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MEMORANDUM TO THE COMMISSION

Community guidelines on financing of airports and start-up aid to airlines departing from regional airports

1. INTRODUCTION

1.1. Background

1. These guidelines form part of the general plan to create a single European airspace, a subject on which the Commission has been working for over 10 years. The set of liberalisation measures known as the “third air package”, in force since 1993, has enabled all air carriers holding a Community licence to have unrestricted access to the intra-Community market, with freedom of tariffs, since April 1997.¹ As a corollary, to guarantee citizens continuous quality service at affordable prices throughout their territory, those Member States that wish to do so have established public service obligations relating to frequency, service punctuality, availability of seats or preferential rates for certain categories of users within a clear legal framework. These public service obligations have enabled air transport to make a significant contribution to economic and social cohesion and to balanced development in the regions.
2. In addition, a number of measures have been taken in areas such as allocation of time slots,² ground handling services³ and computerised reservation systems,⁴ in order to underpin this market liberalisation and allow stakeholders to compete on a level playing field. New targeted proposals will shortly be made in relation to time slots (for the first time, a market mechanism for allocation of time slots will be in place to increase mobility in saturated airports), equal access to computerised reservation systems and ground handling services. The latter proposal is aimed at boosting competition between service providers by increasing their access to the market.
3. At the same time, the opening up of the industry, which has obviously had a major impact on the activities and behaviour of traditional airlines or flag carriers, has been accompanied by strict control of State aid. The application of the principle of single aid for restructuring (“one time - last time”) has thus allowed the more adaptable

¹ Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers (OJ L 240, 24.08.1992), Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes (OJ L 240, 24.8.1992) and Council Regulation (EEC) No 2409/92 of 23 July 1992 on fares and rates for air services (OJ L 240, 24.08.1992).

² Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports (OJ L 14, 22.01.1993).

³ Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports (OJ L 272 of 25.10.1996).

⁴ Council Regulation (EEC) No 2299/89 of 24 July 1989 on a code of conduct for computerized reservation systems (OJ L 220 29.07.1989 p.1).

airlines to make the transition from a relatively protected operating regime to competing as normal players in the market. This has led to a significant restructuring of the whole air industry, a measure that became even more necessary after the events of 11 September 2001, the consequences of which on air transport were significant. Examples of consolidation in the industry are the recent alliances such as Air France/Alitalia, Lufthansa/Austrian Airlines and Iberia/British Airways, and the recent concentration of Air France and KLM.

4. The “*Open Skies*”⁵ judgments of the Court of Justice have also given a new impetus to the air industry by allowing the Community to develop an external policy in the field of civil aviation thanks to its newly-acquired international negotiating powers in the sector. The importance of these judgments is considerable, since they will promote consolidation between the European players and enhance their ability to face competition from third-country airlines on a Community basis.
5. There have been two other major developments on the European air transport market in recent years. One of these is the emergence of a number of new Community-size companies offering promotional rates supported by a low-cost structure. The other development is the drive by airports in recent years to secure new air links.

1.2. Low-cost companies

6. Compared with traditional air carriers, the market share of low-cost airlines has risen from only 3.1% in 1998 to 11.8% in 2003, although this share varies considerably between Member States.⁶ In 2002, the six main low-cost airlines transported over 34 million passengers in the EU.⁷
7. The Commission welcomes this development and appreciates the contribution made by these industry players to the general reduction in prices in the air transport sector in Europe, which has made air travel much more widely accessible. As the guardian of the Treaty, it must nevertheless ensure that internal market rules are complied with, in particular competition rules, especially where State aid proves to be incompatible with these rules. The negotiating methods used by the low-cost airlines to obtain aid from public authorities, whether directly or through the airport manager, have raised a number of questions regarding the application of competition rules under the EC Treaty and have been the subject of several complaints made to the Commission. This led the Commission to adopt its recent decision on the establishment of Ryanair⁸ at Charleroi. However, the fact that aid of this kind is granted to low-cost companies in many different ways and that there is still no

⁵ Court Judgments of 5 December 2002 in Cases C-466 to C-469/98 and C-470 to C-472/98, *Commission v the United Kingdom, Denmark, Sweden, Finland, Belgium and Luxembourg* respectively. ECR, p. I – 9427 to 9741.

⁶ Over 30% for the UK and Ireland, over 35% in Belgium, 12% in the Netherlands but well under 10% in the other Member States. In terms of capacity, between January 1989 and January 2002 the capacity offered by low-cost carriers increased fivefold, with an average increase of 40% per year.

⁷ Ryanair, Easyjet, Go, Virgin Express, Buzz and Bmibaby.

⁸ Commission Decision of 12 February 2004 concerning advantages granted by the Walloon Region and Brussels South Charleroi Airport to the airline Ryanair in connection with its establishment at Charleroi (OJ L 137, 30.04.2004).

framework for such aid has led to expectations within the market of a clear legal framework defining the rules applicable to new players in the air industry and hence to complaints to the Commission.

1.3. Developments in the airport sector

8. The initial development of the airports was often determined by purely territorial considerations, many of them having been initially established in Europe as military airfields. These land-use planning considerations may still persist in some cases, but in many others airports have been transferred from State to regional control, in some cases to be operated by public companies, or even to the private sector. The process of transfer to the private sector has normally taken the form of privatisation or a progressive opening-up of capital.
9. The Community's airport industry has therefore undergone fundamental organisational changes that reflect not only the active interest of private investors in the airport sector but also a change of attitude on the part of the public authorities regarding the contribution of private investment to airport development. This development has led to greater diversification and complexity of the functions undertaken by airports. Although they are still primarily providers of infrastructure to the air transport industry, a certain number of airports have become highly efficient commercial operators.
10. However, this development affects relatively few of the large airports in the EU; the 7 largest EU airports account for 32% of all EU traffic and the 23 largest account for 62%.⁹ Nevertheless, most small airports in the EU are still owned and operated by public authorities in the public interest.¹⁰ This has led to the existence of different categories of airport according to whether they are competing with other smaller or larger airports and whether they have any influence on trade between Member States (see Section 3, "Types of Airport").
11. Furthermore, it is generally accepted that airports play a key role in the integration of the outermost regions of Europe due to their impact on the success of local economies and on maintaining local services such as education and health. Passenger and freight services are crucial for regional competitiveness and development. Airports that provide good services can act as a magnet for air companies and thus promote business activity as well as economic, social and regional cohesion within the EU.
12. However, the Commission notes that air transport is not the only driver of development in terms of regional accessibility. High-speed train connections make a significant contribution to social and economic cohesion in the EU, particularly between large regional cities. As emphasised in the 2001 White Paper,¹¹ rail/air intermodality with rail, with rail and air travel complementing rather than competing

⁹ Based on provisional data available for 2003.

¹⁰ In 2002, of a total of 403 airports in the EU open to commercial traffic, 287 (nearly 70%) had over 1 million passenger movements per year.

¹¹ *European Transport Policy for 2010: time to decide*, COM (2001) 370, 12.9.2001.

with each other and high-speed trains connecting cities, is bound to significantly boost capacity.

13. Airports pose two major issues; on the one hand the financing of certain airport charges and investments, and on the other the policies adopted to develop the air links offered from certain regional airports.

1.3.1. Financing of airports

14. Some of the financial burdens of these airports, whether they are privately or publicly owned, relate to safety or security tasks; these may concern air traffic control, police or fire fighting services, etc., which are wholly or partly funded by public authorities. Compensations for public service may also be granted for costs of activities which would not be economically viable in themselves but which are nonetheless necessary for operating these airports. Similarly, infrastructure financing and maintenance is still mainly covered by public funds.
15. The Commission's main message as regards financing is that the taxes and fees charged in all modes of transport must be variable in order to reflect the cost attributable to differences in pollution levels, journey time and infrastructure cost and maintenance. The application of the "polluter pays" principle and the implementation of a policy of clear tax incentives must therefore contribute to achieving our aim of reducing congestion, fighting pollution, distributing modes of transport in a more balanced way and removing the direct link between growth in transport and economic growth. The Commission's most recent initiative with respect to charges for the use of transport infrastructures was a proposal for a Directive of the European Parliament and of the Council amending Directive 1999/62/EC (the "Eurovignette" Directive) on the charging of heavy goods vehicles for the use of certain infrastructures.¹² The aim of this proposal, which was adopted by the Commission on 23 July 2003,¹³ was the approximation of national systems of tolls and charges for the use of the road infrastructure based on common principles. As it announced in its 2001 White Paper, the Commission will draw up proposals for charges for the use of airport infrastructures.

1.3.2. The development of regional airports

16. The regional airports were also required to develop the air links offered by them, in order either to use the existing public infrastructures better or to fulfil the requirements of their business statutes. In this regard, regional airports have faced a different equation from that faced by the major European hubs such as London, Paris or Frankfurt. They do not have any large reference airline that concentrates its operations on that airport in order to offer passengers the maximum number of links and profit from the large-scale savings that the structure would allow them. In addition, regional airports have to counterbalance any low-profile image due to their location in the outermost regions of the Community (e.g. the Azores) or in areas affected by economic crisis (e.g. Charleroi, the site of a former coalfield).

¹² Directive 1999/62/EC of the European Parliament and of the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures.

¹³ COM (2003) 488.

17. Increased use of these regional airports is an asset in the fight against air traffic congestion at the major European hubs. A greater number of access points for intra-European flights is thus a positive factor, but these points can only develop if supported by an initial public incentive. The Commission welcomes this development. However, airport activity must develop in accordance with the rules of the Treaty, on the basis of transparency, non-discrimination and proportionality in relation to the public finance offered to regional airports, together with a common interest in relation to State aid granted to airlines.

1.4. The Commission's guidelines

18. The Commission's 1994 guidelines on the application of Articles 92 and 93 of the EC Treaty and Article 61 of the EEA Agreement to State aid to the aviation sector¹⁴ (hereinafter "the aviation sector guidelines") do not cover all the new aspects relating to financing of the airports and start-up aid for new routes; they relate almost exclusively to the conditions for the granting of State aid to airlines, which they limit. The guidelines restrict such aid, and also limit direct aid to the operation of airlines solely to public service obligations and aid of a social nature.
19. Part II.3 of the guidelines relates to public investment in airport infrastructure. It states that "*the construction of (airport) infrastructure projects...represents a general measure of economic policy which cannot be controlled by the Commission under the Treaty rules on State aid. This general principle applies only to the construction of infrastructures by Member States, and does not apply to aid resulting from preferential treatment of certain companies for the use of the infrastructures.*"

1.5. Conclusion

20. The aim of these guidelines is not to replace the 1994 guidelines but rather to specify the ways in which airports can be financed (see section 5) and to extend the possibilities of granting direct aid to the operation of airlines, including start-up aid for airlines leaving from regional airports (see section 6). This will provide a framework for the activities of the Member States, public bodies and public or private airport managers within a coherent competitive European environment.

2. LEGAL BASIS

21. This framework therefore specifies to what extent and under which conditions the public financing of airports, such as State aid or start-up aid for airlines leaving from regional airports, will be approved by the Commission in accordance with Community rules and procedures on State aid. When examining whether the start-up aid for airlines leaving from regional airports and financing for the construction, development and maintenance of airport infrastructure is compatible with the common market, the Commission will apply Article 86(2) or Article 87(3)(a), (b) or (c) of the Treaty.

¹⁴ Community 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 sector (OJ C 350, 10.12.1994).

22. Article 86(2) of the Treaty provides for a basic exemption for State aid granted for the operation of a service of general economic interest entrusted to an undertaking, provided the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them and provided the development of trade is not affected to such an extent as would be contrary to the interests of the Community.
23. Article 87(3) of the Treaty lists the aid that may be considered to be compatible with the common market. Article 87(3)(a) and (c) provide for derogations for aid granted to promote or facilitate the development of certain regions and/or certain economic activities.
24. In accordance with Article 87(3)(b), aid to promote the execution of a major project of common European interest may be considered to be compatible with the common market. Particular reference is made to projects relating to trans-European networks, which may include airport projects.
25. In the framework of regional aid schemes, the Commission will apply the general rules laid down in its communications or other provisions on regional aid granted in Member States. These guidelines specify the conditions under which regional aid may be considered to be compatible with the common market in accordance with Article 87(3)(a) and (c). However, aid to airports and start-up aid to airlines is operating aid within the meaning of the guidelines rather than aid to initial investments in fixed capital.¹⁵ This type of operating aid is in principle prohibited except in the poorest regions of Europe, such as regions benefiting from the derogation provided for in Article 87(3)(a) of the EC Treaty, the outermost regions and sparsely populated regions, under exceptional circumstances and subject to strict conditions.¹⁶ Operating aid, in accordance with the rules for regional aid, can therefore be approved only for these regions.
26. If public investment does not fulfil the criteria of the regional guidelines, the Commission, in view of economic trends in the air transport and airport sectors, triggered by the complete opening-up of European air transport services in 1997, will consider whether the aid in question facilitates the regional development of a particular industry (airports) and may therefore be considered to be in accordance with Article 87(3)(c).

3. TYPES OF AIRPORT

27. In the airport industry there are currently several different levels of competition between the different types of airport. This is a key factor when investigating State aid, and makes it necessary to examine the extent to which competition could be distorted and the single market affected. Competition scenarios are evaluated case by

¹⁵ In the guidelines on State aid for the regions, operating aid is defined as aid “*intended to reduce the undertaking's current expenditure*” (point 4.15), while initial investment aid relates to “*an investment in fixed capital relating to the creation of a new establishment, the extension of an existing establishment, or the commencement of an activity that involves a fundamental change in the product or procedure provided by an existing establishment*” (paragraph 4.4).

¹⁶ See paragraph 4.15 *et seq* of the guidelines on State aid for the regions.

case, based on the markets in question. However, research¹⁷ has shown that, generally speaking, major international hubs are competing with similar airports in all the transport markets concerned, even though the level of competition may depend on factors such as congestion and the existence of alternative intermodal transport. Large regional airports may be competing not only with other large regional airports but also with the major Community hubs and land transport, even if the quality of access by land to the airport has an impact on the attraction area. Small isolated airports do not generally have to compete with other airports except, in some cases, with neighbouring airports of a similar size when they cover some of the same attraction areas.

28. There is currently no definition of what constitutes a large airport, medium-sized airport or small airport. The Decision of the Council and of the European Parliament on Community guidelines for the development of the trans-European transport network¹⁸ defined three categories of airport of common interest:
- international connecting points (including airports with an annual passenger volume of no less than 5 000 000);
 - Community connecting points (including airports with an annual passenger volume of between 1 000 000 and 4 999 999);
 - regional connecting points and accessibility points (including airports with an annual passenger volume of between 250 000 and 999 999).
29. Five categories were proposed for European airports by the Committee of the Regions in its outlook opinion of 2 July 2003 on regional airport capacities:¹⁹
- category A represents the major airport nodes (over 25 million passengers, 4 airports), that is, some 30% of all air traffic in Europe;
 - category B represents the national airports (10-25 million passengers, 16 airports), that is, some 35% of all air traffic in Europe;
 - category C contains 15 airports (5-10 million passengers), that is, some 14% of all air traffic in Europe;
 - category D contains 57 airports (1-5 million passengers), that is, some 17% of all air traffic in Europe;
 - category E contains 67 airports (200 000 to 1 million passengers), that is, some 4% of all air traffic in Europe.

¹⁷ Study on competition between airports and the application of State aid rules. Cranfield University, June 2002.

¹⁸ Decision of the European Parliament and of the Council of 23 July 1996 on Community guidelines for the development of the trans-European transport network (OJ L 228, 09.09.1996, annex II section 6).

¹⁹ Outlook Opinion of the Committee of the Regions of 2 July 2003 on regional airport capacities (CdR 393/2002 final).

30. According to the Committee of the Regions, regional airports generally fall into categories D and E, but some category C airports can also be considered as regional airports.
31. The Commission considers that there is a considerable overlap between these two categories and has reduced the number of categories to four for the purpose of these guidelines:
- category A, hereinafter “large Community airports”, with more than 10 million passengers a year;
 - category B, hereinafter “national airports”, with an annual passenger volume of between 5 and 10 million;
 - category C, hereinafter “large regional airports, with an annual passenger volume of between 1 and 5 million;
 - category D, hereinafter “small regional airports”, with an annual passenger volume of less than 1 million.

4. SCOPE OF APPLICATION AND COMMON COMPATIBILITY RULES

32. These guidelines do not make any distinction between the different types of beneficiary based on their legal structure, i.e. on whether they are undertakings, governments or local authorities, or on whether they belong to the public or private sector, and any reference to the airports or undertakings that manage them applies to all types of legal entities.
33. These guidelines cover all the aid granted either by Member States or through State funds to airports, airport operators and air carriers, including any financial benefit of any kind granted by national, regional or local public authorities. If these financial advantages are similar to investments planned by a private investor acting in a market economy, they will not constitute aid and will not be covered by these guidelines.
34. When applying these guidelines on State aid to airports and air carriers, the Commission intends to ensure that the following principles are observed:
- all State aid, to be compatible, must always be in conformity with the Treaty rules;
 - no State aid should affect competition between airports and air services to such an extent as would be contrary to the interests of the Community;
 - no State aid should directly or indirectly benefit a single air carrier in particular serving an airport, or distort competition between air carriers serving the same airport;
 - proportionality: any aid scheme or individual aid should be proportional to the objectives set;

- transparency in financial dealings; it is essential for Member States to guarantee full transparency in their financial dealings with the beneficiary each time they provide funding of any kind;
 - legality: all aid schemes or individual aid must be based on national, regional or local legislation, which must stipulate the conditions under which the aid schemes are available without discrimination.
35. Category A (large Community airports) will be excluded from these guidelines with respect to start-up aid to new routes, while Category B (national airports) will be monitored with particular care. The guidelines will apply fully to Categories C and D (both large and small regional airports), i.e. airports with an annual passenger volume of up to 5 million. They will also apply with regard to start-up aid for new routes for airports in the outermost regions in view of their remoteness and regional isolation. However, the guidelines will apply to all categories with respect to financing of airports, insofar as the advantages granted constitute aid within the meaning of Article 87 of the Treaty.

5. FINANCING OF AIRPORTS

5.1. Objectives

36. Developments in the airport industry have made it necessary for the Commission to reconsider in a more targeted manner its traditional approach whereby public funding of airport construction and development did not come under the scope of its control over State aid, as established in the 1994 guidelines. The developments in the industry have also had a significant impact on application of the rules on State aid to public funds granted for operation of an airport.
37. Due to the diversity of the legal systems governing airports in the Member States and the discrepancies existing with regard to transparency of the financial relations between the public sector and airports, it is difficult to assess the State aid granted to the airport industry. These guidelines seek to clarify how and to what extent the Treaty rules on State aid apply to the public financing of airports and to establish compatibility criteria to allow such financing to be granted to an airport manager.
38. Airport activities can be categorised as follows:
- (i) the provision of airport facilities, consisting of the construction either of airport infrastructures and equipment (runways, terminals, aprons, control tower) or of the facilities that directly support them (fire-fighting facilities, security or safety equipment);
 - (ii) the operation of the infrastructures required for the maintenance and management of airport infrastructure as described in (i);
 - (iii) the provision of airport services ancillary to air transport, including ground handling services and the use of related infrastructures, fire-fighting services, emergency services, security services, etc.;
 - (iv) the pursuit of activities not directly linked to the airport's core activities, including the construction, financing, use and renting of

building space and property assets, not only for offices and storage but also for the hotels and industrial enterprises located within the airport, as well as shops, restaurants and car parks. Some airport managers also engage in activities abroad, giving rise to revenues that are both air revenues and, at the same time, strictly commercial.

5.2. Existence of State aid

5.2.1. Economic activity

39. The Treaty adopts a neutral stance on the question of whether a State opts for public or private ownership of airports. As far as the existence of State aid is concerned, it is of little importance whether the ownership or operation of an airport is public or private.²⁰ The essential point is whether the airport operator is engaged in an economic activity.²¹ Once an airport engages in economic activities, regardless of its legal status or the way in which it is financed, it constitutes an undertaking within the meaning of Article 87(1) of the EC Treaty, and the Treaty rules on State aid may therefore be applied.²²
40. In the “Aéroports de Paris” case,²³ the Court of Justice of the European Communities ruled that activities relating to airport management and operation, consisting of provision of airport services to airlines and to the various service providers within airports, constitute economic activities because “they consist of the provision of airport facilities to airlines and the various service providers, in return for a fee at a rate freely fixed by the manager, and do not fall within the exercise of its official powers as a public authority and are separable from its activities in the exercise of such powers”. Thus, the airport manager, in principle, is engaged in an economic activity within the meaning of Article 87(1) of the EC Treaty, to which the rules on State aid apply.
41. However, not all the activities of an airport manager are necessarily of an economic nature. It is necessary to distinguish between its activities and ascertain to what extent its activities are of an economic nature.²⁴
42. The Court of Justice has held that activities that normally fall under State responsibility in the exercise of its official powers as a public authority are not of an economic nature. Such activities include safety, air traffic control, police, customs officers, fire fighters, etc. Generally speaking, aid granted for these activities, which must be strictly limited to compensation of the costs deriving therefrom, does not fall

²⁰ From a general viewpoint: Case C-41/90 *Hoefner v Elser/ Macrotron* (ECR 1991, p.I-1979).

²¹ According to Court of Justice case law, any activity consisting of supplying goods and services in a given market constitutes an economic activity. See Case C 35/96, *Commission v Italy*, (ECR 1998, p. 3851) and Cases C 180/98 – 184/98, *Pavlov* (ECR 2000, p. I-6451).

²² Cases C-159/91 and C-160/91, *Poucet v Pistre / AGF v Cancava* (ECR 1993, p.I-637).

²³ Case T-128/98, *Aéroports de Paris v Commission of the European Communities* (ECR p.II-3929), confirmed by Case C-82/01 (ECR 2002, p. I-09297), points 75-79.

²⁴ Case C-364/92, *SAT Fluggesellschaft v Eurocontrol*, (ECR 1994, p.I-43).

within the scope of application of the rules on State aid.²⁵ As explained by the Commission in its Communication of 10 October 2001 following the attacks of 11 September 2001, “it goes without saying that if certain measures are imposed directly upon the airlines and other operators in the sector, such as airports, the ground handling assistance service providers and air navigation service providers, their financing by the public authorities must not give rise to operating aid incompatible with the Treaty”.

5.2.2. *Activities constituting services of general economic interest*

43. In addition, certain activities carried out by airports could be considered to be necessary by the competent public authority in order to provide a service of general economic interest. In this case, the authority imposes on the airport manager certain public service obligations in order to ensure that the general public interest is appropriately served. In such circumstances, the airport manager may be granted aid by the public authorities for the additional costs deriving from the public service obligation. It is not impossible for the overall management of an airport, in exceptional cases, to be considered an economic service of general interest. In this case, the public authority might impose public service obligations on an airport (for example, an airport located in an isolated region) and decide whether or not to pay compensation for these obligations.
44. The Commission draws attention to the Court judgment in the *Altmark* case,²⁶ which established case law in this regard. The Court ruled that compensation for public service does not constitute State aid within the meaning of Article 87 of the EC Treaty provided that the following four criteria are met:
- (1) the beneficiary undertaking must actually have public service obligations to discharge and these obligations must be clearly defined;
 - (2) the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner;
 - (3) the compensation must not exceed the amount necessary to cover all or part of the costs incurred in discharging the public service obligations, taking into account the relevant revenues and a reasonable profit for discharging those obligations;
 - (4) where the undertaking which is to discharge public service obligations, in a specific case, is not chosen pursuant to a public procurement procedure which would allow for the selection of the tenderer capable of providing those services at the least cost to the public body, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means of transport so as to be able to meet the necessary public service

²⁵ Case C-343/95, *Cali & Figli v Servizi Ecologici Porto di Genova* (ECR 1997, p.I-1547).

Commission Decision of 19 March 2003, N 309/2002, Aviation security - compensation for costs incurred following the attacks of 11 September 2001.

Commission Decision of 16 January 2002, N 438/02, Aid in support of public authority functions.

²⁶ Case C-280/00, *Altmark Trans v Regierungspräsidium Magdeburg* (ECR 2003, p.I-7747).

requirements, would have incurred in discharging those obligations, taking into account the relevant revenues and a reasonable profit for discharging the obligations.

45. In compliance with the conditions established by the Altmark judgment, compensation for public service obligations imposed on an airport manager does not constitute State aid.
46. Public financing of airports other than those referred to above may constitute State aid within the meaning of Article 87(1) if it has an effect on intra-Community competition and trade.

5.2.3. *Effects on competition and trade between Member States*

47. Competition between airports can be assessed by comparing factors such as economic attraction zones and population centres, congestion, whether there is access by land, the airport services supplied and also the level of charges for use of the airport infrastructures and services. The charge level is a key factor, since State aid granted to an airport may be used to maintain airport charges at an artificially low level in order to attract traffic and may significantly distort competition. Competition between airports must be examined on a case-by-case basis. However, in the light of the guidelines, the Commission considers that the categories identified in section 3 may serve as an “indicator” of the extent to which airports may be competing with one another and also the extent to which an airport may distort intra-Community competition.
48. Public financing of Community and national airports in categories A and B will normally be considered to distort or threaten to distort competition and to affect trade between Member States. All aid to these airports must be notified and examined as State aid within the meaning of Article 87(1) of the Treaty,
49. Small regional airports and isolated airports in category D are not likely to pose any substantial threat to trade and competition. The Commission therefore proposes to exempt public financing of these airports from the prior notification obligation laid down in Article 88(3) of the Treaty.²⁷
50. For category C (airports with an annual passenger volume of between 1 and 5 million), it is impossible to provide an assessment that would cover all the airports in this category. Each case would have to be studied on a case-by-case basis.

5.3. **Financing for the provision of airport facilities**

51. As mentioned in section 5.1, the provision of airport facilities comprises the construction either of airport infrastructures and equipment or of the facilities that directly support them. The Commission will base its approach strictly on the definitions of these facilities given in paragraph 38(i) above.

²⁷ Proposal for a Commission Decision on the application of Article 86 of the Treaty to State aid granted in the form of public service compensation to certain undertakings entrusted with management of services in the general economic interest.

52. Infrastructure is both a necessity and the basis for the economic activities carried out by the airport manager. The provision of airport facilities to air carriers and other users constitutes an economic activity. However, it also represents one of the ways in which the State can affect regional economic development, land-use planning policy and transport policy.
53. With regard to the provision of airport facilities, if a State or another public body decides to undertake the construction, financing or renovation of an airport infrastructure owned by it, the Commission continues to hold the view that this action falls within the exercise of that State's powers as a public authority and that the State concerned is making available the tools required to achieve the policy objectives referred to above. A typical example of this is the scenario whereby a new airport is established near a city which has air access congestion problems or to serve a large regional area. As provided for in the 1994 guidelines, action of this kind would in principle fall outside the scope of application of the Treaty rules on competition.
54. However, this approach will have to be modified in the light of changes in the way the market operates and subject to the case law of the Court.
55. Firstly, the Commission will remain extremely vigilant to ensure that such a long-term infrastructure financing target is not distorted through the allocation of aid, *de facto* or *de jure*, to a predetermined airport manager which would benefit unduly from such financing, and that the infrastructure is not largely reserved or intended for other specific users, for example one or more airlines. In general, the Commission will consider that no element of State aid exists provided that the procedure for assigning operation of the infrastructures conforms to the rules and principles governing public procurement and concessions. In particular, if operation of the infrastructures is to be considered as a service concession, it must be assigned under a transparent and non-discriminatory award procedure which guarantees that potential candidates are treated equally, which will open up the market to competition and make it possible to monitor the impartiality of the award procedures.²⁸
56. Secondly, if it is found at the start of the financing that the authorities intended to entrust management of the infrastructure to a given operator in order to boost its competitive situation, this public financing will in principle be examined as State aid and will therefore have to be notified to the Commission.
57. In addition, if additional infrastructures are made available to the airport manager by the public authorities in exchange for a payment corresponding to all the actual construction and financing costs of these infrastructures, no question of State aid will arise. If the manager benefits from the infrastructure for a shorter period than the time needed for depreciation of the investment, the payment may be reduced proportionally. If the airport facilities are provided under a contract and additional infrastructures are found to be necessary, the Commission considers that no State aid exists provided that Community rules on public procurement and concessions are observed and the award procedure is transparent, non-discriminatory and guarantees the equal treatment of potential candidates, and that the concession contract is

²⁸ Case C-324/98, *Teleaustria Verlags Gesellschaft mb v Post & Telekom Austria* (ECR 2000, p.I-10745).

modified to take account of this new situation in the light of this Communication. In all other cases, the Commission considers that aid may exist and that it must be notified of the measure in question.

58. When assessing whether or not an undue advantage exists, the Commission will in particular take account of the provisions of Articles 86(2) and 87 by making sure that the following conditions are complied with:

All potential users of the infrastructure must be granted access to it in an equal and non-discriminatory manner. If the infrastructure in question is wholly or partly used by a single user, the Commission will monitor these investments very closely.

The aid must be limited to the minimum amount required to finance the airport infrastructures and the infrastructures needed to provide them with direct support, after taking into account all the airport's other possible sources of financing.

The investment must be necessary in order to achieve the objective set (regional development, employment, accessibility, etc.). In order to determine whether aid is necessary, a business plan will normally be required, which should set out the expected developments for the airport and/or the region.

The aid should not cause any distortion of competition contrary to the common interest.

Separate accounts should be drawn up based on cost-accounting data, with precise allocation of revenues and costs to prevent the aid from being used for any activities of the recipient other than those for which it is intended.

59. Similarly, the Commission takes the view that no State aid exists if the public authorities sell the airport infrastructure to an airport manager as part of a stock market flotation or of a full or partial privatisation, provided that the price paid reflects the market value²⁹ and is not less than the cost of construction borne by the State.

60. As already stated, small regional airports and isolated airports in category D are not likely to pose any substantial threat to trade and competition. The Commission therefore proposes to exempt public financing of Category D airports from the prior notification obligation laid down in Article 88(3) of the Treaty, provided the airport in question does not exceed the maximum capacity for this category.

5.4. **Aid for operation of airport infrastructures**

61. The operation of airport infrastructures as defined in these guidelines (section 5.1) forms part of an airport's current operations. In principle, the Commission considers that an airport manager, like any other market player, should meet the normal costs of running the airport infrastructure out of its own resources. Any public financing of

²⁹ For more information see the Commission Communication on State aid elements in sales of land and buildings by public authorities (OJ C 209, 10.7.1997, p. 3-5).

these services would therefore reduce the expenses normally borne by the airport manager in carrying out its current operations. It is recognised that public funding granted for operating costs may have a significant negative effect on competition since rather than producing any structural change it artificially keeps in the market an entity that may be failing. Thus, as explained above (section 2), operating aid, since it falls under Article 87(1) of the Treaty, can only be considered to be compatible with the common market in exceptional circumstances.³⁰

62. Member States may, with respect to the operation of infrastructures, impose public service obligations for the airport management subject to the conditions established by the Altmark judgment.³¹
63. If the conditions of the Altmark judgment are not met but the aid is granted as compensation for public service obligations, the Commission will examine whether the aid is compatible, in particular in the light of Article 86(2) of the Treaty.
64. Article 86(2) states that undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly are subject to the rules contained in this Treaty insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.
65. Generally speaking, aid authorised under Article 86(2) of the Treaty must not exceed the amount needed and must be in proportion to the cost of the task assigned to the manager and limited so as to permit the operator to break even while carrying out this activity, taking into account all the relevant revenues and reasonable profits. Furthermore, the aid must not affect trade between Member States to such an extent as would be contrary to the common interest.
66. The manner in which the aid is calculated can only be correctly examined and verified if the public service obligation imposed on the operator and on the State is defined in advance in a public instrument (either a legislative or regulatory act, or a contract), which should contain all the information needed to identify the specific costs of the public service, including:
 - the precise nature of the public service obligation;
 - the operators and the territory in question;
 - the nature of any special or exclusive rights granted to operators;
 - the methods used to calculate and periodically adjust the amount of the aid;
 - the arrangements for refunding excess compensation paid and for possible State intervention should the compensation be insufficient.

³⁰ Aid which is not both degressive and limited in time may be authorised inasmuch as it contributes to offsetting the additional costs of exercising the economic activity which are inherent in the factors referred to in Article 299(2) of the Treaty, the permanence and combination of which severely restrain the development of the outermost regions (OJ C 258, 9.9.2000, p.5).

³¹ See footnote 27.

67. When calculating the amount of the compensation, the revenues to be taken into consideration must include at least all those obtained from the service of general economic interest. If the airport operator has other special or exclusive rights directly or indirectly associated with this service of general economic interest, the revenues arising from these reserved markets must also be taken into account. Consequently, there must be a transparent accounting system and separation of the accounts for the operator's different activities.
68. Also, public financing of specific services to an airport, such as those provided by the fire-fighting or emergency services, and services that are the responsibility of a Member State because they fall within the exercise of its official powers as a public authority, such as air traffic control or security services, do not constitute State aid within the meaning of Article 87(1) of the Treaty if they are provided by the airport operator itself. If these services are supplied by a third party, the Commission will not consider that this constitutes State aid provided that this third party was selected by an open and non-discriminatory procedure.
69. If aid granted for the operation of airport services is unacceptable according to the Altmark judgment or Article 86(2), the Commission will examine it critically, since such aid is not in principle compatible with the Treaty.

5.5. Aid for airport services

70. With regard to airport services, special mention must be made of the ground handling activity, which is a commercial activity open to competition over a threshold generally set at 2 million passengers annually under Directive 96/67/EC.³² This threshold of 2 million passengers, which is attained by airports such as Leeds, Cork, Strasbourg, Frankfurt-Hahn and Verona, is likely to be reached by Charleroi airport in 2004-2005.
71. Below this threshold, reductions on ground handling charges granted by an airport operator to an airline are not prohibited,³³ provided that they are linked to cost economies and do not constitute an infringement of Article 82 of the Treaty, i.e. that they do not abuse a dominant position resulting from predatory or discriminatory prices. However, they are prohibited when the service provider company operates at a loss over a long term and these losses are directly or indirectly covered by public funds paid to the operator, for example in its capacity as airport authority or provider of a service of general economic interest.³⁴ Until the two-million-passenger threshold

³² See footnote 28.

³³ Paragraph 85 of the decision to initiate the procedure concerning the Ryanair at Charleroi case: *“With regard to ground-handling tariffs, the Commission believes that economies of scale could be applied when an airport user makes significant use of a company's assistance services. It comes as no great shock that the tariff applied to some companies will be lower than the general tariff, insofar as the service requested by these companies will be less than for other clients”*.

³⁴ Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports (OJ L 272, 25.10.1996, p. 36-45).

Directive 96/67/EC expressly provided for the risk of cross-subsidising by requiring the accounts of groundhandling activities to be separated from the accounts of other airport activities. Article 4 thereof stipulates that:

is reached, if an airport is providing these services to an airline at a loss it can of course offset against each other profits and losses relating to purely commercial activities. For example, an airport can offset a loss on handling activities against a surplus on passenger car parking. These losses should not be offset by revenue collected by the airport as an airport authority or as a manager of a service of general economic interest. This means that the tasks required of an airport as an airport authority and general economic interest service manager, on the one hand, and the commercial services provided by it, on the other, must be clearly defined and distinguished from each other, as must the financial flows relating to them.

72. Above this threshold of 2 million passengers or 50 000 tonnes of freight annually, the groundhandling activity is open to competition. Directive 96/67/EC aims to guarantee fair and effective competition,³⁵ and the rules laid down for the smooth operation of airport infrastructures must observe the principles of objectivity, transparency and non-discrimination.³⁶ The Court stipulated in its judgment of 16 October 2003³⁷ that, with regard to the payment collected in return for access to airport facilities, Directive 96/67/EC “*does not prevent the fee from being determined in such a way that the managing body of the airport is able not only to cover the costs associated with the provision and maintenance of airport installations, but also to make a profit*”. Once the two-million-passenger threshold is reached, or the national authorities decide to open up the handling activity to competition over this threshold, Article 4 of Directive 96/67/EC requires a strict separation of accounts to guarantee that this competitive activity is not financed by the revenues from any other activity of the airport, whether these activities are commercial or, evidently, of general interest. Once this threshold is reached, one or more independent operators can offer their groundhandling services, and clearly if one of them, in the case at hand the airport operator, were able to apply a dumping tariff thanks to its other sources of revenue, effective opening up to competition would not be feasible and the effect of the Directive would be nullified. The Commission is also anxious to point out its ongoing efforts to bring about the effective liberalisation of ground handling services.³⁸

‘1. Where the managing body of an airport, the airport user or the supplier of groundhandling services provide groundhandling services, they must rigorously separate the accounts of their groundhandling activities from the accounts of their other activities, in accordance with current commercial practice.

2. An independent examiner appointed by the Member State must check that this separation of accounts is carried out.

The examiner shall also check the absence of financial flows between the activity of the managing body as airport authority and its groundhandling activity.’

³⁵ Recital 16 of Directive 96/67/EC.

³⁶ Recital 25 of Directive 96/67/EC.

³⁷ Case C-363/01, judgment of 16 October 2003, *Flughafen Hannover-Langenhagen GmbH v Deutsche Lufthansa AG* (not yet published in the ECR).

³⁸ In this regard, the Commission points out the referrals made by the Court of Justice against Germany and Italy on 19 December 2002 and 12 September 2003 respectively, on the grounds that these Member States had transposed Directive 96/67/EC in an inappropriate way, leading to direct effects that hindered the entry of new operators at the principal airports in those countries.

73. In neither case, therefore, does there appear to be a need for public funding, in fact the opposite is true. The recent liberalisation of the groundhandling sector and the need to enable it to be effectively implemented mean that, when reductions granted on ground handling services are deemed to constitute State aid to an airline, the Commission believes that this aid cannot be declared compatible with the common market. Such aid does not appear either necessary or likely to encourage the development of an airport structure in a liberalised system.
74. The only case in which financing the costs of the groundhandling activity might be envisaged is that of small regional airports in category D. However, ground handling should not be considered in isolation but as part of an overall general interest task consisting of provision of comprehensive airport services, which would be eligible for public service compensation in accordance with the rules set out above as a result of the Altmark judgment.

6. START-UP AID

6.1. Objectives

75. The Commission has emphasised on many occasions that State aid must be more transparent to ensure that not only national authorities in the broad sense but also companies and individuals are aware of their rights and obligations. The aim of these guidelines is to increase transparency and establish the conditions under which start-up aid can be granted.
76. The first condition for granting aid is that it should fulfil its aim, i.e. form part of a coherent airport development policy characterised by a demonstrated willingness to develop the profitability of infrastructures that are not always profitable.
77. The promotion of regional development, tourism, the local economy or a region's image will therefore be the consequence of this coherent policy which is intended first and foremost to develop the airport's operations on a long-term basis.
78. While State aid for major hubs or even medium-sized airports can only be justified exceptionally and with difficulty, it may on the other hand prove necessary for small airports. Without public aid small airports which have not reached the break-even point could not survive. In order to continue to provide a service, they need public finance, a need the Commission has recognised, notably in its proposal relating to airport fees.³⁹ *“The smooth operation of most of these small airports, which play a role of fundamental importance in the economic and social cohesion of the Union, requires significant and regular support from the State or local authorities, or, in some cases, financial support of the largest airports”.*
79. Regional airports could also provide a solution to one problem of transport policy: that of saturation of the capacities of the major airports.

³⁹ Proposal for a Council Directive on airport charges, COM (97) 154 final (OJ C 257, 22.8.1997, p.2).

80. The Commission, in its *White Paper on European transport policy for 2010: Time to decide*,⁴⁰ stated that “faced with the increase in air traffic, airport operations should be re-examined in order to optimise use of existing capacities”.
81. The development of regional airports is all the more to be recommended because, as stated in the Commission’s White Paper, “the current air transport structure is leading airlines to concentrate their activities on the large airports that they use as hubs for their intra-Community and international activities. Congestion is concentrated at the major airport hubs, with consequences in terms of pollution and air traffic management. Although congestion in the skies is already the subject of a specific action plan, congestion on the ground is still not being given the required level of attention or commitment. However, almost half of the fifty European airports have reached or are close to reaching saturation point in terms of ground capacity.”
82. Although public aid, in the form of infrastructure construction aid or operational aid, is often necessary for some small airports to survive, sustainable airport development clearly requires development of air traffic and an increase in passenger volumes. Small airports do not generally have the passenger volumes necessary for them to reach critical mass and the break-even point. Only after reaching this critical mass will they be able to act like genuinely commercial companies and limit their reliance on public funds.
83. There are no absolute figures with regard to the break-even point. The Committee of the Regions evaluates it at 1.5 million passengers per year, while the University of Cranfield study mentioned above, which cites two different figures (500 000 and 1 million passengers per year), shows that there are variations according to the country and the way in which the airports are organised.⁴¹
84. Reaching this critical size and the profitability threshold is practically impossible for small airports insofar as the traditional, low-cost or charter companies have not decided to set up there. The traditional companies prefer the tried and tested well-located hubs, to which passengers are accustomed, at which rapid links are possible and where the companies have time slots that they cannot afford to lose. Like the traditional companies, which generally resort to well-known airports, low-cost companies are not always prepared, without appropriate incentives, to run the risk of opening routes from unknown and untested airports.
85. To some extent, European regional airports are suffering as a result of years of airport and air traffic policies that concentrated traffic at major national cities. It is not easy for them to develop in the face of the benefits offered by central airports, which, in addition to their catchment areas and geographical situation, have benefited from years of investment in their infrastructures and from the presence of national companies. Some airports can benefit when volumes of passengers are provided by

⁴⁰ White Paper, European Transport Policy for 2010: time to decide, (COM (2001)370 final).

⁴¹ Report “Study on Competition between airports and the application of State Aid Rules”, Cranfield University, September 2002, p. 5.33 and 6.11.

airlines fulfilling public service obligations⁴² or when aid schemes of a social nature are set up by the national authorities.

86. The Community is already encouraging the development of airports, especially regional airports, by granting finance for the development of airport infrastructures under European regional policy and through loans granted by the European Investment Bank. As already emphasised in the White Paper, the Commission attaches considerable importance to intermodality with rail. In recent years the Community has made a significant contribution, in terms of both policy and financing, to the pursuit of ambitious programmes to develop a high-speed rail network. High-speed rail offers a highly attractive alternative to air travel in terms of time, price, comfort and sustainable development. We should therefore try to benefit from the ability of high-speed rail travel to replace air travel and encourage players in the rail and air industries to cooperate in the framework of Article 81 EC and develop complementarity rather than competition between the two modes.
87. To ensure that the infrastructures concerned are effectively used, and therefore that the public budgetary resources often granted in this respect are paid back, the payment of State aid to airlines, whether or not this aid is paid through the airports, can under certain conditions be a necessary means of attracting the passenger volumes that will enable them to reach the break-even point and cease relying on public funds to survive. However, also based on the fact that most high-speed rail links receive significant public or even Community financing, start-up aid should not be granted to a new air link if there is an existing high-speed rail alternative. For example, the infrastructure of an airport in a regional capital may need extending due to increased traffic. The Commission will examine all public aid in the light of these guidelines, but it considers that start-up aid should not be granted for a new air link if there is already a competitive high-speed rail link.
88. Furthermore, transport policy is still crucial for the outermost regions. These regions permanently suffer from a combination of handicaps which highlight the difficulties of access to them.

The Commission communications of 26 May 2004 [COM (2004) 343 final] and 6 August 2004 [SEC (2004) 1030] on a stronger partnership for the outermost regions lay down guidelines for the harmonious development of these regions. The strategy for their development is based on three main principles: helping to reduce the difficulties of access, increasing competition and bolstering the regional integration of the outermost regions which are very remote from mainland Europe and closer to the geographical markets of the Caribbean, America and Africa. These regions need to be more closely integrated into their regional area to alleviate the impact of their distance from the European economy.

⁴² Ditto, pp. 5-27: *'To some extent, subsidisation of air services within the PSO framework can be interpreted, as an indirect subsidy to an airport. In relation to some remote airports in Scotland and Ireland, they are almost exclusively reliant on subsidised PSO air services'*.

The regional integration of the outermost regions into their geographical environment is therefore essential in the context of trade with neighbouring non-member countries. In this framework, the Commission will not object to start-up aid for transport services between the outermost regions and neighbouring non-member countries [see COM (2004) 343 final].

6.2. Conditions to be met

89. Aid of this kind could change the conditions of trade at two different levels. The first corresponds to the impact of trade on the air transport services market. Aid paid to an airline directly creates distortions in European airspace, whether or not the airline operates from the same airports, insofar as it reduces its operating costs.
90. The second level corresponds to a distortion of trade in the airport services market. Aid could lead indirectly to distortion within the categories of Community airports (A), national airports (B) and regional airports (C and D), as well as between these different categories, by encouraging a company to relocate from one airport to another and transfer a route from a Community airport to a regional airport.
91. The Commission recognises, however, that the launching of new routes from regional airports may be accompanied by significant financial difficulties that the Member States may wish to mitigate in order to ensure that regional airports are promoted.
92. In such cases the Commission may approve such aid, which must be notified and must meet the following conditions:
 - (a) The aid will be paid to Community air carriers within the meaning of Council Regulation 2407/92⁴³ on Community licences.
 - (b) The aid will be paid for routes from regional airports in categories C and D, and in exceptional cases from national airports in category B, for example if a severe recession affects the ordinary activity of these airports.
 - (c) The aid will be paid to airlines for routes departing from all categories of airports located in the outermost regions and going to neighbouring non-member countries. This aid will be considered on a case-by-case basis to avoid creating any distortion of competition with non-Community carriers on the routes affected.
 - (d) Aid granted to airlines will apply only to the opening of new routes or of new frequencies leading to an increase in the net volume of passengers departing from the regional airport. Aid will not be paid when the route is already being operated, whether by an air service or equivalent high-speed rail service. Also, aid must not be paid to an airline for a new route that it is operating in substitution for, and following the abandonment of, an old route that had previously benefited from start-up aid for a complete period. On the other hand, the mere substitution, during the aid period, of one route with another

⁴³ Article 2 of Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers (OJ L 240, 24.08.1992).

leaving from the same airport and expected to generate at least an equivalent number of passengers for the airport will not call into question the continuation of payment of aid for the complete period. Furthermore, aid will not be granted for a route provided by the airline to replace another route that it had previously served from another airport located in the same economic attraction zone or population centre and for which it had previously received aid. Lastly, aid cannot be granted to help a new entrant to open links that already exist and to enter into competition with an existing operator already working on that route from the airport or another airport located in the same economic attraction zone or population centre.

- (e) Aid must act as an incentive: it must allow a business to develop an activity that it would not have embarked upon without public support. This activity, however, must prove itself to be profitable in the long term without aid. For this reason, aid granted for launching new connections or for increasing frequencies must be limited in time; a maximum of five years can be applied in air transport. In any event, the period during which start-up aid is granted to an airline must be less than the period during which the airline undertakes to operate from the airport in question.
- (f) Aid must be degressive. Degressive aid allows a carrier to be helped when a route is started up and then to be encouraged to rely fully on its own strengths later. Degressivity can also depend on the size of the airport so that more intensive aid is reserved for initial developments at smaller-category airports and the intensity is reduced once passenger numbers have increased.
- (g) The aid must be proportional:
 - There must be a strict link between the aim of the airport development, which requires net development of passenger traffic, and the level of aid paid to the airline. The total aid must therefore be calculated per passenger. In this way, an airline that cannot provide an airport with the volume of passengers necessary for its development will not be unduly favoured.
 - The second proportionality to be assessed is that between the aid and the costs incurred by the beneficiary. The only costs eligible are the additional start-up costs that the air operator would not have to bear once “cruising speed” is reached and which would require a public contribution in order to share the risk of non-viability associated with the start-up period. Examples of such costs are the marketing and advertising costs incurred at the outset for publicising the link and the start-up costs of launching the route borne by the airline at the site of the regional airport in question. However, aid cannot be granted for recurring operating costs such as aircraft rental or depreciation, fuel, crew salaries or catering service costs.
 - The third proportionality relates to the minimum period over which the beneficiary company undertakes to operate at the airport in question.
- (h) The intensity of the aid will be limited to an absolute maximum of 50% for 5 years for the smallest airports. However, this intensity and maximum period can vary depending on the category of the airport from which the airline leaves:

- Coverage of 30% to 50% of the additional start-up costs for a period of up to an average maximum of three years will normally be acceptable.
 - For particularly disadvantaged regions, especially the outermost regions, the maximum period of three years may be extended to five years. The list of the regions eligible for regional aid, containing relevant indications on the EU regions,⁴⁴ will be taken into account. A five-year period is justified for Objective 1 regions.
 - For all the other regions, including Objective 2 regions, it is for the Member State to justify the intensity and duration of the aid. This duration should in no case exceed the authorised maximum of five years.
- (i) The service for which the aid is to be granted must be commercially viable after the period during which it is eligible for public funding.
 - (j) The amount of the aid granted to an airline for the development of air services must be transparent. It should be calculated per embarking passenger in order to be easily identifiable and identified.
 - (k) If a Member State is prepared to grant aid, either through an airport or by some other means, in return for economic services such as the launch of new routes, this fact must be publicised to allow the interested airlines to come forward and present their case. The rules and principles relating to procurement contracts and concessions must therefore be respected where applicable. An airport wishing to encourage development of air services must therefore develop objective criteria in terms of maximum amounts and periods for aid to ensure that airlines are treated equally.
 - (l) In addition to the appeal procedures provided for by the “Public Procurement” Directives 89/665/EEC and 92/13/EEC,⁴⁵ where applicable, appeal procedures must be provided for at Member State level to ensure that there is no discrimination in the granting of aid.
 - (m) Sanction mechanisms must be implemented as and when a carrier fails to respect the undertakings made by it in relation to an airport at the time the aid was granted. A system for recovering aid or for seizing the guarantee initially deposited by the carrier will allow the airport to ensure that the airline is honouring its commitments.

⁴⁴ See “Guidelines on national regional aid” OJ C 74, 10.3.1998) and “Regional aid maps” (www.europa.eu.int/competition/state_aid/regional/2000/).

⁴⁵ Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ L 395, 30.12.1989, pp. 33-35).

Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ L 76, 23.03.1992, p. 14-20).

- (n) The general rules laid down by the Commission and by case-law on cumulative aid must be observed in this regard. The aid granted cannot be combined with other subsidies received, such as aid of a social nature or public service compensation. In addition, such aid cannot be granted when access to a route has been reserved for a single carrier under Article 4 of Regulation (EEC) No 2408/92, in particular paragraph 1(d) of that Article. Also, in accordance with the rules of proportionality, such aid cannot be combined with other aid granted to cover the same costs, including aid paid in another State. The total aid received by a new airline should in no case exceed the maximum amount authorised in these guidelines, i.e. 50% of the combined start-up costs of the two airports in question. Similarly, contributions paid to one of the two airports should in no case exceed 50% of the start-up costs of that airport. In order to preserve the incentive character of start-up aid for air links as a development tool for secondary (regional or local) airports only, the Commission believes it necessary to ensure that such aid cannot give any indirect advantage to large airports already largely open to international traffic and competition. Specific attention should therefore be paid to limiting eligible costs when an airline links a regional airport with a major airport in Category A and/or with a coordinated airport, i.e. an airport at which, due to congestion, air carriers must be allocated a time slot by a coordinator in order to take off or land.⁴⁶

7. TRANSITIONAL ARRANGEMENTS AND ENTRY INTO FORCE

93. These guidelines will enter into force from the date of their publication in the Official Journal of the European Union. In accordance with Article 88(1) of the Treaty, the Commission proposes that Member States amend their existing aid schemes relating to State aid covered by these guidelines to conform to these guidelines by at the latest. Member States are asked to confirm that they accept these proposals in writing by at the latest.
94. Should a Member State fail to confirm its acceptance in writing before that date, the Commission will apply Article 19(2) of Regulation (EC) 659/1999 and, if necessary, initiate the proceedings provided for in that Article.
95. These guidelines will be reviewed during the (number) years following the date of their implementation.

⁴⁶ According to the definitions and the classification shown in Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports (OJ L 14, 22.1.1993, p. 1). Regulation last amended by European Parliament and Council Regulation (EC) No 1554/2003 (OJ L 221, 4.9.2003, p. 1).