



European Commission consultation - shaping State aid for airports and airlines

May 2011

State aid for airports and airlines – the Commission’s Consultation

On 7 April 2011, a public consultation was launched on possible new Commission guidelines detailing the application of State aid rules in the aviation sector¹ (the **Consultation**). The Commission has indicated this consultation is a “*vital first step*” in assessing whether the guidelines currently in force remain appropriate in light of developments in the aviation sector and, accordingly, the Consultation represents a key opportunity for interested parties to engage in the process and seek to influence the Commission’s approach to State aid in this sector.

The current framework

The focus of the consultation is on two Commission guidelines that set out principles for the assessment of State aid in the aviation sector.

- Against the context of the liberalisation of the market for air transport services, in 1994 the Commission adopted Guidelines on State aids in the aviation sector (the **1994 Aviation Guidelines**), which remain in force and focus on social and restructuring aid to airlines.
- In 2005, the 1994 Aviation Guidelines were complemented by the adoption of the Community Guidelines on financing of airports and start-up aid to airlines departing from regional airports (the **2005 Aviation Guidelines**).

Aviation sector - market developments

At the launch of the Consultation the Commission noted “*the air transport market has changed dramatically in the last 20 years*”. In short, the Commission recognises the aviation sector has experienced a wide-ranging evolution and the circumstances in which the airlines, airports and the State operate in this sector may well be different to those which prevailed when the 1994 Aviation Guidelines and/or the 2005 Aviation Guidelines were introduced.

The Consultation

The Consultation is very detailed and it is aimed at gathering as much information as possible from relevant stakeholders, to be taken into account for the purposes of future legislation and/or guidelines. We set out below a short summary of some of the key themes addressed as part of the Consultation questions.

- **Market characteristics.** The Consultation asks stakeholders how they would describe the current competitive situation and for information on the current business models of airlines and airports. Further, the Consultation asks stakeholders what they consider to be the likely developments and the major challenges for the aviation sector in next year/over the next 3 years.

On market definition, the Commission acknowledges that the definition of the relevant market can be key when investigating State aid. Accordingly, the Consultation seeks the views of stakeholders on this issue, including whether the categorisation of airports and passenger thresholds set out in the 2005 Aviation Guidelines remain appropriate and on whether a block exemption would be appropriate to cover aid granted under certain circumstances. The Consultation also contains questions on the minimum legal and economic conditions under which an airport can be operated on a profitable basis and without financial assistance from the public authorities.

The coming weeks provide a key opportunity for interested parties to shape the agenda for reform of the way in which the State aid rules are applied in the aviation sector

¹ Consultation on review of the Community guidelines on financing of airports and start-up aid to airlines departing from regional airports, see: http://ec.europa.eu/competition/consultations/2011_aviation_guidelines/index_en.html

- **Factual information on the regulatory and economic environment.**

The Consultation asks for stakeholder comments on the distinction between the activities of airports and airlines that are economic and those that fall within the public policy remit.

The Consultation also asks whether the concepts of '*services of general economic interest*' and compensation for public service obligations, as set out in the 2005 Aviation Guidelines, are sufficiently clear and whether additional or alternative criteria and further factual elements should be used to define their application to airports and airlines. The Consultation also poses detailed questions on what criteria should be taken into account when applying the so-called '*market economy investor principle*' to assess whether public financing of an airport or an airline constitutes State aid.

- **Financing of airports.** The 2005 Aviation Guidelines deal with public funding of the construction of airport infrastructure and equipment or facilities; the approach to the public funding of costs of running and maintaining airport infrastructure; and the approach to public funding of different airport services. In respect of each of these factors, the Consultation sets out detailed questions seeking views on, amongst other things, the compatibility criteria, the competitive effect of public financing on these aspects of an airport's service and whether further guidance is needed
- **Start-up aid.** The Consultation asks whether the Commission's approach to the compatibility of start-up aid is adequate and whether the conditions set out in the 2005 Aviation Guidelines are appropriate. In addition, the Commission seeks the view of stakeholders on whether the definition of 'new' routes is adequate and on whether start-up aid remains necessary.

In particular, the Commission is interested to receive information about changes to the business models of airports and airlines

State aid and aviation - Influence the debate

The Commission has invited responses to the Consultation by **6 June 2011**, and interested parties need not necessarily touch upon all the questions asked in the Consultation. The coming weeks provide a key opportunity for interested parties to shape the agenda for reform of the way in which the State aid rules are applied in the aviation sector. In particular, the Consultation is a good opportunity to try and influence the content of future EU legislation or guidelines, advocating e.g. for more relaxed State aid rules in the sector or, on the contrary, more stringent rules to be applied to certain situations.

Following the Consultation, the Commission will consider the extent to which changes to the current rules are necessary and, if appropriate, come forward with a proposal for revised Aviation Guidelines and/or new legislation.

For further information on the issues outlined above and on how your business can engage with the Consultation, contact details of the Squire Sanders Antitrust and Competition partners are available at:

http://www.ssd.com/antitrust_competition/