Targeted review of the General Block Exemption Regulations (State aid): extension to ports and airports

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Despite the aviation sector's substantial climate impact, the European Commission proposes to apply a block exemption from State aid rules for investments aid to airports with up to 3 million passengers annually. Not only will this result in a waste of taxpayer money and a distortion of the single market, but it will also undermine Europe's climate and decarbonisation objectives.

T&E recommends that this block exemption for investment aid to aviation should be withdrawn.

Reduction in Commission oversight

There are a total of approx 460 commercial airports in Europe. Under current State aid Guidelines*,* issued in 2014, airports handling over 5 million passengers per annum are not eligible to receive State aid. These number approx 60. There are some 366 airports in the EU handling less than 3 million passengers per annum. In light of this, the effect of the block exemption will be to leave DG Competition with the task of focussing its attention on only 34 airports – less than 8% of the total. Many airports involved in controversial legal cases, including over state aid, would be covered by the block exemption: Rome-Ciampino; Frankfurt-Hahn; Leipzig-Halle; Pisa; Bratislava, etc.

The 2014 Guidelines[1] set out very specific tests requiring member states to justify State aid to airports. It should be noted that:

> *Smaller airports display the greatest proportion of public ownership and most often rely on public support to finance their operations. The prices of these airports tend to be determined having regard to local and regional considerations, rather than with respect to market strategies. Under the current market conditions, the profitability prospects of commercially run airports also remain highly dependent on the level of throughput, with airports that have fewer than 1 million passengers per annum typically struggling to cover their operating costs. Consequently the vast majority of regional airports are subsidised by public authorities on a regular basis.*

The 2014 Guidelines encouraged member States to notify State aid schemes for investment aid for airports with average annual traffic below 3 million passengers. The only justification provided for removing the above-referred the prior notification scheme is to be found in an assertion by the EU Commission, according to which: "*following the application of the Guidelines on State aid to airports and airlines, investment aid to regional airports does not give rise to undue distortion of trade and competition, provided certain [new] conditions [set out in the block exemption proposal] are met*".[2]

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[1] European Commission (2014), *Guidelines on State aid to airports and airlines* 2014/C 99/03. Link available at: http://eurlex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52014CC0404(01).

[2] European Commission (2015), *Draft Regulation amending Regulation (EU) No. 651/2014*

This block exemption proposal for investment aid for regional airports represents an abrogation of the Commission's responsibility and should, therefore, be withdrawn. It is a very well-known fact that national, regional and local governments have been ignoring the aviation State aid rules for years with impunity. The Commission's proposal, however, would effectively release all brakes, *de jure* allowing the guilty parties to return to the old ways regarding aid to airports handling up to 3 million passengers.

This proposal would essentially reward persistent bad behaviour by state authorities who have for decades wasted taxpayer money on loss making airports. It would fly in the face of efforts by DG Competition to reduce the levels of state aid being granted to other economic sectors and multinational companies, once again providing the aviation sector with privileged treatment under EU law.

Persistent loss-making airports

The Commission itself, in revising the 2014 Guidelines, has acknowledged that "*the vast majority of regional airports do not generate sufficient revenue to cover their costs".* [3] Moreover, "*in the EU, 60% of all airports (62% in 2012) and 77% of airports with fewer than one million passengers per year were loss making in 2014".* [4]

According to the Airports Council International (ACI) Economics Report 2011,[5] airports with over 5 million passengers per year can operate profitably, airports having between 1 and 5 million passengers per year can meet their operational expenses, and the revenues of smaller airports cannot cover even their variable costs.

The Block Exemption proposal (Art. 56a) foresees a condition, according to which the investment concerned shall have medium term prospects for use of the airport capacity on the basis of reasonable traffic forecasts. However, the expression "medium term prospects" is not defined. Nor are conditions governing "reasonable traffic forecasts" set out. The lack of definition of such an expression may clearly undermine the respect of state aid rules to airports, resulting in potential waste of money. At no point has the proposal demonstrated how, after receiving taxpayer subsidies for many years without breaking even, these airports are expected to become profitable with yet more taxpayer money.

At the end of 2014, not long after the Commission had issued its revised State aid guidelines for airports and airlines, the European Court of Auditors issued a scathing report "EU Funded Airport Infrastructures – Poor Value for Money" on aid to the sector.
The Auditors clearly pointed out the risks of subsiding very small airports:

> *"In Kastoria, airport revenue was 176 000 euro for 2005-2012 while, during the same period, the total cost of keeping the airport open was 7,7 million euro. Some 16,5 million euro (5.6. million euro of the EU-funds) has been invested in an extension to the runway at this airport which has up to time of this report never been used by the*

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[3] European Commission (2014), *New State aid rules for a competitive aviation industry,* p.2. Link available at: http://ec.europa.eu/competition/publications/cpb/2014/002_en.pdf.
[4] European Commission (2016), *An aviation strategy for Europe,* p. 25. Link available at: http://ec.europa.eu/transport/modes/air/aviationstrategy/index_en.htm.
[5] Airports Council International (ACI) (2011), *Economics Report 2011,* pp. 13-14. Link available at: http://www.acieurope.org/policy/position-papers.html?view=group&group=1&id=6.

type of aircraft, for which the extension was built. This cannot be considered as an effective use of public funds".[6]

The Court of Auditors concluded that "*in 9 of the 20 airports audited, one or more of the projects sampled for audit were not needed at all. This represented 28% of 129 million euro of the EU funding to airports examined […].*[7]

Many of these airports may play an important role in connecting isolated regions, an objective T&E supports. However wholescale liberalisation of State aid is a poor tool to achieve such an objective, when targeted State aid through PSOs is available.

Industry pressure to liberalise further

It should not surprise that Ryanair, one of the largest recipients of public subsidies and therefore a likely beneficiary of this proposed regulatory change, already in its submission of 30 May 2016 was in favour of the proposal. With particular regard to the airport duplication issue, Ryanair noted that the criteria of distance (100 km) and time (60 mins) should be considered as cumulative, rather than alternative. Moreover, Ryanair asks for eliminating limits with regard to the category of operational aid, despite it being the most distortive form of State aid.[8] These are efforts from Ryanair not to improve connectivity or assist regions, but rather to broaden the amount of subsidies it indirectly receives through aid to airports it uses. However further fueling the expansion of low fares airlines should not be a priority for the Commission.

Connectivity

The European Commission also places great emphasis on the importance of connectivity for European aviation in its 2015 Aviation strategy. Although there is no explicit requirement to connect an underserved regional airport to a hub airport in the provision governing aviation PSOs in Europe,[9] in 2015 the Commission has found that:

"*a fitness check of Regulation 1008/2008 conducted by the Commission in 2011-2013 considered PSO rules as fit for the purpose to ensure connectivity where the market does not deliver it itself. Recommendations were made by stakeholders and member States to enhance cooperation between national authorities and the EU, and ensure a good articulation between State aid rules and PSO rules including by issuing possible guidance*".[10]
T&E does not oppose state aid where it is justified – for instance to connect isolated regions to the aviation network – either through PSOs or well planned and limited subsidies. The past 15 years, however, has shown that there has been little or no effective coordination and

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[6] European Court of Auditors (2014), *EU Funded Airport Infrastructures – Poor Value for Money,* p. 27. Link available at: http://www.eca.europa.eu/Lists/ECADocuments/SR14_21/QJAB14021ENC.pdf.
[7] *Ibid.* p. 25.
[8] Ryanair, *Submission - targeted review of the General Block Exemption Regulation (State aid): extension to ports and airports,* 30 May 2016. Link available at: http://ec.europa.eu/competition/consultations/2016_gber_review/replies/registered_organisations/ie_ryanair_en.pdf.
[9] Art. 16-18 of the EU Regulation No. 1008/2008.
[10] European Commission, *An Aviation Strategy for Europe, Supra* note 4, p. 43.

planning; no effective consultation at the regional or national level concerning individual airport cases; poor or non-existent enforcement of state aid rules leading to many instances where the investments have proved to be a gross waste of public money.

Instead of a smart approach to connectivity, which would deliver effective connectivity in return for taxpayer funding, the Commission has instead presided over a excessively liberal approach which has pumped billions of euro into loss-making airports without ensuring an effective return for taxpayers.

Climate objectives and fossil fuel subsidies

Finally, aviation is the most carbon intensive form of transport. By 2030, aviation emissions are projected to grow 18% compared to 2010, a clear breach of the EU's commitments under the Paris Agreement to achieve economy-wide reductions. Intense negotiations have led ICAO to agree on implementing a global market-based measure(GMBM), aiming to stabilise emissions at 2020 levels. The agreement reached fails to achieve even this modest and insufficient goal. EU ETS in its current form has been reduced by 75% to cover intra-EU flights only.

All the while, aviation remains exempt from any fuel taxation and VAT - this form of fossil fuel subsidy is valued at almost €40bn a year in the EU. While the sector enjoys such an enormous subsidy, the last thing the Commission should do is propose even further aid through this GBER proposal.

T&E Recommendation

It is difficult to reconcile Europe's single market and climate objectives with this proposal to drop almost all oversight of state aid to airports and airlines and with the Commission's overall commitment to Better Regulation.

- This block exemption for investment aid to aviation should be withdrawn.
- If not rejected in its entirety, the block exemption should not be further liberalised as proposed by Ryanair