

Study on the Impact of Directive 96/67/EC on Ground Handling Services

ANNEX

Contact:

Airport Research Center

Bismarckstr. 61

52066 Aachen

Germany

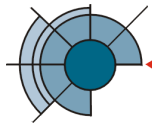
Phone: +49 241 16843-0

Email: directive_review@arc-aachen.de

Website: www.airport-consultants.com

Content:

1	The Directive 96/67/EC	4
2	The Directive 2001/23/EC	23
3	Legal Cases	32
3.1	Case C-386/03: Commission of the European Communities vs. Federal Republic of Germany	32
3.2	Case C-460/02 : Commission of the European Communities vs. Italian Republic....	44
3.3	Case C-363/01 Flughafen Hannover-Langenhagen GmbH v Deutsche Lufthansa AG	56
3.4	Case C-181/06: Deutsche Lufthansa AG v ANA – Aeroportos de Portugal SA	72
4	Questionnaires	82



1 The Directive 96/67/EC

Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports

Official Journal L 272 , 25/10/1996 P. 0036 - 0045

COUNCIL DIRECTIVE 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 84 (2) thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the Economic and Social Committee (2),

Acting in accordance with the procedure laid down in Article 189c of the Treaty (3),

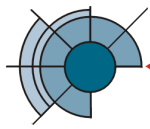
(1) Whereas the Community has gradually introduced a common air transport policy with the aim of completing the internal market in accordance with Article 7a of the Treaty as a lasting contribution to promoting economic and social progress;

(2) Whereas the objective of Article 59 of the Treaty is to eliminate the restrictions on freedom to provide services in the Community; whereas, in accordance with Article 61 of the Treaty, that objective must be achieved within the framework of the common transport policy;

(3) Whereas through Council Regulations (EEC) No 2407/92 (4), (EEC) No 2408/92 (5) and (EEC) No 2409/92 (6) that objective has been attained with regard to air transport services as such;

(4) Whereas groundhandling services are essential to the proper functioning of air transport; whereas they make an essential contribution to the efficient use of air transport infrastructure;

(5) Whereas the opening-up of access to the groundhandling market should help reduce the operating costs of airline companies and improve the quality of service provided to airport users;



(6) Whereas in the light of the principle of subsidiarity it is essential that access to the groundhandling market should take place within a Community framework, while allowing Member States the possibility of taking into consideration the specific nature of the sector;

(7) Whereas in its communication of June 1994 entitled 'The way forward for civil aviation in Europe' the Commission indicated its intention of taking an initiative before the end of 1994 in order to achieve access to the groundhandling market at Community airports; whereas the Council, in its resolution of 24 October 1994 on the situation in European civil aviation (7), confirmed the need to take account of the imperatives linked to the situation of airports when opening up the market;

(8) Whereas, in its resolution of 14 February 1995 on European civil aviation (8), the European Parliament repeated its concern that account should be taken of the impact of access to the groundhandling market on employment and safety conditions at Community airports;

(9) Whereas free access to the groundhandling market is consistent with the efficient operation of Community airports;

(10) Whereas free access to the groundhandling market must be introduced gradually and be adapted to the requirements of the sector;

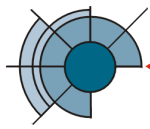
(11) Whereas for certain categories of groundhandling services access to the market and self-handling may come up against safety, security, capacity and available-space constraints; whereas it is therefore necessary to be able to limit the number of authorized suppliers of such categories of groundhandling services; whereas it should also be possible to limit self-handling; whereas, in that case, the criteria for limitation must be relevant, objective, transparent and non-discriminatory;

(12) Whereas if the number of suppliers of groundhandling services is limited effective competition will require that at least one of the suppliers should ultimately be independent of both the managing body of the airport and the dominant carrier;

(13) Whereas if airports are to function properly they must be able to reserve for themselves the management of certain infrastructures which for technical reasons as well as for reasons of profitability or environmental impact are difficult to divide or duplicate; whereas the centralized management of such infrastructures may not, however, constitute an obstacle to their use by suppliers of groundhandling services or by self-handling airport users;

(14) Whereas in certain cases these constraints can be such that they may justify restrictions on market access or on self-handling to the extent that these restrictions are relevant, objective, transparent and non-discriminatory;

(15) Whereas the purpose of such exemptions must be to enable airport authorities to overcome or at least reduce these constraints; whereas these exemptions must be approved by



the Commission, assisted by an advisory committee, and must be granted for a specific period;

(16) Whereas, if effective and fair competition is to be maintained where the number of suppliers of ground-handling services is limited, the latter need to be chosen according to a transparent and impartial procedure; whereas airport users should be consulted when it comes to selecting suppliers of ground-handling services, since they have a major interest in the quality and price of the ground-handling services which they require;

(17) Whereas it is therefore necessary to arrange for the representation of airport users and their consultation when authorized suppliers of ground-handling services are selected, by setting up a committee composed of their representatives;

(18) Whereas it is possible in certain circumstances and under specific conditions, in the context of selecting suppliers of ground-handling services at an airport, to extend the public service obligation to other airports in the same geographical region of the Member State concerned;

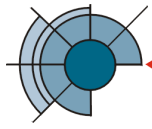
(19) Whereas the managing body of the airport may also supply ground-handling services and, through its decisions, may exercise considerable influence on competition between suppliers of ground-handling services; whereas it is therefore essential, in order to maintain fair competition, that airports be required to keep separate accounts for their infrastructure management and regulatory activities on the one hand and for the supply of ground-handling services on the other;

(20) Whereas an airport may not subsidize its ground-handling activities from the revenue it derives from its role as an airport authority;

(21) Whereas the same transparency requirements must apply to all suppliers wishing to offer ground-handling services to third parties;

(22) Whereas, in order to enable airports to fulfil their infrastructure management functions and to guarantee safety and security on the airport premises as well as to protect the environment and the social regulations in force, Member States must be able to make the supply of ground-handling services subject to approval; whereas the criteria for granting such approval must be objective, transparent and non-discriminatory;

(23) Whereas, for the same reasons, Member States must retain the power to lay down and enforce the necessary rules for the proper functioning of the airport infrastructure; whereas those rules must relate to the intended objective and must not in practice reduce market access or the freedom to self-handle to a level below that provided for in this Directive; whereas the rules must comply with the principles of objectivity, transparency and non-discrimination;



(24) Whereas Member States must retain the power to ensure an adequate level of social protection for the staff of undertakings providing ground-handling services;

(25) Whereas access to airport installations must be guaranteed to suppliers authorized to provide ground-handling services and to airport users authorized to self-handle, to the extent necessary for them to exercise their rights and to permit fair and genuine competition; whereas it must be possible however, for such access to give rise to the collection of a fee;

(26) Whereas it is justified that the rights recognized by this Directive should only apply to third-country suppliers of ground-handling services and third-country airport users subject to strict reciprocity; whereas where there is no such reciprocity the Member State should be able to suspend these rights with regard to those suppliers and users;

(27) Whereas arrangements for greater cooperation over the use of Gibraltar airport were agreed in London on 2 December 1987 by the Kingdom of Spain and the United Kingdom in a joint declaration by the Ministers of Foreign Affairs of the two countries, and such arrangements have yet to come into operation;

(28) Whereas this Directive does not affect the application of the rules of the Treaty; whereas in particular the Commission will continue to ensure compliance with these rules by exercising, when necessary, all the powers granted to it by Article 90 of the Treaty,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Scope

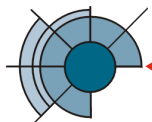
1. This Directive applies to any airport located in the territory of a Member State, subject to the provisions of the Treaty, and open to commercial traffic in the following circumstances:

(a) The provisions of Article 7 (1) relating to categories of ground-handling services other than those referred to in Article 7 (2) shall apply to any airport regardless of its volume of traffic as from 1 January 1998.

(b) The provisions relating to the categories of groundhandling services referred to in Article 7 (2) shall apply as from 1 January 1998 to airports whose annual traffic is not less than 1 million passenger movements or 25 000 tonnes of freight.

(c) The provisions relating to the categories of groundhandling services referred to in Article 6 shall apply as from 1 January 1999 to airports:

- whose annual traffic is not less than 3 million passenger movements or 75 000 tonnes of freight; or - whose traffic has been not less than 2 million passenger movements or 50 000



tonnes of freight during the six-month period prior to 1 April or 1 October of the preceding year.

2. Without prejudice to paragraph 1, the provisions of this Directive shall apply as from 1 January 2001 to any airport located in the territory of a Member State, subject to the provisions of the Treaty, and open to commercial traffic, whose annual traffic is not less than 2 million passenger movements or 50 000 tonnes of freight.

3. Where an airport reaches one of the freight traffic thresholds referred to in this Article without reaching the corresponding passenger movement threshold, the provisions of this Directive shall not apply to categories of groundhandling services reserved exclusively for passengers.

4. The Commission shall publish, for information, in the Official Journal of the European Communities a list of the airports referred to in this Article. The list shall first be published within three months following the entry into force of this Directive, and thereafter annually.

Member States shall, before 1 July of each year, forward to the Commission the data required to compile the list.

5. Application of this Directive to the airport of Gibraltar is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to the dispute over sovereignty over the territory in which the airport is situated.

6. Application of this Directive to Gibraltar airport shall be suspended until the arrangements in the joint declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 have come into operation. The Governments of Spain and the United Kingdom will so inform the Council on that date.

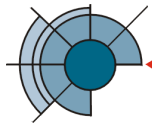
Article 2

Definitions

For the purposes of this Directive:

(a) 'airport' means any area of land especially adapted for the landing, taking-off and manoeuvres of aircraft, including the ancillary installations which these operations may involve for the requirements of aircraft traffic and services including the installations needed to assist commercial air services;

(b) 'airport system' means two or more airports grouped together to serve the same city or conurbation, as referred to in Annex II to Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes;



(c) 'managing body of the airport` means a body which, in conjunction with other activities or not as the case may be, has as its objective under national law or regulation the administration and management of the airport infrastructures, and the coordination and control of the activities of the different operators present in the airport or airport system concerned;

(d) 'airport user` means any natural or legal person responsible for the carriage of passengers, mail and/or freight by air from, or to the airport in question;

(e) 'groundhandling` means the services provided to airport users at airports as described in the Annex;

(f) 'self-handling` means a situation in which an airport user directly provides for himself one or more categories of groundhandling services and concludes no contract of any description with a third party for the provision of such services; for the purposes of this definition, among themselves airport users shall not be deemed to be third parties where:

- one holds a majority holding in the other; or - a single body has a majority holding in each;

(g) 'supplier of groundhandling services` means any natural or legal person supplying third parties with one or more categories of groundhandling services.

Article 3

Managing body of the airport

1. Where an airport or airport system is managed and operated not by a single body but by several separate bodies, each of these bodies shall be considered part of the managing body of the airport for the purposes of this Directive.

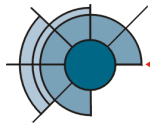
2. Similarly, where only a single managing body is set up for several airports or airport systems, each of those airports or airport systems shall be considered separately for the purposes of this Directive.

3. If the managing bodies of airports are subject to the supervision or control of a national public authority, that authority shall be obliged, in the context of the legal obligations devolving upon it, to ensure that this Directive is applied.

Article 4

Separation of accounts

1. Where the managing body of an airport, the airport user or the supplier of groundhandling services provide groundhandling services, they must rigorously separate the accounts of their groundhandling activities from the accounts of their other activities, in accordance with current commercial practice.



2. An independent examiner appointed by the Member State must check that this separation of accounts is carried out.

The examiner shall also check the absence of financial flows between the activity of the managing body as airport authority and its groundhandling activity.

Article 5

Airport Users' Committee

1. Twelve months at the latest following the entry into force of this Directive, Member States shall ensure that, for each of the airports concerned, a committee of representatives of airport users or organizations representing airport users is set up.

2. All airport users shall have the right to be on this committee, or, if they so wish, to be represented on it by an organization appointed to that effect.

Article 6

Groundhandling for third parties

1. Member States shall take the necessary measures in accordance with the arrangements laid down in Article 1 to ensure free access by suppliers of groundhandling services to the market for the provision of groundhandling services to third parties.

Member States shall have the right to require that suppliers of groundhandling services be established within the Community.

2. Member States may limit the number of suppliers authorized to provide the following categories of groundhandling services:

- baggage handling,

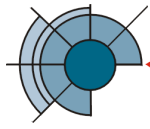
- ramp handling,

- fuel and oil handling,

- freight and mail handling as regards the physical handling of freight and mail, whether incoming, outgoing or being transferred, between the air terminal and the aircraft.

They may not, however, limit this number to fewer than two for each category of groundhandling service.

3. Moreover, as from 1 January 2001 at least one of the authorized suppliers may not be directly or indirectly controlled by:



- the managing body of the airport,
- any airport user who has carried more than 25 % of the passengers or freight recorded at the airport during the year preceding that in which those suppliers were selected,
- a body controlling or controlled directly or indirectly by that managing body or any such user.

However at 1 July 2000, a Member State may request that the obligation in this paragraph be deferred until 31 December 2002.

The Commission, assisted by the Committee referred to in Article 10, shall examine such request and may, having regard to the evolution of the sector and, in particular, the situation at airports comparable in terms of traffic volume and pattern, decide to grant the said request.

4. Where pursuant to paragraph 2 they restrict the number of authorized suppliers, Member States may not prevent an airport user, whatever part of the airport is allocated to him, from having, in respect of each category of groundhandling service subject to restriction, an effective choice between at least two suppliers of groundhandling services, under the conditions laid down in paragraphs 2 and 3.

Article 7

Self-handling

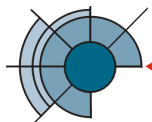
1. Member States shall take the necessary measures in accordance with the arrangements laid down in Article 1 to ensure the freedom to self-handle.

2. However, for the following categories of groundhandling services:

- baggage handling,
- ramp handling,
- fuel and oil handling,
- freight and mail handling as regards the physical handling of freight and mail, whether incoming, outgoing or being transferred, between the air terminal and the aircraft,

Member States may reserve the right to self-handle to no fewer than two airport users, provided they are chosen on the basis of relevant, objective, transparent and non-discriminatory criteria.

Article 8



Centralized infrastructures

1. Notwithstanding the application of Articles 6 and 7, Member States may reserve for the managing body of the airport or for another body the management of the centralized infrastructures used for the supply of groundhandling services whose complexity, cost or environmental impact does not allow of division or duplication, such as baggage sorting, de-icing, water purification and fuel-distribution systems. They may make it compulsory for suppliers of groundhandling services and self-handling airport users to use these infrastructures.

2. Member States shall ensure that the management of these infrastructures is transparent, objective and non-discriminatory and, in particular, that it does not hinder the access of suppliers of groundhandling services or self-handling airport users within the limits provided for in this Directive.

Article 9

Exemptions

1. Where at an airport, specific constraints of available space or capacity, arising in particular from congestion and area utilization rate, make it impossible to open up the market and/or implement self-handling to the degree provided for in this Directive, the Member State in question may decide:

(a) to limit the number of suppliers for one or more categories of groundhandling services other than those referred to in Article 6 (2) in all or part of the airport; in this case the provisions of Article 6 (2) and (3) shall apply;

(b) to reserve to a single supplier one or more of the categories of groundhandling services referred to in Article 6 (2);

(c) to reserve self-handling to a limited number of airport users for categories of groundhandling services other than those referred to in Article 7 (2), provided that those users are chosen on the basis of relevant, objective, transparent and non-discriminatory criteria;

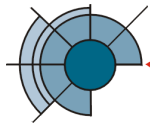
(d) to ban self-handling or to restrict it to a single airport user for the categories of groundhandling services referred to in Article 7 (2).

2. All exemptions decided pursuant to paragraph 1 must:

(a) specify the category or categories of groundhandling services for which the exemption is granted and the specific constraints of available space or capacity which justify it;

(b) be accompanied by a plan of appropriate measures to overcome the constraints.

Moreover, exemptions must not:



(i) unduly prejudice the aims of this Directive;

(ii) give rise to distortions of competition between suppliers of groundhandling services and/or self-handling airport users;

(iii) extend further than necessary.

3. Member States shall notify the Commission, at least three months before they enter into force, of any exemptions they grant on the basis of paragraph 1 and of the grounds which justify them.

The Commission shall publish a summary of the decisions of which it is notified in the Official Journal of the European Communities and shall invite interested parties to submit comments.

4. The Commission shall examine closely exemption decisions submitted by Member States. To that end the Commission shall make a detailed analysis of the situation and a study of the appropriate measures submitted by the Member State to check that the alleged constraints exist and that it is impossible to open up the market and/or implement self-handling to the degree provided for in this Directive.

5. Further to that examination and after consulting the Member State concerned, the Commission may approve the Member State's decision or oppose it if it deems that the alleged constraints have not been proved to exist or that they are not so severe as to justify the exemption. After consulting the Member State concerned the Commission may also require the Member State to amend the extent of the exemption or restrict it to those parts of an airport or airport system where the alleged constraints have been proved to exist.

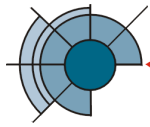
The Commission's decision shall be taken no later than three months after notification by the Member State and shall be published in the Official Journal of the European Communities.

6. Exemptions granted by Member States pursuant to paragraph 1 may not exceed a duration of three years except for exemptions granted under paragraph 1 (b). Not later than three months before the end of that period the Member State must take a new decision on any request for exemption, which will also be subject to the procedure laid down in this Article.

Exemptions under paragraph 1 (b) may not exceed a duration of two years. However, a Member State may on the basis of the provisions of paragraph 1 request that this period be extended by a single period of two years. The Commission, assisted by the Committee referred to in Article 10, shall decide on such request.

Article 10

Advisory Committee



1. The Commission shall be assisted by an advisory committee made up of representatives of the Member States and chaired by the representative of the Commission.
2. The Committee shall advise the Commission on the application of Article 9.
3. The Committee may furthermore be consulted by the Commission on any other matter concerning the application of this Directive.
4. The Committee shall establish its own rules of procedure.

Article 11

Selection of suppliers

1. Member States shall take the necessary measures for the organization of a selection procedure for suppliers authorized to provide groundhandling services at an airport where their number is limited in the cases provided for in Article 6 (2) or Article 9. This procedure must comply with the following principles:

(a) In cases where Member States require the establishment of standard conditions or technical specifications to be met by the suppliers of groundhandling services, those conditions or specifications shall be established following consultation with the Airport Users' Committee. The selection criteria laid down in the standard conditions or technical specifications must be relevant, objective, transparent and non-discriminatory.

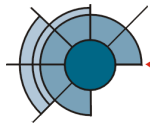
After having notified the Commission, the Member State concerned may include among the standard conditions or technical specifications with which suppliers of groundhandling services must comply a public service obligation in respect of airports serving peripheral or developing regions which are part of its territory, which have no commercial interest but which are of vital importance for the Member State concerned.

(b) An invitation to tender must be launched and published in the Official Journal of the European Communities, to which any interested supplier of groundhandling services may reply.

(c) Suppliers of groundhandling services shall be chosen:

(i) following consultation with the Airport Users' Committee by the managing body of the airport, provided the latter:

- does not provide similar groundhandling services; and - has no direct or indirect control over any undertaking which provides such services; and - has no involvement in any such undertaking;



(ii) in all other cases, by competent authorities of the Member States which are independent of the managing body of the airport concerned, and which shall first consult the Airport Users' Committee and that managing body.

(d) Suppliers of groundhandling services shall be selected for a maximum period of seven years.

(e) Where a supplier of groundhandling services ceases his activity before the end of the period for which he was selected, he shall be replaced on the basis of the same procedure.

2. Where the number of suppliers of groundhandling services is limited in accordance with Article 6 (2) or Article 9, the managing body of the airport may itself provide groundhandling services without being subject to the selection procedure laid down in paragraph 1. Similarly, it may, without submitting it to the said procedure, authorize an undertaking to provide groundhandling services at the airport in question:

- if it controls that undertaking directly or indirectly; or - if the undertaking controls it directly or indirectly.

3. The managing body of the airport shall inform the Airport Users' Committee of decisions taken under this Article.

Article 12

Island airports

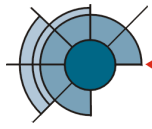
In the context of the selection of suppliers of groundhandling services at an airport as provided for in Article 11, a Member State may extend the obligation of public service to other airports in that Member State provided:

- those airports are located on islands in the same geographical region; and - such airports each have a traffic volume of no less than 100 000 passenger movements per year; and - such an extension is approved by the Commission with the assistance of the Committee referred to in Article 10.

Article 13

Consultations

Member States shall see to it that a compulsory consultation procedure relating to the application of this Directive is organized between the managing body of the airport, the Airport Users' Committee and the undertakings providing groundhandling services. This consultation shall cover, inter alia, the price of those groundhandling services for which an exemption has



been granted pursuant to Article 9 (1) (b) and the organization of the provision of those services. Such consultation shall be organized at least once a year.

Article 14

Approval

1. Member States may make the groundhandling activity of a supplier of groundhandling services or a self-handling user at an airport conditional upon obtaining the approval of a public authority independent of the managing body of the airport.

The criteria for such approval must relate to a sound financial situation and sufficient insurance cover, to the security and safety of installations, of aircraft, of equipment and of persons, as well as to environmental protection and compliance with the relevant social legislation.

The criteria must comply with the following principles:

- (a) they must be applied in a non-discriminatory manner to the various suppliers of groundhandling services and airport users;
- (b) they must relate to the intended objective;
- (c) they may not, in practice, reduce market access or the freedom to self-handle to a level below that provided for in this Directive.

These criteria shall be made public and the supplier of groundhandling services or self-handling airport user shall be informed in advance of the procedure for obtaining approval.

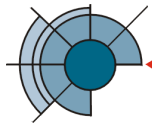
2. The approval may be withheld or withdrawn only if the supplier of groundhandling services or self-handling airport user does not meet, for reasons of his own doing, the criteria referred to in paragraph 1.

The grounds for withholding or withdrawal must be communicated to the supplier or user concerned and to the managing body of the airport.

Article 15

Rules of conduct

A Member State may, where appropriate on a proposal from the managing body of the airport:



- prohibit a supplier of groundhandling services or an airport user from supplying groundhandling services or self-handling if that supplier or user fails to comply with the rules imposed upon him to ensure the proper functioning of the airport;

Those rules must comply with the following principles:

(a) they must be applied in a non-discriminatory manner to the various suppliers of groundhandling services and airport users;

(b) they must relate to the intended objective;

(c) they may not, in practice, reduce market access or the freedom to self-handle to a level below that provided for in this Directive;

- in particular require suppliers of groundhandling services at an airport to participate in a fair and non-discriminatory manner in carrying out the public service obligations laid down in national laws or rules, including the obligation to ensure continuous service.

Article 16

Access to installations

1. Member States shall take the necessary measures to ensure that suppliers of groundhandling services and airport users wishing to self-handle have access to airport installations to the extent necessary for them to carry out their activities. If the managing body of the airport or, where appropriate, the public authority or any other body which controls it places conditions upon such access, those conditions must be relevant, objective, transparent and non-discriminatory.

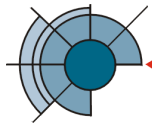
2. The space available for groundhandling at an airport must be divided among the various suppliers of groundhandling services and self-handling airport users, including new entrants in the field, to the extent necessary for the exercise of their rights and to allow effective and fair competition, on the basis of the relevant, objective, transparent and non-discriminatory rules and criteria.

3. Where access to airport installations gives rise to the collection of a fee, the latter shall be determined according to relevant, objective, transparent and non-discriminatory criteria.

Article 17

Safety and security

The provisions of this Directive in no way affect the rights and obligations of Member States in respect of law and order, safety and security at airports.



Article 18

Social and environmental protection

Without prejudice to the application of this Directive, and subject to the other provisions of Community law, Member States may take the necessary measures to ensure protection of the rights of workers and respect for the environment.

Article 19

Compliance with national provisions

A supplier of groundhandling services at an airport in a Member State shall be required to comply with the provisions of national law which are compatible with Community law.

Article 20

Reciprocity

1. Without prejudice to the international commitments of the Community, whenever it appears that a third country, with respect to access to the groundhandling or self-handling market:

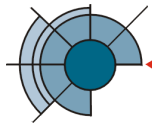
(a) does not, de jure or de facto, grant suppliers of groundhandling services and self-handling airport users from a Member State treatment comparable to that granted by Member States to suppliers of groundhandling services and self-handling airport users from that country; or
(b) does not, de jure or de facto, grant suppliers of groundhandling services and self-handling airport users from a Member State national treatment; or
(c) grants suppliers of groundhandling services and self-handling airport users from other third countries more favourable treatment than suppliers of groundhandling services and self-handling airport users from a Member State;

a Member State may wholly or partially suspend the obligations arising from this Directive in respect of suppliers of groundhandling services and airport users from that third country, in accordance with Community law.

2. The Member State concerned shall inform the Commission of any withdrawal or suspension of rights or obligations.

Article 21

Right of appeal



Member States or, where appropriate, managing bodies of airports shall ensure that any party with a legitimate interest has the right to appeal against the decisions or individual measures taken pursuant to Articles 7 (2) and 11 to 16.

It must be possible to bring the appeal before a national court or a public authority other than the managing body of the airport concerned and, where appropriate, independent of the public authority controlling it.

Article 22

Information report and revision

Member States shall communicate to the Commission the information required by it to draw up a report on the application of this Directive.

The report, accompanied by any proposals for revision of the Directive, shall be drawn up not later than 31 December 2001.

Article 23

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than one year from the date of its publication in the Official Journal of the European Communities. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

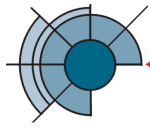
Article 24

Entry into force

This Directive shall enter into force on the 20th day following that of its publication in the Official Journal of the European Communities.

Article 25

Addressees



This Directive is addressed to the Member States.

Done at Luxembourg, 15 October 1996.

For the Council The President B. HOWLIN

(1) (2) OJ No C 301, 13. 11. 1995, p. 28.

(3) (4) OJ No L 240, 24. 8. 1992, p. 1.

(5) (6) OJ No L 240, 24. 8. 1992, p. 15.

(7) OJ No C 309, 5. 11. 1994, p. 2.

(8) OJ No C 56, 6. 3. 1995, p. 28.

(1) (2) OJ No C 301, 13. 11. 1995, p. 28.

(3) (4) OJ No L 240, 24. 8. 1992, p. 1.

(5) (6) OJ No L 240, 24. 8. 1992, p. 15.

(7) OJ No C 309, 5. 11. 1994, p. 2.

(8) OJ No C 56, 6. 3. 1995, p. 28.

ANNEX

LIST OF GROUNDHANDLING SERVICES

1. Ground administration and supervision comprise:

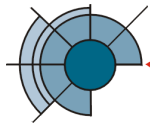
1.1. representation and liaison services with local authorities or any other entity, disbursements on behalf of the airport user and provision of office space for its representatives;

1.2. load control, messaging and telecommunications;

1.3. handling, storage and administration of unit load devices;

1.4. any other supervision services before, during or after the flight and any other administrative service requested by the airport user.

2. Passenger handling comprises any kind of assistance to arriving, departing, transfer or transit passengers, including checking tickets and travel documents, registering baggage and carrying it to the sorting area.



3. Baggage handling comprises handling baggage in the sorting area, sorting it, preparing it for departure, loading it on to and unloading it from the devices designed to move it from the aircraft to the sorting area and vice versa, as well as transporting baggage from the sorting area to the reclaim area.

4. Freight and mail handling comprises:

4.1. for freight: physical handling of export, transfer and import freight, handling of related documents, customs procedures and implementation of any security procedure agreed between the parties or required by the circumstances;

4.2. for mail: physical handling of incoming and outgoing mail, handling of related documents and implementation of any security procedure agreed between the parties or required by the circumstances.

5. Ramp handling comprises:

5.1. marshalling the aircraft on the ground at arrival and departure (*);

5.2. assistance to aircraft packing and provision of suitable devices (*);

5.3. communication between the aircraft and the air-side supplier of services (*);

5.4. the loading and unloading of the aircraft, including the provision and operation of suitable means, as well as the transport of crew and passengers between the aircraft and the terminal, and baggage transport between the aircraft and the terminal;

5.5. the provision and operation of appropriate units for engine starting;

5.6. the moving of the aircraft at arrival and departure, as well as the provision and operation of suitable devices;

5.7. the transport, loading on to and unloading from the aircraft of food and beverages.

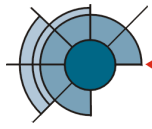
6. Aircraft services comprise:

6.1. the external and internal cleaning of the aircraft, and the toilet and water services;

6.2. the cooling and heating of the cabin, the removal of snow and ice, the de-icing of the aircraft;

6.3. the rearrangement of the cabin with suitable cabin equipment, the storage of this equipment.

7. Fuel and oil handling comprises:



7.1. the organization and execution of fuelling and defuelling operations, including the storage of fuel and the control of the quality and quantity of fuel deliveries;

7.2. the replenishing of oil and other fluids.

8. Aircraft maintenance comprises:

8.1. routine services performed before flight;

8.2. non-routine services requested by the airport user;

8.3. the provision and administration of spare parts and suitable equipment;

8.4. the request for or reservation of a suitable parking and/or hangar space.

9. Flight operations and crew administration comprise:

9.1. preparation of the flight at the departure airport or at any other point;

9.2. in-flight assistance, including re-dispatching if needed;

9.3. post-flight activities;

9.4. crew administration.

10. Surface transport comprises:

10.1. the organization and execution of crew, passenger, baggage, freight and mail transport between different terminals of the same airport, but excluding the same transport between the aircraft and any other point within the perimeter of the same airport;

10.2. any special transport requested by the airport user.

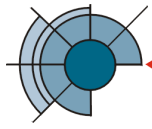
11. Catering services comprise:

11.1. liaison with suppliers and administrative management;

11.2. storage of food and beverages and of the equipment needed for their preparation;

11.3. cleaning of this equipment;

11.4. preparation and delivery of equipment as well as of bar and food supplies.



2 The Directive 2001/23/EC

COUNCIL DIRECTIVE 2001/23/EC of 12 March 2001

on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 94 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament (1),

Having regard to the opinion of the Economic and Social Committee (2),

Whereas:

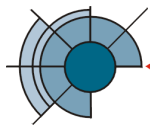
(1) Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (3) has been substantially amended (4). In the interests of clarity and rationality, it should therefore be codified.

(2) Economic trends are bringing in their wake, at both national and Community level, changes in the structure of undertakings, through transfers of undertakings, businesses or parts of undertakings or businesses to other employers as a result of legal transfers or mergers.

(3) It is necessary to provide for the protection of employees in the event of a change of employer, in particular, to ensure that their rights are safeguarded.

(4) Differences still remain in the Member States as regards the extent of the protection of employees in this respect and these differences should be reduced.

(5) The Community Charter of the Fundamental Social Rights of Workers adopted on 9 December 1989 ('Social Charter') states, in points 7, 17 and 18 in particular that: 'The completion of the internal market must lead to an improvement in the living and working conditions of workers in the European Community. The improvement must cover, where necessary, the development of certain aspects of employment regulations such as procedures for collective redundancies and those regarding bankruptcies. Information, consultation and participation



for workers must be developed along appropriate lines, taking account of the practice in force in the various Member States. Such information, consultation and participation must be implemented in due time, particularly in connection with restructuring operations in undertakings or in cases of mergers having an impact on the employment of workers'.

(6) In 1977 the Council adopted Directive 77/187/EEC to promote the harmonisation of the relevant national laws ensuring the safeguarding of the rights of employees and requiring transferors and transferees to inform and consult employees' representatives in good time.

(7) That Directive was subsequently amended in the light of the impact of the internal market, the legislative tendencies of the Member States with regard to the rescue of undertakings in economic difficulties, the case-law of the Court of Justice of the European Communities, Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies (5) and the legislation already in force in most Member States.

(8) Considerations of legal security and transparency required that the legal concept of transfer be clarified in the light of the case-law of the Court of Justice. Such clarification has not altered the scope of Directive 77/187/EEC as interpreted by the Court of Justice.

(9) The Social Charter recognises the importance of the fight against all forms of discrimination, especially based on sex, colour, race, opinion and creed.

(10) This Directive should be without prejudice to the time limits set out in Annex I Part B within which the Member States are to comply with Directive 77/ 187/EEC, and the act amending it,

HAS ADOPTED THIS DIRECTIVE:

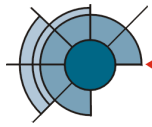
CHAPTER I

Scope and definitions

Article 1

1. (a) This Directive shall apply to any transfer of an undertaking, business, or part of an undertaking or business to another employer as a result of a legal transfer or merger.

(b) Subject to subparagraph (a) and the following provisions of this Article, there is a transfer within the meaning of this Directive where there is a transfer of an economic entity which retains its identity, meaning an organised grouping of resources which has the objective of pursuing an economic activity, whether or not that activity is central or ancillary.



(c) This Directive shall apply to public and private undertakings engaged in economic activities whether or not they are operating for gain. An administrative reorganisation of public administrative authorities, or the transfer of administrative functions between public administrative authorities, is not a transfer within the meaning of this Directive.

2. This Directive shall apply where and in so far as the undertaking, business or part of the undertaking or business to be transferred is situated within the territorial scope of the Treaty.
3. This Directive shall not apply to seagoing vessels.

Article 2

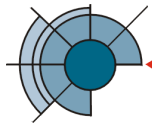
1. For the purposes of this Directive:

- (a) 'transferor' shall mean any natural or legal person who, by reason of a transfer within the meaning of Article 1(1), ceases to be the employer in respect of the undertaking, business or part of the undertaking or business;
- (b) 'transferee' shall mean any natural or legal person who, by reason of a transfer within the meaning of Article 1(1), becomes the employer in respect of the undertaking, business or part of the undertaking or business;
- (c) 'representatives of employees' and related expressions shall mean the representatives of the employees provided for by the laws or practices of the Member States;
- (d) 'employee' shall mean any person who, in the Member State concerned, is protected as an employee under national employment law.

2. This Directive shall be without prejudice to national law as regards the definition of contract of employment or employment relationship. However, Member States shall not exclude from the scope of this Directive contracts of employment or employment-relationships solely because:

of the number of working hours performed or to be performed,

- (e) they are employment relationships governed by a fixed duration contract of employment within the meaning of Article 1(1) of Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship (1), or
- (f) they are temporary employment relationships within the meaning of Article 1(2) of Directive 91/383/EEC, and the undertaking, business or part of the undertaking or business transferred is, or is part of, the temporary employment business which is the employer.



CHAPTER II

Safeguarding of employees' rights

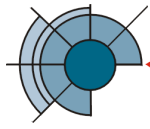
Article 3

1. The transferor's rights and obligations arising from a contract of employment or from an employment relationship existing on the date of a transfer shall, by reason of such transfer, be transferred to the transferee. Member States may provide that, after the date of transfer, the transferor and the transferee shall be jointly and severally liable in respect of obligations which arose before the date of transfer from a contract of employment or an employment relationship existing on the date of the transfer.
2. Member States may adopt appropriate measures to ensure that the transferor notifies the transferee of all the rights and obligations which will be transferred to the transferee under this Article, so far as those rights and obligations are or ought to have been known to the transferor at the time of the transfer. A failure by the transferor to notify the transferee of any such right or obligation shall not affect the transfer of that right or obligation and the rights of any employees against the transferee and/or transferor in respect of that right or obligation.
3. Following the transfer, the transferee shall continue to observe the terms and conditions agreed in any collective agreement on the same terms applicable to the transferor under that agreement, until the date of termination or expiry of the collective agreement or the entry into force or application of another collective agreement. Member States may limit the period for observing such terms and conditions with the proviso that it shall not be less than one year.
4. (a) Unless Member States provide otherwise, paragraphs 1 and 3 shall not apply in relation to employees' rights to old-age, invalidity or survivors' benefits under supplementary company or intercompany pension schemes outside the statutory social security schemes in Member States.

(b) Even where they do not provide in accordance with subparagraph (a) that paragraphs 1 and 3 apply in relation to such rights, Member States shall adopt the measures necessary to protect the interests of employees and of persons no longer employed in the transferor's business at the time of the transfer in respect of rights conferring on them immediate or prospective entitlement to old age benefits, including survivors' benefits, under supplementary schemes referred to in subparagraph (a).

Article 4

1. The transfer of the undertaking, business or part of the undertaking or business shall not in itself constitute grounds for dismissal by the transferor or the transferee. This



provision shall not stand in the way of dismissals that may take place for economic, technical or organisational reasons entailing changes in the workforce. Member States may provide that the first subparagraph shall not apply to certain specific categories of employees who are not covered by the laws or practice of the Member States in respect of protection against dismissal.

2. If the contract of employment or the employment relationship is terminated because the transfer involves a substantial change in working conditions to the detriment of the employee, the employer shall be regarded as having been responsible for termination of the contract of employment or of the employment relationship.

Article 5

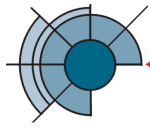
1. Unless Member States provide otherwise, Articles 3 and 4 shall not apply to any transfer of an undertaking, business or part of an undertaking or business where the transferor is the subject of bankruptcy proceedings or any analogous insolvency proceedings which have been instituted with a view to the liquidation of the assets of the transferor and are under the supervision of a competent public authority (which may be an insolvency practitioner authorised by a competent public authority).

2. Where Articles 3 and 4 apply to a transfer during insolvency proceedings which have been opened in relation to a transferor (whether or not those proceedings have been instituted with a view to the liquidation of the assets of the transferor) and provided that such proceedings are under the supervision of a competent public authority (which may be an insolvency practitioner determined by national law) a Member State may provide that:

(a) notwithstanding Article 3(1), the transferor's debts arising from any contracts of employment or employment relationships and payable before the transfer or before the opening of the insolvency proceedings shall not be transferred to the transferee, provided that such proceedings give rise, under the law of that Member State, to protection at least equivalent to that provided for in situations covered by Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer (1), and, or alternatively, that,

(b) the transferee, transferor or person or persons exercising the transferor's functions, on the one hand, and the representatives of the employees on the other hand may agree alterations, in so far as current law or practice permits, to the employees' terms and conditions of employment designed to safeguard employment opportunities by ensuring the survival of the undertaking, business or part of the undertaking or business.

3. A Member State may apply paragraph 2(b) to any transfers where the transferor is in a situation of serious economic crisis, as defined by national law, provided that the situation is declared by a competent public authority and open to judicial supervision, on condition that such provisions already existed in national law on 17 July 1998. The Commission shall pre-



sent a report on the effects of this provision before 17 July 2003 and shall submit any appropriate proposals to the Council.

4. Member States shall take appropriate measures with a view to preventing misuse of insolvency proceedings in such a way as to deprive employees of the rights provided for in this Directive.

Article 6

1. If the undertaking, business or part of an undertaking or business preserves its autonomy, the status and function of the representatives or of the representation of the employees affected by the transfer shall be preserved on the same terms and subject to the same conditions as existed before the date of the transfer by virtue of law, regulation, administrative provision or agreement, provided that the conditions necessary for the constitution of the employee's representation are fulfilled. The first subparagraph shall not apply if, under the laws, regulations, administrative provisions or practice in the Member States, or by agreement with the representatives of the employees, the conditions necessary for the reappointment of the representatives of the employees or for the reconstitution of the representation of the employees are fulfilled. Where the transferor is the subject of bankruptcy proceedings or any analogous insolvency proceedings which have been instituted with a view to the liquidation of the assets of the transferor and are under the supervision of a competent public authority (which may be an insolvency practitioner authorised by a competent public authority), Member States may take the necessary measures to ensure that the transferred employees are properly represented until the new election or designation of representatives of the employees. If the undertaking, business or part of an undertaking or business does not preserve its autonomy, the Member States shall take the necessary measures to ensure that the employees transferred who were represented before the transfer continue to be properly represented during the period necessary for the reconstitution or reappointment of the representation of employees in accordance with national law or practice.

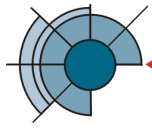
2. If the term of office of the representatives of the employees affected by the transfer expires as a result of the transfer, the representatives shall continue to enjoy the protection provided by the laws, regulations, administrative provisions or practice of the Member States.

CHAPTER III

Information and consultation

Article 7

1. The transferor and transferee shall be required to inform the representatives of their respective employees affected by the transfer of the following:



- the date or proposed date of the transfer,

 - the reasons for the transfer,

 - the legal, economic and social implications of the transfer
- for the employees,
- any measures envisaged in relation to the employees.

The transferor must give such information to the representatives of his employees in good time, before the transfer is carried out. The transferee must give such information to the representatives of his employees in good time, and in any event before his employees are directly affected by the transfer as regards their conditions of work and employment.

2. Where the transferor or the transferee envisages measures in relation to his employees, he shall consult the representatives of this employees in good time on such measures with a view to reaching an agreement.

3. Member States whose laws, regulations or administrative provisions provide that representatives of the employees may have recourse to an arbitration board to obtain a decision on the measures to be taken in relation to employees may limit the obligations laid down in paragraphs 1 and 2 to cases where the transfer carried out gives rise to a change in the business likely to entail serious disadvantages for a considerable number of the employees.

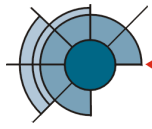
The information and consultations shall cover at least the measures envisaged in relation to the employees. The information must be provided and consultations take place in good time before the change in the business as referred to in the first subparagraph is effected.

4. The obligations laid down in this Article shall apply irrespective of whether the decision resulting in the transfer is taken by the employer or an undertaking controlling the employer. In considering alleged breaches of the information and consultation requirements laid down by this Directive, the argument that such a breach occurred because the information was not provided by an undertaking controlling the employer shall not be accepted as an excuse.

5. Member States may limit the obligations laid down in paragraphs 1, 2 and 3 to undertakings or businesses which, in terms of the number of employees, meet the conditions for the election or nomination of a collegiate body representing the employees.

6. Member States shall provide that, where there are no representatives of the employees in an undertaking or business through no fault of their own, the employees concerned must be informed in advance of:

- the date or proposed date of the transfer,



— the reason for the transfer,

— the legal, economic and social implications of the transfer

for the employees,

— any measures envisaged in relation to the employees.

CHAPTER IV

Final provisions

Article 8

This Directive shall not affect the right of Member States to apply or introduce laws, regulations or administrative provisions which are more favourable to employees or to promote or permit collective agreements or agreements between social partners more favourable to employees.

Article 9

Member States shall introduce into their national legal systems such measures as are necessary to enable all employees and representatives of employees who consider themselves wronged by failure to comply with the obligations arising from this Directive to pursue their claims by judicial process after possible recourse to other competent authorities.

Article 10

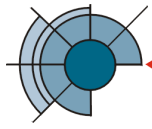
The Commission shall submit to the Council an analysis of the effect of the provisions of this Directive before 17 July 2006. It shall propose any amendment which may seem necessary.

Article 11

Member States shall communicate to the Commission the texts of the laws, regulations and administrative provisions which they adopt in the field covered by this Directive.

Article 12

Directive 77/187/EEC, as amended by the Directive referred to in Annex I, Part A, is repealed, without prejudice to the obligations of the Member States concerning the time limits for implementation set out in Annex I, Part B. References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.



Article 13

This Directive shall enter into force on the 20th day following its publication in the Official Journal of the European Communities.

Article 14

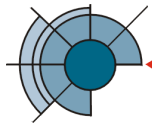
This Directive is addressed to the Member States.

Done at Brussels, 12 March 2001.

For the Council

The President

B. RINGHOLM



3 Legal Cases

3.1 Case C-386/03: Commission of the European Communities vs. Federal Republic of Germany

(Failure of a Member State to fulfil obligations — Airports — Groundhandling — Directive 96/67/EC)

Opinion of Advocate General Léger delivered on 26 May 2005

Judgment of the Court (Second Chamber), 14 July 2005

Summary of the Judgment

1. Transport – Air transport – Access to the groundhandling market at Community airports – Power of the Member States to ensure an adequate level of social protection for the staff of undertakings providing groundhandling services – Limits – National legislation enabling the managing body of an airport to require a new supplier of groundhandling services to take over workers employed by the previous supplier – Measure liable to jeopardise the opening up of the market – Not compatible

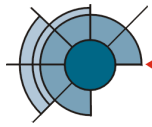
(Council Directive 96/67, Art. 18)

2. Transport – Air transport – Access to the groundhandling market at Community airports – Charging of a fee for use of airport installations – Conditions – National legislation providing for the possibility for the managing body of an airport to offset by a fee the costs connected with not taking over workers by the new suppliers – Charge not connected with the costs incurred by the managing body in making its installations available – Financial advantage for that body – Not permissible

(Council Directive 96/67, Arts 16 and 18)

1. The power to ensure an adequate level of social protection for the staff of undertakings providing groundhandling services, which Member States retain under Directive 96/67 on access to the groundhandling market at Community airports, does not confer an unlimited jurisdiction and must be exercised in a manner that does not prejudice the effectiveness of that directive and the objectives it pursues.

National legislation enabling managing bodies of airports in that Member State to exercise a certain amount of pressure on undertakings or self-handling users wishing to enter such a market by providing them with an incentive to take over workers engaged in groundhandling



services is liable to make it more burdensome for new suppliers of groundhandling services to enter the sector concerned and to place them at a disadvantage in relation to undertakings which are already established. Such legislation, on account of its financial implications, risks impairing the rational use of airport infrastructures and the reduction of the costs of the services charged to users, thus jeopardising the opening-up of the groundhandling markets and the useful effect of Directive 96/67 and cannot, consequently, be regarded as compatible with the powers conferred on Member States under Article 18 of that directive.

(see paras 26-30)

2. A Member State which, in its national legislation, provides that a part of the fee that a managing body of an airport may require from suppliers of groundhandling services and self-handling users for the access to and availability and use of its installations may be intended to offset the costs of not taking over workers when a groundhandling market is opened up fails to fulfil its obligations under Articles 16 and 18 of Directive 96/67 on access to the groundhandling market at Community airports.

First, the amount of the fee charged by the managing body of the airport must constitute consideration which corresponds exactly to the use of the airport installations and must be calculated according to the criteria laid down in Article 16(3) of Directive 96/67, taking account of the interest of the body concerned in making a profit. The costs arising from not taking over workers are in no way connected with the costs incurred by that body in making its installations available, and cannot therefore be regarded as being among the criteria referred to in the abovementioned provision.

Second, such a charge constitutes a financial advantage for the managing body of the airport and is intended to protect interests which are not among those set out in Article 18 of Directive 96/67.

(see paras 32, 36-37, 39, 41)

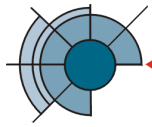
JUDGMENT OF THE COURT (Second Chamber)

14 July 2005 (*)

(Failure of a Member State to fulfil obligations – Airports – Groundhandling – Directive 96/67/EC)

In Case C-386/03,

ACTION under Article 226 EC for failure to fulfil obligations, brought on 12 September 2003,



Commission of the European Communities, represented by M. Huttunen and M. Niejahr, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Federal Republic of Germany, represented by W.-D. Plessing and A. Tiemann, acting as Agents,

defendant,

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, R. Silva de Lapuerta (Rapporteur), C. Gulmann, R. Schintgen and J. Klučka, Judges,

Advocate General: P. Léger,

Registrar: M.-F. Contet, Principal Administrator,

having regard to the written procedure and further to the hearing on 17 February 2005,

after considering the observations submitted on behalf of the parties,

after hearing the Opinion of the Advocate General at the sitting on 26 May 2005,

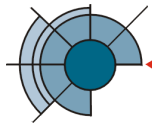
gives the following

Judgment

1 By its application, the Commission of the European Communities is seeking a declaration from the Court that, by adopting measures contrary to Articles 16 and 18 of Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports (OJ 1996 L 272, p. 36), in Paragraphs 8(2) and 9(3) of the Regulation on airport groundhandling services (Verordnung über Bodenabfertigungsdienste auf Flugplätzen) of 10 December 1997 (BGBl. 1997 I, p. 2885, 'the BADV'), the Federal Republic of Germany has failed to fulfil its obligations under that directive.

Legal framework

Community legislation



2 Directive 96/67 provides for a system of gradual opening-up of the market for ground-handling services in Community airports.

3 Articles 16 and 18 of that directive contain provisions on access to airport installations and on social and environmental protection respectively. Those articles are worded as follows:

'Article 16

Access to installations

1. Member States shall take the necessary measures to ensure that suppliers of groundhandling services and airport users wishing to self-handle have access to airport installations to the extent necessary for them to carry out their activities. If the managing body of the airport or, where appropriate, the public authority or any other body which controls it places conditions upon such access, those conditions must be relevant, objective, transparent and non-discriminatory.

2. The space available for groundhandling at an airport must be divided among the various suppliers of groundhandling services and self-handling airport users, including new entrants in the field, to the extent necessary for the exercise of their rights and to allow effective and fair competition, on the basis of the relevant, objective, transparent and non-discriminatory rules and criteria.

3. Where access to airport installations gives rise to the collection of a fee, the latter shall be determined according to relevant, objective, transparent and non-discriminatory criteria.

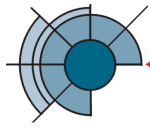
Article 18

Social and environmental protection

Without prejudice to the application of this Directive, and subject to the other provisions of Community law, Member States may take the necessary measures to ensure protection of the rights of workers and respect for the environment.'

4 Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ 2001 L 82, p. 16) codifies Council Directive 77/187/EEC of 14 February 1977 (OJ 1977 L 61, p. 26), as amended by Council Directive 98/50/EC of 29 June 1998 (OJ 1998 L 201, p. 88).

National legislation



5 In Germany, Directive 96/67 was transposed mainly by the Law on Airport Groundhandling Services (Gesetz über Bodenabfertigungsdienste auf Flughäfen) of 11 November 1997 (BGBl. 1997 I, p. 2694), and by the BADV. Paragraphs 8 and 9 of the BADV provide as follows:

‘Paragraph 8

(1) Suppliers of groundhandling services and self-handling users shall fulfil the “requirements for the provision of groundhandling services” In the cases referred to in Paragraph 3(2) to (5), those requirements shall form part of the invitation to tender and the selection procedure in accordance with Paragraph 7.

(2) The airport operator may require a supplier of groundhandling services or a self-handling user to take over workers according to the groundhandling services transferred to that supplier or user. Such workers shall be chosen on the basis of relevant criteria, in particular according to the function that they perform. The third sentence of Paragraph 9(3) shall apply. Article 613a of the Civil Code is not affected.

(3) In addition to subparagraphs 1 and 2, the aviation authority may make the provision of groundhandling services subject to compliance with specifications or technical conditions. The Airport Users’ Committee shall be consulted before those are determined.

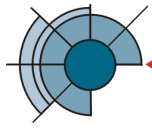
(4) The requirements, criteria, specifications and technical conditions laid down under subparagraphs 1 to 3 must be established and applied in a relevant, objective, transparent and non-discriminatory manner. They must be notified in advance by the airport operator.

Paragraph 9

(1) The airport operator and the supplier of groundhandling services or self-handling user are required to enter into a contract concerning the use of the requisite and available part of the airport and its infrastructures as well as the fees to be paid under this regulation to the airport operator, and the conditions to be fulfilled by suppliers of groundhandling services or self-handling users under Paragraph 8.

(2) The airport operator shall ensure that access to airport installations by suppliers of groundhandling services and self-handling users authorised on the basis of this regulation is not wrongfully impeded so far as access is necessary for carrying on their activities. If the airport operator imposes conditions on such access, they must be relevant, objective, transparent and non-discriminatory.

(3) The airport operator is entitled to charge suppliers of groundhandling services and self-handling users a fee for the access to and availability and use of its installations. The amount of such remuneration shall be determined after a hearing of the users’ committee in accordance with relevant, objective, transparent and non-discriminatory criteria and may in particu-



lar contribute, in the sense of a commercial fee, to the self-financing of the airport. In setting the fee, the airport operator may take into account to a reasonable extent the costs necessarily incurred by him as a result of the transfer of groundhandling services to suppliers of groundhandling services or self-handling users, in particular as a result of not taking over workers.'

6 Paragraph 613a of the German Civil Code (Bürgerliches Gesetzbuch), referred to in Paragraph 8(2) of the BADV, provides:

'(1) When a business or part of a business is transferred to another owner as a result of a legal transaction, that owner shall take over the rights and obligations arising from the employment relationship existing on the date of the transfer. Where those rights and obligations are governed by the provisions of a collective agreement or company agreement, they shall be incorporated in the employment relationship between the new owner and the worker, and may not be altered in a manner unfavourable to the worker within a year of the date of the transfer. The second sentence shall not apply if the rights and obligations under the new owner are governed by the provisions of a different collective agreement or company agreement. The rights and obligations may be altered before the expiry of the period specified in the second sentence if the collective agreement or company agreement ceases to apply or if the terms of another collective agreement, which the new owner and the worker agree is applicable, are not binding on both parties.

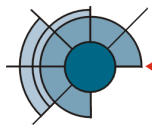
(2) The former employer shall be jointly and severally liable with the new owner in respect of the obligations referred to in paragraph 1, in so far as such obligations arose before the date of the transfer and fall to be met within a year of that date. However, where such obligations fall to be met after the date of the transfer, the former employer shall be liable only in respect of the period before the date of the transfer.

Pre-litigation procedure

7 Having examined the German legislation, the Commission concluded that it had not transposed Articles 16 and 18 of Directive 96/67 correctly into national law. It therefore sent the Federal Republic of Germany a letter of formal notice on 28 February 2000, inviting that Member State to submit its observations.

8 In its reply of 16 May 2000 the Federal Republic of Germany denied that it had failed to fulfil its obligations.

9 The Commission was not persuaded by the explanations provided and, by letter of 21 March 2002, it sent that Member State a reasoned opinion, calling on it to adopt within two months of the date of notification of that opinion the measures necessary to comply with its obligations under that directive.



10 Finding the reply to that reasoned opinion unsatisfactory, the Commission brought the present action.

The action

Arguments of the parties

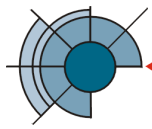
11 The Commission observes that the measures taken in the framework of the powers enjoyed by Member States under Article 18 of Directive 96/67 cannot run counter to the gradual realisation of free access to the groundhandling market as set out in Articles 6 and 7 of that directive. Consequently, national measures adopted with the aim of regulating employment conditions in that field must not discriminate between suppliers of groundhandling services and self-handling users or distort competition between them.

12 The Commission submits that the German legislation in question does not meet those requirements, since it draws a distinction between the managing body of the airport on the one hand and the other suppliers of groundhandling services and self-handling users on the other, thus impeding access to the market for the latter and distorting competition between those different categories of operators. The managing body is able to pass on to new entrants to the market all or, at least, part of the costs connected with the employees whom it can no longer employ because of the loss of market shares inherent in the opening-up of the market.

13 The Commission submits that the general protection measures adopted by the Member States for transposing Directive 2001/23 also apply to the groundhandling sector. Consequently, where the opening-up of the groundhandling market such as that provided for by Directive 96/67 leads to the transfer of a business within the meaning of Article 1(1) of Directive 2001/23, the transferor's rights and obligations arising from a contract of employment or from an employment relationship existing on the date of the operation in question are therefore transferred to the transferee.

14 The Commission states that the measures referred to in Paragraphs 8(2) and 9(3) of the BADV have a discriminatory effect in cases which are not covered by Directive 2001/23, as between the managing body of the airport on the one hand and the other suppliers of groundhandling services and self-handling users on the other, as regards social costs, where groundhandling services are transferred.

15 The Commission also observes that the possibility of passing on certain social costs, provided for in Paragraph 9(3) of the BADV, cannot be justified on the basis of Article 16(3) of Directive 96/67. It is true that that latter provision authorises the managing body of the airport to collect a fee from other suppliers of groundhandling services and self-handling users in return for access to the airport installations. None the less, the amount of that fee should be set according to relevant, objective, transparent and non-discriminatory criteria.



16 The Commission claims that the term 'airport installations' which appears in Article 16(3) of Directive 96/67 must be understood in the context of the infrastructure of the airport and that the amount of the fee charged may be relevant and objective only if it is based on the costs borne by the managing body of the airport in order to guarantee access to the infrastructure in question for the other suppliers of groundhandling services and self-handling users. Consequently, the costs to be met by the managing body where workers are not taken over are not among the costs which may be taken into account to determine the fee referred to in Article 16(3) of Directive 96/67.

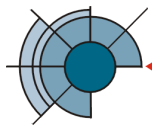
17 The German Government observes that, by introducing a system based on negotiation between the managing body of the airport and a new operator, Paragraph 8(2) of the BADV creates a system aiming to safeguard contracts of employment when the business is transferred, in so far as that is possible. According to that system, a new operator wishing to provide groundhandling services on his own behalf or on behalf of a third party is required to consult with the managing body in order to ensure the protection of workers' rights. Only if that body required that its workers who had become surplus to requirements be taken over and the new operator refused to do so would that body be entitled to share the resulting social costs between all suppliers of the groundhandling services market in question.

18 The German Government submits that the combined provisions of Paragraphs 8(2) and 9(3) of the BADV and the consequent possibility of apportioning fairly, between the suppliers of groundhandling services, the social costs incurred by making workers redundant constitute social protection measures which do not go beyond the framework set by Article 18 of Directive 96/67.

19 The German Government states that, to the extent that in the framework of the liberalisation of groundhandling services, the transfer of activities, employees and other parts of the managing body of the airport to another operator is accompanied by a transfer of the undertaking, the provisions of Directive 2001/23 prevail in any event. Furthermore, in situations which do not fall within the scope of that directive, Paragraphs 8(2) and 9(3) of the BADV comply with the principle of proportionality, since they aim to establish a fair balance between the protection of workers and the objective of liberalising the services in question.

20 The German Government states that Paragraph 8(2) of the BADV requires the new operator and the managing body of the airport only to consult each other with regard to taking on workers. Those measures only lay down an alternative in providing that the managing body may share out proportionately among the economic operators the social costs arising from liberalisation and the refusal to take on workers, on the basis of relevant, objective, transparent and non-discriminatory criteria.

21 Finally, in the opinion of the German Government, Article 16(3) of Directive 96/67 is not inconsistent with the national legislation in question, because that provision governs the right of the managing body of the airport to require a fee in consideration of access to the airport



installations. Paragraph 9(3) of the BADV is not limited to access to the airport installations, but should constitute an incentive to new operators to negotiate with the managing body concerning the conditions for taking over the activity in question in the interests of the workers.

22 In that respect, the German Government submits that the German legislation in question does not transpose Article 16(3) of Directive 96/67, but is based on Article 18 of that directive.

Findings of the Court

The subject-matter of the action

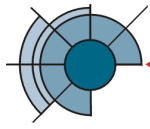
23 First of all, it should be observed that the subject-matter of this action relates to the compatibility of the German legislation in question with Articles 16 and 18 of Directive 96/67 only in situations which are not provided for by Directive 2001/23. As is apparent from the arguments submitted to the Court, the parties agree, on the one hand, that Directive 2001/23 applies to transfer operations in the groundhandling sector, and, on the other hand, that the rights and obligations arising from Directive 2001/23 are fully implemented each time an opening-up of the market in this area leads to a transfer within the meaning of Article 1(1) of that directive.

24 As regards the national legislation in question, the parties also agree that its scope is broader than that of Directive 2001/23 and that it concerns any situation where a business sector is abandoned by the managing body of the airport for the benefit of a new economic operator. Consequently, it must be determined whether Paragraphs 8(2) and 9(3) of the BADV comply with Articles 16 and 18 of Directive 96/67.

The complaint based on the obligation to take on workers

25 The Commission's complaint relates to Paragraph 8(2) of the BADV, under which the managing body of the airport may require a supplier of groundhandling services or a self-handling user to take over workers according to the groundhandling services which have been transferred to it.

26 In that respect, it must be observed that, even if the German Government's argument that Paragraph 8(2) does not contain an absolute obligation to take over workers in all cases where the groundhandling market is opened up to new suppliers or self-handling users were to be correct, it is still the case that, by virtue of its very existence, that provision enables managing bodies of airports in Germany to exercise a certain amount of pressure on undertakings or users wishing to enter such a market by providing them with an incentive to take over workers engaged in groundhandling services.



27 Such a provision is therefore liable to make it more burdensome for new suppliers of groundhandling services to enter the sector concerned and to place them at a disadvantage in relation to undertakings which are already established.

28 As for the question of whether such legislation may be justified under Article 18 of Directive 96/67, it should be noted that the Court has held that, whilst Member States retain the power to ensure an adequate level of social protection for the staff of undertakings providing groundhandling services, it is also true that that power does not confer an unlimited jurisdiction and must be exercised in a manner that does not prejudice the effectiveness of that directive and the objectives it pursues (see Case C-460/02 Commission v Italy [2004] ECR I-0000, paragraphs 31 and 32).

29 As regards the national legislation in question, it should be observed that, on account of its financial implications, there is a risk that it would impair the rational use of airport infrastructures and the reduction of the costs of the services charged to users, thus jeopardising the opening-up of the groundhandling markets and the useful effect of Directive 96/67 (see Commission v Italy, paragraphs 33 and 34).

30 Consequently, Paragraph 8(2) of the BADV cannot be regarded as compatible with the powers conferred on Member States under Article 18 of Directive 96/67.

31 It follows from those considerations that the complaint based on the obligation to take over workers is well founded.

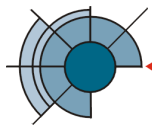
The complaint based on the right to require a fee for the access to and availability and use of airport installations

32 The complaint of the Commission relates to Paragraph 9(3) of the BADV, the purpose of which is to determine the rules relating to the fees that the managing body of an airport may require from suppliers of groundhandling services and self-handling users for the access to and availability and use of its installations.

33 That provision is the legal basis which enables the managing body to impose a number of charges on the abovementioned economic operators.

34 As regards whether the option of charging a fee complies with Directive 96/67, it should be borne in mind that the Court has held that the reference to installations clearly relates to the infrastructure and the equipment made available by the airport (see Case C-363/01 Flughafen Hannover-Langenhagen [2003] ECR I-11893, paragraph 40).

35 The Court has also stated that, not only would the possibility for the managing body of an airport to charge an access fee in addition to the fee for use of the airport installations not facilitate access to the market concerned, it would also run directly counter to the objective of



reducing the operating costs of airline companies and, in certain cases, would even lead to an increase in those costs (see Flughafen Hannover-Langenhagen, paragraph 44).

36 It follows from those considerations that the amount of the fee in question must constitute consideration which corresponds exactly to the use of the airport installations and must be calculated according to the criteria laid down in Article 16(3) of Directive 96/67, taking account of the interest of the body concerned in making a profit (see Flughafen Hannover-Langenhagen, paragraph 62).

37 However, in this case, the national legislation in question provides that a part of the fee may be intended to offset the costs of not taking over workers when a groundhandling market is opened up.

38 As the Advocate General rightly states at point 69 of his Opinion, that provision shows that the fee provided for in German law goes further than the framework for which it was designed by the Community legislature, which sees the fee exclusively as a payment for the use of airport installations by suppliers of groundhandling services or self-handling users.

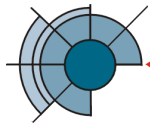
39 The costs arising from not taking over workers are in no way connected with the costs incurred by the managing body of the airport in making its installations available, and cannot therefore be regarded as being among the criteria referred to in Article 16(3) of Directive 96/67.

40 Furthermore, as regards the German Government's argument that Paragraph 9(3) of the BADV does not aim to transpose Article 16(3) of Directive 96/67 but complies, when considered in its entirety, with Article 18 thereof, it is sufficient to note that that paragraph of the BADV provides for a fee for access to and availability and use of airport installations, whereas Article 16(3) of Directive 96/67 relates specifically to collecting fees for access to those installations. In those circumstances, the German Government's argument must be rejected.

41 As regards that argument of the German Government, it should be added, for the sake of completeness, that, as the Advocate General rightly states in points 50 and 51 of his Opinion, a charge that the managing body of the airport may impose on new economic operators for not taking on workers when a groundhandling market is transferred constitutes a financial advantage for that body, and is intended to protect interests which are not among those set out in Article 18 of Directive 96/67.

42 The complaint alleging infringement of Article 16 of Directive 96/67 is therefore also well founded.

43 It follows from all the foregoing that the action of the Commission must be considered to be well founded in its entirety.



44 Consequently, it must be held that, by adopting measures contrary to Articles 16 and 18 of Directive 96/67 in Paragraphs 8(2) and 9(3) of the BADV, the Federal Republic of Germany has failed to fulfil its obligations under that directive.

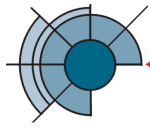
Costs

45 Article 69(2) of the Rules of Procedure provides that the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Federal Republic of Germany has been unsuccessful, the Federal Republic of Germany must be ordered to pay the costs.

On those grounds, the Court (Second Chamber) hereby:

1. Declares that, by adopting measures contrary to Articles 16 and 18 of Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports, in Paragraphs 8(2) and 9(3) of the Regulation on airport groundhandling services (Verordnung über Bodenabfertigungsdienste auf Flugplätzen) of 10 December 1997, the Federal Republic of Germany has failed to fulfil its obligations under that directive;
2. Orders the Federal Republic of Germany to pay the costs.

[Signatures]



3.2 Case C-460/02 : Commission of the European Communities vs. Italian Republic

(Air transport – Groundhandling – Directive 96/67/EC)

Summary of the Judgment

1. Transport – Air transport – Access to the groundhandling market at Community airports – Power of the Member States to ensure an adequate level of social protection for the staff of undertakings providing groundhandling services – Limits

(Council Directive 96/67)

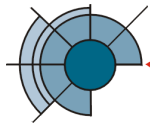
2. Social policy – Approximation of laws – Transfers of undertakings – Safeguarding of employees' rights – Directive 2001/23 – Transfer – Meaning – National provision guaranteeing that existing employment levels are to be maintained and that labour relations with staff under the previous management arrangements are to be continued where there is the transfer of an activity irrespective of the nature of the transaction concerned – Excluded

(Council Directive 2001/23)

1. The power to ensure an adequate level of social protection for the staff of undertakings providing groundhandling services, which the Member States retain under Directive 96/67 on access to the groundhandling market at Community airports, does not confer an unlimited jurisdiction and must be exercised in a manner that does not prejudice the effectiveness of that directive and the objectives it pursues. The aim of the directive is to ensure the opening up of the groundhandling market which must help, in particular, to reduce the operating costs of airlines.

(see paras 31-32)

2. A national provision which guarantees that existing employment levels are to be maintained and that labour relations with staff under the previous management arrangements are to be continued which applies, irrespective of the nature of the transaction concerned, to any 'transfer of activity' in the sector in question plainly goes beyond the concept of transfer laid down by Directive 2001/23 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses, as interpreted by the Court. It is only by having regard to the specific characteristics of each transfer of activity that it is possible to determine whether the transaction concerned constitutes a transfer for the purposes of the directive.



(see paras 41-42)

JUDGMENT OF THE COURT (First Chamber)

9 December 2004(1)

(Air transport – Groundhandling – Directive 96/67/EC)

In Case C-460/02, ACTION under Article 226 EC for failure to fulfil obligations, brought on 19 December 2002,

Commission of the European Communities, represented by A. Aresu and M. Huttunen, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Italian Republic, represented by I.M. Braguglia, acting as Agent, and by O. Fiumara, vice-avvocato generale dello Stato, with an address for service in Luxembourg,

defendant,

THE COURT (First Chamber),,

composed of: P. Jann, President of the Chamber, R. Silva de Lapuerta (Rapporteur), K. Lenaerts, S. von Bahr and K. Schiemann, Judges,

Advocate General: P. Léger,

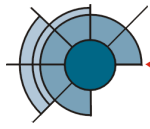
Registrar: M. Múgica Arzamendi, Principal Administrator,

having regard to the written procedure and further to the hearing on 25 March 2004,

after hearing the Opinion of the Advocate General at the sitting on 9 September 2004,

gives the following Judgment

1 By its application, the Commission of the European Communities asks the Court to declare that, in so far as Legislative Decree No 18 of 13 January 1999 applying Directive



96/67/EC on access to the groundhandling market at Community airports (ordinary supplement to GURI No 28 of 24 February 1999) ('Legislative Decree No 18/99')

– failed to specify a maximum period of seven years for the selection of suppliers of groundhandling services, in accordance with Article 11(1)(d) of Council Directive 96/67/EC of 15 October 1996 (OJ 1996 L 272, p. 36),

– incorporated, in Article 14, a social measure which is incompatible with Article 18 of that directive, and

– set out, in Article 20, interim provisions which are not authorised under the directive,

the Italian Republic has failed to fulfil its obligations under that directive.

Legal framework

Community legislation

2 Directive 96/67 provides for a system of progressive opening-up of the market for groundhandling services in Community airports.

3 Article 2(e) and (f) of the directive define 'groundhandling' and 'self-handling' as follows:

'(e) "groundhandling" means the services provided to airport users at airports as described in the Annex;

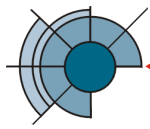
(f) "self-handling" means a situation in which an airport user directly provides for himself one or more categories of groundhandling services and concludes no contract of any description with a third party for the provision of such services; for the purposes of this definition, among themselves airport users shall not be deemed to be third parties where:

– one of them holds a majority holding in the other;

or

– a single body has a majority holding in each.'

4 Articles 6(1) and 7(1) of Directive 96/67 state that Member States are to take the necessary measures to ensure, in general terms, free access to the market for groundhandling services to third parties and the freedom for third parties to self-handle in Community airports.



5 Article 6(2) of the directive lays down the following exceptions to the freedom of access to the groundhandling market for third parties:

'Member States may limit the number of suppliers authorised to provide the following categories of groundhandling services:

- baggage handling,
- ramp ra rramp handling,
- fuel and oil handling,
- freight and mail handling as regards the physical handling of freight and mail, whether incoming, outgoing or being transferred, between the air terminal and the aircraft.

They may not, however, limit this number to fewer than two for each category of groundhandling service.'

6 Article 9(1) of Directive 96/67 states: 'Where at an airport specific constraints of available space or capacity, arising in particular from congestion and area utilisation rate, make it impossible to open up the market and/or implement self-handling to the degree provided for in this Directive, the Member State in question may decide:

(b) #to reserve to a single supplier one or more of the categories of groundhandling services referred to in Article 6(2);

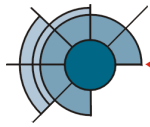
7 Article 14(1) of the directive provides that access to the groundhandling market may be made conditional upon obtaining an 'approval' granted by an independent authority. That provision reads as follows:

'Member States may make the groundhandling activity of a supplier of groundhandling services or a self-handling user at an airport conditional upon obtaining the approval of a public authority independent of the managing body of the airport.

The criteria for such approval must relate to a sound financial situation and sufficient insurance cover, to the security and safety of installations, of aircraft, of equipment and of persons, as well as to environmental protection and compliance with the relevant social legislation.

The criteria must comply with the following principles:

- (a) they must be applied in a non-discriminatory manner to the various suppliers of groundhandling services and airport users;
- (b) they must relate to the intended objective;



(c) they may not, in practice, reduce market access or the freedom to self-handle to a level below that provided for in this Directive.

These criteria shall be made public and the supplier of groundhandling services or self-handling airport user shall be informed in advance of the procedure for obtaining approval'.

8 Article 18 of Directive 96/67 states: 'Without prejudice to the application of this Directive, and subject to the other provisions of Community law, Member States may take the necessary measures to ensure protection of the rights of workers and respect for the environment'.

National legislation

9 Directive 96/67 was transposed into Italian law by Legislative Decree No 18/99.

10 Article 14 of the legislative decree, which relates to social protection, states:

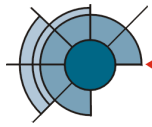
1. When guaranteeing free access to the groundhandling market, it is necessary, for 30 months after this decree enters into force, to ensure that existing employment levels are maintained and that labour relations with staff under the previous management arrangements are continued.

2. Except where a branch of an undertaking is transferred, any transfer of activity in one or more categories of groundhandling, as set out in Annexes A and B, shall include the transfer of staff, named by those concerned, and in agreement with trade unions, from the previous supplier to the subsequent supplier, in proportion to the volume of traffic or to the scale of the activities being taken over by the subsequent supplier'.

11 Article 20 of the legislative decree contains the following interim provision: 'Contractual arrangements for groundhandling staff in force as of 19 November 1998, which include various organisational and contractual schemes, shall remain in force until the expiry of the relevant contracts, which shall not be renewed, and in any event for a period not greater than six years'.

Pre-litigation procedure

12 Following a complaint, the Commission held that the Italian legislation failed to comply with Community law in several respects. It therefore sent the Italian Government a letter of formal notice of 3 May 2000. The Italian Government replied to it by a note of 18 July 2000.



13 As it considered that that reply was unsatisfactory, the Commission sent a reasoned opinion to the Italian Republic on 24 July 2001. The Italian Government's reply was given by a note of 31 October 2001. That note was followed by another communication of 5 December 2001.

14 Several meetings then took place between the representatives of the Commission services responsible for the matter and experts from the Italian Ministry of Infrastructure and Transport, during which the Italian Government produced proposals to amend Legislative Decree No 18/99. As no further information was provided to the Commission, it decided to bring this action.

The action

The first complaint

15 By letter of 19 January 2004, the Italian Government informed the Court that Article 11(1) of Legislative Decree No 18/99 had been amended by Law No 306 of 31 October 2003 (GURI of 15 November 2003). In those circumstances, the Commission withdrew its first complaint by letter of 23 March 2004, while maintaining its application for costs against the defendant.

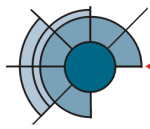
The second complaint

Arguments of the parties

16 The Commission considers that Article 14 of Legislative Decree No 18/99 is incompatible with Article 18 of Directive 96/67, since it obliges the suppliers of groundhandling services to ensure that, on each occasion of a 'transfer of activity' in one or more of the categories of groundhandling referred to in the annexes to the decree, the staff of the previous supplier are transferred to the subsequent supplier in proportion to the volume of traffic or the scale of the activities being taken over by the latter.

17 The Commission points out that measures to protect the rights of workers are permitted under Article 18 of Directive 96/67, provided they do not prejudice the effective application of the directive as regards groundhandling services. Article 14(1) of Legislative Decree No 18/99 plainly goes beyond the protection guaranteed by Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses (OJ 1977 L 61, p. 26), as amended by Council Directive 98/50/EC of 29 June 1998 (OJ 1998 L 201, p. 88) and codified by Council Directive 2001/23/EC of 12 March 2001 (OJ 2001 L 82, p. 16).

18 The Commission considers that a national provision such as that impugned in the present case could only be justified on the basis of Article 18 of Directive 96/67 if it applied to



the transfer of an undertaking within the meaning of Directive 2001/23. For that directive to apply, the transfer must relate to an economic entity, that is to say an organised grouping of persons and assets facilitating the exercise of an economic activity which pursues a specific objective. However, in order to be in a position to judge whether the transfer of an entity is involved, it is necessary to take into account all the actual circumstances which apply to the transaction in question.

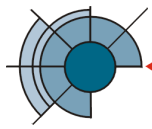
19 According to the Commission, the mere fact that the services provided by the previous supplier and those provided by the subsequent supplier are similar does not mean that there is a transfer of an economic entity between the two undertakings. An entity cannot consist only of the activity which is entrusted to it, and its identity is made up of other factors, such as its staff, its management, the manner in which its work is organised, and its methods and style of management.

20 The Commission states there can be no transfer of an undertaking in the present case, as the key element for the disposal of the undertaking is missing, namely a negotiated agreement, whether express or implied, or an act of a public authority. The new supplier in fact gains access to the airport structures on the basis of a separate title, independently of any relationship or contact, howsoever constituted, with the previous supplier. The source of that title is a contract entered into with the operator of the airport concerned.

21 The Commission argues that the measure adopted by the Italian Government truly entails the transfer of social costs borne by the State to the new undertakings providing the services, to the detriment of those undertakings. Should the national authorities wish to adopt social measures as part of the process of liberalisation of groundhandling services, Article 18 of Directive 96/67 could represent an adequate legal basis, but only if the measures in question were to comply with the spirit of that directive and the general principles of Community law.

22 According to the Commission, Article 14 of Legislative Decree No 18/99 prevents suppliers wishing to enter the market from selecting their own staff and, accordingly, the way in which the services they seek to provide are organised so that they can carry out their activities on the market. The objective of Directive 96/67 is precisely to encourage competition in markets that were previously closed and monopolistic, by reducing the operating costs of airlines and improving the quality of the services provided to airport users.

23 The Italian Government maintains that Directive 96/67 provides the Member States with a degree of discretion as regards the manner and timing of the adoption of the measures required for the implementation of the new system, in light of the specific circumstances in each State. With that in mind, the national legislature adopted the legislation concerned, aware of the fact that free access to the market may be compatible with the proper working of Community airports and put into place progressively and in a manner adapted to the requirements of the sector. The social protection measures laid down in Article 14 of Legisla-



Directive No 18/99 do not impede the liberalisation of the groundhandling sector and represent the practical embodiment of a power given to the State by Article 18 of Directive 96/67.

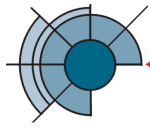
24 The Italian Government considers that compliance with that directive and other provisions of Community law, particularly those relating to the safeguarding of employees' rights in the event of transfers of undertakings, does not mean that the level of protection the Member States may provide can only be set within the limits permitted by legislative harmonisation at the Community level. If that were so, Article 18 of Directive 96/67 would lose all purpose, since that provision would give the Member States no freedom to offer employees a safeguard which was not already available under Community law.

25 According to the Italian Government, the last-mentioned provision should be interpreted as meaning that by its very nature such an 'additional' safeguard must not represent a breach of the Community law set out specifically in Directive 96/67 or, more generally, in other Community acts. In so far as the effective protection of the workforce can only be given effect by the imposition of a financial constraint and an obligation on the employer, its validity must be judged by a comparative and reasonable analysis of the interests involved.

26 The Italian Government also argues that, in so far as the service remains the same as, or at least similar to, that provided by the previous supplier, the critical element of the definition of the transfer of an undertaking is not necessarily the taking over of tangible or intangible assets. The organisation of an activity in such a way that, seen from an economic perspective, there is in substance a taking over of activities also falls within the scope of the concept of a 'transfer'.

27 In the light of the specific characteristics of the sector concerned and the organisation of the undertakings in question, the Italian Government maintains that the transfer of airport 'activities' may be covered by the wider concept of the 'transfer of an undertaking'. In fact, it is precisely the continuity of the activity, which moves from one supplier to another, which makes that situation wholly comparable with the transfer of an undertaking.

28 The Italian Government states that, while Article 14 of Legislative Decree No 18/99 refers specifically to any 'transfer of activity in one or more categories of groundhandling', it is clear that in practice such a transfer will be accompanied by the transfer of a number of tangible assets and structures necessary to enable the activity to be carried out by the new supplier. In those circumstances, there is a transfer of part of an undertaking or, at the very least, the carrying on of a business by one party as successor to another which has, in substance, the characteristics of a transfer. It was accordingly lawful for the national legislature to be concerned to ensure the protection of the workforce by adopting a reasonable compromise between opposing interests.



29 As regards the argument that the transposition of Directive 96/67 into national law was liable to distort competition on the market for airport services in favour of established undertakings and to the detriment of potential competitors, the Italian Government observes that the principle of freedom of competition means that the undertakings concerned should enjoy true equality of opportunity under the rules laid down by the social legislation which applies, even if those rules are restrictive in their nature.

Findings of the Court

30 By its arguments, the Italian Government is essentially maintaining that Article 14 of Legislative Decree No 18/99 has its legal basis in Article 18 of Directive 96/67 and that the disputed provision falls within the scope of Directive 2001/23.

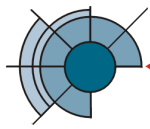
31 As to the compatibility of Article 14 of the decree with Directive 96/67, in the light of Article 18 of that directive, it is clear from the 24th recital in the preamble to the directive that Member States retain the power to ensure an adequate level of social protection for the staff of undertakings providing groundhandling services.

32 As regards the definition of 'adequate level', it must be pointed out, as the Advocate General rightly observes at point 33 of his Opinion, that that power does not confer an unlimited jurisdiction and must be exercised in a manner that does not prejudice the effectiveness of Directive 96/67 and the objectives it pursues. As the Court noted in Case C-363/01 Flughafen Hannover-Langenhagen [2003] ECR I-11893, paragraph 43, the aim of the directive is to ensure the opening-up of the groundhandling market which, according to the fifth recital in the preamble to the directive, must help, in particular, to reduce the operating costs of airlines.

33 By contrast, the interpretation of Article 18 of Directive 96/67 provided by the Italian Government, particularly as regards the taking into account of social considerations, would make the entry of new suppliers of services in the groundhandling market unduly difficult, as they would be obliged to take over the staff employed by the previous supplier. As a result, the rational use of airport infrastructures and the reduction of the costs of the services charged to users would be impaired.

34 The obligation imposed by Article 14 of Legislative Decree No 18/99 on the undertakings concerned to take over the staff of the previous supplier puts potential new competitors at a disadvantage in relation to established undertakings and jeopardises the opening-up of the groundhandling markets, thereby undermining the effectiveness of Directive 96/67.

35 It follows that the disputed legislation prejudices the aim of that directive, namely the opening-up of the markets concerned and the creation of appropriate conditions for intra-Community competition in the sector.



36 Since the disputed legislation is not compatible with Directive 96/67, it is not relevant to argue, as the Italian Government does, that Article 14 of Legislative Decree No 18/99 does not contravene Directive 2001/23.

37 In any event, the Italian Government cannot maintain that Article 14 of the legislative decree is based on the notion of the 'transfer of an activity' which is within the scope of Directive 2001/23.

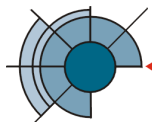
38 Article 1(1) of that directive provides that it applies to any transfer of an undertaking, business, or part of an undertaking or business to another employer as a result of a legal transfer or merger. The Court's case-law makes it clear that the decisive criterion for establishing the existence of a transfer within the meaning of the directive is whether the entity in question retains its identity, as indicated *inter alia* by the fact that its operation is actually continued or resumed (see, *inter alia*, Case 24/85 *Spijkers* [1986] ECR 1119, paragraphs 11 and 12, and Case C-13/95 *Süzen* [1997] ECR I-1259, paragraph 10).

39 In order to determine whether the conditions for the transfer of an entity are met, the Court has held that it is necessary to consider all the facts characterising the transaction in question, including in particular the type of undertaking or business, whether or not its tangible assets, such as buildings and movable property, are transferred, the value of its intangible assets at the time of the transfer, whether or not the majority of its employees are taken over by the new employer, whether or not its customers are transferred, the degree of similarity between the activities carried on before and after the transfer, and the period, if any, for which those activities were suspended. However, all those circumstances are merely single factors in the overall assessment which must be made and cannot therefore be considered in isolation (see, in particular, *Spijkers*, paragraph 13, and *Süzen*, paragraph 14).

40 It follows from that case-law that the importance to be given to the different criteria which may establish the existence of the transfer of an undertaking, establishment or parts of undertakings or establishments within the meaning of Directive 2001/23 will vary in accordance with a large number of factors.

41 It must accordingly be held that it is only by having regard to the specific characteristics of each transfer of activity concerning one or more categories of groundhandling services that it is possible to determine whether the transaction concerned constitutes a transfer for the purposes of Directive 2001/23.

42 It should be noted that Article 14 of Legislative Decree No 18/99 applies, irrespective of the nature of the transaction concerned, to 'any transfer of activity' in the sector in question and that, in light of the case-law mentioned above, such a definition of a transfer clearly goes beyond the definition laid down in Directive 2001/23, as interpreted by the Court.



43 It must accordingly be held that the second complaint is well founded, as the social protection arrangements provided for in Legislative Decree No 18/99 are incompatible with Directive 96/67.

The third complaint

44 The Commission considers that Article 20 of Legislative Decree No 18/99 is incompatible with Directive 96/67, as the article permits undertakings with particular organisational arrangements to operate in the self-handling field at the same time as suppliers selected and/or licensed in accordance with the provisions of the directive.

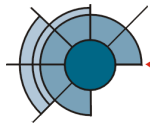
45 The Commission notes that Article 20 of the legislative decree refers to contracts of employment in force on 19 November 1998, which include various organisational and contractual schemes. Those contracts of employment involve the staff of self-handling users other than those covered by Directive 96/67. They are to remain in force in their current form until their expiry and, in any event, for a period not greater than six years. In practice, those undertakings are licensed to provide services at the same time as other undertakings in the self-handling field and suppliers of groundhandling services to third parties.

46 According to the Commission, Directive 96/67 clearly specifies the categories of undertakings providing groundhandling services which may regard themselves as being suppliers of groundhandling services to third parties and as being self-handling users. Entities which fail to satisfy the criteria for self-handling laid down in Article 2(f) of Directive 96/67 may only operate as suppliers of services to third parties. Furthermore, Articles 6 and 7 of that directive impose a duty to follow specific procedures for the selection of self-handling users and of suppliers of groundhandling services to third parties.

47 The Commission adds that Directive 96/67 does not lay down any interim measures for undertakings having different organisational arrangements. The validity of the contractual relations must be judged having regard to the applicable legislation and in particular to the provisions of Directive 96/67. The national legislature may not impose rules as to the maximum period of the validity of contractual relations, thereby treating those relations as if they fell outside the obligations laid down under those provisions.

48 The Italian Government considers that the disputed rule is not only an interim measure, but also very limited in its scope. It should be understood as seeking to safeguard acquired rights, and as doing so for a relatively brief period, namely until the expiry of the contracts in question and, in any event, for a period not greater than six years. Furthermore, it is intended that it will be repealed under the next annual law implementing Community provisions.

Findings of the Court



49 Directive 96/67 clearly specifies the categories of undertakings which may provide groundhandling services to third parties and self-handling users. It follows that entities which do not satisfy the criteria for self-handling set by that directive may operate only as suppliers of services to third parties. Furthermore, as the Advocate General rightly notes at point 49 of his Opinion, the directive does not allow Member States to adopt interim measures in that regard.

50 In putting such interim measures in place, Article 20 of Legislative Decree No 18/99 adopts a regime which is incompatible with Directive 96/67.

51 The Commission's complaint is accordingly well founded.

52 In the light of all of the above, it must be held that, in so far as Legislative Decree No 18/99 incorporates, at Article 14, a social measure which is incompatible with Article 18 of Council Directive 96/67 and sets out, at Article 20, interim provisions which are not authorised under the directive, the Italian Republic has failed to fulfil its obligations under the directive.

Costs

53 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. As the Commission has asked that costs be awarded against the Italian Republic and the latter has been unsuccessful, the Italian Republic must be ordered to pay the costs.

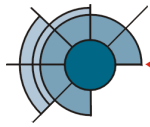
On those grounds, the Court (First Chamber) hereby:

- 1 Declares that in so far as Legislative Decree No 18 of 13 January 1999 applying Directive 96/67/EC on access to the groundhandling market at Community airports incorporates, at Article 14, a social measure which is incompatible with Article 18 of Council Directive 96/67/EC of 15 October 1996 and sets out, at Article 20, interim provisions which are not authorised under the directive, the Italian Republic has failed to fulfil its obligations under the directive;

2. Orders the Italian Republic to pay the costs.

Signatures.

Language of the case: Italian.



3.3 Case C-363/01 Flughafen Hannover-Langenhagen GmbH v Deutsche Lufthansa AG

(Reference for a preliminary ruling from the Oberlandesgericht Frankfurt am Main)

«(Air transport – Access to the groundhandling market in Community airports – Directive 96/67/EC – Article 16 – Collection of a fee for access to airport installations – Conditions)»

Opinion of Advocate General Mischo delivered on 28 January 2003

I - 0000

Judgment of the Court (Sixth Chamber), 16 October 2003

I - 0000

Summary of the Judgment

Transport – Air transport – Access to the groundhandling market at Community airports – Collection of an access fee – Not permissible – Collection of an access fee for use of airport installations – Conditions

(Council Directive 96/67, Art. 16(3))

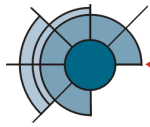
Directive 96/67 on access to the groundhandling market at Community airports, in particular Article 16(3) thereof, precludes the managing body of an airport from making access to the groundhandling market in the airport subject to payment by a supplier of groundhandling services or self-handler of an access fee as consideration for the grant of a commercial opportunity, in addition to the fee payable by that supplier or self-handler for the use of the airport installations. On the other hand, that body is entitled to collect a fee for the use of airport installations, of an amount, to be determined according to the criteria laid down in Article 16(3) of the Directive, which takes account of the interest of that body in making a profit. see paras 60, 62-63, operative part

JUDGMENT OF THE COURT (Sixth Chamber)

16 October 2003 (1)

((Air transport – Access to the groundhandling market in Community airports – Directive 96/67/EC – Article 16 – Collection of a fee for access to airport installations – Conditions))

In Case C-363/01,



REFERENCE to the Court under Article 234 EC by the Oberlandesgericht Frankfurt am Main (Germany) for a preliminary ruling in the proceedings pending before that court between

Flughafen Hannover-Langenhagen GmbH and

Deutsche Lufthansa AG,

on the interpretation of Article 16(3) of Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports (OJ 1996 L 272, p. 36),

THE COURT (Sixth Chamber),,

composed of: J.-P. Puissechet, President of the Chamber, C. Gulmann, V. Skouris, N. Colneric and J.N. Cunha Rodrigues (Rapporteur), Judges,

Advocate General: J. Mischo,

Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

—Flughafen Hannover-Langenhagen GmbH, by G. Schohe, Rechtsanwalt,

—Deutsche Lufthansa AG, by B. Haager and H. Neumann, Rechtsanwälte,

—the Greek Government, by M. Apessos, I. Bakopoulos and S. Chala, acting as Agents,

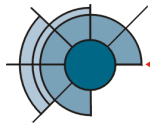
—the Commission of the European Communities, by M. Huttunen and M. Niejahr, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Flughafen Hannover-Langenhagen GmbH, represented by G. Schohe; of Deutsche Lufthansa AG, represented by B. Haager, H. Neumann and M. Kleuk, Abteilungsleiter, and of the Commission, represented by M. Huttunen and M. Niejahr, at the hearing on 5 December 2002,

after hearing the Opinion of the Advocate General at the sitting on 28 January 2003, gives the following Judgment

1 By order of 31 July 2001, received at the Court on 24 September 2001, the Oberlandesgericht Frankfurt am Main (Higher Regional Court, Frankfurt am Main) referred to the Court for a preliminary ruling under Article 234 EC five questions on the interpretation of Article 16(3) of Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports (OJ 1996 L 272, p. 36; the Directive).



2 Those questions were raised in the course of proceedings between Flughafen Hannover-Langenhagen GmbH (the Flughafen), which operates the Hannover-Langenhagen airport (Germany), and the airline Deutsche Lufthansa AG (Lufthansa), concerning Lufthansa's refusal to pay the Flughafen a separate fee from 1 January 1998 onwards for access to the groundhandling market (the access fee).

Legal background

Community legislation

3 Recital 5 in the preamble to the Directive states that the opening-up of access to the groundhandling market should help reduce the operating costs of airline companies and improve the quality of service provided to airport users.

4 According to Recital 9 of the Directive, free access to the groundhandling market is consistent with the efficient operation of Community airports.

5 Recital 25 of the Directive states: Whereas access to airport installations must be guaranteed to suppliers authorised to provide groundhandling services and to airport users authorised to self-handle, to the extent necessary for them to exercise their rights and to permit fair and genuine competition; whereas it must be possible however, for such access to give rise to the collection of a fee.

6 Pursuant to Article 2 of the Directive: For the purposes of this Directive:

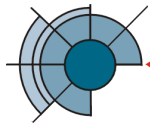
(a) airport means any area of land especially adapted for the landing, taking-off and manoeuvres of aircraft, including the ancillary installations which these operations may involve for the requirements of aircraft traffic and services including the installations needed to assist commercial air services;

##

(c) managing body of the airport means a body which, in conjunction with other activities or not as the case may be, has as its objective under national law or regulation the administration and management of the airport infrastructures, and the coordination and control of the activities of the different operators present in the airport or airport system concerned;

(d) airport user means any natural or legal person responsible for the carriage of passengers, mail and/or freight by air from, or to the airport in question;

(e) groundhandling means the services provided to airport users at airports as described in the Annex;



(f) self-handling means a situation in which an airport user directly provides for himself one or more categories of groundhandling services and concludes no contract of any description with a third party for the provision of such services; for the purposes of this definition, among themselves airport users shall not be deemed to be third parties where:

- one holds a majority holding in the other; or
- a single body has a majority holding in each;

(g) supplier of groundhandling services means any natural or legal person supplying third parties with one or more categories of groundhandling services.

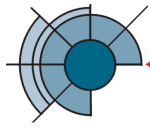
7 Article 6 of the Directive, entitled Groundhandling for third parties, provides: 1. Member States shall take the necessary measures in accordance with the arrangements laid down in Article 1 to ensure free access by suppliers of groundhandling services to the market for the provision of groundhandling services to third parties. Member States shall have the right to require that suppliers of groundhandling services be established within the Community. 2. Member States may limit the number of suppliers authorised to provide the following categories of groundhandling services:

- baggage handling,
- ramp handling,
- fuel and oil handling,
- freight and mail handling as regards the physical handling of freight and mail, whether incoming, outgoing or being transferred, between the air terminal and the aircraft.

They may not, however, limit this number to fewer than two for each category of groundhandling service. 3. Moreover, as from 1 January 2001 at least one of the authorised suppliers may not be directly or indirectly controlled by:

- the managing body of the airport,
- any airport user who has carried more than 25% of the passengers or freight recorded at the airport during the year preceding that in which those suppliers were selected,
- a body controlling or controlled directly or indirectly by that managing body or any such user.

However at 1 July 2000, a Member State may request that the obligation in this paragraph be deferred until 31 December 2002. The Commission, assisted by the Committee referred to in Article 10, shall examine such request and may, having regard to the evolution of the sector and, in particular, the situation at airports comparable in terms of traffic volume and pattern,



decide to grant the said request.⁴ Where pursuant to paragraph 2 they restrict the number of authorised suppliers, Member States may not prevent an airport user, whatever part of the airport is allocated to him, from having, in respect of each category of groundhandling service subject to restriction, an effective choice between at least two suppliers of groundhandling services, under the conditions laid down in paragraphs 2 and 3.

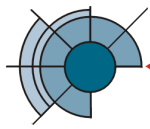
8 Article 7 of the Directive, entitled Self-handling, is worded as follows: 1. Member States shall take the necessary measures in accordance with the arrangements laid down in Article 1 to ensure the freedom to self-handle.² However, for the following categories of groundhandling services:

- baggage handling,
- ramp handling,
- fuel and oil handling,
- freight and mail handling as regards the physical handling of freight and mail, whether incoming, outgoing or being transferred, between the air terminal and the aircraft,

Member States may reserve the right to self-handle to no fewer than two airport users, provided they are chosen on the basis of relevant, objective, transparent and non-discriminatory criteria.

9 Paragraph 1 of Article 9 of the Directive, entitled Exemptions, provides: Where at an airport, specific constraints of available space or capacity, arising in particular from congestion and area utilisation rate, make it impossible to open up the market and/or implement self-handling to the degree provided for in this Directive, the Member State in question may decide:

- (a) to limit the number of suppliers for one or more categories of groundhandling services other than those referred to in Article 6(2) in all or part of the airport; in this case the provisions of Article 6(2) and (3) shall apply;
- (b) to reserve to a single supplier one or more of the categories of groundhandling services referred to in Article 6(2);
- (c) to reserve self-handling to a limited number of airport users for categories of groundhandling services other than those referred to in Article 7(2), provided that those users are chosen on the basis of relevant, objective, transparent and non-discriminatory criteria;
- (d) to ban self-handling or to restrict it to a single airport user for the categories of groundhandling services referred to in Article 7(2).



10 Article 16 of the Directive, entitled Access to installations, states: 1. Member States shall take the necessary measures to ensure that suppliers of groundhandling services and airport users wishing to self-handle have access to airport installations to the extent necessary for them to carry out their activities. If the managing body of the airport or, where appropriate, the public authority or any other body which controls it places conditions upon such access, those conditions must be relevant, objective, transparent and non-discriminatory. 2. The space available for groundhandling at an airport must be divided among the various suppliers of groundhandling services and self-handling airport users, including new entrants in the field, to the extent necessary for the exercise of their rights and to allow effective and fair competition, on the basis of the relevant, objective, transparent and non-discriminatory rules and criteria. 3. Where access to airport installations gives rise to the collection of a fee, the latter shall be determined according to relevant, objective, transparent and non-discriminatory criteria.

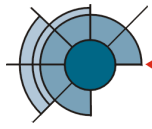
11 At the time the Directive was adopted, the Commission arranged for a statement to be entered in the minutes relating to the application of Article 16(3), worded as follows: The Commission states that Article 16(3) recognises an airport is right to collect a fee from suppliers of groundhandling services and self-handling users for access to its installations. The Commission states that such a fee may be construed as a commercial charge [*Geschäftsgebühr* in the German version of the declaration] and may in particular contribute to the self-financing of the airport in so far as it is determined on the basis of relevant, objective, transparent and non-discriminatory criteria.

National legislation

12 The Gesetz über Bodenabfertigungsdienste (Law on groundhandling services) of 11 November 1997 (BGBl. 1997 I, p. 2694) inserted into the Luftverkehrsgesetz (Law on air transport) a power under which the Verordnung über Bodenabfertigungsdienste auf Flugplätzen und zur Änderung weiterer luftrechtlicher Vorschriften (Regulation concerning groundhandling services at airports and amending other provisions of air transport law) of 10 December 1997 (BGBl. 1997 I, p. 2885; the BADV) was adopted.

13 Paragraph 9(1) and (3) of the BADV provides: (1) The airport operator and the supplier of groundhandling services or self-handler are required to enter into a contract concerning the use of the requisite and available part of the airport and its infrastructure as well as the fees to be paid under this regulation to the airport operator.(3) The airport operator is entitled to charge suppliers of groundhandling services and self-handlers a fee for the access, availability and use of its installations. The amount of such remuneration shall be determined after a hearing of the users' committee in accordance with relevant, objective, transparent and non-discriminatory criteria and may in particular contribute, in the sense of a commercial fee, to the self-financing of the airport. ...

The dispute in the main proceedings and the questions referred to the Court



14 It is clear from the order for reference that Lufthansa planes fly in and out of the Hannover-Langenhagen airport. At that airport, Lufthansa provides, inter alia, check-in services for passengers flying on its planes and for passengers transported by other airlines. In the context of those activities, the Flughafen makes check-in desks available to Lufthansa in return for a rent determined in accordance with a contract for aircraft groundhandling.

15 Until the end of 1997, the Flughafen did not require Lufthansa to pay an access fee, at least in respect of its self-handling activities. However, even at that time it did collect such a fee from suppliers of groundhandling services to third parties and from other suppliers.

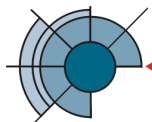
16 It is common ground that the access fee constitutes remuneration for the grant of the opportunity to gain access to the groundhandling market in the airport and is not intended as payment for any actual services rendered by the Flughafen, such as the provision of separate installations or installations used in common, which are covered by a user fee paid by Lufthansa to the Flughafen.

17 On 1 January 1998, the Flughafen adopted new rules governing the use of the airport, paragraphs 2.5.1 and 2.5.2 of which provide: '2.5.1. The airport operator shall offer groundhandling services in accordance with the list of services offered and the table of fees payable which may be applicable from time to time. Self-handlers and suppliers of groundhandling services are also entitled, to the extent permitted by the managing body of the airport, to provide such services. 2.5.2. The airport operator is entitled to charge authorised self-handlers and suppliers of groundhandling services fees for access to, availability and use of its installations. Those fees are intended to contribute, in the sense of a commercial fee, to the self-financing of the airport.'

18 On that basis the Flughafen adopted a table of fees which refers to an access fee of DEM 0.30 per passenger.

19 On 24 July 1998, the Flughafen sought payment from Lufthansa of DEM 151 890.74 in access fees for the period from 1 January 1998. Lufthansa denied the validity of that demand for payment, and, consequently, the Flughafen brought an action before the Landgericht Frankfurt am Main (Regional Court, Frankfurt am Main) seeking payment of those fees.

20 After the Landgericht dismissed that action, the Flughafen appealed to the national court which has made this reference. That court is, in particular, uncertain whether Lufthansa is obliged to enter into a contract with the Flughafen regarding the payment of access fees. The Oberlandesgericht notes that the Flughafen could, in certain circumstances, rely on Paragraph 9(3) of the BADV, in conjunction with Article 16(3) of the Directive, as a basis for a right to conclude a licence agreement and receive payment of an access fee in addition to the fee for use of the airport installations.



21 The wording of Paragraph 9(1) and (3) of the BADV does not, of itself, establish whether there is a right to remuneration for the grant of access to the groundhandling market as distinct from the right to remuneration in respect of the availability and use of the airport installations.

22 According to the national court, it cannot be inferred from the wording, meaning or purpose of the Directive, and in particular Article 16(3) thereof read in conjunction with Recital 25, that an airport operator is entitled to require payment of an access fee in addition to a separate fee for making airport installations available.

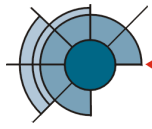
23 It points out that Article 16(3) of the Directive refers to access to airport installations, which covers physical installations. It is difficult to equate access to installations to access to a specific market. That provision allows for the collection of a fee, set by way of common agreement, for the provision of physical installations, which takes account of both the airport operator's interest in achieving a profit and the need to cover its costs, on the one hand, and the objective of opening up the market on the other.

24 In the national court's view, the Directive aims to ensure the opening-up of the market and a reduction in costs. Accepting the Flughafen's view would not only result in the denial of access of a type which Lufthansa and other airlines in a comparable situation had enjoyed for decades, but also render such access more difficult because it would be associated with a significant increase in costs. Article 16(3) of the Directive, in conjunction with Recital 25 in its preamble, merely provides that access to airport installations may be made subject to payment of a fee the amount of which is to be determined in accordance with the criteria indicated, taking into account the profit of the undertaking concerned.

25 The national court submits that the view advocated by the Flughafen appears to be supported by the wording of Paragraph 9(3) of the BADV, by Commission Decision 98/513/EC of 11 June 1998 relating to a proceeding under Article 86 of the EC Treaty (IV/35.613 – Alpha Flight Services/Aéroports de Paris) (OJ 1998 L 230, p. 10), and by Case T-128/98 Aéroports de Paris v Commission [2000] ECR II-3929). In the light of those texts, Article 16(3) of the Directive and Paragraph 9 of the BADV could also be interpreted as referring to fees payable in return for the grant of a commercial opportunity rather than for making physical installations available for a specific use.

26 According to the national court, the legislative history of the Directive militates against the interpretation advocated by the Flughafen. The proposals drawn up by the European Parliament and the Committee of the Regions of the European Union, the latter of which used the term concession charge, were not taken up in the resolution on the common position of the Council or in the final text of the Directive.

27 The national court also states that some academic writers consider that the access fee differs from the fee for specific services usually provided by the airport operator and



points out that Paragraph 9(3) of the BADV provides for a fee relating to three components, namely access, availability and use. Conversely, other authors take the view that no provision of the Directive provides for collection of an access fee and that collection of such a fee impedes airport operators' competitors from gaining access to the groundhandling market.

28 The national court considers that even if the Directive had to be interpreted as authorising collection of an access fee, such a fee would be permissible only in cases where the supplier of services gains access to the market without using the airport installations because, otherwise, the grant of a commercial opportunity would already be remunerated by the user fee for those installations.

29 Moreover, assuming that the Directive must be interpreted as permitting collection of an access fee, the national court raises the question whether such a fee can also be charged in areas in which the market in question has long since been opened up and where, accordingly, the Directive can no longer have any effect.

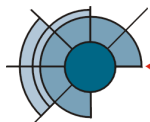
30 If that question is answered affirmatively, the Oberlandesgericht poses the further question whether that fee may then also be charged to an undertaking which had in the past been granted market access in return for a user fee alone, adjusted at regular intervals, thereby causing groundhandling costs to rise significantly, contrary to the objectives of the Directive.

31 Moreover, the national court takes the view that a difference in the treatment of existing and new operators might result in objectively unjustified unequal treatment and an infringement of the prohibition of discrimination. That court considers that its preferred interpretation does not give rise to discrimination between self-handlers and suppliers of services to third parties or between existing and new operators. The airport operator would in each case be able to charge a user fee determined in such a way as to allow it to achieve a profit while complying with the criteria laid down in Article 16(3) of the Directive.

32 If it were to follow from the interpretation given by the Court of Justice that the Flughafen is entitled to require an undertaking in Lufthansa's situation to pay an access fee, the question would arise whether fee calculation methods such as those at issue in the main proceedings meet the requirements laid down in Article 16(3) of the Directive.

33 In the light of the foregoing considerations, the Oberlandesgericht Frankfurt am Main decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

- (1) Is Council Directive 96/67/EC of 15 October 1996, in particular Article 16(3) thereof, in conjunction with Recital 25 in the preamble thereto, to be interpreted as meaning that the managing body of an airport within the meaning of Article 3 is entitled to demand from a self-handler and/or a supplier of groundhandling services to third parties payment of a separate licence fee for the grant of access to airport instal-



lations in the sense of an access fee in return for the opening-up of a commercial opportunity in addition to a user fee (rental) payable by the self-handler and/or supplier to third parties of groundhandling services for the rental under contract of airport installations, in this case, passenger check-in desks; or alternatively, does the Directive merely provide that, for the purposes of determining a user fee, account is to be taken of the criteria mentioned in Article 16(3) and regard is to be had to the interest of the managing body of the airport in achieving a profit?

(2) If the answer to Question 1 – first alternative – is affirmative, does the airport operator also have the right to claim such a fee from the self-handler and/or supplier of groundhandling services to third parties (supplier in the situation of the defendant in the main proceedings) in sectors where free access to the groundhandling market was already guaranteed prior to the entry into force of the Directive, in particular in regard to land-side handling services?

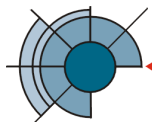
(3) If Question 2 is answered affirmatively, is the Directive to be interpreted as entitling the managing body of an airport within the meaning of Article 3 also to demand payment of an additional licence fee as described in Question 1 for access to airport installations from a self-handler and/or a supplier of services in the situation of the defendant in the main proceedings who, until the entry into force of the Directive or provisions transposing it into national law, paid (only) rent for the use of the relevant airport installations?

(4) May it even be mandatory to demand (additionally) payment of a licence fee by a self-handler and/or supplier of groundhandling services who has hitherto enjoyed free access to that market, or, as the case may be, to the self-handling sector alone, without being required to pay an additional licence fee, in order to prevent unequal treatment in relation to other self-handlers and suppliers of groundhandling services

(a) who have already hitherto been requested to pay a supplementary licence fee in addition to a user fee;

(b) who are for the first time granted access to airport installations on the basis of the legal situation created by the Directive and are henceforth being requested to pay a licence fee for such access in addition to a further user fee for use of the installations?

(5) If Article 16(3) of the Directive entitles an airport's managing body to require payment of a supplementary licence fee as described above, does such a fee, which must be paid in addition to a fee for use of check-in desks, meet the requirements of Article 16(3) in regard to relevance, objectivity, transparency and non-discrimination where it is determined according to numbers of passengers (in this case DEM 0.30 per passenger checked in)?



The first question

34 By the first part of its first question, the national court is asking essentially whether the Directive, in particular Article 16(3) thereof, authorises the managing body of an airport to make access to the groundhandling market in the airport subject to payment by a supplier of groundhandling services or self-handler of an access fee as consideration for the grant of a commercial opportunity, in addition to the fee payable by that supplier or self-handler for the use of the airport installations.

35 According to the Flughafen and the Greek Government, the fee for access to airport installations which the managing body of an airport may, under Article 16(3) of the Directive, collect from suppliers of services and self-handlers in reality constitutes remuneration for access to the market in groundhandling services or in other words for the anticipated profit that such access provides to suppliers and self-handlers. Accordingly, such a fee is payable in addition to the fee charged for the provision of the airport installations by the airport's managing body, which does not fall within the scope of the Directive.

36 That interpretation is incorrect.

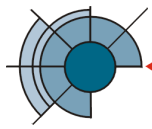
37 Recital 25 of the Directive states that access to airport installations must be guaranteed to suppliers authorised to provide ground-handling services and to airport users authorised to self-handle and it must be possible ... for such access to give rise to the collection of a fee.

38 Under Article 16(1) and (3) of the Directive, entitled Access to installations, Member States shall take the necessary measures to ensure that suppliers of groundhandling services and airport users wishing to self-handle have access to airport installations and [w]here access to airport installations gives rise to the collection of a fee, the latter shall be determined according to relevant, objective, transparent and non-discriminatory criteria.

39 It follows that the managing body of the airport is authorised to collect a fee in return for granting access to airport installations.

40 The reference to installations clearly relates to the infrastructure and the equipment made available by the airport. That interpretation is consistent with Article 2(a) of the Directive, which defines an airport as any area of land especially adapted for the landing, taking-off and manoeuvres of aircraft, including the ancillary installations which these operations may involve for the requirements of aircraft traffic and services, and the installations needed to assist commercial air services.

41 In addition, as Lufthansa correctly points out, any other interpretation of Article 16 of the Directive would render the first paragraph of that provision meaningless in so far as its



aim is to ensure that suppliers and users receive access to the airport installations to the extent necessary for them to carry out their activities. It is common ground that in order to carry out groundhandling activities it is in any event necessary to have access to that market. Therefore, the specification in that paragraph makes sense only if it refers to access to the airport installations themselves, the need for which varies according to the activity concerned. For some groundhandling activities, the supplier or self-handler needs to rent moveable or immoveable property belonging to the airport's managing body, while for others mere access to the installations used in common is sufficient.

42 An interpretation to the effect that the Directive does not allow for the possibility of collecting an access fee is supported by other provisions of the Directive, and in particular by Articles 6 and 7 thereof. In contrast to the provisions of Article 16(3) of the Directive relating to access to airport installations, those provisions, which require the Member States to take the necessary measures to ensure that suppliers of groundhandling services and airport users wishing to self-handle are granted free access to the market and the freedom to self-handle respectively, do not make any provision whatsoever for the collection of a fee as consideration for the exercise of those freedoms.

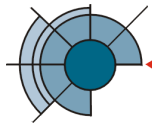
43 That interpretation is also correct in the light of the Directive's objective of ensuring the opening-up of the groundhandling market which, according to Recital 5 of the Directive, must help, in particular, to reduce the operating costs of airline companies.

44 Not only would the possibility for the managing body of an airport to charge an access fee in addition to the fee for use of the airport installations not facilitate access to the market concerned, it would also run directly counter to the objective of reducing the operating costs of airline companies and, in certain cases, would even lead to an increase in those costs. That would be the case if certain suppliers or self-handlers who, like Lufthansa, did not pay the access fee before the Directive was implemented, were now required, having regard to the criteria laid down in Article 16(3) of the Directive, to pay such a fee.

45 Against that background, the Court must reject the Flughafen's argument that the Directive cannot validly regulate the terms of collection of the user fee for airport installations because the purpose of that Directive is, according to its very title, to ensure access to the groundhandling market and not to those installations.

46 As the Advocate General pointed out in points 36 and 37 of his Opinion, the fact that access to the airport installations is a necessary precondition for access to the groundhandling market explains why the Community legislature not only laid down provisions relating directly to access to that market but, in order to ensure genuine access to the market, was also entitled to specify the conditions for access to the airport installations themselves.

47 The argument put forward by the Flughafen that the Community legislature's intention was to permit the collection of an access fee as consideration for the additional costs to the



managing bodies of airports of opening up the groundhandling market, in order to ensure the self-financing of those airports, is inconsistent with the broad logic of the Directive.

48 First, the Community legislature stated in Recital 9 of the Directive that free access to the market concerned was consistent with the efficient operation of Community airports, without mentioning the collection of any fee as consideration for that access. Second, none of the Directive's provisions providing for exceptions to the principle of free access, namely Articles 6, 7 and 9, permit such an exception for reasons relating to the financing requirements of airports. Moreover, airports have access to sources of financing other than those linked to groundhandling activities, such as take-off and landing fees.

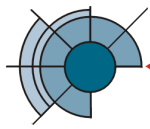
49 A consideration of the legislative history of the Directive also confirms the validity of this interpretation of Article 16(3) of the Directive.

50 The final text of the Directive does not include Amendment No 29 to the Commission proposal for a Council Directive No 95/C 142/09 on access to the groundhandling market at Community airports (OJ 1995 C 142, p. 7), set out in the legislative resolution embodying the Parliament's opinion on that proposal (OJ 1995 C 323, p. 94). That amendment states that a fee may ... be charged for access by third parties to the commercial opportunities created by the airport undertaking, in addition to the user fee which may be charged for access to airport installations and reflecting the costs that that access and the provision of the necessary infrastructure occasions for the airport. For its part, Article 16(3) of the Directive authorises the collection of a fee only for access to airport installations, which lends support to the argument posited by Lufthansa and the Commission that that provision does not permit the collection of a fee for market access as consideration for the commercial opportunities created by that access.

51 The statement relating to the application of Article 16(3) of the Directive, which the Commission arranged to be entered in the minutes when the Directive was adopted and on which the Flughafen relies in support of its argument, likewise does not permit the inference that the commercial fee referred to therein, which may contribute ... to the self-financing of an airport, in fact constitutes a fee for market access. In any event, an interpretation based on such a statement cannot give rise to an interpretation different from that resulting from the actual wording of the provision concerned (see, to that effect, Case 429/85 *Commission v Italy* [1988] ECR 843, paragraph 9).

52 Moreover, neither Decision 98/513 nor the judgment in *Aéroports de Paris v Commission*, cited above, can reasonably be relied on by the Flughafen if only because the case which gave rise to that decision and later to that judgment did not concern the application of the Directive but related to the Community law applicable prior to its entry into force.

53 Nor do the fundamental principles of Community law relied on by the Flughafen, namely the principle of non-discrimination, the right to property and the freedom to carry on



an economic or commercial activity militate against interpreting the Directive as prohibiting the collection of an access fee.

54 As regards the principle of non-discrimination, inasmuch as it is clear from the foregoing considerations that the collection of a fee from any suppliers or self-handlers at all in return for access to the market concerned cannot be justified on the basis of either Article 16(3) of the Directive or any other provision thereof, the Flughafen's argument alleging an infringement of that principle inasmuch as such a fee would be collected from certain operators but not from others, must be rejected because it is based on an incorrect premiss.

55 As to the right to property, the fact that the managing body of an airport is not authorised to collect an access fee does not mean, contrary to the Flughafen's assertions, that that body is deprived of the possibility of profiting from the economic services that it provides on the groundhandling market to which it must grant access.

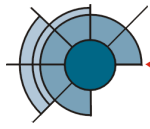
56 Article 16(3) of the Directive requires that the fee which may be collected in return for access to airport installations must be determined according to relevant, objective, transparent and non-discriminatory criteria. Therefore, that provision does not prevent the fee from being determined in such a way that the managing body of the airport is able not only to cover the costs associated with the provision and maintenance of airport installations, but also to make a profit.

57 That interpretation is supported by the legislative history of the Directive from which it is clear that, while the proposal for a directive referred to in paragraph 50 of this judgment stated, in the corresponding provision (see Article 14(3)), that the managing body of the airport may collect a fee only as a charge for the costs which this access ... occasions for the airport and reflecting the level of the costs, Article 16(3) does not contain any such specification.

58 Therefore, the Flughafen's argument based on the failure to respect the right to property must be rejected inasmuch as it is based on the incorrect premiss that it would be impossible for that company to exploit its property in such a way as to make a profit.

59 At the hearing the Flughafen submitted that the prohibition on collecting an access fee constitutes arbitrary interference in its freedom to carry on an economic or commercial activity inasmuch as that prohibition is not laid down by the Directive and is thus illegal. But, as is clear from the foregoing considerations, the restriction on the freedom to set prices, which the managing body of the airport sees as the consequence of a prohibition on collecting a fee solely for access to the groundhandling market, clearly follows from the Directive and, accordingly, the Flughafen's argument in that regard is also based on an incorrect premiss and must be rejected.

60 In those circumstances, the answer to the first part of the first question must be that the Directive, in particular Article 16(3) thereof, precludes the managing body of an airport



from making access to the groundhandling market in the airport subject to payment by a supplier of groundhandling services or self-handler of an access fee as consideration for the grant of a commercial opportunity, in addition to the fee payable by that supplier or self-handler for the use of the airport installations.

61 By the second part of its first question, the national court asks whether Article 16(3) of the Directive merely provides that that body is entitled to collect a fee for the use of airport installations, of an amount, to be determined according to the criteria laid down in that provision, which takes account of the interest of that body in making a profit.

62 As is clear from paragraphs 55 to 57 of this judgment, the answer to the second part of the first question must be that the managing body of an airport is entitled to collect a fee for the use of airport installations, of an amount, to be determined according to the criteria laid down in Article 16(3) of the Directive, which takes account of the interest of that body in making a profit.

63 In the light of all the foregoing considerations, the answer to the first question must be that the Directive, in particular Article 16(3) thereof, precludes the managing body of an airport from making access to the groundhandling market in the airport subject to payment by a supplier of groundhandling services or self-handler of an access fee as consideration for the grant of a commercial opportunity, in addition to the fee payable by that supplier or self-handler for the use of the airport installations. On the other hand, that body is entitled to collect a fee for the use of airport installations, of an amount, to be determined according to the criteria laid down in Article 16(3) of the Directive, which takes account of the interest of that body in making a profit.

The second to fifth questions

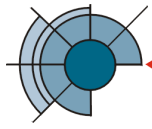
64 In the light of the answer to the first question there is no need to answer the second to fifth questions.

Costs

65 The costs incurred by the Greek Government and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),



in answer to the questions referred to it by the Oberlandesgericht Frankfurt am Main by order of 31 July 2001, hereby rules:

Puissochet

Gulmann

Skouris

Colneric

Cunha Rodrigues

Delivered in open court in Luxembourg on 16 October 2003.

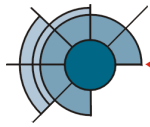
R. Grass

V. Skouris

Registrar

President

Language of the case: German.



3.4 Case C-181/06: Deutsche Lufthansa AG v ANA – Aeroportos de Portugal SA

(Reference for a preliminary ruling from the Tribunal Administrativo e Fiscal do Porto)

(Air transport – Airports – Groundhandling – Levying of a fee for ground administration and supervision)

Opinion of Advocate General Mazák delivered on 19 April 2007

Judgment of the Court (Second Chamber), 5 July 2007

Summary of the Judgment

Transport – Air transport – Access to the groundhandling market at Community airports

(Council Directive 96/67, Art. 16(3) and Annex, point 1)

Community law precludes rules of national law which provide for the payment to the airport managing authority by providers of groundhandling services of a fee for ground administration and supervision, unless the fee for ground administration and supervision provided for by that legislation is payable as the consideration for some or all of the services defined in paragraph 1 of the Annex to Council Directive 96/67 on access to the groundhandling market at Community airports and does not constitute a second charge for services already paid for through another fee or tax. If the examination carried out by the referring court discloses that that fee constitutes a fee for access to the airport installations, it is a matter for that court to ascertain whether the fee at issue meets the criteria of relevance, objectivity, transparency and non-discrimination as specified in Article 16(3) of Directive 96/67.

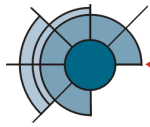
(see para. 29, operative part)

JUDGMENT OF THE COURT (Second Chamber)

5 July 2007 (*)

(Air transport – Airports – Groundhandling – Levying of a fee for ground administration and supervision)

In Case C-181/06,



REFERENCE for a preliminary ruling under Article 234 EC, from the Tribunal Administrativo e Fiscal do Porto (Portugal), made by decision of 7 March 2006, received at the Court on 7 April 2006, in the proceedings

Deutsche Lufthansa AG vs. ANA – Aeroportos de Portugal SA,

intervening parties:

Ministério Público,

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, P. Kūris (Rapporteur), J. Makarczyk, L. Bay Larsen and J.-C. Bonichot, Judges,

Advocate General: J. Mazák,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 8 February 2007, after considering the observations submitted on behalf of:

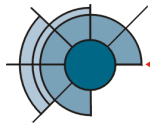
- Deutsche Lufthansa AG, by A. Moura Portugal, advogado,
- the Portuguese Government, by L. Fernandes and M.J. Viegas, acting as Agents,
- the Greek Government, by K. Georgiadis and Z. Chatzipavlou, acting as Agents,
- the Commission of the European Communities, by J.R. Vidal Puig, S. Noe and P. Guerra e Andrade, acting as Agents,

after hearing the Opinion of the Advocate General at the hearing of 19 April 2007 gives the following Judgment:

1 The reference for a preliminary ruling concerns the interpretation of Articles 6 and 16(3) of Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports (OJ 1996 L 272, p. 36).

2 This reference was made in the course of proceedings between Deutsche Lufthansa AG ('Lufthansa') and ANA – Aeroportos de Portugal SA ('ANA') concerning a notice, issued by ANA, assessing and levying fees for ground administrative assistance and supervision.

Legal context



Community legislation

3 Article 6(1) of Directive 96/67 is worded as follows:

'Member States shall take the necessary measures in accordance with the arrangements laid down in Article 1 to ensure free access by suppliers of groundhandling services to the market for the provision of groundhandling services to third parties.'

Member States shall have the right to require that suppliers of groundhandling services be established within the Community.'

4 Article 16(3) of that directive states:

'Where access to airport installations gives rise to the collection of a fee, the latter shall be determined according to relevant, objective, transparent and non-discriminatory criteria.'

5 The Annex to that directive states:

1. Ground administration and supervision comprise:

1.1. representation and liaison services with local authorities or any other entity, disbursements on behalf of the airport user and provision of office space for its representatives;

1.2. load control, messaging and telecommunications;

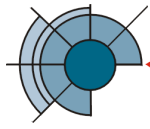
1.3. handling, storage and administration of unit load devices;

1.4. any other supervision services before, during or after the flight and any other administrative service requested by the airport user.'

National legislation

6 Decree-Law No 102/90 of 21 March 1990, as amended by Decree-Law No 280/99 of 26 July 1999 (Diário da República I, series A, No 172, of 26 July 1999, p. 4678) ('Decree-Law No 280/99'), details the fees that may be charged for the carrying out of any activities in airport premises. Article 18(2) of that Decree-Law provides that in the public airport sector operated by ANA, the level of the fees for groundhandling is to be set, following prior approval by the National Institute for Civil Aviation, by ANA.

7 Article 3 of Decree No 12/99 of 30 July 1999 (Diário da República I, series B, No 176, of 30 July 1999, p. 4922) states:



'The fees provided for under Article 17 of Decree-Law No 102/90 of 21 March 1990, and for the application of Article 18 of that decree-law, are divided, on the basis of the nature of the services and activities carried out, into:

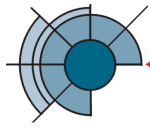
- (a) traffic fees;
- (b) groundhandling fees;
- (c) occupancy fees;
- (d) other commercial fees;

8 The groundhandling fees are provided for in Article 10 et seq. of Decree No 12/99. There are 11 of them.

9 Article 10 of that Decree states:

'Groundhandling fees shall be payable for the carrying out of any activity forming part of the services specified in the list in Annex I to Decree-Law No 275/99 of 23 July 1999, in accordance with the following conditions:

- (1) The ground administration and supervision fee shall be payable by the service providers and shall be calculated by applying a rate relative to the turnover made.
- (2) The passenger handling fee shall be payable by the service providers and by airport or self-handling airfield users; it shall be calculated by reference to timetables, or to fractions of days or of months, or to passenger check-ins.
- (3) The baggage handling fee shall be payable by service providers and by airport or self-handling airfield users; it shall be calculated by reference to timetables, or to fractions of days or of months, or to passenger check-ins, or per number of items of baggage handled.
- (4) The freight and mail handling fee shall be payable:
 - (e) by airport or self-handling airfield users; it shall be calculated per unit of traffic,
 - (f) by service providers; it shall be calculated by applying a rate relative to the turnover made.
- (5) The ramp handling fee shall be payable:
 - (a) by airport or self-handling airfield users; it shall be calculated per unit of traffic,
 - (b) by service providers; it shall be calculated by applying a rate relative to the turnover made.
- (6) The aircraft cleaning and servicing fee shall be payable by the service providers and shall be calculated by applying a rate relative to the turnover made.



(7) The fuel and oil handling fee shall be payable by the service providers and shall be calculated by applying a rate relative to the turnover made, or by hectolitre of fuel and litre of oil supplied, in which case figures shall be rounded up.

(8) The aircraft maintenance fee shall be payable by the service providers and shall be calculated by applying a rate relative to the turnover made.

(9) The flight operations and crew administration fee shall be payable by the service providers and shall be calculated by applying a rate relative to the turnover made.

(10) The surface transport fee shall be payable by the service providers and shall be calculated by applying a rate relative to the turnover made.

(11) The catering fee shall be payable by the service providers and shall be calculated by applying a rate relative to the turnover made.'

10 Article 11 of that Decree provides:

'According to the period of use, the administrative unit or the physical unit handled, a different fee may be collected from users of any airport or centralised airfield infrastructure, for the carrying out of groundhandling activities.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

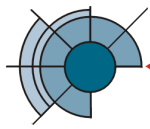
11 Lufthansa, a company governed by German law, a branch of which has its head office at Lisbon airport (Portugal), brought legal proceedings against the notice, issued by ANA, assessing and levying fees for ground administration and supervision.

12 ANA granted Lufthansa a licence to carry out groundhandling activities at the Oporto Francisco Sá Carneiro Airport. As a result, Lufthansa was subject to payment of a fee, including value added tax, totalling PTE 22 164 (EUR 110.55).

13 Lufthansa claims before the national court that the relevant provisions of national law – Article 10(1) of Decree No 12/99 and Article 18(2) of Decree-Law No 280/99 – infringe Directive 96/67.

14 The Tribunal Administrativo e Fiscal do Porto (Oporto Administrative and Customs Court) (Portugal) decided to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

(1) May the sum demanded by way of fees for administrative assistance and supervision, in accordance with Article 10(1) of Decree No 12/99 of 30 July 1999, be regarded as a fee having been “determined according to relevant, objective, transparent and non-discriminatory criteria”, as required by Article 16(3) of Directive 96/67?



(2) Is it in conflict, or incompatible, with the free access to the market for the provision of groundhandling services to third parties provided for by Article 6 of Council Directive 96/97, for payment to be required of a sum by way of fees for administrative assistance and supervision, in accordance with Article 10(1) of Decree No 12/99 of 30 July 1999 and Article 18(2) of Decree-Law No 102/90 of 21 March 1990, as amended by Decree-Law No 280/99 of 26 July 1999, and other provisions fixing the amount of that sum?

(3) Is it in conflict, or incompatible, with the completion of the internal market and the principles laid down in Articles 3(c) EC and 4 EC, for payment to be required of a sum by way of fees for administrative assistance and supervision, in accordance with Article 10(1) of Decree No 12/99 of 30 July 1999 and Article 18(2) of Decree-Law No 102/90 of 21 March 1990, as amended by Decree-Law No 280/99 of 26 July 1999, and other provisions fixing the amount of that sum?

(4) May requiring payment of a sum by way of fees for administrative assistance and supervision, in accordance with Article 10(1) of Decree No 12/99 of 30 July 1999 and Article 18(2) of Decree-Law No 102/90 of 21 March 1990, as amended by Decree-Law No 280/99 of 26 July 1999, and other provisions fixing the amount of that sum, be regarded as abuse within the meaning of Article 82 EC?

The questions referred for a preliminary ruling

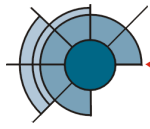
15 At the outset it should be noted that from 1 January 1999, as provided for in Article 1(1)(c) and (2) of Directive 96/67, only airports whose annual traffic is not less than 3 million passenger movements or 75 000 tonnes of freight – or whose traffic has been not less than 2 million passenger movements or 50 000 tonnes of freight during the six-month period prior to 1 April or 1 October of the preceding year – are subject to that directive. From 1 January 2001 the directive applies to any airport, located in the territory of a Member State, and open to commercial traffic, whose annual traffic is not less than 2 million passenger movements or 50 000 tonnes of freight.

16 However, it is not clear from the facts put forward by the referring Court that Oporto airport had reached the abovementioned thresholds before 2005. If this was not the case, that airport would only fall within the scope of Directive 96/67 from 1 January 2006. However, the notice assessing fees, which is contested by Lufthansa, seems to concern the year 2000.

17 It is for the referring court, therefore, first to ensure that Directive 96/67 is applicable to the facts of the dispute in the main proceedings.

The first and second questions

18 By its first and second questions, which it is appropriate to examine together, the referring court essentially asks if Articles 6 and 16(3) of Directive 96/67 preclude national legislation, such as that at issue in the main proceedings, which provides for the payment to the



airport managing authority by providers of groundhandling services of a fee for ground administration and supervision.

19 The Court has held that it follows, both from recital 25 of Directive 96/67 and from Article 16(1) and (3) of that directive, that the airport managing authority is authorised to collect a fee in return for granting access to airport installations. Those installations must be taken to mean the infrastructure and equipment made available by the airport. By contrast, the Court has held that the airport managing authority had no right to charge an access fee to the groundhandling market in addition to the fee for use of the airport installations (see, to that effect, Case C-363/01 Flughafen Hannover-Langenhagen [2003] ECR I-11893, paragraphs 37 to 40, 44 and 60).

20 Firstly, it is necessary to examine whether a fee, such as the fee charged for ground administration and supervision at issue in the main proceedings, should be considered as a fee payable in return for access to airport installations.

21 The Portuguese Government submits that the fee in question is levied in return for the provision of a public airport service in support of civil aviation and for making available property in the public domain, which ANA must ensure is in good condition for use.

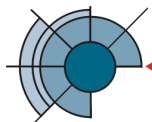
22 At the hearing, the Portuguese authorities stated, on the one hand, that the ground administration and supervision fee provided for by Decree No 12/99 was no different from the fee mentioned in the Annex to Directive 96/67 and in no way constituted a second charge for services on which a fee provided for by that same decree has already been levied.

23 On the other hand, those authorities mentioned, for the first time, that effective use of the public area must mean water and electricity consumption, as well as the cost of cleaning, and safety and security measures.

24 In this context, it is a matter for the referring court to examine the consideration for the fee at issue in the main proceedings in light of the definition of ground administration and supervision in paragraph 1 of the Annex to Directive 96/67. Thereafter, if that fee is payable for some or all of those services and is not a second charge on services already paid for by another fee or charge, it may be considered as a fee for access to airport installations and not as a fee for access to the groundhandling market.

25 In any case, it is necessary, secondly, to examine whether the fee at issue in the main proceedings meets the criteria specified in Article 16(3) of Directive 96/67.

26 As regards the criteria of relevance and objectivity, it is for the referring court to examine the link between the running costs incurred by ANA and the level of the fee calculated as a percentage of the turnover made by Lufthansa at the Oporto Francisco Sá Carneiro airport.



27 As regards the criterion of transparency, that can be considered as satisfied only if the national law contains a clear exposition of the services provided by ANA and a precise definition of the method of calculating the relevant fee.

28 Finally, as regards the criterion of non-discrimination, while it is common ground that the fee at issue in the main proceedings is payable only by the providers of groundhandling, even though the self-handling users make use of the same airport installations as those providers, it is also clear that if the only justification for that difference in treatment lies in the fact that only those service providers make a profit, then that difference must be regarded as discriminatory.

29 It follows from the foregoing that the reply to the first and second questions must be that Community law precludes rules of national law such as those provided for by Article 10(1) of Decree No 12/99 and Article 18(2) of Decree-Law No 280/99, unless the fee for ground administration and supervision provided for by that legislation is payable as the consideration for some or all of the services defined in paragraph 1 of the Annex to Directive 96/67 and does not constitute a second charge for services already paid for through another fee or tax. If the examination carried out by the referring court discloses that the fee at issue in the main proceedings constitutes a fee for access to the airport installations, it is a matter for that court to ascertain whether the fee at issue meets the criteria of relevance, objectivity, transparency and non-discrimination as specified in Article 16(3) of Directive 96/67.

The third question

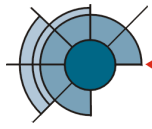
30 By its third question, the referring court essentially asks whether the payment of the fee at issue in the main proceedings is contrary to Articles 3 and 4 EC.

31 It is sufficient to state that Articles 3 and 4 EC specify the fields and objectives to which the activities of the European Community are to relate, and do not lay down obligations on Member States or public or private bodies (see, to that effect, Case C-9/99 *Échirolles Distribution* [2000] ECR I-8207, paragraph 22). Since those activities have been detailed in other parts of the EC Treaty and in Community implementing acts such as Directive 96/67, it is necessary to reply to the referring court only with regard to that directive.

The fourth question

32 By its fourth question, the referring court essentially asks whether the fact of demanding payment of the fee at issue in the main proceedings can be considered as an abuse of a dominant position within the meaning of Article 82 EC.

33 According to settled case-law, references for a preliminary ruling must indicate the precise reasons which caused the referring court to question itself as to the interpretation of Community law and to consider that it was necessary to refer questions to the Court for a preliminary ruling (see the order in Case C-116/00 *Laguillaumie* [2000] ECR I-4979, para-



graph 16 and the case-law cited, as well as Case C-36/99 *Idéal tourisme* [2000] ECR I-6049, paragraph 20). Thus, the Court has held that it is essential that the national court should give, at the very least, some explanation of the reasons for the choice of the Community provisions which it requires to be interpreted and on the link it establishes between those provisions and the national legislation applicable to the dispute in the main proceedings (order in Case C-167/94 *Grau Gomis and Others* [1995] ECR I-1023, paragraph 9).

34 It must be stated that the reference for a preliminary ruling does not meet those requirements.

35 It is not possible to delimit the specific problem of interpretation which might be raised in relation to Article 82 EC. The need for precision with regard to the factual and legislative context applies especially in the area of competition, which is characterised by complex factual and legal situations (*Laguillaumie*, paragraph 19, and case-law cited).

36 It follows that the fourth question referred to the Court is inadmissible.

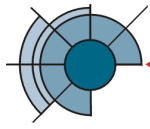
Costs

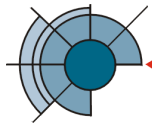
37 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

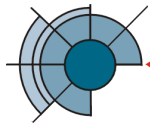
Community law precludes rules of national law such as those provided for by Article 10(1) of Decree No 12/99, of 30 July 1999, and Article 18(2) of Decree-Law No 120/90 of 21 March 1990, as amended by Decree-Law No 280/99 of 26 July 1999, unless the fee for ground administration and supervision provided for by that legislation is payable as the consideration for some or all of the services defined in paragraph 1 of the Annex to Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports and does not constitute a second charge for services already paid for through another fee or tax. If the examination carried out by the referring court discloses that the fee at issue in the main proceedings constitutes a fee for access to the airport installations, it is a matter for that court to ascertain whether the fee at issue meets the criteria of relevance, objectivity, transparency and non-discrimination as specified in Article 16(3) of Directive 96/67.

[Signatures]





4 Questionnaires



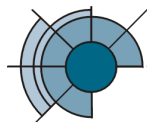
Study on Impact of Directive 96/67 EC on Ground Handling Services

Questionnaire – EU-15

Contact:

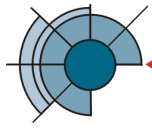
Airport Research Center
Bismarckstr. 61
52066 Aachen
Germany

Phone: +49 241 16843-0
E-Mail: directive_review@arc-aachen.de
Website: www.airport-consultants.com



Content:

Introduction	3
Data	4
Glossary.....	6
Characterisation of the interviewee / stakeholder (All Stakeholders).....	7
1 Airline specification / self- and third party handling activities (Airlines).....	8
2 Ground Handler specification (Ground Handling Companies and Airport Ground Handling Company).....	13
3 Market description (All Stakeholders)	16
4 Centralized Infrastructure (All Stakeholders)	18
5 Contestable market (All Stakeholders)	21
6 Airport Users' Committee (AUC) (All Stakeholders)	22
7 Tender process (All Stakeholders)	23
8 Sub contracting (All Stakeholders)	27
9 Changes in Handling prices (All Stakeholders)	28
10 Changes in Quality Level (All Stakeholders)	29
11 Airport operator's involvement in ground handling (All Stakeholders)	31
12 Self Handling/Third Party Airlines involvement in Ground Handling (All Stakeholders)	32
13 Staff Safety (All Stakeholders)	33
14 Employment (Airport Ground Handling Company, Airlines, Independent Ground Handling Company)	35
Results of Directive (All Stakeholders)	46



Introduction

The Airport Research Center is dedicated by the European Commission to evaluate the impact of the Directive 96/67/EC on access to the ground handling market at Community airports.

The aim is to update the previous study on this topic completed in 2002 by SH&E and additionally focus on the new member states, which came under the Directive since 2004 and have seen major changes since then. The study will therefore analyze the impact on airports, airlines and ground handlers and their employees.

We would like to ask you as an involved stakeholder dealing with the Directive 96/67/EC to support us by fulfilling this questionnaire. With your help the European Commission can get the information it needs to adjust the Directive where necessary.

Methodically the study will be based on surveys (internet questionnaire and on-site interviews) of the involved stakeholders in the European ground handling market. To analyse the impact of the directive 96/67 EC since its implementation in 1996 and after the SH&E report, this study will cover the time between 1996 and 2007. In respect to the ground handling markets in the new member states of the EU only the period between 2004 and 2007 will be considered.

Due to the fact that the Directive only allows exceptions on airside handling services the study focuses on baggage, freight and mail, ramp and fuel and oil handling.

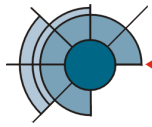
Since the European aviation market is subject to major changes, like the increasing market share of low cost airlines, and a remarkable traffic growth, not all developments in the European ground handling market could be clearly interpreted as a consequence and impact of Directive 96/67 EC.

While the aim of the study is to analyse the impact of the opening of the ground handling market, please indicate by fulfilling this questionnaire, in addition to the directive related effects, further drivers of the development in European ground handling market.

Due to the transparency of the study we prepared a general questionnaire which includes all questions for all stakeholders in the ground handling process. While not all questions are dedicated to each stakeholder, the title of each chapter indicates by whom it should be answered. If you would like to answer other questions, dedicated to other stakeholders, please do not hesitate to do so.

If there is a supplementary need to comment the market developments and structures as well as this questionnaire, please feel free and provide us with extra data and information.

Thank you for your support.



Data

In order to receive an comprehensive market overview please provide us with following data as indicated:

Figures of general traffic structure ([Airport](#))

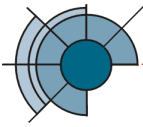
		1996	2002	2007
Passengers	Total			
	O-D Passengers			
	Transfer Passengers			
Cargo (t)	Total			
Aircraft Movements	Total			
	Network Carrier			
	Charter Carrier			
	LCC Carrier			
	Cargo Carrier			

Remarks:

Frequencies of delays caused by ground handling operations in accordance to the IATA Delay Code Scheme ([Airport](#))

		1996	2002	2007
IATA Delay Code	32			
	33			
	34			
	35			
	36			
	37			
	38			
	39			

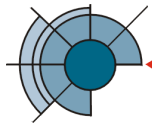
Remarks:



Figures of the ground handling market structure (All Stakeholders)

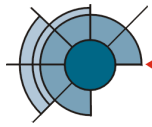
		1996		2002		2007	
		MTOW	Aircrafts	MTOW	Aircrafts	MTOW	Aircrafts
Ground Handling Volume Total							
Airport Ground Handling Company							
Self Handling Airline	Company						
	Company						
	Company						
	Company						
Third Party Handling Airline	Company						
	Company						
	Company						
	Company						
Independent Ground Handling Company	Company						
	Company						
	Company						
	Company						

Remarks:



Glossary

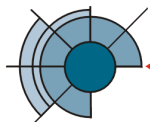
Cascade sub contracting:	The use of subcontracting by a company which is already itself subcontracting.
Centralized Infrastructure	Comprises Centralized Facilities and Centralized Services
Centralized Facilities:	Facilities which are provided by the airport and have to be used by ground handling company.
Centralised Service:	Services that are provided by the airport operator and can not be done by the ground handling company itself.
Contestable market:	Within this questionnaire the contestable market is defined as the ramp handling market open to independent ground handling companies. The contestable market therefore excludes the market share comprised by self handling airlines .
EU-15:	Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Luxembourg, Netherlands, Portugal, Spain, Sweden, United Kingdom
Independent ground handling company:	Ground handling company, not linked to an airport operating company or an airline
Market opening	Year when the airport came under the Directive 96/67/EC (Either because of the eastern enlargement of the European Union or due to market growth of the airport)
MTOW:	Maximum take-off weight of the aircraft.
Multi station contracting:	Contract between the airline and the ground handling company which includes the handling of an airline at more than one airport.
New Members States	Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia, Romania
Ramp Agent	Coordination and control of the handling processes on the apron
Safety Management System (SMS):	A documented process for managing risks that integrates operations and technical systems to ensure aviation safety or the safety of the public.
Self handling Airline:	Airline that does the ground handling itself (excluding the handling of alliance partners)
Sub contract	A contract assigning some obligations of a prior contract to another party.
Third party handling airline:	Airline which provides ground handling services for another airline.



Characterisation of the interviewee / stakeholder (All Stakeholders)

Specifications	
Stakeholder	
Name of the company	
Airport / Place of operations	
Year of market entry at the airport	
Contact Data of the interviewee (s)	

Remarks:



1 Airline specification / self- and third party handling activities (Airlines)

1.1 Which ground handling categories covers the airline at the airport by self handling activities?

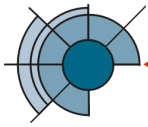
Handling of:		
1.1.1	Baggage handling	<input type="checkbox"/>
1.1.2	Freight and mail handling	<input type="checkbox"/>
1.1.3	Ramp handling	<input type="checkbox"/>
1.1.4	Fuel and oil handling	<input type="checkbox"/>

Remarks:

1.2 How much of the ground handling market on the airport does the airline comprise as a self handling party? (Percentage of total MTOW handled at the airport / year) (If no data of MTOW is available please indicate in number of total aircraft)

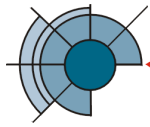
Handling of:		1996	2002	2007
1.2.1	Freight and mail handling			
1.2.2	Ramp handling			

1.3 If no detailed data is available, please give a qualitative description of the developments between 1996 and 2007.



1.4 Generally, does the airline practice multi station contracting with one single supplier (ground handling company) at different airports in the EU? If yes, please indicate the reasons:

Remarks:



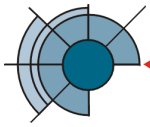
	(If No continue with No. 3)
1.5 Does the airline provide ground handling services as <u>third party handler</u> for other airlines at the airport?	

1.6 Which specific services does the airline provide as a third party handler at this airport?		
Handling of:		
1.6.1	Baggage handling	<input type="checkbox"/>
1.6.2	Freight and mail handling	<input type="checkbox"/>
1.6.3	Ramp handling	<input type="checkbox"/>
1.6.4	Fuel and oil handling	<input type="checkbox"/>

Remarks:

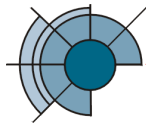
1.7 Which traffic segments does the airline handle as third party handler (Percentage)?		
1.7.1	Network Carrier	
1.7.2	Charter	
1.7.3	Low Cost Carrier	
1.7.4	Cargo Carrier	

1.8 How much of the ground handling market on the airport does the airline comprise as a third party handler? (Percentage of total MTOW handled at the airport / year) (If no data of MTOW is available please indicate in number of total aircraft)				
Handling of:				
		1996	2002	2007
1.8.1	Freight and mail handling			
1.8.2	Ramp handling			



1.9 If no detailed data is available, please give a qualitative description of the developments between 1996 and 2007:

Remarks:



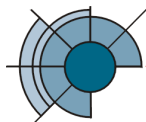
(If No,
continue with
No. 3)

1.10 Does the airline as a third party handler provide ground handling services for alliance partners at the airport?

1.11 If yes, please indicate the share of total ground handling activities as a third party handler for alliance partners (Percentage of total MTOW handled at the airport / year) (If no data of MTOW is available please indicate in number of total aircraft)

Handling of:		1996	2002	2007
1.11.1	Freight and mail handling			
1.11.2	Ramp handling			

1.12 How does the company balance a possible deficit in ground handling activities as a third party handler?



2 Ground Handler specification (Ground Handling Companies and Airport Ground Handling Company)

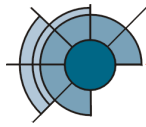
2.1 Please describe the ownership / structure of shareholders of your company.

2.2 Which specific ground handling services does your company provide?

Handling of:		
2.2.1	Baggage handling	<input type="checkbox"/>
2.2.2	Freight and mail handling	<input type="checkbox"/>
2.2.3	Ramp handling	<input type="checkbox"/>
2.2.4	Fuel and oil handling	<input type="checkbox"/>

Remarks:

2.3 Do you provide any of the above mentioned services as a sub contractor?



2.4 Are there any constraints on the license to operate only at dedicated terminals?

2.5 Which traffic segments does the company handle (Percentage)?

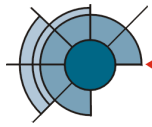
2.5.1	Network Carrier	
2.5.2	Charter	
2.5.3	Low Cost Carrier	
2.5.4	Cargo Carrier	

2.6 How much of the ground handling market on the airport does the company comprise? (Percentage of total MTOW handled at the airport / year) (If no data of MTOW is available please indicate in number of total aircraft)

	Handling of:	1996	2002	2007
2.6.1	Freight and mail handling			
2.6.2	Ramp handling			

2.7 If no data available, please describe the development qualitative.

2.8 Is your company profitable? (EBIT)



2.9 Please indicate the development of the company's profitability between 1996 and 2002 and between 2002 and 2007.

1996 - 2002:

2002 - 2007:

2.10 Is your station at the airport profitable? (EBIT)

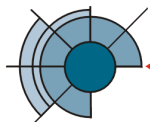
2.11 Please indicate the development of the station's profitability between 1996 and 2002 and between 2002 and 2007.

1996 - 2002:

2002 - 2007:

2.12 If the company or station is not profitable, please indicate for what reasons.

2.13 How does the company balance a possible station's deficit?



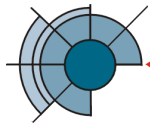
3 Market description (All Stakeholders)

3.1 Current Number of handling companies at the airport in 2007:			
	Handling of:	Self handling	Third Party handling (incl. Independent Ground Handling Companies)
3.1.1	Baggage handling		
3.1.2	Freight and mail handling		
3.1.3	Ramp handling		
3.1.4	Fuel and oil handling		

3.2 Any short term changes to be expected?

3.3 If yes, please indicate in which regard.

Remarks:

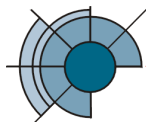


3.4 Number of handlers before the opening of the market (1996) and 2002:

		Self handling		Third Party handling	
		Before opening of the market (1996)	2002	Before opening of the market (1996)	2002
3.4.1	Baggage handling				
3.4.2	Freight and mail handling				
3.4.3	Ramp handling				
3.4.4	Fuel and oil handling				

3.5 Are there any forms of market constraints? If yes, please indicate in which regard

Remarks:



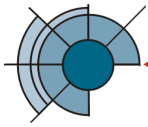
4 Centralized Infrastructure (All Stakeholders)

4.1 Indicate if the following facilities and services are defined as Centralized Infrastructure:			
		Centralized Facilities	Centralized Services
4.1.1	Baggage Handling System	<input type="checkbox"/>	<input type="checkbox"/>
4.1.2	De-Icing facilities	<input type="checkbox"/>	<input type="checkbox"/>
4.1.3	Passenger Bridges	<input type="checkbox"/>	<input type="checkbox"/>
4.1.4	Fixed Power Installation (400Hz)	<input type="checkbox"/>	<input type="checkbox"/>
4.1.5	Fuel System / station	<input type="checkbox"/>	<input type="checkbox"/>
4.1.6	Toilet servicing	<input type="checkbox"/>	<input type="checkbox"/>
4.1.7	Check-In desks	<input type="checkbox"/>	<input type="checkbox"/>
4.1.8	Marshalling	<input type="checkbox"/>	<input type="checkbox"/>

Remarks:

4.2 Are there other facilities and services at the airport defined as Centralized Infrastructure? Please name.

4.3 How is the interface between the Centralized Infrastructure and the apron defined in respect to the regulated services?



4.4 Did problems occur with regard to the Centralized Infrastructure?

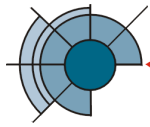
4.5 If yes, please indicate in which regard.

4.6 What is the user charge for Centralized Infrastructure based on?

4.7 Are there other charges related to the use of the airport?

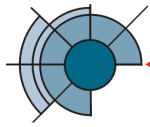
4.8 If yes, please indicate in which regard.

4.9 Please estimate the costs related to the use of infrastructure and airport facilities as a percentage of total operational costs.



4.10 Please estimate the location and the size of the area on the apron available for the equipment of ground handling companies.

Remarks:



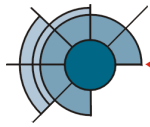
5 Contestable market (All Stakeholders)

5.1 Please give the share of the market that can be seen as the contestable market for the following years.

	1996	2002	2007

5.2 If there are changes in the share of the contestable market, indicated in the question above, please reason the changes.

Remarks:



6 Airport Users' Committee (AUC) (All Stakeholders)

(If No,
continue with
No. 7)

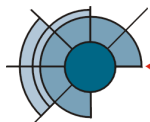
6.1 Does an Airport Users' Committee exist?

6.2 If yes, when has it been established?

6.3 In which subjects was the AUC involved through the managing body of the airport?

6.4 Does the AUC have some influence on decisions? If yes, please describe.

Remarks:



7 Tender process (All Stakeholders)

7.1 Is the access to the ground handling market liberalized?

7.2 Please give reasons for the above mentioned market form.

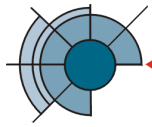
If the market is liberalized continue with No. 8

7.3 Were applicants rejected even before the tender process? (Pre-selection)

7.4 If yes, please explain the reasons for the rejections before the tender process.

7.4.1	Baggage handling	
7.4.2	Freight and mail handling	
7.4.3	Ramp handling	
7.4.4	Fuel and oil handling	

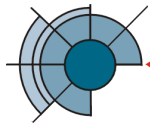
Remarks:



7.5 Indicate the <u>number of applications</u> for ground handling services since the opening of the market (1996) until 2007.			
		Self Handling 1996 – 2007	Third Party Handling 1996 – 2007
7.5.1	Baggage handling		
7.5.2	Freight and mail handling		
7.5.3	Ramp handling		
7.5.4	Fuel and oil handling		

7.6 Indicate the <u>number of tender processes</u> for ground handling services since the opening of the market (1996) until 2007 and name the year of the tender.			
		Self Handling 1996 – 2007	Third Party Handling 1996 – 2007
7.6.1	Baggage handling		
7.6.2	Freight and mail handling		
7.6.3	Ramp handling		
7.6.4	Fuel and oil handling		

7.7 For which reasons were applicants rejected during the tender process?		
7.7.1	Baggage handling	
7.7.2	Freight and mail handling	
7.7.3	Ramp handling	
7.7.4	Fuel and oil handling	



7.8 What were the selection criteria in the tender process – especially the decisive criteria?

7.8.1	Baggage handling	
7.8.2	Freight and mail handling	
7.8.3	Ramp handling	
7.8.4	Fuel and oil handling	

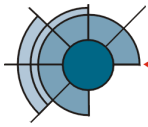
Remarks:

7.9 Was/Is the AUC consulted in regard to tender processes?

7.10 Which stakeholders can vote in the tender process?

7.11 Which votes reflected the final decision of the authority?

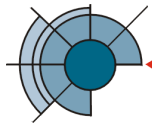
Remarks:



7.12 Does the time limit for the supplier's licenses differ from the maximum of 7 years? If yes, please indicate the length of a license.

7.13 Is it justified that there is a time limit (max. 7 years) for the supplier's licenses?

Remarks:



8 Sub contracting *(All Stakeholders)*

8.1 Does sub contracting generally exist in ground handling services at the airport?

8.2 Does cascade sub contracting generally exist in ground handling services at the airport?

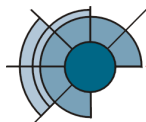
Remarks:

8.3 Was sub contracting already indicated during the tender process?

Remarks:

8.4 Did problems encounter due to sub contracting or cascade sub contracting?

8.5 If yes, which problems encountered?



9 Changes in Handling prices (All Stakeholders)

9.1 Please indicate the development of the handling prices per service and in general. Please indicate changes in percent in 5% steps.

Handling of:		Change in handling charges in % between opening of the market (1996) and 2002	Change in handling charges in % between 2002 and 2007
9.1.1	Baggage handling		
9.1.2	Freight and mail handling		
9.1.3	Ramp handling		
9.1.4	Fuel and oil handling		
9.1.5	General development of ground handling charges		

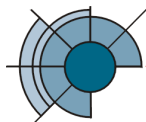
9.2 Please indicate the reasons for the price developments between the years 1996 until 2007.

1996 - 2002:

2002 - 2007:

9.3 Any short term changes to be expected?

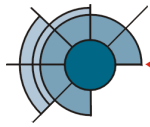
9.4 If yes, please indicate in which regard.



10 Changes in Quality Level (All Stakeholders)

10.1 Indicate the development of the quality level per service and in general between 1996 until 2002.							
Handling of:	Change in Quality level for Passenger Convenience			Change in Quality level for Airline Convenience			
	Improvement	Deterioration	No change	Improvement	Deterioration	No change	
10.1.1	Baggage handling						
10.1.2	Freight and mail handling						
10.1.3	Ramp handling						
10.1.4	Fuel and oil handling						
10.1.5	General development						

10.2 Indicate the development of the quality level per service and in general between 2002 and 2007.							
Handling of:	Change in Quality level for Passenger Convenience			Change in Quality level for Airline Convenience			
	Improvement	Deterioration	No change	Improvement	Deterioration	No change	
10.2.1	Baggage handling						
10.2.2	Freight and mail handling						
10.2.3	Ramp handling						
10.2.4	Fuel and oil handling						
10.2.5	General development						

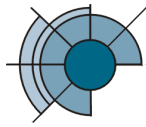


10.3 Please indicate the reasons for the quality developments.

10.4 Any short term changes to be expected?

10.5 If yes, please indicate in which regard.

Remarks:



11 Airport operator's involvement in ground handling (All Stakeholders)

(If No,
continue with
No. 12)

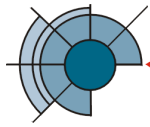
11.1 Does the airport operator provide handling services?

11.2 What are the advantages and disadvantages of the airport operator's involvement in ground handling services?

Remarks:

11.3 How would you rate the business relation between the airport operator as ground handler and as infrastructure provider?

Remarks:



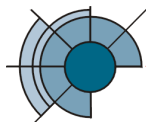
12 Self Handling/Third Party Airlines involvement in Ground Handling (All Stakeholders)

12.1 What are the advantages and disadvantages of the airline's involvement in ground handling services?

Remarks:

12.2 How would you rate the business relation between the airline ground handling division and the other commercial activities of the airline?

Remarks:



13 Staff Safety (All Stakeholders)

(If No, continue with No. 13.4)

13.1 Does the company run a safety management system at the airport?

13.2 When has it been established (year)?

13.3 Please describe the functionality of the system.

Remarks:

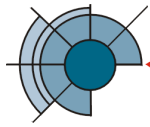
13.4 Please indicate the development of safety issues between 1996 and 2002 and between 2002 and 2007.

	1996-2002			2002-2007		
	Increase	Decrease	No Changes	Increase	Decrease	No Changes
Incidents						

13.5 Please indicate the reasons for the above stated developments.

1996 - 2002:

2002 - 2007:

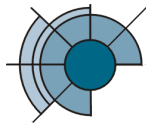


13.6 Number of accidents during work. (For a one year period)				
		Before opening of the market (1996)	2002	2007
13.6.1	Minor accident. Only on-site treatment required. No loss of work force			
13.6.2	Accident requires off site treatment for up to two days			
13.6.3	Accident requires off site treatment for more than two days			
13.6.4	Aircrafts damaged			

13.7 Do ground handler and the airport operator work together to enhance the safety systems at the airport?

13.8 If yes, please describe the cooperation.

Remarks:



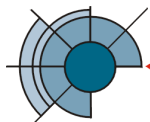
14 Employment (Airport Ground Handling Company, Airlines, Independent Ground Handling Company)

a) Number of Employees

14.1 Please indicate the number of jobs in your company for the following forms of employment (rough description).		Before opening of the market (1996)	2002	2007
14.1.1	Full time jobs			
14.1.2	Part time jobs			
14.1.3	Seasonal jobs			
14.1.4	Total jobs			

14.2 Please indicate the number of the following ground handling jobs within your company (rough estimation).		Before opening of the market (1996)	2002	2007
14.2.1	Ramp Agents			
14.2.2	Loaders			

Remarks:

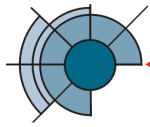


b) Income levels

		1996-2002			2002-2007		
		Increase	Decrease	No Changes	Increase	Decrease	No Changes
14.3 Please indicate the development of income levels in your company since the opening of the market in 5% steps. (not inflation-adjusted)							
14.3.1	Full time jobs						
14.3.2	Part time jobs						
14.3.3	Seasonal jobs						
14.3.4	General						

		Before opening of the market (1996)	2002	2007
		14.4 Please give information for the average yearly salary of the following ground handling jobs within your company (rough estimation).		
14.4.1	Ramp Agent			
14.4.2	Loader			

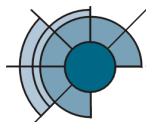
Remarks:



c) Job stability

14.5 How long were employees on average employed in your company?						
		< 1 year	1 – 2 years	2-5 years	5- 10 years	> 10 years
14.5.1	Percentage of all employees in 1996					
14.5.2	Percentage of all employees in 2002					
14.5.3	Percentage of all employees in 2007					

14.6 Which contracts do the employees hold in 2007?		
Contract Type:		Share of all contracts
14.6.1	Unlimited contracts	
14.6.2	Fixed-term contract	
14.6.3	Via temp agencies	
14.6.4	Full time contract	
14.6.5	Part time contract	
14.6.6	Seasonal contract	



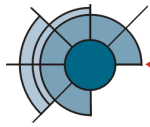
14.7 How did the type of contract change in your company since the opening of the market (1996) and 2002 and between 2002 and 2007?

		1996-2002			2002-2007		
Contract Type		Increase	Decrease	No Changes	Increase	Decrease	No Changes
14.7.1	Unlimited contracts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14.7.2	Fixed-term contract	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14.7.3	Via temp agencies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14.7.4	Full time contract	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14.7.5	Part time contract	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14.7.6	Seasonal contract	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Remarks:

14.8 Please indicate the reason for employees leaving the company. (Percentage)

		End of contract (incl. end of probation)	Dismissal through Employee	Dismissal through employer
14.8.1	Full time jobs			
14.8.2	Part time jobs			
14.8.3	Seasonal jobs			



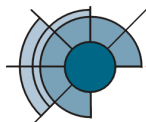
14.9 Are the contracts subject to collective agreements between unions and employers?

		1996	2002	2007
14.9.1	Full time jobs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14.9.2	Part time jobs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14.9.3	Seasonal jobs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Remarks:

14.10 If there are changes in respect to the quality of collective agreements, please indicate the reasons for the developments.

Remarks:

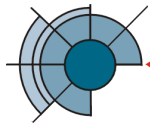


d) Working conditions

		1996-2002			2002-2007		
		Increase	Decrease	No Changes	Increase	Decrease	No Changes
14.11.1	Working conditions in general	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14.11.2	Operational pressure	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14.11.3	Professional health and security	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14.11.4	Number of working hours	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14.11.5	Number of holidays	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14.11.6	Rest time between shifts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14.11.7	Rest time during shifts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14.11.8	Influence of employees on their shifts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Remarks:

14.12 Please indicate the average rate of overtime for employees within your company.



Remarks:

14.13 Give the typical shift times for the different types of employment in 2007.

		Shift times / week
14.13.1	Full time jobs	
14.13.2	Part time jobs	
14.13.3	Seasonal jobs	

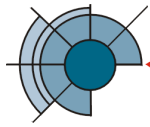
14.14 Please indicate the developments of the typical shift times for the different types of employment since 1996 until 2007.

14.14.1	Full time jobs	
14.14.2	Part time jobs	
14.14.3	Seasonal jobs	

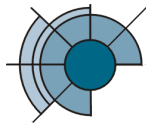
14.15 How did the scope of activities of the following ground handling jobs change between 1996 and 2007? Please reason the developments.

Ramp Agent:

Loader:



Remarks:

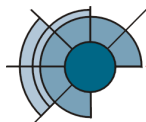


e) Rate of employees' illness

14.16 Indicate the average age of employees in the following job categories in your company.				
		Before opening of the market (1996)	2002	2007
14.16.1	Ramp Agent			
14.16.2	Loader			

14.17 Indicate the rate of employees' illness for the following years by the average number of days absent due to health issues. (For a one year period).				
		Before opening of the market (1996)	2002	2007
14.17.1	Ramp Agent			
14.17.2	Loader			

Remarks:



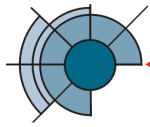
f) Training

14.18 Length of initial training before start of work (in days).				
		Before opening of the market (1996)	2002	2007
14.18.1	Ramp Agent			
14.18.2	Loader			

14.19 How many trainings per year (indicate in number and total days / hours) are given to the employees?							
		Before opening of the market (1996)		2002		2007	
		Number of trainings	% of yearly working time	Number of trainings	% of yearly working time	Number of trainings	% of yearly working time
14.19.1	Ramp Agent						
14.19.2	Loader						

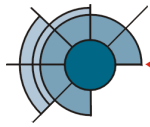
14.20 What are the trainings offered to the employees? (rough description)

Remarks:



14.21 Please indicate the share of training costs related to the total personnel costs of the company at this airport.

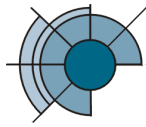
Remarks:



Results of Directive *(All Stakeholders)*

Positive results	
Negative results	
Changes / improvements in results since the last study 2002	
No changes	

General Comments / Remarks



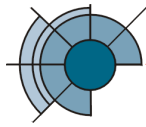
Study on Impact of Directive 96/67 EC on Ground Handling Services

Questionnaire – New Member States

Contact:

Airport Research Center
Bismarckstr. 61
52066 Aachen
Germany

Phone: +49 241 16843-0
E-Mail: directive_review@arc-aachen.de
Website: www.airport-consultants.com



Content:

Introduction 3

Data 4

Glossary..... 6

Characterisation of the interviewee / stakeholder (All Stakeholders)..... 7

1 Airline specification / self- and third party handling activities (Airlines) 8

2 Ground Handler specification (Ground Handling Companies and Airport Ground Handling Company) . 13

3 Market description (All Stakeholders)..... 16

4 Centralized Infrastructure (All Stakeholders) 18

5 Contestable market (All Stakeholders) 21

6 Airport Users’ Committee (All Stakeholders) 22

7 Tender process (All Stakeholders)..... 23

8 Sub contracting (All Stakeholders)..... 27

9 Changes in Handling Prices (All Stakeholders) 28

10 Changes in Quality Level (All Stakeholders) 29

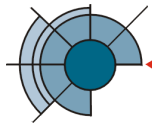
11 Airport operator’s involvement in ground handling (All Stakeholders)..... 31

12 Self Handling/Third Party Airlines involvement in Ground Handling (All Stakeholders)32

13 Staff Safety (All Stakeholders) 33

14 Employment (All Stakeholders) 35

15 Results of Directive (All Stakeholders) 45



Introduction

The Airport Research Center is dedicated by the European Commission to evaluate the impact of the Directive 96/67/EC on access to the ground handling market at Community airports.

The aim is to update the previous study on this topic completed in 2002 by SH&E and additionally focus on the new member states, which came under the Directive since 2004 and have seen major changes since then. The study will therefore analyze the impact on airports, airlines and ground handlers and their employees.

We would like to ask you as an involved stakeholder dealing with the Directive 96/67/EC to support us by fulfilling this questionnaire. With your help the European Commission can get the information it needs to adjust the Directive where necessary.

Methodically the study will be based on surveys (internet questionnaire and on site interviews) of the involved stakeholders in the European ground handling market. To analyse the impact of the directive 96/67 EC since its implementation in 1996 and after the SH&E report, this study will cover the time between 1996 and 2007. In respect to the ground handling markets in the new member states of the EU only the period between 2004 and 2007 will be considered.

Due to the fact that the Directive only allows exceptions on airside handling services the study focuses on baggage, freight and mail, ramp and fuel and oil handling.

Since the European aviation market is subject to major changes, like the increasing market share of low cost airlines, and a remarkable traffic growth, not all developments in the European ground handling market could be clearly interpreted as a consequence and impact of directive 96/67 EC.

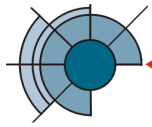
While the aim of the study is to analyse the impact of the opening of the ground handling market, please indicate by fulfilling this questionnaire, in addition to the directive related effects, further drivers of the development in European ground handling market.

Due to the transparency of the study we prepared a general questionnaire which includes all questions for all stakeholders in the ground handling process. While not all questions are dedicated to each stakeholder, the title of each chapter indicates by whom it should be answered. If you would like to answer other questions, dedicated to other stakeholders, please do not hesitate to do so.

If there is a supplementary need to comment the market developments and structures as well as this questionnaire, please feel free and provide us with extra data and information.

If there are any questions on this questionnaire, please do not hesitate to contact us.

Thank you for your support.



Data

In order to receive an comprehensive market overview please provide us with following data as indicated:

Figures of general traffic structure ([Airport](#))

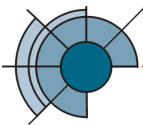
		2004	2007
Passengers	Total		
	O-D Passengers		
	Transfer Passengers		
Cargo (t)	Total		
Aircraft Movements	Total		
	Network Carrier		
	Charter Carrier		
	LCC Carrier		
	Cargo Carrier		

Remarks:

Frequencies of delays caused by ground handling operations in accordance to the IATA Delay Code Scheme ([Airport](#))

		2004	2007
IATA Delay Code	32		
	33		
	34		
	35		
	36		
	37		
	38		
	39		

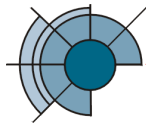
Remarks:



Figures of the ground handling market structure (All Stakeholders)

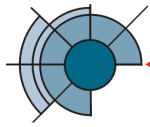
		2004		2007	
		MTOW	Aircrafts	MTOW	Aircrafts
Ground Handling Volume Total					
Airport Ground Handling Company					
Self Handling Airline	Company				
	Company				
	Company				
	Company				
Third Party Handling Airline	Company				
	Company				
	Company				
	Company				
Independent Ground Handling Company	Company				
	Company				
	Company				
	Company				

Remarks:



Glossary

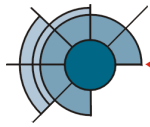
Cascade sub contracting:	The use of subcontracting by a company which is already itself subcontracting.
Centralized Infrastructure	Comprises Centralized Facilities and Centralized Services
Centralized Facilities:	Facilities which are provided by the airport and have to be used by ground handling company.
Centralised Service:	Services that are provided by the airport operator and can not be done by the ground handling company itself.
Contestable market:	Within this questionnaire the contestable market is defined as the ramp handling market open to independent ground handling companies. The contestable market therefore excludes the market share comprised by self handling airlines .
Contractable market:	Market which is accessible for an independent ground handling agent within one year excluding the share of handling which is operational complex or seldom operated
EU-15:	Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Luxembourg, Netherlands, Portugal, Spain, Sweden, United Kingdom
Independent ground handling company:	Ground handling company, not linked to an airport operating company or an airline
Market opening	Year when the airport came under the Directive 96/67/EC (Either because of the eastern enlargement of the European Union or due to market growth of the airport)
MTOW:	Maximum take-off weight of the aircraft.
Multi station contracting:	Contract between the airline and the ground handling company which includes the handling of an airline at more than one airport.
New Members States	Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia, Romania
Ramp Agent	Coordination and control of the handling processes on the apron
Safety Management System (SMS):	A documented process for managing risks that integrates operations and technical systems to ensure aviation safety or the safety of the public.
Self handling Airline:	Airline that does the ground handling itself (excluding the handling of alliance partners)
Sub contract	A contract assigning some obligations of a prior contract to another party.
Third party handling airline:	Airline which provides ground handling services for another airline.



Characterisation of the interviewee / stakeholder (All Stakeholders)

Specifications	
Stakeholder	
Name of the company	
Airport / Place of operations	
Year of market entry at the airport	
Contact Data of the interviewee (s)	

Remarks:



1 Airline specification / self- and third party handling activities (Airlines)

1.1 Which ground handling categories covers the airline at the airport by self handling activities?

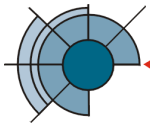
Handling of:		
1.1.1	Baggage handling	<input type="checkbox"/>
1.1.2	Freight and mail handling	<input type="checkbox"/>
1.1.3	Ramp handling	<input type="checkbox"/>
1.1.4	Fuel and oil handling	<input type="checkbox"/>

Remarks:

1.2 How much of the ground handling market on the airport does the airline comprise as a self handling party? (Percentage of total MTOW handled at the airport / year) (If no data of MTOW available please indicate in number of total aircraft)

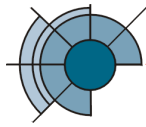
Handling of:		2004	2007
1.2.1	Freight and mail handling		
1.2.2	Ramp handling		

1.3 If no detailed data is available, please give a qualitative description of the developments between 2004 and 2007:



1.4 Generally, does the airline practice multi station contracting with one single supplier (ground handling company) at different airports in the EU? If yes, please indicate the reasons:

Remarks:



(If No
continue with
No. 3)

1.5 Does the airline provide ground handling services as third party handler for other airlines at the airport?

1.6 Which specific services does the airline provide as a third party handler at this airport?

Handling of:		
1.6.1	Baggage handling	<input type="checkbox"/>
1.6.2	Freight and mail handling	<input type="checkbox"/>
1.6.3	Ramp handling	<input type="checkbox"/>
1.6.4	Fuel and oil handling	<input type="checkbox"/>

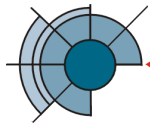
Remarks:

1.7 Which traffic segments does the airline handle as third party handler (Percentage)?

1.7.1	Network Carrier	
1.7.2	Charter	
1.7.3	Low Cost Carrier	
1.7.4	Cargo Carrier	

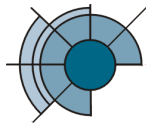
1.8 How much of the ground handling market on the airport does the airline comprise as a third handling party? (Percentage of total MTOW handled at the airport / year) (If no data of MTOW available please indicate in number of total aircraft)

Handling of:		2004	2007
1.8.1	Freight and mail handling		
1.8.2	Ramp handling		



1.9 If no detailed data is available, please give a qualitative description of the developments between 2004 and 2007:

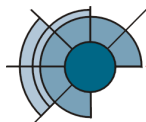
Remarks:



	(If No, continue with No. 3)
1.10 Does the airline as a <u>third party handler</u> provide ground handling services <u>for alliance partners</u> at the airport?	

1.11 If yes, please indicate the share of total ground handling activities as a third party handler for alliance partners (Percentage of total MTOW handled at the airport / year) (If no data of MTOW available please indicate in number of total aircraft)			
Handling of:		2004	2007
1.11.1	Freight and mail handling		
1.11.2	Ramp handling		

1.12 How does the company balance a possible deficit in ground handling activities as a third party handler?



2 Ground Handler specification (Ground Handling Companies and Airport Ground Handling Company)

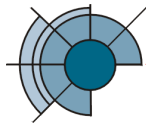
2.1 Please describe the ownership / structure of shareholders of your company.

2.2 Which specific ground handling services does your company provide?

Handling of:		
2.2.1	Baggage handling	<input type="checkbox"/>
2.2.2	Freight and mail handling	<input type="checkbox"/>
2.2.3	Ramp handling	<input type="checkbox"/>
2.2.4	Fuel and oil handling	<input type="checkbox"/>

Remarks:

2.3 Do you provide any of the above mentioned services as a sub contractor?



2.4 Are there any constraints on the license to operate only at dedicated terminals?

2.5 Which traffic segments does the company handle (Percentage)?

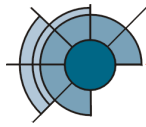
2.5.1	Network Carrier	
2.5.2	Charter	
2.5.3	Low Cost Carrier	
2.5.4	Cargo Carrier	

2.6 How much of the ground handling market on the airport does the company comprise? (Percentage of total MTOW handled at the airport / year) (If no data of MTOW available please indicate in number of total aircraft)

Handling of:		2004	2007
2.6.1	Freight and mail handling		
2.6.2	Ramp handling		

2.7 If no data available, please describe the development qualitative between 2004 and 2007.

2.8 Is your company profitable? (EBIT)



2.9 Please indicate the development of the company's profitability since 2004 until 2007.

2004 - 2007:

2.10 Is your station at the airport profitable? (EBIT)

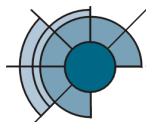
2.11 Please indicate the development of the station's profitability between 2004 and 2007.

2004- 2007:

2.12 If the company or station is not profitable, please indicate for what reasons.

2.13 How does the company balance a possible station's deficit?

Remarks:



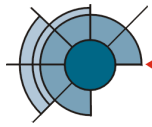
3 Market description (All Stakeholders)

3.1 Current Number of handling companies at the airport in 2007:			
	Handling of:	Self handling	Third Party handling (incl. Independent Ground Handling Companies)
3.1.1	Baggage handling		
3.1.2	Freight and mail handling		
3.1.3	Ramp handling		
3.1.4	Fuel and oil handling		

3.2 Any short term changes to be expected?

3.3 If yes, please indicate in which regard.

Remarks:

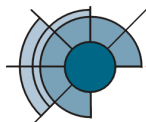


3.4 Number of handlers before the opening of the market (2004)

		Self handling Before opening of the market (2004)	Third Party handling Before opening of the market (2004)
3.4.1	Baggage handling		
3.4.2	Freight and mail handling		
3.4.3	Ramp handling		
3.4.4	Fuel and oil handling		

3.5 Are there any forms of market constraints? If yes, please indicate in which regard

Remarks:



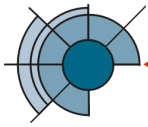
4 Centralized Infrastructure (All Stakeholders)

4.1 Indicate if the following facilities and services are defined as Centralized Infrastructure at the airport:			
		Centralized Facilities	Centralized Services
4.1.1	Baggage Handling System	<input type="checkbox"/>	<input type="checkbox"/>
4.1.2	De-Icing facilities	<input type="checkbox"/>	<input type="checkbox"/>
4.1.3	Passenger Bridges	<input type="checkbox"/>	<input type="checkbox"/>
4.1.4	Fixed Power Installation (400Hz)	<input type="checkbox"/>	<input type="checkbox"/>
4.1.5	Fuel System / station	<input type="checkbox"/>	<input type="checkbox"/>
4.1.6	Toilet servicing	<input type="checkbox"/>	<input type="checkbox"/>
4.1.7	Check-In desks	<input type="checkbox"/>	<input type="checkbox"/>
4.1.8	Marshalling	<input type="checkbox"/>	<input type="checkbox"/>

Remarks:

4.2 Are there other facilities and services at the airport defined as Centralized Infrastructure? Please name.

4.3 How is the interface between the Centralized Infrastructure and the apron defined in respect to the regulated services?



4.4 Did problems occur with regard to the Centralized Infrastructure?

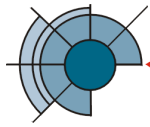
4.5 If yes, please indicate in which regard.

4.6 What is the user charge for Centralized Infrastructure based on?

4.7 Are there other charges related to the use of the airport?

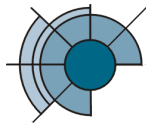
4.8 If yes, please indicate in which regard.

4.9 Please estimate the costs related to the use of infrastructure and airport facilities as a percentage of total operational costs.



4.10 Please estimate the location and the size of the area on the apron available for the equipment of ground handling companies.

Remarks:



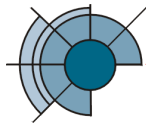
5 Contestable market (All Stakeholders)

5.1 Please give the share of the market that can be seen as the contestable market at the airport for the following years

2004	2007

5.2 If there are changes in the share of the contestable market, indicated in the question above, please reason the changes.

Remarks:



6 Airport Users' Committee (All Stakeholders)

(If No,
continue with
No. 7)

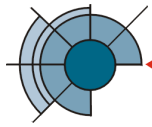
6.1 Does an Airport Users' Committee exist?

6.2 If yes, when has it been established?

6.3 In which subjects was the AUC involved through the managing body of the airport?

6.4 Does the AUC have some influence on decisions? If yes, please describe.

Remarks:



7 Tender process (All Stakeholders)

7.1 Is the access to the ground handling market liberalized?

7.2 Please give reasons for the above mentioned market form.

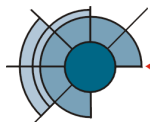
If the market is liberalized continue with No. 8

7.3 Were applicants rejected even before the tender process? (Pre-selection)

7.4 If yes, please explain the reasons for the rejections before the tender process.

7.4.1	Baggage handling	
7.4.2	Freight and mail handling	
7.4.3	Ramp handling	
7.4.4	Fuel and oil handling	

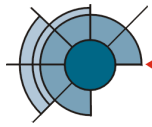
Remarks:



7.5 Indicate the <u>number of applications</u> for ground handling services at the airport since the opening of the market 2004 until 2007.			
		Self Handling 2004 – 2007	Third Party Handling 2004 – 2007
7.5.1	Baggage handling		
7.5.2	Freight and mail handling		
7.5.3	Ramp handling		
7.5.4	Fuel and oil handling		

7.6 Indicate the <u>number of tender processes</u> for ground handling services since the opening of the market 2004 until 2007 and name the year of the tender.			
		Self Handling 2004 – 2007	Third Party Handling 2004 – 2007
7.6.1	Baggage handling		
7.6.2	Freight and mail handling		
7.6.3	Ramp handling		
7.6.4	Fuel and oil handling		

7.7 For which reasons were applicants rejected during the tender process?		
7.7.1	Baggage handling	
7.7.2	Freight and mail handling	
7.7.3	Ramp handling	
7.7.4	Fuel and oil handling	



7.8 What were the selection criteria in the tender process – especially the decisive criteria?

7.8.1	Baggage handling	
7.8.2	Freight and mail handling	
7.8.3	Ramp handling	
7.8.4	Fuel and oil handling	

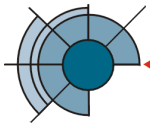
Remarks:

7.9 Was/Is the AUC consulted in regard to tender processes?

7.10 Which stakeholders can vote in the tender process?

7.11 Which votes reflected the final decision of the authority?

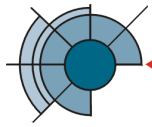
Remarks:



7.12 Does the time limit for the supplier's licenses differ from the maximum of 7 years? If yes, please indicate the length of a license.

7.13 Is it justified that there is a time limit (max. 7 years) for the supplier's licenses?

Remarks:



8 Sub contracting *(All Stakeholders)*

8.1 Does sub contracting generally exist in ground handling services at the airport?

8.2 Does cascade sub contracting generally exist in ground handling services at the airport?

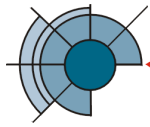
Remarks:

8.3 Was sub contracting already indicated during the tender process?

Remarks:

8.4 Did problems encounter due to sub contracting or cascade sub contracting?

8.5 If yes, which problems encountered?



9 Changes in Handling Prices *(All Stakeholders)*

9.1 Please indicate the development of the handling prices per service and in general. Please indicate changes in percent in 5% steps.

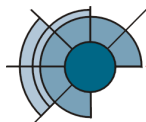
	Handling of:	Change in handling charges in % between 2004 and 2007
9.1.1	Baggage handling	
9.1.2	Freight and mail handling	
9.1.3	Ramp handling	
9.1.4	Fuel and oil handling	
9.1.5	General development of ground handling charges	

9.2 Please indicate the reasons for the price developments between the years 2004 until 2007.

2004 - 2007:

9.3 Any short term changes to be expected?

9.4 If yes, please indicate in which regard.



10 Changes in Quality Level (All Stakeholders)

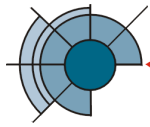
10.1 Indicate the development of the quality level per service or in general between 2004 and 2007.

	Handling of:	Change in Quality level for Passenger Convenience			Change in Quality level for Airline Convenience		
		Improvement	Deterioration	No change	Improvement	Deterioration	No change
10.1.1	Baggage handling						
10.1.2	Freight and mail handling						
10.1.3	Ramp handling						
10.1.4	Fuel and oil handling						
10.1.5	General development						

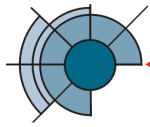
10.2 Please indicate the reasons for the quality developments.

10.3 Any short term changes to be expected?

10.4 If yes, please indicate in which regard.



Remarks:



11 Airport operator's involvement in ground handling (All Stakeholders)

(If No,
continue with
No. 12

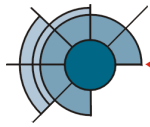
11.1 Does the airport operator provide handling services?

11.2 What are the advantages and disadvantages of the airport operator's involvement in ground handling services?

Remarks:

11.3 How would you rate the business relation between the airport operator as ground handler and as infrastructure provider?

Remarks:



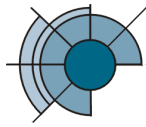
12 Self Handling/Third Party Airlines involvement in Ground Handling (All Stakeholders)

12.1 What are the advantages and disadvantages of the airline's involvement in ground handling services?

Remarks:

12.2 How would you rate the business relation between the airline ground handling division and the other commercial activities of the airline?

Remarks:



13 Staff Safety (All Stakeholders)

(If No, continue with No. 13.4)

13.1 Does the company run a safety management system at the airport?

13.2 When has it been established (year)?

13.3 Please describe the functionality of the system.

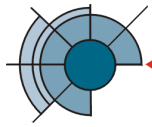
Remarks:

13.4 Please indicate the development of safety issues since 2004 until 2007.

	2004-2007		
	Increase	Decrease	No Changes
Incidents			

13.5 Please indicate the reasons for the above stated developments.

2004 - 2007:



Remarks:

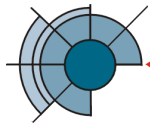
13.6 Number of accidents during work. (For a one year period)

		Before opening of the market (2004)	2007
13.6.1	Minor accident. Only on-site treatment required. No loss of work force.		
13.6.2	Accident requires off site treatment for up to two days.		
13.6.3	Accident requires off site treatment for more than two days.		
13.6.4	Aircrafts damaged.		

13.7 Do ground handler and the airport operator work together to enhance the safety systems at the airport?

13.8 If yes, please describe the cooperation.

Remarks:



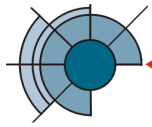
14 Employment (All Stakeholders)

a) Number of Employees

14.1 Please indicate the number of jobs in your company at the airport for the following forms of employment (rough description).			
		2004	2007
14.1.1	Full time jobs		
14.1.2	Part time jobs		
14.1.3	Seasonal jobs		
14.1.4	Total jobs		

14.2 Please indicate the number of the following ground handling jobs within your company at the airport (rough estimation).			
		2004	2007
14.2.1	Ramp Agents		
14.2.2	Loaders		

Remarks:

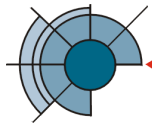


b) Income levels

		2004-2007		
		Increase	Decrease	No Changes
14.3 Please indicate the development of income levels in your company at the airport since the opening of the market in 5% steps. (not inflation-adjusted)				
14.3.1	Full time jobs			
14.3.2	Part time jobs			
14.3.3	Seasonal jobs			
14.3.4	General			

		Before opening of the market (2004)	2007
		14.4 Please give information for the typical yearly salary of the following ground handling jobs within your company (rough estimation).	
14.4.1	Ramp Agent		
14.4.2	Loader		

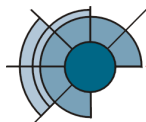
Remarks:



c) Job stability

14.5 How long were employees on average employed in your company at the airport?						
		< 1 year	1 – 2 years	2-5 years	5- 10 years	> 10 years
14.5.1	Percentage of all employees in 2004					
14.5.2	Percentage of all employees in 2007					
14.5.3						

14.6 Which contracts do the employees hold in 2007?		
Contract Type:		Share of all contracts
14.6.1	Unlimited contracts	
14.6.2	Fixed-term contract	
14.6.3	Via temp agencies	
14.6.4	Full time contract	
14.6.5	Part time contract	
14.6.6	Seasonal contract	



14.7 How did the type of contract change in your company at the airport since the opening of the market (2004) and 2007?

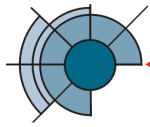
		2004 – 2007		
Contract Type		Increase	Decrease	No Changes
14.7.1	Unlimited contracts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14.7.2	Fixed-term contract	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14.7.3	Via temp agencies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14.7.4	Full time contract	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14.7.5	Part time contract	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14.7.6	Seasonal contract	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

14.8 Please indicate the reason for employees leaving the company. (Percentage)

		End of contract (incl. end of probation)	Dismissal through Employee	Dismissal through employer
14.8.1	Full time jobs			
14.8.2	Part time jobs			
14.8.3	Seasonal jobs			

14.9 Are the contracts subject to collective agreements between unions and employers?

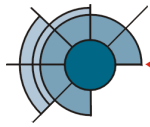
		2004	2007
14.9.1	Full time jobs	<input type="checkbox"/>	<input type="checkbox"/>
14.9.2	Part time jobs	<input type="checkbox"/>	<input type="checkbox"/>
14.9.3	Seasonal jobs	<input type="checkbox"/>	<input type="checkbox"/>



Remarks:

14.10 If there are changes in respect to the quality of collective agreements, please indicate the reasons for the developments.

Remarks:

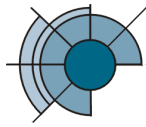


d) Working conditions

		2004-2007		
		Increase	Decrease	No Changes
14.11.1	Working conditions in general	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14.11.2	Operational pressure	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14.11.3	Professional health and security	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14.11.4	Number of working hours	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14.11.5	Number of holidays	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14.11.6	Rest time between shifts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14.11.7	Rest time during shifts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14.11.8	Influence of employees on their shifts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Remarks:

14.12 Please indicate the average rate of overtime for employees within your company.



Remarks:

14.13 Give the typical shift times for the different types of employment in 2007.

		Shift times / week
14.13.1	Full time jobs	
14.13.2	Part time jobs	
14.13.3	Seasonal jobs	

14.14 Please indicate the developments of the typical shift times for the different types of employment since 2004 until 2007.

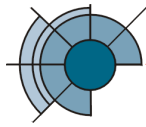
14.14.1	Full time jobs	
14.14.2	Part time jobs	
14.14.3	Seasonal jobs	

14.15 How did change the scope of activities of the following ground handling jobs between 2004 and 2007? Please reason the developments.

Ramp Agent:

Loader:

Remarks:

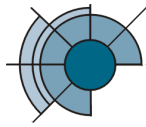


e) Rate of employees' illness

14.16 Indicate the average age of employees in the following job categories in your company at the airport.			
		Before opening of the market (2004)	2007
14.16.1	Ramp Agent		
14.16.2	Loader		

14.17 Indicate the rate of employees' illness for the following years by the average number of days absent due to health issues. (For a one year period).			
		Before opening of the market (2004)	2007
14.17.1	Ramp Agent		
14.17.2	Loader		

Remarks:



f) Training

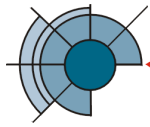
14.18 Length of initial training before start of work (in days).			
		Before opening of the market (2004)	2007
14.18.1	Ramp Agent		
14.18.2	Loader		

14.19 How many trainings per year (indicate in number and total days / hours) are given to the employees?					
		Before opening of the market (2004)		2007	
		Number of trainings	% of yearly working time	Number of trainings	% of yearly working time
14.19.1	Ramp Agent				
14.19.2	Loader				

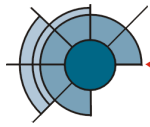
14.20 What are the trainings offered to the employees? (rough description)

Remarks:

14.21 Please indicate the share of training costs related to the total personnel costs of the company at this airport.



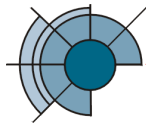
Remarks:



15 Results of Directive *(All Stakeholders)*

Positive results	
Negative results	
No changes	

General Comments / Remarks



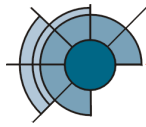
Study on Impact of Directive 96/67 EC on Ground Handling Services

Questionnaire – Authorities – EU-15

Contact:

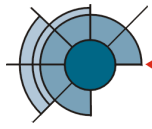
Airport Research Center
Bismarckstr. 61
52066 Aachen
Germany

Phone: +49 241 16843-0
E-Mail: directive_review@arc-aachen.de
Website: www.airport-consultants.com



Content:

Introduction 3
Glossary.....4
Characterisation of the interviewee / stakeholder 5
1 General Questions 6
2 Licencing / Tender process 9
3 Sub contracting..... 12
4 Airport operator’s involvement in ground handling 13
5 Self Handling / Third Party Airlines involvement in Ground Handling 14
6 Staff Security..... 15
7 Results of Directive 16



Introduction

The Airport Research Center is dedicated by the European Commission to evaluate the impact of the Directive 96/67/EC on access to the ground handling market at Community airports.

The aim is to update the previous study on this topic completed in 2002 by SH&E and additionally focus on the new member states, which came under the Directive since 2004 and have seen major changes since then. The study will therefore analyze the impact on airports, airlines and ground handlers and their employees.

We would like to ask you as an involved stakeholder dealing with the Directive 96/67/EC to support us by fulfilling this questionnaire. With your help the European Commission can get the information it needs to adjust the Directive where necessary.

Methodically the study will be based on surveys (internet questionnaire and on-site interviews) of the involved stakeholders in the European ground handling market. To analyse the impact of the directive 96/67/EC since its implementation in 1996 and after the SH&E report, this study will cover the time between 1996 and 2007. In respect to the ground handling markets in the new member states of the EU only the period between 2004 and 2007 will be considered.

Due to the fact that the Directive only allows exceptions on airside handling services the study focuses on baggage, freight and mail, ramp and fuel and oil handling.

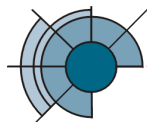
Since the European aviation market is subject to major changes, like the increasing market share of low cost airlines, and a remarkable traffic growth, not all developments in the European ground handling market could be clearly interpreted as a consequence and impact of Directive 96/67/EC.

While the aim of the study is to analyse the impact of the opening of the ground handling market, please indicate by fulfilling this questionnaire, in addition to the Directive related effects, further drivers of the development in European ground handling market.

If there is a supplementary need to comment the market developments and structures as well as this questionnaire, please feel free and provide us with extra data and information.

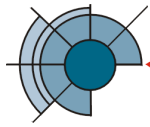
If there are any questions on this questionnaire, please do not hesitate to contact us.

Thank you for your support.



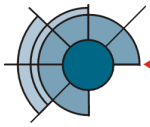
Glossary

Cascade sub contracting:	The use of subcontracting by a company which is already itself subcontracting.
Centralized Infrastructure	Comprises Centralized Facilities and Centralized Services
Centralized Facilities:	Facilities which are provided by the airport and have to be used by ground handling company.
Centralised Service:	Services that are provided by the airport operator and can not be done by the ground handling company itself.
Contestable market:	Within this questionnaire the contestable market is defined as the ramp handling market open to independent ground handling companies. The contestable market therefore excludes the market share comprised by self handling airlines .
EU-15:	Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Luxembourg, Netherlands, Portugal, Spain, Sweden, United Kingdom
Independent ground handling company:	Ground handling company, not linked to an airport operating company or an airline
Market opening	Year when the airport came under the Directive 96/67/EC (Either because of the eastern enlargement of the European Union or due to market growth of the airport)
MTOW:	Maximum take-off weight of the aircraft.
Multi station contracting:	Contract between the airline and the ground handling company which includes the handling of an airline at more than one airport.
New Members States	Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia, Romania
Ramp Agent	Coordination and control of the handling processes on the apron
Safety Management System (SMS):	A documented process for managing risks that integrates operations and technical systems to ensure aviation safety or the safety of the public.
Self handling Airline:	Airline that does the ground handling itself (excluding the handling of alliance partners)
Sub contract	A contract assigning some obligations of a prior contract to another party.
Third party handling airline:	Airline which provides ground handling services for another airline.



Characterisation of the interviewee / stakeholder

Specifications	
Name of the authority	<input type="text"/>
Place of operations	<input type="text"/>
Name of contact person	<input type="text"/>
Contact Data	<input type="text"/>



1 General Questions

(Quote of the Directive:

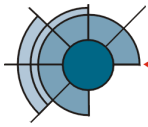
“If the managing bodies of airports are subject to the supervision or control of a national public authority, that authority shall be obliged, in the context of the legal obligations devolving upon it, to ensure that this Directive is applied.”)

1.1 Which authorities / national bodies are in charge to control the implementation of the Directive 96/67/EC at airports in your country?

1.2 When was the Directive 96/67/EC converted in national law?

1.3 In regard to the implementation of the Directive 96/67EC are there any specific aspects / provisions in the national law? Please describe.

1.4 Which airports in the country are under the supervision of the authority?



1.5 How does the Authority ensure the application of the Directive?

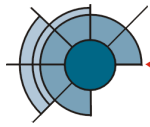
█

1.6 Please name the airports under the authority’s supervision and characterize if the licences are limited or if the market is liberalised

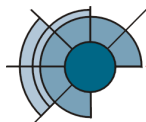
liberalised	limited
█	█
█	█
█	█
█	█
█	█
█	█
█	█
█	█
█	█
█	█
█	█
█	█
█	█
█	█
█	█

1.7 For which reasons is the number of licences limited at some airports?

█



**1.8 How would you rate the role of the Advisory Committee
(Directive 96/67EC, Article 9 and 10)?**



2 Licensing / Tender process

2.1 Which are the criteria for a general license to operate on the ramp at an airport?

█

2.2 Were applicants rejected even before the tender process? (Pre-selection)

█

2.3 If yes, please explain the reasons for the rejections before the tender process.

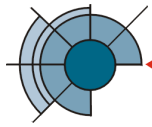
2.3.1	Baggage handling	█
2.3.2	Freight and mail handling	█
2.3.3	Ramp handling	█
2.3.4	Fuel and oil handling	█

Remarks:

█

2.4 What were the selection criteria in the tender process especially the decisive criteria?

2.4.1	Baggage handling	█
2.4.2	Freight and mail handling	█
2.4.3	Ramp handling	█
2.4.4	Fuel and oil handling	█



Remarks:

2.5 Are there differences in the selection criteria for different airports?

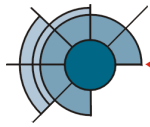
2.6 If yes, what are the reasons?

Remarks

2.7 For which reasons were applicants rejected?

2.7.1	Baggage handling	<input type="text"/>
2.7.2	Freight and mail handling	<input type="text"/>
2.7.3	Ramp handling	<input type="text"/>
2.7.4	Fuel and oil handling	<input type="text"/>

Remarks



2.8 Which role does the airport operator play in the tender process?

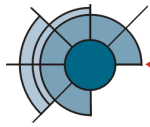
■

2.9 Which role does the AUC play in the tender process?

■

Remarks

■



3 Sub contracting

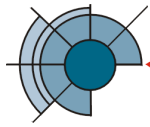
3.1 Was sub contracting already indicated during the tender process?

Remarks

3.2 Did problems encounter due to sub contracting or cascade sub contracting?

Remarks

3.3 If yes, which problems encountered?



4 Airport operator's involvement in ground handling

4.1 Are there any airports under the supervision of the authority providing ground handling services itself?

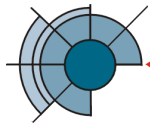
■

4.2 How would you rate the business relation between the airport operator as ground handler and as infrastructure provider?

■

Remarks

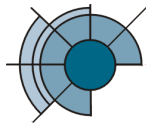
■



5 Self Handling / Third Party Airlines involvement in Ground Handling

5.1 How would you rate the business relation between the airline ground handling division and the other commercial activities of the airline?

Remarks



6 Staff Security

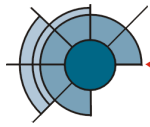
6.1 Does the authority track security issues at the airports?

6.2 What kind of data is being collected?

6.3 Please indicate the development of security issues since the opening of the ground handling market (for a one year period).

		Before opening of the market (1996)	2002	2007
6.3.1	Total number of back ground screenings			
6.3.2	Percentage of failed security check of ground handling security staff			
6.3.3	Letters of warning for ground handling staff			
6.3.4	Dismissal of ground handling staff			

Remarks



7 Results of Directive

Positive results	<input type="checkbox"/>
Negative results	<input type="checkbox"/>
Changes / improvements in results since the last study 2002	<input type="checkbox"/>
No changes	<input type="checkbox"/>

Remarks
