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THE NEW AIRPORT AND AIRLINE STATE AID REGIME – THE ENEMY AT THE GATE OR A BENIGN MOVE TO BETTER AID?

By Julian Ellison

Introduction

Many, if not most, regional airports receive some level of public sector financial support. Since airports are now clearly regarded as competing in transport infrastructure markets, the use of public sector money to support their activities has come under ever closer regulatory scrutiny, in particular under the umbrella of EU state aid law. The application of EU state aid law to airports and airlines has been described in important guidelines which date from 2005. As part of a wider programme to modernise and improve the state aid regime, the Commission's long awaited revised airport and airline state aid guidelines finally went public in February of this year. So what, at 25,000 feet has changed in this important area of airport management?

Perhaps the single most obvious shock wave to hit the airport sector is the requirement that all regional airports receiving operating aid (designed to cover the "gap" between operating expenses and receipts) must reach a position of operational viability within a period of 10 years. The Commission's policy brief issued on the same day as the new guidelines makes the background for this potentially draconian measure abundantly clear "...regional airports present a dilemma... public funding has often resulted in duplication of (unprofitable) airports in the same catchment area creating ghost airports and over capacity...while leaving the congestion of main airports unresolved...the vast majority of regional airports do not... cover their costs...the capacity...is and remains underutilised...42 per cent of European airports remain loss-making".

The second stand-out change in the revised 2014 guidelines is the introduction of a tighter assessment regime for investment aid (i.e. aid used to finance new or refurbished airport infrastructure). Most notable here is the introduction of aid intensity thresholds, limiting (subject to few exceptions) the maximum permissible levels of public support for a project (the maximum is 75% for very small airports, scaling down to 0% for large airports).

This short summary aims to set out some practical steps that airport owners and operators can apply in order to assess what actions they need to take in the light of the new state aid guidelines.

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1. Firstly, identify what the public sector money (or potential state aid) is to be spent on.

There are different rules for different types of aid:

- **Is it investment aid?**
  (i.e. aid for the construction or refurbishment of airport infrastructure such as terminal buildings).
- **Is it operating aid?**
  (i.e. aid to cover the operating deficit of an airport (the gap between receipts and expenses)).
- **Is it aid for security/safety?**
  (e.g. aid for air traffic control, the fire brigade, police, customs, anti-terrorism or equipment related to any of these).
- **Is it aid to support a service of general economic interest ("SGEI")?**
  (e.g. aid to finance an airport or route offering a vital transport link to an isolated region).
- **Is it aid for a new airline route?**
  (i.e. aid to assist an airline in introducing a new service).
- **Is it aid of a social character?**
  (i.e. aid for a particular category of passenger - the young, the old, the handicapped, or passengers in a remote region).

2. Secondly, identify when the aid was or is to be spent

» In principle, all state aid should be cleared in advance of its expenditure. The date of expenditure of aid will dictate whether the 2005 or 2014 guidelines on state aid to airports and airlines will apply.

3. Thirdly, apply the relevant rules to the particular type of aid.

» **Investment aid** Under the 2005 guidelines there was no guidance as to which airports would qualify for investment aid or how much aid could be used. The 2014 guidelines, in contrast, identify the size of airport which will qualify for investment aid and the maximum aid intensities that will be allowed. The following matrix applies:

Size of airport (passengers per annum)	Maximum investment aid intensity
> 5 million	0%
3- 5 million	up to 25%
1-3 million	up to 50%
< 1 million	up to 75%

» aid to an airport in a remote region and aid to large airport projects, for example the upgrade or replacement of a major hub such as London Heathrow, may benefit from higher aid intensities but such cases will be subject to a second stage and in-depth state aid analysis, typically lasting in excess of 12 months. The guidelines refer to the possibility of case specific exceptions more generally to the above matrix, but it can be expected that these will be applied strictly.

- **Operating aid** to airports before March 2014 will be subject to the same basic assessment criteria as investment aid, however in the pre 2014 regime there was no limit on the size of airport that could qualify or any requirement for a percentage contribution to the operating deficit from the airport. Under the 2014 guidelines, operating aid will in principle be approved for airports with up to 3 million passengers per annum, however, these airports will be subject to a 10 year transitional period (which started in March 2014 with the publication of the 2014 guidelines), during which the airport must make a transition to full operational viability. Airport operators will be required to draw up detailed ex-ante business plans identifying the measures that they will take to transition to viability and the lump sum operating deficit that will be required to be paid during the transition period to cover their on-going operating deficit. Airports with more than 3 million passengers per year will in principle not be eligible for operating aid.

The 2014 guidelines further provide that the permissible intensity of operating aid during the transitional period is limited to 50% of the funding gap (i.e. the difference between receipts and payments). An operating aid intensity of 80% will be allowed for small airports of up to 700,000 passengers per annum for a period of up to 5 years. Thereafter, such small airports will be assessed on a case by case basis.

- **Services of general economic interest (SGEI).** It is possible that the operation of an entire airport will amount to an SGEI service where that airport provides an essential transport link to a remote region. Similarly, it is possible that a part of an airport's operations (that relating to the provision of certain essential transport services) may meet the SGEI test. Because SGEI public sector payments will, in principle, fall outside the state aid net entirely, the Commission's approach to the analysis of SGEI airports and services is a restrictive one. In short, these will be exceptional and rare cases.
- **Start up aid to airlines,** is again subject to the same basic assessment criteria as investment aid and operating aid. The 2014 guidelines provide that this aid category is limited to airports with up to 3 million passengers per annum. For airports with 3 – 5 million passengers per annum, exceptional circumstances would be required to use this aid category. In order to secure state aid approval, an ex-ante business plan showing that the route will be profitable within three years will be required (or in the alternative a commitment will be required by the airline to operate the route for at least as long again as the period covered by the initial start up aid). The aid may cover up to but no more than 50% of the airport charges in respect of the new route over a three year period.
- **Aid of a social character** must benefit a defined category of end customer (the old, the young, the handicapped or exceptionally, a geographically isolated population).

4. Conclusion

Europe's many regional airports must begin a compulsory migration to operational viability. At the same time the rules on investment aid have been tightened. Clearly, all airports will need to re-assess their state aid compliance under this much tougher 2014 regime.

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