Thessaloniki Forum of Airport Charges Regulators

Working Group on Market Power Assessments

Terms of Reference

Purpose and scope

The working group will 1) provide recommendations to the Commission on how market power assessments should best be used to ensure economic regulation of airports in the EU is appropriately targeted; and, if deemed necessary, 2) provide ISAs with recommendations on best practices in conducting market power assessments. These recommendations will inform the evaluation of the Airport Charges Directive and will also serve to improve the implementation of the Directive. The working group will also provide advice to support the European Commission in developing its understanding of the way in which market power assessments are currently being used in aviation and other sectors.

The definition of economic market power of this working group corresponds with the principles of EU competition law and rulings of the ECJ.\(^1\)

The purpose of this working group is not to investigate the market power of existing airports in Member States or to discuss possible regulatory measures in case market power is concluded. These questions are beyond the scope of the recommendations asked by the Commission.

Reporting

The working group should produce a report providing recommendations to the Commission on how market power assessments should best be used to ensure economic regulation of airports in the EU is appropriately targeted. This report will be considered by MOVE as part of its evaluation of the Airport Charges Directive. The final report should be adopted by the Thessaloniki Forum. To fit with the broader evaluation timetable a draft final report should be finished by 2\(^{nd}\) June 2017.

If deemed necessary after the completion of the first report, the working group should produce a second report providing ISAs with recommendations on best practice in performing market power assessments. The timetable for producing a second report will be decided by the working group on completion of the first report, but should be finalised and adopted before end 2017. Reports of the working group should be clearly and concisely written in English and will be published on the Register of Commission Expert Groups.

Membership and Chairmanship of Group

The group will be made up of members of the Thessaloniki Forum who have volunteered to contribute to its work. The group has appointed a Chair during the first meeting, in the person

\(^1\) Article 102 TFEU

\(^2\) The concept of dominant position is not defined as such in the Treaty but it is established by case law as: "[A] position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by giving it the power to behave to an appreciable extent independently of its competitors, customers and ultimately of its consumers" Case 27/76, United Brands v Commission
of Mr Ernst-Jan Heuten, Enforcement specialist and Aviation specialist at the Authority for Consumers and Markets (ACM) of the Netherlands.

Meetings

The first meeting of the group was convened and chaired by the Commission. Further meetings of the group can be convened on the agreement of the Chair of the group and the Commission. Meetings of the group shall generally be held on Commission premises and be chaired by the Chair appointed by the working group. The Chair will set the agenda for meetings in consultation with the Commission, who will provide secretarial support to the Chair. In all other respects the meetings will conform to the rules of procedure of the Thessaloniki Forum of Airport Charges Regulators.