

## The Portuguese and Finnish Airports Case

### TARIFFS (AIRPORTS): PORTUGUESE AND FINNISH AIRPORTS CASE

Subject: Tariffs  
Discounts  
Price differentiation  
Abuse of dominant position

Industry: Airports

Parties: Aeroportos e Navegacao Aerea-Empresa Publica (ANA)  
Ilmailulaitos Luftvartsferket (CAA)

Source: Commission Statement IP/99/101, dated 10 February 1999

*(Note. As the Commission reminds us in the report which follows, the Court of Justice has held that airports may constitute a substantial part of the common market, that they are therefore subject to the provisions of Article 86 of the EC Treaty and that Article 86 prohibits the application of dissimilar conditions to equivalent transactions with other trading parties. It follows that where airports pursue a policy of price differentiation according to the origin of flights, they run the risk of infringing the rules on the abuse of a dominant position. We have carried reports in earlier issues on the problems involved with the Brussels, Paris and Frankfurt airports; according to the Commission, the determination of the problems involving the Portuguese and Finnish airports substantially completes the process throughout the European Union.)*

#### Commission demand

The Commission has called on Portugal to bring to an end the system of discounts and differentiated landing charges linked to the origin of flights in operation at the airports of Lisbon, Oporto and Faro. It has also asked the Finnish civil aviation authority to bring to an end the system of differentiated landing charges by flight origin in operation at the airports of Helsinki, Vaasa, Turku, Pori and Tampere. Article 86 of the EC Treaty prohibits airport authorities from discriminating between different airlines as regards equivalent services, without any objective justification. Aircraft handling services are identical, regardless of whether the aircraft is the first or the hundredth flight by a particular airline and irrespective of the airport of origin, be it another Portuguese or Finnish airport or an airport in any other Member State.

#### Finnish airports

As regards the Finnish airports, domestic flights benefit from a discount of 60% as compared with intra-Community flights, for no objective reason. The airports administrator, Ilmailulaitos Luftvartsferket (the Finnish Civil Aviation Administration, or CAA) has been unable to demonstrate that a cost differential exists between the two types of flight. In any event, even if the costs for certain intra-Community flights really were different from those incurred for certain domestic routes, the CAA has admitted that the difference bears no relation to the discounts.

## **Portuguese airports**

This Decision concerns the charges levied for services, such as the maintenance and operation of runways, and approach control, provided by the Portuguese airports administrator Aeroportos e Navegacao Aerea-Empresa Publica (ANA). The Commission is calling for two elements of the charges structure applied by ANA to be abolished: the 50% discount on landing charges for domestic flights compared with intra-Community services, and the volume-based discount ranging between 7% and 32%, depending on the number of monthly landings. As in the Finnish case, discrimination between domestic flights and other flights has the effect of artificially modifying the cost structure of certain airlines, without any objective justification. Nor have the Portuguese authorities provided any justification for the existence of the frequency-based discounts.

## **Additional information**

Airport authorities hold a monopoly position. The European Court of Justice has, in several judgments, held that a port or an airport does indeed constitute a substantial part of the common market, to which, therefore, Article 86 of the EC Treaty is applicable. The Court has also explicitly condemned the practice of applying dissimilar conditions to equivalent transactions with other trading parties. The Portuguese and Finnish cases follow a general investigation by the Commission into discounts and differentiation of landing charges, launched in the wake of the Commission Decision of 28 June 1995 concerning Brussels-Zaventem airport.

These two cases round off Commission competition policy as regards airports. Following the decision on Frankfurt airport regarding access to the market for ground-handling services, and the decision on the Paris airports regarding the commercial policy of airports, the issue at stake here is the cost of access to airport facilities and, more particularly, non-discrimination in the setting of such costs. This issue was dealt with in an initial Decision on the airport at Zaventem. This has now been supplemented by the two new decisions concerning the differentiation of landing charges according to origin of flight (i.e. domestic or non-domestic). The discounts of 50% and 60% respectively for domestic flights granted in Portuguese and Finnish airports are completely at odds with the principle of a single market for transport. In the case of the Portuguese airports, the system was established by virtue of a state measure, and the Commission decision in this case was therefore adopted under Articles 90 and 86 of the Treaty. As regards the Finnish airports, the system is based on an autonomous measure taken by the CAA. The Commission decision in this case was adopted under Article 86 of the EC Treaty. As it is the first decision dealing with the cost of access to airport facilities under Article 86 of the EC Treaty and in view of the fact that, since the case was opened, CAA has dismantled part of the system of discounts and reduced the gap between charges for domestic flights and those for intra-Community flights, the Commission has not imposed a fine. Commission competition policy on airports is now clear and well-established. In order to avoid significant fines when the Commission is next called upon to deal with any cases in this area, the other airports in the Community should adopt pricing policies in line with these rulings. □