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(Announcements)

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMPETITION  
POLICY

COMMISSION

STATE AID — GERMANY

State aid C 24/07 (ex NN 71/06) — State aid to Flughafen Lübeck GmbH and Ryanair

Invitation to submit comments pursuant to Article 88(2) of the EC Treaty

(Text with EEA relevance)

(2007/C 287/07)

By means of the letter dated 10 July 2007 reproduced in the authentic language on the pages following this summary, the Commission notified Germany of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty concerning the abovementioned measure.

Interested parties may submit their comments within one month of the date of publication of this summary and the following letter, to:

European Commission  
Directorate-General for Energy and Transport  
Directorate A, General Affairs  
DM 28, 6/109  
B-1049 Brussels  
Fax (32-2) 296 41 04

These comments will be communicated to Germany. Confidential treatment of the identity of the interested party submitting the comments may be requested in writing, stating the reasons for the request.

SUMMARY

— **Description of the measure/aid in respect of which the Commission is initiating the procedure:**

This case concerns certain business relationships which may give rise to issues of State aid concern in connection with Lübeck Blankensee Airport differing in nature according to the parties involved.

— Potential State aid to Flughafen Lübeck GmbH (the airport operator) for the operation of the airport: The Hanseatic City of Lübeck seems to have financed the operation of the airport by different means, namely a Loss Transfer Agreement, a favourable Lease agreement, and Guarantees.

— Potential State aid to Flughafen Lübeck GmbH by the means of infrastructure financing: The Land of Schleswig-Holstein has given to Flughafen Lübeck GmbH

via the Hanseatic City of Lübeck funding for certain building investments at Lübeck Airport (particularly the setting up of a Category II Instrument Landing System (ILS Cat II)).

— Potential State aid to Infratil in the context of the privatisation of Flughafen Lübeck GmbH: Flughafen Lübeck GmbH was 'privatised', as 90 % of the shares of Flughafen Lübeck GmbH were sold by the Hanseatic City of Lübeck to Infratil, a New Zealand-based infrastructure operator.

— Potential State aid to Ryanair: In the relationship between Flughafen Lübeck GmbH and the low-cost airline Ryanair, the latter might have benefited from State aid in the form of inadequate landing charges and passenger charges or combined charge, and a marketing arrangement.

— **Assessment of the measure/aid:**

The Commission has come to the conclusion that the privatisation of Flughafen Lübeck GmbH might have been carried out in accordance with the applicable Commission guidelines, and hence might not entail any State aid. However, at this stage, it cannot with certainty determine whether the price paid by Infratil was the market price.

The Commission has come to the conclusion that the three other measures are likely to entail State aid.

**Compatibility of the aid in the light of this legal basis, including statement of the Commission's doubts, with precise references to specific provisions in the relevant guidelines/frameworks**

The operating aid for Flughafen Lübeck GmbH has been assessed under Article 86(2) EC treaty and Article 87(3)(c). At this stage, the Commission has serious doubts whether it can be declared compatible with the common market, as none of the exceptions to the general prohibition of State aid seems to apply.

The investment aid for Flughafen Lübeck GmbH might be declared compatible based on Article 87(3)(c) and the 2005 Commission Guidelines for State aid for Regional Airports, if all conditions set out in these guidelines are fulfilled. The conditions are the following:

- construction and operation of the infrastructure meets a clearly defined objective of general interest (regional development, accessibility, etc.),
- the infrastructure is necessary and proportional to the objective which has been set,

- the infrastructure has satisfactory medium-term prospects for use, in particular as regards the use of existing infrastructure,
- all potential users of the infrastructure have access to it in an equal and non-discriminatory manner,
- the development of trade is not affected to an extent contrary to the Community interest.

At this stage, the Commission has the doubts whether any of these conditions is fulfilled.

The State aid in the context of the privatisation is unlikely to be compatible with the common market, should it turn out that the price paid by Infratil was less than the market price, as none of the grounds of compatibility seems to apply.

The operating aid for Ryanair could be declared compatible with the common market if the conditions set out for the authorisation of start-up aid in the 2005 Commission Guidelines for State aid for Regional Airports are fulfilled. The Commission has doubts whether the following of these conditions are fulfilled:

- opening of new routes: the German authorities have not demonstrated that the aid is limited to new routes,
- economic viability and degressivity: the German authorities have not demonstrated that the aid is limited to new routes, nor that it is degressive,
- aid linked to the Start-up costs: the German authorities have not demonstrated that the aid is limited to the start-up costs,
- publicity and non discrimination: the German authorities have not demonstrated that the aid has been publicised, and that it was available on a non-discriminatory basis.

In accordance with Article 14 of Council Regulation (EC) No 659/1999<sup>(1)</sup>, all unlawful aid can be subject to recovery from the recipient.

<sup>(1)</sup> OJ L 83, 27.3.1999, p. 1.