (96) Therefore, the maximum aid amount would correspond to 50% x [...]million x 10, which equals EUR [...]for the period 2014-2024²².
- (97) The notified amount of EUR 27 285 000 is therefore below the maximum aid amount set by the initial operating funding gap.
- (98) In view of the above, the Commission considers that the operating aid amount is proportionate and limited to the minimum necessary for the aided activity to take place.

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

- (99) Points 131 of the Aviation Guidelines indicates that when assessing the compatibility of operating aid the Commission will take account of the distortions of competition and the effects on trade. Point 132 stipulates that operating aid for an airport located in the same catchment area will be considered compatible with the internal market only when it is demonstrated that all airports in the same catchment area will be able to achieve full operating cost coverage at the end of the transitional period. Point 133 requires that in order to limit further the distortions of competition, the airport must be open to all potential users and not be dedicated

²² As specified in point 128 of the Aviation Guidelines.

to one specific user. Point 134 clarifies that the Commission will approve operating aid to airports for a transitional period of 10 years beginning from 4 April 2014.

- (100) In this framework, it is first of all reiterated that the Commission's assessment has not lead to any indications that passenger growth at Dortmund airport will have a detrimental effect on other airports in the catchment area (see points (64) *et seq.*).
- (101) Düsseldorf airport is able to cover its operating costs today²³ and there is no indication that this should change in future.
- (102) Münster airport adopted a business plan in 2014 which includes measures to improve the financial situation of the airport. Münster airport had a positive EBITDA until 2012, but due to the developments described in recital (68) its EBITDA has been negative since. The biggest losses were recorded in 2015, but the operating funding gap has been decreasing since, in line with its business plan. The airport is therefore expected to be able to cover its operating costs at the end of the transition period, and even before.
- (103) Paderborn airport has had a positive EBITDA for over ten years and is planning to maintain a positive operating result.
- (104) The Commission therefore considers that the Member State has demonstrated that all airports in the same catchment area will be able to achieve full operating cost coverage at the end of the transitional period in conformity with point 132 of the Aviation Guidelines.
- (105) In addition, point 133 is complied with, as Dortmund airport is open to all potential users and not dedicated to one specific user. Finally, the Commission notes that the aid will be granted from 4 April 2014 until end 2022 which is an even shorter period than allowed by point 134 of the Aviation Guidelines.
- (106) On this basis, the Commission considers that the undue negative effects on competition and trade between Member States are limited to the minimum.

Transparency of the aid

- (107) Germany commits to comply with the rules on transparency as provided for in points 162 and 163 of the Aviation Guidelines and amended by the “Transparency Communication”²⁴.

Conclusion

- (108) In view of the above assessment, the Commission considers that the operating aid to Dortmund airport is in accordance with the compatibility conditions set out in the Aviation Guidelines. Hence, the operating aid can be declared compatible with the internal market on the basis of Article 107(3)(c) of the TFEU.

²³ Annual reports confirm overall profitability since 2010 and specifically mention a positive EBITDA as of 2014.

²⁴ 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 C 198, 27.6.2014, p. 30–34.

4. CONCLUSION

The Commission regrets that Germany put the aid in question into effect in breach of Article 108(3) of the Treaty on the Functioning of the European Union.

However, it has decided, on the basis of the foregoing assessment, not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

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Yours faithfully,

For the Commission

Margrethe VESTAGER
Member of the Commission