

## **ERA's position on the Community guidelines on financing of airports and start-up aid to airlines departing from regional airports**

**07 March 2005**

### **GENERAL COMMENTS**

ERA welcomes the publication of simple, easy to interpret guidelines that seek to clarify the **existing** laws on the application of state aid to airlines and airports. ERA does not support development of any guidelines that are not based existing laws.

As they are written, the guidelines are complex, difficult to interpret, cover areas outside the scope of the subject area (with no legal basis) and are in certain areas contradictory.

ERA believes that where a member state and/or public body grants state aid to an airport and/or airline in support of the development of a new air route this should be encouraged if it benefits the region served. However, it is important that aid does not distort competition between airlines, airports (public or private) and other modes of transport. In this regard ERA supports existing EU competition law.

Several references in the guidelines are made to high speed rail (HSR). ERA strongly supports the development of a free market for transport in Europe. This enables consumers to choose the mode that suits their requirements best. It also allows modes to compete in an open market without distortions of competition. The active promotion of HSR at the expense of air transport is a clear violation of a free market and a distortion of competition between modes and will ultimately limit the choice and accessibility to transport options for Europe's citizens.

Air transport in Europe operates in a fully deregulated market. This has allowed air services to grow greatly benefiting the consumer. The European air network has created an enlarged European transport system that has greatly enhanced the mobility of Europe's citizens and has created a more integrated European community. ERA members transport over 80m passenger per year within Europe and have been providing air links between the regions and to/from Europe's capitals for over 25 years. Approximately 60% of our members' 2 million annual flights connect regional airports to major hub airports. The development of 'low cost' airlines is a new phenomenon which has added to the development of some regional airports. However these new carriers are not the only source of transport development in the regions and this must not be overlooked.

Detailed comments on individual paragraphs are attached.

## DETAILED COMMENTS

*The 'Para' references refer to the numbered paragraphs contained in the guidelines*

### 1 INTRODUCTION

**Para 2** – This paragraph references the fact that the EC plans to make targeted proposals to introduce greater slot mobility through the introduction of market mechanisms. Paragraph 2 implies that these market mechanisms **will** be introduced. There are a range of options under discussion which include retaining the current slot allocation system. The paragraph makes assumptions on policy which have yet to be discussed. As this subject is still open to discussion elsewhere (and is likely to be controversial) ERA proposes that it be removed from the guidelines.

**Para 5** – The last sentence makes reference to the '*drive by airports in recent years to secure new air links*'. This development is not 'recent'. An airport's primary business is the development and retention of routes. This has always been a commercial motivator for airports and should not be used as a justification for the development of the guidelines.

**Para 12** – ERA supports an open and free transport market which is consumer driven and gives the consumer the right to choose their preferred mode of transport. High Speed Rail (HSR) is a heavily subsidised form of transport that offers an alternative to air transport on certain sector lengths. ERA strongly opposes the use of the guidelines as a means to promote HSR in favour of air. The intent of the guidelines is to provide a level playing field without distortions of competition between airports and airlines. The suggestion in the guidelines that HSR should be actively promoted ahead of air transport is a clear distortion of free competition and works against the entire intent of the paper.

It should also be remembered that geography precludes the use of HSR in many areas of Europe.

**Para 15** – Paragraph 15 addresses a wide range of subjects including taxes, fees, environmental protection, congestion, heavy goods vehicle charges and general infrastructure charges. ERA does not see the relevance of addressing these subjects in the guidelines. Each topic is an area in itself and subject to considerable debate elsewhere. Their inclusion in the guidelines only adds complexity and confusion.

**Para 16** – This paragraph states that historically regional airports only developed air links in order to make better use of public infrastructure or to fulfil the requirements of their business statutes. This statement is made without any supporting facts and portrays regional airports as being indifferent about the importance of transport links. In ERA's experience regional airports have developed air routes in order to become more financially secure and to provide essential transport links between the regions and to/from Europe's major capitals. As detailed in Para 5 the drive to develop new air routes is not a new concept for regional airports.

**Para 20** – Paragraph 20 provides a simple and clear explanation of the aim of the guidelines. With minor additions this paragraph could be used as a replacement for paragraphs 1-19. The amended contents of paragraphs 1-19 could be annexed for information. This change would greatly simplify the document and its interpretation.

### 2 LEGAL BASIS

No comments on this section at this time.

### **3 TYPES OF AIRPORT**

**Para 31** – This paragraph introduces a new classification for airport sizes. This in turn impacts the application of the guidelines on different categories of airport based on passenger volumes. ERA believes that the annual passenger volume at an airport is not the ideal determinant of whether or not to grant aid. ERA supports the application of aid to any airport or airline providing it is done in a transparent manner which does not distort competition. In addition, ERA believes that airports of less than a certain annual passenger volume (for example 1 million) may have a case to be exempt from the requirement to prior notification laid down in Article 88(3) of the Treaty. See comments on Para 49 below.

### **4 SCOPE OF APPLICATION**

**Para 35** – No explanation is given as to why airports with greater than 5m passenger per year will not have to comply with the rules on start up aid, whereas all airport will have to comply with the rules of financing of airports. ERA supports the application of rules (based on existing EU law) to all airports irrespective of passenger volume.

### **5 FINANCING OF AIRPORTS**

**Para 43** – ERA supports the provision of state aid in cases where a general public interest is being served and there is no risk of distortion to competition. Certain regions of Europe rely on regional air links to provide an essential public service for local communities. They also provide essential communication links with large communities. In these cases the airport is an integral part of providing the public service and aid is justified.

**Para 48, 49 & 50** – The use of passenger volumes as a basis on which to decide whether or not public financing threatens a distortion of competition is an imprecise indicator. ERA would support an approach which considers each instance of public financing on a case by case basis. However, ERA believes that airports of less than certain annual passenger volumes (for example 1 million) may need additional incentives to help grow passenger numbers. In these cases ERA would support an exemption from the prior notification obligation laid down in Article 88(3) of the Treaty.

An exemption would free these airports of the additional bureaucracy and regulatory costs associated with prior notification. More importantly it would prevent any undue delays in receiving aid at these airports. However, it is still important to ensure that there is no risk of distortion of competition and that transparency is retained. ERA would therefore support a need for the authority or state granting aid to these airports to immediately make public any decision to grant aid which is exempt from prior notification.

**Para 55** – ERA supports the need for vigilance to ensure that public financing does not give an undue long term benefit to one particular airport or airport user. ERA believe this is particularly important in the case of public airports which are competing with a private airport in the same catchment area.

### **6 START UP AID**

**Para 76, 77 & 78** – Para 76 defines a condition of granting aid as the need for an airport to demonstrate a coherent development policy which is intended to develop the airport as a profitable infrastructure. Para 77 supports regional development and the promotion of the local economy as a consequence of the airports long term development. Para 78 states that state aid for major hubs can only be justified exceptionally.

ERA believes that the size of an airport alone should not be the prime driver for deciding whether or not to grant aid to a new route. For example a route between a remote region and a major hub is likely to provide significant prosperity to the remote region. Arguably a regional 'hub feed' route would provide more economic prosperity and more international connecting points than a point to point service between two remote European points. However the regional hub feed route may not provide significant added passenger volume and prosperity to the airport and would thus be discounted from receiving any state aid. The main point is that passenger volume alone is not a good indicator of the value of a route to a local community.

**Para 84** – In order to categorise the market correctly this paragraph needs to include mention of the regional sector. Unlike so called tradition companies and no frills carriers, regional carriers provide links on low volume routes between the regions and on hub feed routes to major European centres and international connecting points. Often these routes provide an essential transport link for a regional community. A new route, by any type of carrier, poses significant business risks and incentives are often required to 'tip the balance' in favour of launching the route.

**Para 85** – This paragraph discusses the development of major airports and the reasons why this has occurred. The development of major airports is a consequence of a free market and the economics of supply and demand. The text adds no substance to the guidelines and offers only a single sided view of the development of Europe's airport infrastructure.

**Para 86** – Experience has shown that a de-regulated transport system generally benefits the consumer. An example of this is the development of regional carriers that have flourished since deregulation and have opened up access to Europe's regions. Paragraph 86 actively promotes the development of high speed rail ahead of air transport. This policy is not based in law and would be a direct intervention in competition between modes, is a clear distortion of competition and a backward step as far as promoting a free market in transport. ERA believes this paragraph should be removed from the guidelines.

**Para 87** – Paragraph 87 positively discriminates against air transport by suggesting no aid be paid to a new air link which would compete against a HSR route. This policy is not based in law and is a clear distortion of competition between transport modes which would limit the choice of the consumer. The guidelines acknowledge that rail is heavily subsidised which in itself is a distortion of competition between modes. ERA believes this paragraph should be removed from the guidelines.

**Para 92 – General Comments.** The majority of the guidelines specified in para 92 are not based on existing EU law. As such there is no legal basis for the opinions given nor is there any objective justification provided for the statements made. Where a guideline is not based on law but merely the opinion of the EC, ERA does not support its publication as a guideline.

ERA believes that start up aid may be granted on a case by case basis to any route at any airport within the EU. The authority granting the aid and/or the EC should ensure that the aid granted does not distort competition between airports or airlines. This simple requirement will negate the need for lengthy guidelines that are not based on law and are subject to interpretation and challenge.

**Para 92d** – As stated in ERA comments to para 76, 77 & 78 passenger volume alone is not a good indicator of the value of a route to a community. Consequently this should not be the main determinant for the granting of aid. ERA does not support this guideline.

**Para 92d** – Specifying that aid should not be granted to a route where a competing HSR route already exists is a direct distortion of the market. ERA does not support this guideline.

**Para 92e & 92d** – The imposition of a fixed time period of 5 years and the requirement for degressive aid has no legal basis. ERA does not support these guidelines.

**Para 92g (point 1)** – As stated above passenger volume is not a good indicator of the value of a route to a community. The adherence to this guideline could potentially dis-benefit a local community from receiving aid for a low volume, but economically beneficial air route. ERA does not support this guideline.

**Para 92g (point 2), 92h, 92i** – The requirements of these paragraphs have no basis in law, are subject to interpretation and can be challenged. Consequently ERA does not support their inclusion.

**Para 92j** – ERA supports the requirement for aid granted to be transparent. This requirement will help reduce a likely distortion of competition. There appears to be no logical reason for it to be calculated per embarking passenger providing it is properly accounted and disclosed.

**Para 92k, 92l, 92m** – ERA supports this requirement for public and transparent granting of aid. This requirement will help reduce a likely distortion of competition law.

**Para 92n** – There is considerable advantage to a local regional community through the provision of a link to a major airport. Generally major airports are situated close to large economic centres to which air links for the regions are essential. Major airports provide international links giving regional communities access to international markets and destinations. The requirements of Paragraph 92n would prevent links to major airports from being granted aid and this would serve to disadvantage and discriminate local communities. Additionally, there is no basis in law for this requirement and it is not supported by ERA.

## **7 TRANSITIONAL ARRANGEMENTS**

No comments on this section at this time.