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CONSULTATION PAPER

(presented by the Commission)

Ground handling services

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I. Introduction

1. Implementation of the third package of air transport measures adopted by the Council has already intensified competition in air transport to some extent. For the full benefit of liberalization to be felt, however, there will also have to be new rules of play applying the principles of competition to activities ancillary to air transport proper. Such, for example, was the aim of the proposal for a Community code of conduct for computerized reservation systems.
2. The provision of ground handling services falls into this category. Since liberalization, Community airlines have been able to operate on an open market, but if they are to seize all the opportunities afforded by this new environment they must be better able to control their prices, costs and the quality of services supplied. Ground handling is a substantial factor in airlines' operating costs. Ground handling is also an important aspect of the way in which airlines seek to differentiate the image they present to customers. Carriers are therefore anxious to have the freedom to choose between several suppliers of different services, or to provide their own services.

Certain airports might also be interested in differentiating their image from other airports to the extent that they compete for part of the traffic. Those aspects are of relevance, however, primarily in relation to air carriers as users of the airports. They are less important in relation to the passengers, for which carriers compete in a liberalised environment.

3. The large number of complaints received by the Commission in recent months is evidence of the existence of problems in this sector. The continued existence of monopolies or undertakings with special or exclusive rights in a number of Community airports indicates that ground handling services are atypical of the liberalized air transport market. Moreover, the Commission granted a block exemption for certain types of agreement between undertakings in this sector under Article 85(3) of the EEC Treaty. The exemption expired at the end of 1992, and it is now necessary to set up a framework that will regulate and organize the market for ground handling services in accordance with the principles of competition.

II. Present status of the ground handling market

Ground handling services

4. "Ground handling services" are all the services supplied at an airport for the aircraft itself, the passengers and the cargo. They are very varied and do not form a homogeneous whole. They may be subdivided into eleven major categories on the basis of Annex A to the IATA standard ground handling agreement (the references are to sections of that Agreement):
 - (1) Ground administration and supervision (Sections 1, 2, 3 and 13)
 - (2) Passenger handling (Section 4, excepting 4.4)
 - (3) Baggage handling (Section 4.4)
 - (4) Cargo and mail handling (Section 5)
 - (5) Ramp services (Section 6)
 - (6) Cleaning (Section 7)
 - (7) Fuelling (Section 8)
 - (8) Aircraft maintenance (Section 9)
 - (9) Flight operations and crew administration (Section 10)
 - (10) Surface transport (Section 11)

Situation in airports

5. The supply of ground handling services differs from one airport to another, and even from one terminal to another within the same airport. It is nevertheless possible to pinpoint certain general patterns.

In a number of Community airports, ground handling is only partially open to competition:

- in many cases the airport or the national carrier operates a monopoly or duopoly;
- in addition, carriers are not always allowed to perform their own handling services.

Airlines are thus not always able to choose between competing suppliers; suppliers have a margin of discretion to set prices that are barely transparent, at levels which may not effectively reflect their costs, or which exceed those which would result from the free interaction of supply and demand. Furthermore, the lack of competition and the restrictions on carriers providing their own services could prevent carriers from improving the quality of services or matching them to the specific needs of their customers. Lastly, service suppliers holding a monopoly can in practice favour certain carriers to the detriment of others: the risk is even greater where monopoly suppliers are themselves carriers, as is sometimes the case, and hence direct competitors of the airlines that are forced to use their services.

6. Very likely the optimum degree of market openness will not be identical in all the airports in question. It is in particular in the large airports that the problems of choice affect the largest number of consumers and potential suppliers. It is also in the busiest airports that the problems of discrimination against new suppliers are liable to arise most frequently. And it is probably in these large airports that liberalization is least likely to encounter practical obstacles.
7. In addition, the supply of ground handling services is subject to a number of constraints, chief among which are the following.

· Available capacity and space in airports: This constraint essentially concerns the space available in terminals and ramp areas, which may be inadequate for the personnel and technical equipment required to supply the services concerned. Lack of space can also affect the infrastructures needed to supply services such as passenger check in desks, or the central area for sorting and dispatching baggage to terminals.

· Security and safety: This is a constraint imposed by the need for identity checks on persons with access to areas that are closed to the public and sensitive from the standpoint of airport security (the security aspect), and the need to coordinate and supervise all operations so as to prevent accidents (the safety aspect). The latter aspect is partly linked to the problem of lack of space referred to above.

· Technical feasibility: The provision of some handling services means that suppliers must have access to certain equipment and certain infrastructures. Constraints caused by technical feasibility may thus affect the supply of particular services. These constraints are not related to problems of capacity, but they may be aggravated by a lack of space. The need to coordinate or indeed centralize certain functions may constitute a major constraint, in particular as regards the utilization of facilities and infrastructures.

Investment costs. In some cases, the only way of alleviating or removing the constraints caused by lack of capacity and space and by the need for coordination is through considerable investment, on the part of both the service supplier and the airport itself. This fact may in certain cases militate against liberalization of certain services in the short term, or make it necessary to restrict its extent.

The question of the necessity for an airport to guarantee a minimum transfer time might also be examined in particular cases.

It is essential to take account of all these constraints to ensure that the ground handling services provided in airports are efficient. Such constraints can have a significant impact on the overall capacity of airports, which can in turn restrict the scope for opening up these services to competition.

The constraints do not affect all types of services to the same degree. They may also differ from one airport to another, and occasionally from one terminal to another within the same airport.

III. Ends and means

8. The current situation therefore requires that the market in ground handling services be reorganized and opened up to competition, the principal objective being to guarantee quality services and an acceptable level of prices for all interested parties. This will mean:

avoiding discriminatory practices observed at certain airports and distortions of competition between carriers which such practices may engender.

preventing similar situations recurring in future.

The means to this end are twofold.

- (1) The market should be opened up by removing the current de jure and de facto restrictions, so as to establish free access to the market by service suppliers.
- (2) This process should be accompanied by framework measures laying down minimum rules for Member States, airports and service suppliers to ensure that access to the market remains open and that the market works in accordance with competitive principles. Such measures would in no way preclude national rules intended for example to guarantee sound management of infrastructures and to maintain safety and security. National rules would nevertheless have to comply with Community law.

Opening up the market

9. Given the wide variety of services involved, not all ground handling services need necessarily be covered by the same arrangements for liberalizing the market: for practical reasons, some types of service are better suited for complete liberalization than others. A differentiated approach designed to liberalize some types of service completely and others partially is probably better geared to the characteristics of the various types of service, to user requirements and to constraints at airports.

Degrees of liberalization

10. As regards the various degrees of liberalization, the following options can be envisaged.

- (1) Complete liberalization would require the abolition of all exclusive or special rights and of legal restrictions on the freedom of airlines to provide their own services.

Competition would be given a free rein, the number of suppliers would not be limited, and self supply would be allowed without restriction.

- (2) A more limited form of liberalization would involve the partial elimination of current restrictions and the authorization of a limited number of suppliers, at least one of whom should be independent, i.e. not controlled directly or indirectly by the airport itself or by the dominant carrier (a carrier accounting for more than a certain percentage of the airport's traffic). Authorized suppliers would be selected by tender.

This partial liberalization would be accompanied by the complete removal of restrictions on carriers providing their own services. Each airline would therefore have a choice between providing its own services and using those of authorized suppliers, at least one of whom would be independent.

Criteria

11. The optimum degree to which the various services should be opened up to competition can be determined by reference to a number of criteria.

(1) Contact with passengers

Some services are in more immediate contact with passengers themselves and influence the image of an airline in the eyes of the travelling public. These are, principally:

- passenger handling;
- baggage handling;
- catering, and
- cleaning.

These are services where there may be the strongest arguments for opening up the market completely, since it is essential for airlines to be able to control the quality of the service and, in order to do this, to have as much freedom as possible in choosing their supplier.

(2) Technical complexity and cost of investment

Some services, such as ground administration and supervision, do not require considerable investment by the supplier nor are they very technical in character. Others, however, do fall into this category, e.g. fuelling and aircraft maintenance.

In the case of very technical or capital-intensive services, few candidates will probably respond to market liberalization moves. Complete liberalization is therefore less necessary.

(3) Capacity and space available

At many airports, the capacity of the installations, especially terminals, may limit the number of service suppliers that can be accommodated in practice. There are two aspects to this difficulty :

- virtually all handling services may be affected since the supplier's physical presence at the airport will almost always be necessary, at least intermittently; the only exceptions seem to be ground administration and supervision and flight operations and crew administration, which require very little space;

the degree of difficulty may differ completely from one airport to another and even from one terminal to another.

On the basis of the information available to the Commission it is hard at present to judge what the real impact is in each case.

Another major problem associated with this constraint is the investment which opening up the market may require of the airport itself, and not just of the service suppliers. While it is reasonable that a supplier should bear the costs of providing services at an airport, it is less obvious that airports should be forced to undertake the sometimes considerable investment that accommodating new suppliers might require. Service suppliers could therefore be invited to contribute in some way to the financing of such investment, e.g. through the rents, charges **and fees**, etc. which they are asked to pay in return for access to the infrastructure.

(4) Safety and security

In certain cases, safety and security requirements may also limit the number of suppliers of certain services that can be accommodated. This is particularly so in the case of:

- services which involve direct access by staff to the aircraft or to sensitive areas, such as catering, cleaning or aircraft maintenance;
- services involving the movement of vehicles in mixed areas where aircraft are also present, e.g. ramp services or fuelling.

Strictly speaking, this means only that the airport should have the power to check the identity of persons having access to the aircraft and to sensitive areas, and to make sure that staff and vehicles comply with the necessary traffic and coordination rules. This does not seem automatically incompatible with opening up the market, provided that increasing the number of suppliers does not make it impossible in practice to carry out such checks and coordination measures. It will therefore be necessary to find a compromise which will achieve the highest degree of liberalization compatible with maintaining the level of safety and security necessary.

12. These considerations suggest that the best candidate for complete liberalization is a service:

- which is close to the passenger,
- which involves little cost and is technically straightforward;
- where security and safety constraints are not prominent, and
- which is not likely to be affected by a lack of space or capacity.

The ideal example is passenger handling.

Conversely, the worst candidate for complete liberalization is a service:

- where there is no contact with passengers;
- which is technically complex or involves a high level of investment;
- where there are acute problems of safety or security, and
- where available capacity or space is likely to be limited.

A typical example would be fuelling or ramp services.

Framework measures

13. The framework measures include a number which are likely to be applied across the board despite the variety of situations encountered. The main ones are as follows.

(1) "Unbundling", would separate the functions of airport manager and service supplier.

All ground handling services are supplied, by definition, at an airport, whose infrastructure is used by the service suppliers. The body responsible for managing the airport can, therefore, through its decisions, significantly influence competition between the various suppliers of ground handling services. It is consequently essential to ensure that it remains impartial with regard to them.

At present, the managing bodies of several airports are also suppliers of ground handling services, under various arrangements which range from a straightforward monopoly to a holding in a specialist company. Competition between suppliers can be distorted by this duality of roles.

Four types of measure can be taken in order to contain this risk:

(a) unbundling of accounts

this would oblige airports to differentiate in their cost accounting between airport management activities and ground handling services;

(b) management unbundling

in addition to unbundled accounts, this level requires separate management for the two activities (e.g. a company with two separate divisions);

(c) legal unbundling

this requires, in addition to (b), that the two activities be carried out by bodies with separate legal personality;

(d) total unbundling

this would, in addition to (c), prohibit any economic links between the two legal persons.

"Total unbundling" would avoid all conflicts of interest; it would require airports to sell off their ground handling divisions. But at the present time the two activities are vertically integrated in many airports, and total unbundling could cause practical and legal difficulties which might be quite serious in some cases. "Legal unbundling", which does not present such difficulties, appears sufficient for the present purpose.

(2) Where a service was not opened up to competition, and continued as a monopoly under the exemption clause described in point 15(3) below, measures could be taken to ensure transparency in the prices charged for the service, and to establish machinery for compulsory consultation between the service supplier and carriers.

There might also be a conciliation procedure to deal with disputes.

(3) Where the market was fully open to competition, procedures could be laid down under which the airport would have to give approval to service suppliers. This

should not be a discriminatory power; any requirements imposed would have to comply with a number of principles in order to avoid any unfairness:

- they would have to be non discriminatory;

- they would have to be suited to the purpose in view;

- they could not impose constraints or costs on service suppliers which were out of proportion to the gains in effectiveness, safety or security which they were likely to produce;

- they could not have the effect of reducing market openness below a level authorized by the Community legislation.

- (4) Public tendering procedures could be established at Community level for the designation of successful candidates where the market could not be opened fully and the number of suppliers had to be limited.

Such procedures would have the advantage of preventing any collusion between certain service suppliers and the managing body or any favouritism on the managing body's part.

- (5) There are principles which ought to govern any requirements imposed on service suppliers by the airport. Whether or not the market is fully open to competition, the airport authority or corporation, as the body managing and regulating the airport, must be entitled to take the measures necessary for efficient management and for security and safety. It must be able to require service suppliers at the airport to comply with the rules and conditions it considers appropriate for these purposes. But such measures should comply with the same principles as those listed in point (3).

A binding code of conduct might incorporate some of the framework measures just mentioned.

14. The liberalization measures envisaged here could have repercussions on employment in ground handling services:

- as competition became effective, that is to say when new service suppliers had acquired sufficient market share to exercise real pressure on the conduct of firms which currently enjoy a monopoly or face only a low level of competition, existing firms might be forced to seek productivity gains, and this could result in job losses;

- the new service suppliers, on the other hand, would create new jobs; and airlines would see an improvement in the quality-price ratio for ground handling services, which would reduce their operating costs, and could have a positive effect on their employment policies, particularly in the difficult period they are going through at present.

These social consequences will have to be properly considered during the consultations, bearing in mind that problems of adjustment which might be easily resolved in a period of rapid growth can be more serious in a period where the economy is depressed.

In the long term the liberalization of the market in ground handling services should not in principle result in a reduction in overall employment or a worsening of working conditions.

IV. Conclusions

15. The Commission accordingly takes the view that there is a need for a reorganization of

the market in ground handling services. Such a reorganization might comprise the following.

- (1) The market in ground handling services could be opened up by fully liberalizing all services which come into some sort of contact with the user, or which are subject to only minor constraints of cost, safety and security, or available capacity and space. There would be no limit to the number of service suppliers, and airlines would be free to provide their own ground handling services without restriction; this arrangement would in any event apply to ground administration and supervision and to flight operations and crew administration, where there are practically no constraints of the kind just referred to, and to passenger handling, which directly affects the image of the airline in the eyes of the travelling public. Cleaning, cargo and mail handling and catering might also be fully liberalized, but the Commission wishes to consult interested parties before deciding its position on this point.
- (2) Those categories of service in which the contact element is absent, or in which there are practical constraints which stand in the way of a full opening of the market, could be partially liberalized. Here there would be a minimum number of service suppliers, the number being determined in the light of the consultation process; one supplier at least would be independent both of the airport and of the dominant carrier, and airlines would be free to provide their own services. This arrangement would apply to the types of service where problems of safety and security are most serious, such as ramp services and other activities which involve the movement of staff and vehicles in the immediate neighbourhood of aircraft. It would also apply to categories such as baggage handling, where a high level of coordination or indeed centralization is usually needed, if only because of the scale of the investment undertaken by the airport itself.
- (3) Exemptions could be granted to airports where there were objective and specific constraints which made the opening up of the market difficult to achieve in practice. What form such exemptions should take, their extent and limits and the machinery for granting them are matters which would have to be decided in the light of the consultation process. Wherever a service was declared exempt, and was not opened up to competition, there would in any event have to be absolute transparency in respect of such aspects as price determination.
- (4) Binding rules could be laid down comprising in particular the following.
 - (a) "Legal unbundling" of airports would allow openness in the decisions taken by the body managing the airport, to curb any discrimination or abuse on its part in its dealings with service suppliers.
 - (b) Procedures could be established for the approval by the airport of service suppliers wishing to provide one or more categories of service which were fully liberalized at that airport. The airport would be entitled to impose requirements needed for the proper management of the infrastructure and for the preservation of safety and security. These requirements would nevertheless have to comply with a number of fundamental principles
 - they would have to be non-discriminatory
 - they would have to be suited to the purpose in view
 - they would have to be in proportion to that purpose
 - they could not reduce the openness of the market to a point below what was required by Community legislation.
 - (c) Impartial tendering procedures could be laid down at Community level for the designation of suppliers of services wherever their number was limited. These procedures could be based on the Community legislation on the award of public contracts.

- (d) The body managing the airport could be entitled to take measures or impose requirements necessary for the proper management of infrastructures and in the interests of safety and security. Such measures or requirements would apply to all service suppliers for the entire time they operated at the airport. They would have to comply with the principles listed at point (b) above.
 - (e) There should be transparent, objective and non-discriminatory conditions for access to airport property and plant by service suppliers and by airlines wishing to perform their own ground handling services.
 - (f) Machinery should be set up for consultation and conciliation between airports, carriers and suppliers of services, to deal particularly with
 - disputes concerning rent, charges, etc. imposed on service suppliers by the airport authority for access to and use of infrastructures;
 - changes in the prices of services for which the airport has secured exemption in accordance with point 3 above, so that it is not required to open them up to competition.
- (5) These measures would apply to airports and airport systems recording no less than 2 million passenger movements or 50 000 tonnes of cargo a year.

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