



30 April 2017

WITHOUT PREJUDICE

Secretary
Airports Economic Regulatory Authority (AERA) of India
AERA Building, Administrative Complex
Safdarjung Airport, New Delhi 110 003
Email: puja.jindal@aera.gov.in

Dear Ms. Puja,

SUBJECT: IATA'S RESPONSE TO CONSULTATION PAPER NO. 08/2016-17 CAPPING THE PERCENTAGE OF ROYALTY/REVENUE SHARE PAYABLE TO AIRPORT

As the global trade association representing the world's leading airlines, the International Air Transport Association (IATA) is pleased to provide a submission on AERA's consultation paper mentioned above. IATA's membership includes some 265 passenger and cargo airlines comprising 83% of total air traffic and IATA's mission is to represent, lead and serve the airline industry.

IATA would like to thank AERA for initiating the Consultation paper of 31st March, on the subject of 'Capping of Royalties & Revenue Share payable to Airport Operators'. These royalties and revenue share which have no relation to any cost for the airport are being simply passed through by the ISPs to the Airlines. IATA welcomes AERA's recognition of the adverse impact of this flawed practice on the industry.

IATA also appreciates the opportunity to comment on the consultation paper. This submission is based on the views expressed by IATA at the stakeholder consultation meeting held on 21 April and additional comments following the meeting. We would like to specifically request AERA to consider the following proposals before making a final decision:

- As the consultation document rightly points out, the high royalty fees being charged by airports are simply allowed as a pass-through under the light touch approach adopted by AERA for regulation of the ISPs. This practice has resulted in artificially high charges being passed through to the airlines – without any relation to service levels, quality of service, competition or the impact on consumers.
- In the current setup, ISPs bidding for the operating rights at an airport are motivated to bid at artificially and excessively high levels of revenue share, without consideration for their bids being commensurate with cost or quality of service. This is of course due to the fact that the system allows for the existence of these royalty fees which are then allowed to be fully passed-through to the Airlines. This is a fact which AERA has recognized in the Consultation Paper. The issue at hand is not only about competition, but how competitively and reasonably priced services by ISPs can be better achieved without imposition of such unjustifiable royalties. IATA is aware of at least one case where an airport operator has attempted to unilaterally impose a hike in the Royalty (more than doubled) without any due justification given.



- IATA would like to highlight that in Para 2.6, AERA arrives at the conclusions that:
 - I. There be a ceiling on fees/royalty/revenue-share payable by the ISP to the airport operator, &
 - II. That only x% of such fees/royalty/revenue-share be allowed as a 'Pass through cost'.

However, the subsequent proposal in Para 3.1 seems to be at odds with Para 2.6. Para 3.1 seems to suggest that AERA is proposing to cap the royalty at 30% of the ISP's gross turnover and allowing that same royalty (in full) to be passed through to the airlines (i.e. the full 100% of the 30% cap to be passed through) for the purpose of determining tariffs for the ISP.

- IATA would like to highlight that ICAO Doc 9082 (Para 10 section II refers) indicates that concession revenues directly related to the operation of air transport services (such as fuel, in-flight catering and ground handling) should not be maximised. Regular escalation of concession fees runs against the guidance of ICAO. AERA's Consultation paper too has correctly recognized that the levy of such charges are not consistent with the policies of ICAO relating to tariff determination. It is unclear then why AERA is still proposing to allow, albeit with a cap, concession revenues solely for the right to do business on these services.
- IATA would also like to highlight that EU laws [Council Directive 96/67/EC, Article 6, para 1 refers] indicate that member States shall ensure free access by suppliers of ground handling services to the market for the provision of ground handling services to third parties (ground handling services are defined in Annex 1). Some selection parameters exist solely on exceptional circumstances (and none of these parameters relate to bidding on royalty payments), For ensuring sustainability of the industry, IATA would suggest that this is the direction India should take i.e. recognizing that non-cost related fees that have an impact on air transport services are not justifiable and therefore should not be allowed.
- Further, annual escalation of these royalties continue to pile on cost with no upper limit. An annual escalation is unjustifiable as there is no inflationary factor in a non-cost related charge. A cap will put a stop to this unsustainable and unjustifiable practice.
- On those grounds, IATA does not support royalties and recognizes that AERA's proposal to implement capping is a step in the right direction, though it should be more ambitious.
- In the area of fuel specifically, the airport levies a concession fee in the form of a Fuel Throughput Charge (FTC). This FTC charge is levied on fuel suppliers which AERA does not consider as ISPs. Nonetheless, such a concession fee should also be included in the ambit of this consultation as it is a market access fee with no cost basis that is applied to a critical aspect of air transportation and impacts directly the cost of provision of air transport services. The capping for the FTC is not on gross turnover of the supplier but should be benchmarked to the levels previously paid by suppliers to the Airport Authority of India prior to the privatization of Indian airports of 57.88 INR/KL.
- Finally, with regards to capping of Royalty Fees for ISPs (including into-plane service providers), IATA believes that a 30% cap on Gross Turnover is much too high and would still



burden the industry with a significant cost – an outcome that the capping is intended to avoid. We believe that AERA should aim to not allow any royalty fees. However, if AERA intends to continue to allow them (with a cap), a more appropriate level that we believe is sustainable for the industry, is a cap of 5%. AERA's current proposal of 30% cap is far higher than the levels arrived at after a very detailed analysis at some of the other successful airport hubs in the region.

We request that our views expressed above be taken into consideration by your respected agency leading to an objective and rational decision.

Yours sincerely,

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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;

⁽¹⁾ OJ No C 142, 8. 6. 1995, p. 7 and OJ No C 124, 27. 4. 1996, p. 19.

⁽²⁾ OJ No C 301, 13. 11. 1995, p. 28.

⁽³⁾ Opinion of the European Parliament of 16 November 1995 (OJ No C 323, 4. 12. 1995, p. 106), common position of the Council of 28 March 1996 (OJ No C 134, 6. 5. 1996, p. 30) and Decision of the European Parliament of 16 July 1996 (OJ No C 261, 9. 9. 1996).

⁽⁴⁾ OJ No L 240, 24. 8. 1992, p. 1.

⁽⁵⁾ OJ No L 240, 24. 8. 1992, p. 8. Regulation as amended by the 1994 Act of Accession.

⁽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.



- (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 ground-handling 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 ground-handling 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 ground-handling 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



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.

(*) Provided that these services are not provided by the air traffic service.



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.
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