



- “State aid control in the aviation sector”

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● Overview

1. Existence of State aid

- Definition of State aid
- Airport as undertakings subject to EC competition law
- Notion of State resources
- The market investor principle

2. State aid to airports

- Investment aid for airport infrastructure
- Strings attached
- Operating aid as public service compensation

3. State aid to airlines

- Start-up aid for new routes

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● What is an aid? - Definition of State aid

The 4 criteria for existence of State aid:

- » State resources
- » Economic advantage favouring certain undertakings
- » Distortion of competition
- » Affectation of trade between Member States

● Airports as undertakings

- **1994 Aviation Guidelines**: financing of airport infrastructure is a measure of general economic policy, not subject to State aid control
- **Aéroport de Paris judgement (T 128/98 and C 82/01P)**: airports are undertakings subject to EC competition law, but also in charge of tasks within the public policy remit (security, safety, air traffic control, police, customs)
- **Commission decision practice** further clarifies the scope of the public policy remit, see case N 309/2002 (9/11 decision) and subsequent cases

● Notion of State resources

- Notion of State resources is very broad
- Examples of State resources:
 - » Direct grants
 - » Capital injections by public shareholders
 - » Profit and Loss transfer agreements with a publicly owned mother company
 - » Reductions in airport and security charges
 - » Loans and guarantees
 - » Statutory exemption from bankruptcy law
 - » Tax exemptions

● The market investor principle (1)

- The conduct of a public investor must be compared with that of a private investor pursuing a structural policy and guided by prospects of profitability in the longer term.
- The market investor test will normally be satisfied where the structure and future prospects for the company are such that a normal return, by way of dividend payments or capital appreciation by reference to a comparable private undertaking, can be expected within a reasonable period.
- The assessment should leave aside any positive repercussions on the economy of the region in which the airport is located.

- The market investor principle (2)
 - **Al Italia doctrine:** no State aid, if concomitant investment of State and private investor under identical conditions and substantial private sector involvement
 - » Case example: Start-up scheme at Norrköping airport

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● Airport: Infrastructure aid (1)

2005 aviation guidelines: define 5 criteria for assessing infrastructure aid

- » construction and operation of the infrastructure meets a clearly defined objective of general interest (regional development, accessibility, etc.),
- » infrastructure is necessary and proportional to the objective which has been set,
- » infrastructure has satisfactory medium-term prospects for use, in particular as regards the use of existing infrastructure,
- » all potential users of the infrastructure have access to it in an equal and non-discriminatory manner,
- » development of trade is not affected to an extent contrary to the Community interest.

● Airport: Infrastructure aid (2)

● Case practice before 2005 airport guidelines

- » 2 notified cases « no aid » in 1999 (airport is not an undertaking)
- » 1 notified case « no aid » in 2001 (no affectation of trade)
- » 2 existing aid cases regarding tax exemptions in 2001
- » 3 positive decisions on notified cases « compatible aid » in 2004 and 2005

● Case practice under 2005 airport guidelines

- » 11 positive decisions on notified cases (10 compatible aid, 1 no aid)
- » Total aid amount: around 190 million EUR

● Airport: Infrastructure aid (3)

● Case practice under 2005 airport guidelines in Poland

- » 5 positive decisions on notified cases
 - Case example:
 - State aid for the building of infrastructure and purchase of equipment for Rzeszów Jasionka Airport
 - Aid for infrastructure construction and purchase of equipment for the airport in Łódź
- » Total aid amount: around 15 million EUR



- Airport: Strings attached (1)

- Financing of commercial activities (parking, hotels, offices and storage facilities) not directly linked with airport's core activities
 - » These are not transport activities
 - » Public financing is not covered by 2005 airport guidelines

● Airport: Strings attached (2)

- Open and non discriminatory access for all air carriers wishing to operate from the beneficiary airport
- Nota Bene:
 - » a market investor running an airport has some possibilities to differentiate between airlines in order to maximize its profit
 - » an airport that has received State aid for its infrastructure or receives public service compensation cannot
- **Sanction:** recovery of the abused State aid

- Airport: Operating aid (1)
 - **Principle:** operating not authorized, as it keeps inefficient firms afloat
 - **Exception:** compensation for public service obligations (PSO)
 - **2005 aviation guidelines, point 34:** PSO for overall management of an airport only in exceptional cases, e.g. isolated region; otherwise, PSO limited to certain activities.

● Airport: Operating aid (2)

● Notification exemption for PSO:

- » less than 1 million passengers (category D airport)
- » less than 30 million EUR compensation and
- » less than 100 million EUR turn-over

● Compatibility criteria (2005 aviation guidelines, point 65 to 67):

- » Entrustment
- » no over-compensation
- » separation of accounts

● Airport: Operating aid (3)

- Case practice before 2005 aviation guidelines:

- » 6 openings of formal investigation procedures

- Case practice after 2005 aviation guidelines:

- » no cases, but discussion with national authorities on airports under 1 million passengers

- Main problems:

- » respect of conditions for notification exemption

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● Airlines: Start-up aid (1)

- **Start-up aid:** new concept developed in the 2004 Charleroi/Ryanair decision
- **12 criteria developed in 2005 aviation guidelines**
- **Main points:**
 - » Departure from category C or D airport (less 5 million passengers)
 - » New route (including catchment area and high speed trains)
 - » Long-term viability and degressivity

● Airlines: Start-up aid (2)

● Main criteria (continued)

- » Compensation for additional start-up costs
- » 3 years duration, max. 50% in the first year and max 30% over three years
- » Link with development of route (adjustment to real costs)
- » Non-discriminatory allocation
- » Business plan
- » Publicity, Appeals, Penalties

● Airlines: Start-up aid (3)

● Case practice before 2005 aviation guidelines:

- » 1 no aid decision, 1 final negative decision, 6 decision to open formal investigation procedure

● Case practice under 2005 aviation guidelines:

- » 1 no aid decision, 1 decision to open formal investigation procedure, 6 compatible aid decisions
- » Total aid amount authorized: 163.6 million EUR



**Merci !
Thank you !
Vielen Dank !**



Further information on State aid to airports and airlines:

➔ http://ec.europa.eu/dgs/energy_transport/state_aid/index_en.htm