

**REVIEW OF THE
COMMUNITY GUIDELINES ON FINANCING OF AIRPORTS AND
START-UP AID TO AIRLINES DEPARTING FROM REGIONAL
AIRPORTS¹**

A. INTRODUCTION

In 2005, the Commission adopted the Community guidelines on financing of airports and start-up aid to airlines departing from regional airports (hereafter “[2005 Aviation Guidelines](#)”) in order to lay down rules for the approval of public financing of airports and airlines under EU State aid law.

The 2005 Aviation Guidelines were preceded by Guidelines on the application of Articles 92 and 93 of the EC Treaty and Article 61 of the EEA Agreement to State aids in the aviation sector² (hereafter: "1994 Aviation Guidelines"). These Guidelines were adopted by the Commission in 1994 in the context of the liberalisation of the market for air transport services in order to provide for level playing field for air carriers.

The purpose of the present consultation is, thus, to invite Member States, other institutions and stakeholders to provide feedback on the application of the 1994 and 2005 Aviation Guidelines as well as any comments and proposals regarding the public financing of airports and airlines.

The present consultation gives the Member States, other Institutions and stakeholders the opportunity to express their views on the various issues at stake. The Commission will carefully analyse the outcome of the consultation before deciding to what extent changes to the current rules are necessary and, if appropriate, come forward with a proposal for revised Aviation Guidelines.

This consultation is in principle limited to the current scope of the 1994 and 2005 Aviation Guidelines. Nevertheless, the Commission services are prepared to look at any other issues that may be relevant for State aid to the aviation sector.

B. GENERAL REMARKS REGARDING THE CONSULTATION

Member States and other interested parties are invited to respond to the questionnaire. Replies can be submitted in all official languages. Given the possible delays in translating comments submitted in certain languages, translations of the

¹ OJ C 312, 9 December 2005, p. 1.

² OJ C 350, 10 December 1994, p. 5.

replies in English, French or German would enable the Commission to process them more speedily. Certain questions are intended specifically for public authorities or certain stakeholders and respondents are, thus, not required to address every question. If you are not concerned by a particular question please reply "not applicable". Any comments and information submitted beyond the scope of the questionnaire will be welcome, in particular other documents, reports, studies, etc which may be relevant.

The deadline for replies is 6 June 2011. The replies should be sent to the European Commission, DG COMP, Unit F-2, B-1049 Brussels, preferably via e-mail to Stateaidgreffe@ec.europa.eu indicating the consultation reference "***HT-2635 Revision of Aviation Guidelines***".

QUESTIONNAIRE

NOTE: The following questionnaire follows the structure of the [Community guidelines on financing of airports and start-up aid to airlines departing from regional airports](#). You are requested to follow the order of the questions, even though you are not required to reply to all questions. You can also submit additional information that you consider relevant and which does not fit the questions in this questionnaire.

A. ABOUT YOU

Please describe the main activities of your company/organisation/association.

**European Federation for Transport and Environment (T&E)
Mundo B Building
26 Rue d'Edimburgh 26
1050 Brussels Belgium**

Registration Number 58744833263-19

The European Federation for Transport and Environment(T&E) is an independent pan-European association with scientific and educational aims, with no party political affiliation and devoid of any profit making motive. The T&E mission is to promote a policy of transport and accessibility, based on the principles of sustainable development, which minimises negative impacts on the environment and health, use of energy and land and all economic and social costs, maximises safety, and guarantees sufficient access for all;

Established in 1990, T&E has grown to become the principal environmental organisation campaigning on sustainable transport at the EU level in Brussels. Our primary focus is on European transport and environmental policy but our work in Brussels is supported by around 50 member organisations working to promote an environmentally sound approach to transport across Europe.

Our main work areas at the moment are Clean vehicles, low carbon fuels, transport noise, road charging for lorries, aviation and shipping. T&E is an NGO in Special Consultative Status with the Economic and Social Council of the United Nations. We coordinate the International Coalition for Sustainable Aviation (ICSA) which has observer status at the International Civil Aviation Organisation (ICAO) and are members of the Clean Shipping Coalition which has observer status at the International Maritime

Organisation (IMO). We are also a member of the Green 10 group of environmental NGOs active on EU policy.

Please provide your contact details below.

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<i>Organisation represented</i>	European Federation For Transport and Environment (T&E)
<i>Location (Country)</i>	Belgium
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For the sake of transparency, the Commission intends to make accessible the replies to this questionnaire on its website. In the absence of reply to the following questions, the Commission will assume that the response contains no confidential elements and can be divulged in its entirety.

For rules on data protection on the EUROPA website, please see: http://ec.europa.eu/geninfo/legal_notices_en.htm#personaldata

A.1. Do you object to the disclosure of your identity? **No**

A.2. Does any of the exceptions foreseen in Article 4 of Regulation 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents¹ apply to your response? If so, please indicate clearly which parts should not be divulged, justify the need for such confidential treatment and provide also a non-confidential version of your response for publication on our website. **No**

¹ OJ L 145, 31 May 2001, p. 43.

B. GENERAL

B.1. Assessment of the market developments and the necessity to modify the 1994 and 2005 Aviation Guidelines

B.1.1 What are, in your view, the main developments, in particular with regard to

(a) *Economic and social matters; Aviation is a mature industry which nevertheless continues to benefit from enormous tax concessions in Europe – absence of fuel taxation and exemption from VAT of airline tickets and of input VAT. Aviation is also the most climate intensive form of transport and its emissions continue to grow unchecked. In these circumstances, any exceptions to the ban on state aid to the aviation industry need to be considered very carefully. From our consideration of the Commission’s treatment of applications for exemptions prior to and following the introduction of strengthened guidelines in 2005, we are far from convinced that this has been the case. We therefore call on the Commission to undertake a wholesale review of the question of state aid to airlines and airports and in the meantime demonstrate in a transparent way that the current rules are being properly enforced.*

(b) *Environmental and climate change issues;*

The climate impact of aviation continues to grow with the growth of air traffic while the climate impacts of the non-CO₂ effects of aviation are becoming somewhat clearer. They are estimated at two to four times the impact of CO₂ itself. Lee et al 2010 estimates the radiative forcing (RF) impact of aviation at 4.9% of global RF.

(c) *Regulatory changes, such as passenger rights, security standards, airport charges, transport and competition with other modes of transport, tourism, tax policies, successive EU enlargements in 2004 and 2007 and extension of the Schengen zone; and Significant distortions to competition between transport modes remain because of the favourable treatment of aviation for VAT purposes and the continuing exemption of fuel taxation for aviation. Please see the two attached submissions.*

(d) *Competition and State aid issues*

that have recently taken place in the aviation sector and what are their impacts on the sector? Where available, please provide data or studies showing such evolutions. Where protected by copyright or contractual restrictions, please provide the references of the study.

B.1.2 *How have airport / airline business models evolved since the adoption of the 2005 Aviation Guidelines? Please describe the main differences*

between the business models of airports providing examples (e. g. regional v. national, large v. small, passenger v. cargo, etc.)? N/A

B.1.3 *Do you consider that the 1994 and 2005 Aviation Guidelines laid down the basis for a satisfactory State aid policy in the aviation sector today? Please justify your answer. **Judging by the way the current guidelines have been administered – leading to an explosion of applications and of aid grants particularly in the last two or three years - it would seem that the guidelines neither lay down a satisfactory basis for state aid policy nor are being effectively administered. We will justify this statement in a forthcoming publication. The guidelines provide (79j) for member states to ensure that the list of routes receiving aid is published annually for each airport. It is hard to see that this is happening so the Commission should seek to correct this.***

B.1.4 *How would you describe the current competitive situation of the various stakeholders in the aviation sector? Where available, please provide the relevant data on, for instance, leading players, market shares, market share evolution in relevant markets, etc. To what extent did the 1994 and 2005 Aviation Guidelines contribute to / hamper this evolution? N/A*

B.1.5 *Which are, in your view, the likely developments, past or future, and where do you see the major challenges for the aviation sector in the short (during the next year) and medium term (in the next 3 years) future (airlines and airports)? **If aviation does not address the climate change impact of its emissions then the industry will become increasingly vulnerable. As this occurs, governments will come under increasing pressure to remove implicit subsidy – fuel tax exemption, VAT exemption etc – which will lead to industry shocks. The state aid guidelines for airlines also increasingly lack credibility. Rather than being a vehicle for ensuring genuine needs to establish aviation links to remote or deprived areas are met, they are largely seen as a means for low cost carriers to blackmail local governments into the provision of subsidies in the name of “expanding tourism” or of giving a green light to local governments to build airports that often duplicate neighbouring facilities or can only continue to survive with long term financial assistance because of insufficient traffic.***

B.1.6 *Do you consider that the 1994 and 2005 Aviation Guidelines should be revised in light of these developments? Alternatively, do you consider that these developments do not justify the adoption of a new text? Which other actions do you consider appropriate? Please explain what changes should be introduced and why? **The guidelines need to be reviewed and revised because evidence of their application since 2005 gives cause for serious concern. Rather than serve as a means to control and limit subsidies to cases of genuine need, the revised guidelines seem to have ushered in an orgy of applications and aid grants that stretches credibility.***

B.1.7 *In case you consider that the 2005 Aviation Guidelines should be revised, do you think that a substantial revision is necessary or, alternatively, that only minor points should be amended, leaving the structure and main substantive points unchanged? **The more we study the details of state aid so far approved, the more we feel that a wholesale review and revision is needed!***

B.1.8 *Do you consider that sectoral State aid rules for the aviation sector are still necessary? What characteristics are making the aviation sector unique from the perspective of State aid control? What sectoral rules do you consider as being necessary in view of these characteristics? If so, please clarify why horizontal State aid rules are, in your view, not sufficient or appropriate for the sector. Please be as specific as possible in your reply indicating also the expected economic, social and environmental impact of the sectoral rules and of a potential application of the horizontal rules. **Aviation is a mature sector. If sectoral rules are still required, they should be strictly limited to addressing the needs of deprived or remote regions. When trying to justify the continuing fuel tax and VAT exemptions for aviation, airlines typically stress that, unlike rail, they pay for all their infrastructure. Although analysis of the management of the state aid guidelines for aviation since 2005 shows that this is clearly not the case, we should take the airline industry at its word and sweep away the vast majority of applications for aid which are nothing but thinly disguised schemes to finance the expansion of mainly low cost carriers at public expense or ill-conceived local public works programs.***

B.2. Information on business models by airport operators and airlines

B.2.1 *In what market segments (in particular passenger air carriers v. air cargo carriers, network air carriers v. point-to-point air carriers, long haul vs. short haul air carriers, airport operators, air traffic control, air ground handling, etc.) of the aviation sector are you active? Is there in your opinion an overcapacity in these market segments? Please provide details justifying your answer. **N/A***

B.2.2 *What is your market share in the market segment(s) you are active in? Please provide also historic data (per market segment for the last ten years) in order to show the development of the market share. Please clarify extraordinary circumstances, which lead to an increase or decrease of your market share (e. g. mergers). **N/A***

B.2.3 *Please provide information on the market leaders in the market segment(s) you are active in. If possible, please provide reasons why these companies have the market leadership. **N/A***

B.2.4 *Please describe whether you consider all market segment(s) you are active in, as competitive market(s) or not. Please justify your answer with examples and data as far as available. **N/A***

- B.2.5 *Considering your market position, which are, in your view, the likely developments of the market segment(s) you are active in? N/A*
- B.2.6 *Do you consider that State aid has played a (positive or negative) role in the market development so far in the market segment(s) in which you are active? If so, please specify how and why this was the case. Please provide data and narrative explanations in order to support your answer. N/A*
- B.2.7 *Please describe how you perceive the role of State aid in the aviation sector in general and in particular concerning infrastructure investment incentives, regional development, safeguarding fair competition, financing in the sector. Please justify your answer with data, if possible. **State aid should be limited to genuine cases where there is a public interest to support the development of infrastructure or the provision of new routes. Such infrastructure needs to adequately reflect both national and regional priorities so as to avoid a proliferation of unneeded and unused airports. Current experience shows that the guidelines now in force have failed to prevented such occurrences. We are also unsure if in fact all cases of state aid provided by local or regional governments have been referred to, examined and approved by the Commission.***

B.2.8 *Where do you see the major challenges for your company and the aviation sector in general and in particular the market segment(s) you are active in the short term (during the next year), medium term (in the next 3 years) and long term (after the next 3 years)? Please distinguish in your answer between competition / economic / regulatory / political / environmental and climate change / capacity and social challenges supporting your answers with data, if possible.* **Aviation will face the continuing challenge of having to make the best use of limited infrastructure. Communities are increasingly unprepared to see the construction of new airports or the addition of new runways because of noise and other environmental considerations. The desirability of EU citizens to have increased mobility that is recognised in the guidelines needs to be balanced against the fact that aviation is the most climate intensive mode of transport by a factor of 10. Arguments in the guidelines that airports help the development of regional economies may be just as true for railways or for investment in rail efficiency measures. Assistance to airlines under the guidelines seems to have been directed almost overwhelmingly to low cost carriers apart from aid for French metropolitan routes and for programs to strengthen airport security and compensate for airport interruptions due to 9/11. The low cost carrier business model is built around providing service between secondary airports. Their object is to make a profit not to operate in the public interest and serve isolated or underprivileged areas of Europe. Quite the contrary, they frequently seek out volume routes where traffic can be diverted from existing services which are being provided by other carriers at a higher cost from airports with higher landing and other charges. So it is remarkable that virtually all such aid approved under the guidelines has gone to these carriers serving secondary airports and that it has all been deemed to be in the public interest.**

B.2.9 *Have you as Member State or public body granted State aid in application of the 1994 or/and 2005 Aviation Guidelines? Please specify whether the aid was approved or not, providing details on the procedure and the aid amount granted.* N/A

B.2.10 *Have you as market participant applied to a Member State / a regional or local authority / a public undertaking for State aid under the 1994 or/and 2005 Aviation Guidelines? Please specify whether the aid was approved or not, providing details on the procedure and the aid amount granted.* N/A

B.2.11 *Do you consider that the existing Guidelines for the aviation sector impose an adequate level of regulation or would you favour a higher or lower degree of regulation? Please be as specific as possible in your reply indicating also the expected economic, social and environmental impact connected to your view.* **The significant growth in the number and value of applications for state aid since the 2005 revisions (approximately fivefold) suggests that far from providing an adequate**

level of regulation, the revised guidelines have facilitated an explosion of applications and approvals of possibly dubious merit.

B.3. Definition of relevant markets for airports and airlines

In the aviation industry there are currently several different levels of competition between the different types of airports and between airlines. Therefore, the definition of relevant markets for airports and airlines is a key factor when investigating State aid, and makes it necessary to examine the extent to which competition could be distorted and the internal market affected.

B.3.1 Do you consider that the categories of airports and passenger thresholds referred to in Section 1.2.1. of the 2005 Aviation Guidelines are appropriate in view of the evolution of the sector? Otherwise, what changes would you consider appropriate to this categorisation? In your view is it sufficient to take into account for the categorisation of airports only passenger numbers? Which other indicators (for example tonnes of air cargo, number of aircraft movements or other indicators) should replace or also be taken into account in order to address sufficiently the impact of the different business models on the competition and trade between Member States? Please be as detailed as possible, providing data and narrative explanations. N/A

- B.3.2 *Are you of the opinion that the Commission should examine aid granted to all airports irrespective of its size or do you consider that a Block exemption for small airports would be appropriate? If you are of the opinion that a Block exemption² rule is appropriate, for which size of the airports should it be established? Or, do you consider that other criteria than size should be taken into account? If so, what are in your opinion these criteria? Please provide justification of your opinion and possible criteria for a Block exemption. Please be as specific as possible, providing data and narrative explanations. **The Commission should examine all applications irrespective of airport size. T&E is opposed to block exemptions. There are sufficient cases where smaller regions or cities have decided that they need an airport irrespective of the true potential and likely traffic developments only to see these largely public funded investments end up as white elephants.***
- B.3.3 *How do you consider should the relevant geographic and product markets be defined for airports and airlines? In particular, under which condition do you consider that a connection to one airport is part of the same geographic and product market as a connection to another airport located in vicinity respectively to a high-speed train linking the same urban areas? You are invited to answer to these questions for passenger and for freight transport. **The question is not clear. The Commission needs to set clear guidelines for determining whether two airports compete for traffic from the same geographic catchment area. Aid should not be granted for operations between city pairs where a high speed rail link already exists. Aid should not be granted to develop one airport where another nearby airport serving the same catchment area is already operating successfully and the aid only serves to facilitate the siphoning off of traffic to the new from the existing facility through subsidised landing fees or other incentives. This should particularly be the case if the second airport also has, or is near, to a high speed rail connection.***
- B.3.4 *What are in your view the minimal, legal and economic conditions under which an airport can be operated on a profitable basis and without financial assistance from the public authorities? In this respect, do you consider that the results of the study carried out by Cranfield University for the Commission in preparation of the 2005 Aviation Guidelines, which concludes that this figure varies according to the country and the business model, but is generally between 500 000 and 1 000 000 passengers, are still valid today? (A copy of the study can be found under http://ec.europa.eu/competition/sectors/transport/reports/airports_competition_1.pdf and*

² Such Block exemption could, for instance, provide for exemption from notification of State aids to certain categories of airports and set up conditions under which such aids can be considered compatible with the internal market. Alternatively, it could exempt from notification certain types or amounts of State aid, independently of the category of airports.

http://ec.europa.eu/competition/sectors/transport/reports/airports_competition_2.pdf; please provide reasons in case you disagree with that study.)

C. FACTUAL INFORMATION ON THE REGULATORY AND ECONOMIC ENVIRONMENT

C.1. Airport's economic activity and activities falling within the public policy remit

Section 3.2.1 of the 2005 Aviation Guidelines distinguishes between economic activities of an airport and activities which normally fall under State responsibility in the exercise of its official powers as a public authority.

C.1.1 Which activities of an airport in your view in your country fall within public policy remit and do not constitute an economic activity keeping in mind the notion of undertaking under EU State aid law? How are these activities defined and regulated in your country? Is the distinction made by the 2005 Aviation Guidelines appropriate? Please justify your view on this issue. N/A

C.1.2 The 2005 Aviation Guidelines provide examples for the activities falling within the public policy remit, such as safety, air traffic control, police, customs. How are these activities and the equipment necessary for these activities (e. g. scanners etc.) financed in your country? How are fire fighting services at the airport organised and financed in your country? N/A

C.1.3 Do you consider that the framework established in the 2005 Aviation Guidelines for differentiating between economic activities and activities falling within the public policy remit is sufficiently clear and unambiguous? What additional guidance or clarification should be introduced in possible revised guidelines? In general, security costs should be borne by airports and user airlines and ultimately paid for by passengers. To ascribe these costs to public policy serves only to expand subsidies to the aviation industry.

C.1.4 Is a distinction between economic and non-economic activities still relevant for an airport? Please justify your view. N/A

C.2. Services of general economic interest

Section 3.2.2 of the 2005 Aviation Guidelines sets out the possibility for certain economic activities carried out by airports to be considered by the public authority as constituting services of general economic interest. It also describes the conditions under which compensation for public service obligations imposed on an airport operator does not amount to State aid. The 1994 Aviation Guidelines provide rules for the assessment of the compatibility of compensation for public service obligations imposed on airlines.

The possibility for airport's activities to be considered as constituting services of general economic interest is specified further in the Commission Decision of 28 November 2005 on the application of Article 86 (2) of the EC Treaty (now Article 106 (2) TFEU) to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest³ (hereafter "*2005 Commission Decision on services of general economic interest*"). It exempts from notification public service compensation for airports with average annual traffic during the two financial years preceding that in which the service of general economic interest was assigned not exceeding 1 million passengers and complying with the conditions set up in the decision,

³ OJ 312, 29 November 2005, p. 67.

as well as airports whose turn over is below 100 million EUR and which receive less than 30 million EUR compensation per year.

C.2.1 Are public service obligations for airports / air carriers already legally defined in your country? What is their form (law or contract)? Please indicate the relevant legal provisions. If so, how are these public service obligation entrusted on the airport operators / air carriers? If not, why is the decision not used in the aviation sector? On what basis is the compensation for discharging these public service obligations determined? Please be as detailed as possible, providing data and narrative explanations. N/A

C.2.2 Do you consider that the framework established in the 2005 Aviation Guidelines and the 2005 Commission Decision on services of general economic interest for assessing compensation given to airports is sufficiently clear? Otherwise, what additional guidance or clarifications should be introduced in possible revised guidelines? N/A

C.2.3 Do you see any practical obstacles to the use of this possibility offered by the 2005 Aviation Guidelines and the 2005 Commission Decision on services of general economic interest? If so, how do you think that such obstacles might be removed? N/A

C.2.4 Do you consider that additional or alternative conditions/criteria should be used in order to avoid undue distortion of competition? If so, what are these criteria? N/A

C.3. Factual elements to be taken into account for the application of the market economy investor principle

Section 3.2.4. of the 2005 Aviation Guidelines explains how the Commission will assess whether public funding constitutes State aid, by reference to the so-called "market economy investor principle". This issue concerns, on the one hand, public funding of airport operators (e.g. for infrastructure investments or management, for the provision of airport services, etc.) and, on the other hand, support by airport operators to air carriers (e.g. marketing support, quantity rebates, start-up support, etc.).

C.3.1 With regard to the public funding of airport operators (e. g. financing of infrastructure investments, capital injections, etc.)

C.3.1. a) Do you consider that the factual elements considered in the 2005 Aviation Guidelines with regard to the application of the so-called "market economy investor principle" to public funding of airports are sufficient, or do you think that additional elements should be taken into account? Please justify your reply.

*C.3.1. b) In case you consider that further elements should be taken into account, which ones? **Guideline 3.2.4.(46) requires the Commission to assess whether the public funding directly or indirectly to airlines constitutes state aid by assessing whether a private shareholder having regard to the foreseeability of obtaining a return would have subscribed the capital in question. It is hard to see how this***

principle is being applied appropriately concerning those applications for the provision of assistance especially to low cost carriers. These low cost carriers only open new routes after having obtained public funding in its various forms by arguing that without such funding the new route would not be economically viable. If the new route was not economically viable even for a low cost carrier, then it would hardly be economically viable to any other private shareholder and thereby the application for public funding should fail this test.

- C.3.1. c) In your opinion, what type of costs (e. g. parking fees; rents for shops; rents for advertisement spaces; etc.) would a market economy investor take into account when setting airport charges and defining the cost structure of commercial services offered by the airport (e.g. only variable/marginal costs, variable costs and infrastructure costs, only part of infrastructure costs, etc.)? In this context, on which basis would a market economy investor evaluates infrastructure costs (e.g. historical cost, market value, accounting value, etc.)? Please justify your views on this issue providing data and concrete business plans, if possible, and also describe the impact of the different types of the cost on the setting of airport charges and the cost structure of commercial services offered by the airport (parking fees; rents for shops; rents for advertisement spaces; etc.). **N/A**
- C.3.1. d)** In your opinion, what type of revenues would a market economy investor base its business decisions on (e.g. only direct revenues such as airport charges, direct revenues and other indirect revenues such as parking and shop/sales revenues, etc.)? Please justify your views on this issue providing data and concrete business plans, if possible. **N/A**
- C.3.1. e) What time frame does a market economy investor base its investment decisions on (e.g. based on the useful economic, technical or accounting depreciation period of airport infrastructure or based on a shorter timeframe)? Please justify your views on this issue providing data and concrete business plans, if possible, and also describe the impact. **N/A**
- C.3.1. f) Please explain whether or not you are of the opinion that aid is necessary for ensuring that the market provides for sufficient airport infrastructure? If so, please specify for which types of airport infrastructure this may be the case and why. Did you invest in airport infrastructure without receiving aid? Please specify your answer providing data and concrete business plans, if possible. **N/A**

C.3.2 *With regard to support by airport operators and/or public authorities to air carriers (e. g. marketing support, rebates schemes and start- up support etc.)*

- C.3.2. a)** Do you consider that the factual elements considered in the 2005 Aviation Guidelines with regard to the application of the market economy investor principle to public funding of air carriers (e.g. in the form of marketing support, quantity rebates, start-up support, etc.) are sufficient or do you think that additional elements should be taken into account ? **The implementation of the current guidelines should be reviewed. In many cases funding does not appear to be provided in order to serve the public good of connecting isolated regions or promoting development of deprived areas. The funding is rather being sought and given to open new routes from new or marginal or even largely, unused, airports, to enable low cost airlines to provide a service that is sufficiently cheap to siphon traffic from**

existing neighbouring airports. Such practices raise clear questions of competitive distortion.

C.3.2. b) In case you consider that additional elements should be taken into account, which ones? Assistance should be provided to airlines to operate new routes only in cases where the need for the new route has clearly been identified and agreed in a transparent process of public consultation. Such a requirement would eliminate the apparent abuses under the current arrangements whereby low cost carriers essentially blackmail local authorities into providing assistance for opening new routes of the airline's choice or of keeping them open on pain of closure even of the airline withdrawing all services at the airport.

- C.3.2. c)** In your opinion, what type of costs would a market economy investor take into account when negotiating an agreement with an air carrier (e.g. only variable/marginal costs, variable costs and infrastructure costs, only part of infrastructure costs, etc.)? In this context, on which basis would he evaluate infrastructure costs (e.g. historical cost, market value, accounting value, etc.)? On which basis (e. g. passenger numbers, maximum take-off weight, aircraft movements at the airport etc.) would he attribute the costs to the specific agreement with an air carrier? Please justify your views on this issue providing data and concrete contracts, if possible, and also describe the impact of the different options. **N/A**
- C.3.2. d)** In your opinion, what type of revenues (e.g. only direct revenues, such as airport charges, direct revenues and other indirect revenues, such as parking and shop/sales revenues, etc.) would a market economy investor take into account when negotiating an agreement with an air carrier? Please justify your views on this issue providing data and concrete business plans, if possible, and also describe the impact. **N/A**
- C.3.2. e)** What time frame would a private investor use for his agreement with an air carrier on (e.g. based on the duration of the specific contract or based on a longer or shorter timeframe or the balance of risk assumptions of the parties under a specific contract)? **N/A**
- C.3.2. f)** Please justify your views on this issue and also describe the impact. Please distinguish in your answer between competition / economic / regulatory / political / environmental and climate change / capacity and social challenges supporting your answers with data, if possible. **N/A**

D. FINANCING OF AIRPORTS

D.1. Financing of airport infrastructure

Section 4.1. of the 2005 Aviation Guidelines sets out the Commission approach to the public funding of the construction of airport infrastructure and equipment or facilities.

- D.1.1 *Do you think that the compatibility criteria (point 61 of the 2005 Aviation Guidelines) set out in Section 4.1 for the public funding of airport infrastructure are adequate, transparent and well applicable? Otherwise, please explain which criteria should be reviewed and how? **Criterion 61 must include consideration of the geographic proximity of other airports including across borders in neighbouring member states. Additional criteria beyond those meeting a general interest (eg regional development, accessibility) should be considered. The availability of alternative links eg rail, or their construction should be considered. Whether alternative viable air services via a connecting point are available is another.***
- D.1.2 *Which are in your view the distortions of competition resulting from investment aid to airports depending in particular on their size and their geographical location (in particular proximity to other airports)? Do you consider that this is a valid and only criterion that should be taken into account in this respect? **This question usually involves examples with low cost carriers. Invariably the aid enables the low cost carrier to operate at the subsidised airport at a lower operating cost than at the neighbouring airport. Traffic on the subsidised routes depends on diverting passengers from airlines operating out of the neighbouring airport and what little genuinely new traffic that is generated is often motivated by the cheap price which has been made possibly through subsidy. Such practices bring the guidelines into disrepute and have no place in future policy.***

- D.1.3 Which annual traffic (passenger and cargo) do you consider necessary in order to cover all investments and maintenance costs? Please justify your view also in light of the Cranfield University study referred to above in point C.3.4. N/A*
- D.1.4 Which annual traffic (passenger and cargo) do you consider necessary in order to cover all operating costs? Please justify your view also in light of the Cranfield University study referred to above in point C.3.4. N/A*
- D.1.5 Do the compatibility criteria set out in point 61 of the 2005 Aviation Guideline provide enough legal certainty and contribute to the predictability of the Commission's decisions in individual cases? Otherwise, please explain in which way these criteria could be further developed? Should there be, for example, further guidance on the maximum aid intensity that the Commission would allow for each type of infrastructure investment or for each type of airport, further indications about the eligible and non-eligible costs, and further indications on the definition of the catchment area of an airport and its degree of competition with other airports and high speed rail ?*
- D.1.6 Please justify your views on this issue and also describe the impact. Please distinguish in your answer between competition / economic / regulatory / political / environmental and climate change / capacity and social challenges supporting your answers with data, if possible.*
- D.1.7 Do you consider that public financing of airport infrastructure provides for crowding-out of private investors? Please justify your opinion on this issue. N/A*
- D.1.8 Do you consider that public financing of regional airports provides positive and negative externalities, for instance in terms of local development, accessibility, employment, air and noise pollution, climate change? If yes, please provide examples, indicating the economic, social and environmental impact.*

*Do you consider that specific conditions should be attached to the financing of regional airports, for instance to limit distortion of competition of or to avoid duplication on non-profitable airports? Which conditions (i. e. non-discrimination with regard to airport charges; certain minimum level of airport charges; necessity of aid; catchment area; avoid creation of overcapacity etc.)? How should the catchment area of an airport be defined (i. e. distance in kilometres, travelling time using public transport or car, etc.)? **Yes we agree that additional criteria should be included to prevent distortion of competition and or avoid duplication of non-profitable airports We have been examining the list of cases ‘Les Aides d’Etat en Matiere’s des Aeroports’ listed on the website of DG Competition. While a disclaimer is included that the list may not be comprehensive, we are surprised to be unable to find any mention of Beja airport in Portugal or Ciudad real airport in Spain. As noted in the attached report of the Portugese Court of Auditors concerning Beja Airport, the court***

estimated that the total investment in the airport would be €74.365.998,85 whereas the initial project only estimated a total investment of €31.365.998,85 all from public sources, of which €13.199.262,06 (42%) would be European FEDER, ERDF funds. The Court strongly criticises the value for money of this investment. It notes that, up to May 2010 the project has not contributed to regional development nor to jobs creation (Point 15). The region of Alentejo is amongst the least developed of the EU, it has an old population and there are no exporting industries or activities that might benefit from the infrastructure. Agriculture activity is decreasing and its exports occur though inland or waterborne transport (Point 17) There was an expectation for touristic investment in the region which was re-considered following the financial crises, leading to air companies loss of interest in exploiting routes to the airport (Point 24). Point 25 clearly states that a conclusion is that in general the objectives of the project will not be achieved. Here we seem to have an example of a project partly funded by the EU which has gone badly wrong and yet it does not appear in the list of cases for state aid being considered by the Commission. Ciudad Real airport in Spain also does not appear in the list despite there being credible press reports of the airport receiving local funding of over €2m euros to promote the airport and its services.

D.1.9 Please describe how important the access to finance is for you as airport operator and the cost of it. N/A

D.1.10 Please describe whether or not you deem State support necessary for having access to finance, supporting your answer with data, if possible. N/A

D.2. Aid for operation of airport infrastructure

Section 4.2. of the 2005 Aviation Guidelines sets out the Commission approach to the public funding of costs of running and maintaining the airport infrastructure.

D.2.1 The 2005 Aviation Guidelines consider that normally this type of aid is incompatible with the Treaty, except under certain conditions in disadvantaged regions on the basis of Article 107 (3)(a) or (c) TFEU (ex Article 87(3)(a) or (c) of the EC Treaty) or if it is necessary for the operation of a service of general economic interest in the sense of Article 106 (2) TFEU (ex Article 86(2) of the EC Treaty); see points 62-63 of the 2005 Aviation Guidelines). Do you do you consider that this approach remains valid? If not, what changes do you consider appropriate? N/A

D.2.2 Do you consider that this Section of the 2005 Aviation Guidelines provides enough guidance on the conditions that must be met in order for the public financing of the operation of airport infrastructure as compensation for the operation of a service of general economic interest in the sense of Article 106 (2) TFEU (ex Article 86 (2) of the EC Treaty) to be compatible with the Treaty? If not, what additional guidance or clarifications should be introduced in possible revised guidelines? N/A

D.2.3 As mentioned above (see section C.2), the 2005 Commission Decision on services of general economic interest applies to airport operators. However, the Community framework for State aid in the form of public service compensation⁴, which lays down the compatibility conditions for compensation paid to undertakings for the performance of services of general economic interest, does not apply to airport operators. This Framework and well as the Decision are currently being revised. In your view, would it be appropriate to continue to address compensation for services of general economic interest in airport operation in the 2005 Aviation Guidelines, as is currently the case, or would it be preferable to simply refer to the general rules laid down in the above-mentioned Framework and Decision? Are special rules for services of general economic interest compensation for airport operations needed (as opposed to most other economic sectors) and if so, why? N/A

D.2.4 Do you consider that all airport operators should meet the normal costs of running and maintaining the airport infrastructure from its own resources? If not, please justify your view on this issue and indicate which 'critical mass' (e. g. number of passengers, number of tonnes air cargo, number of aircraft movements) is necessary for an airport in order to achieve financial viability (being able to meet the cost of running the airport including the cost for running and maintaining the infrastructure)? Please justify your view on this issue with data and in view of the Cranfield University study referred to above in point C.3.4 . N/A

⁴ OJ C 297, 29 November.2005, p. 4.

D.2.5 *In your opinion, is it necessary to provide criteria for assessment of compatibility of public financing of certain operating costs outside the scope of services of general economic interest? If so, please identify these operating costs and provide a detailed justification why and on what basis, in your view, they should be considered compatible with the State aid rules. N/A*

D.2.6 *Please explain whether you regard aid for the operation of airport infrastructure as necessary in the current business environment and in which conditions? Did you operate airport infrastructure without receiving aid? Please specify your answer by providing data, if possible. N/A*

D.2.7 *Please justify your views on this issue and also describe the impact. Please distinguish in your answer between competition / economic / regulatory / political / environmental and climate change / capacity and social challenges supporting your answers with data, if possible.*

D.3. Aid for airport services

Section 4.3. of the 2005 Aviation Guidelines sets out the Commission approach to the public funding of different airport services, such as groundhandling services.

D.3.1 *Do you consider that, in general terms, the Commission approach to the compatibility of public financing of airport services is adequate? Otherwise, what should in your view be the approach to this type of aid? N/A*

D.3.2 *Do you consider that this Section of the 2005 Aviation Guidelines provides enough guidance on the conditions that must be met in order for the public financing of airport services to be compatible with the Treaty? If not, what additional guidance or clarifications should be introduced in possible revised guidelines? N/A*

D.3.3 *Please explain whether you regard aid for airport services as necessary in the current business environment? Did you operate airport services without receiving aid? Please specify in your answer providing data, if possible. N/A*

D.3.4 *Please justify your views on this issue and also describe the impact. Please distinguish in your answer between competition / economic / regulatory / political / environmental and climate change / capacity and social challenges supporting your answers with data, if possible.*

E. START-UP AID

Section 5 of the 2005 Aviation Guidelines sets out the criteria that must be fulfilled for start-up aid for new routes departing from regional airports to be considered compatible with the Treaty.

- E.1.1 Do you consider that, in general terms, the Commission approach to the compatibility of start-up aid is adequate? Otherwise, what should in your view be the approach to this type of aid? **There seem to be sufficient examples of state aid being provided which would appear to breach these guidelines that warrant their complete review.***
- E.1.2 Do you consider that the compatibility conditions laid down in point 79 of the 2005 Aviation Guidelines are appropriate, taking into account the risk of distortion of competition of this type of aid? If no, why? **They seem straightforward enough in writing. The problem seems to be their interpretation and application which so often seems to run contrary to the intentions of para 79 itself.***
- E.1.3 Please justify your views on this issue and also describe the impact. Please distinguish in your answer between competition / economic / regulatory / political / environmental and climate change / capacity and social challenges supporting your answers with data, if possible.*
- E.1.4 Do you consider that the current limitation of start-up aid to routes linking a regional airport in category C or D to another EU airport (point 79 (b)) is warranted? If not, should start-up aid be more or less restrictive in terms of airport size? Which criteria should be required? **Given the experience of approvals over the past 5 years, it would seem the criteria need to be far more restrictive.***
- E.1.5 Do you consider that the definition of new routes is adequate? If, not which changes would you propose? Are in your view the criteria to define abuses clear, relevant and effective? **This definition needs to be the subject of a close study also drawing on mistakes/past examples.,***
- E.1.6 Is the eligible cost base set out in point 79 (e) appropriate in your view? Should it be adapted in some way? Does this criterion offer sufficient guidance on what type of costs are eligible for start-up aid or is additional clarification needed? **N/A***
- E.1.7 In your view are the limits of start-up aid in terms of duration and intensity adequate? Otherwise, please explain what changes should be introduced and why? Please provide economic justifications. **These provisions need to be the subject of a wider review.***
- E.1.8 In your view, which other compatibility criteria should be revised, abolished or added. Please explain. **N/A***
- E.1.9 Please explain whether you regard start up aid as necessary in the current business environment? Did you set up new flight routes despite not*

*receiving Start up aid? Please specify in your answer providing data, if possible. **It might be justifiable in some cases but it is clear that the current definitions lead to decisions which are not the intent or spirit of the guidelines.***

*E.1.10 Did you apply and/or receive Start up aid? Please describe whether the aid was approved or not and on what grounds providing also details on the procedure. **N/A***

E.1.11** Please describe the economic / social / environmental impacts that start up aid had for you as airline / airport, if possible, with data and narrative explanations. **N/A

E.1.12 *Do you consider that the scope of the eligible costs for start-up aid is accurate? If not please justify your answer. N/A*

E.1.13 *Do you consider that the aid intensity and duration serves its purpose as investment incentive or not? Please justify your reply with data also mentioned the economic / social / environmental impact. N/A*

E.1.14 *From a transport perspective, please describe whether you regard it as justified that the 2005 Aviation Guidelines should keep the prohibition of start up aid for a connection where a high speed train link exists. Please mention also potential economic / environmental / social impacts in your answer, if possible. **The prohibition should certainly remain. The fact that aid might be contemplated for such a link shows how wrongheaded the guidelines or their interpretation are.***

F. 1994 AVIATION GUIDELINES

F.1.1 *Do you as airline / public authority consider that the rules established in the 1994 Aviation Guidelines will remain appropriate in the light of the developments of the market or do you believe that abolition or adaptations will be necessary? Please explain what changes should be introduced and why?*

F.1.2 *Please explain what is in your view the relevance of the 1994 Aviation Guidelines after the publication of the 2005 Aviation Guidelines? Please explain which rules set out in the 1994 Aviation Guidelines should be retained?*

F.1.3 *Is the scope of operating aid to airlines still appropriate, i.e. as regards/for public service obligation and social aid to the benefit of consumers?*

F.1.4 *Do you consider that aid of a social character to cover specific categories of passengers and underprivileged regions, mainly islands, is still justified by the market conditions? Please justify your opinion on this issue.*

F.1.5 *Are the assessment assumptions for market economy investor principle investments still valid in view of the market development, in particular concerning capital injections, loan financing, etc.*

F.1.6 *In the context of the market development do you believe that there is a need for special conditions for the assessment of restructuring aid in the aviation industry? Please provide detailed economic justifications.*

F.1.7 *In your view, which other compatibility criteria should be revised, abolished or added? Please explain.*

G. FURTHER INFORMATION

G.1.1 In case you have carried out or are aware of any studies concerning the impacts of public financing of airports or air carriers, or related aspects which maybe relevant, we would be grateful if you could provide us with these studies. You should clearly identify any confidential data in these studies. Where protected by copyright or contractual restrictions, please provide the references of the study.