

Unclassified

DAF/COMP/WD(2014)52

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

26-May-2014

English - Or. English

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

DAF/COMP/WD(2014)52
Unclassified

AIRLINE COMPETITION

-- Note by Romania --

18-19 June 2014

This document reproduces a written contribution from Romania submitted for Item IX of the 121st meeting of OECD Competition Committee on 18-19 June 2014.

*More documents related to this discussion can be found at:
www.oecd.org/daf/competition/airlinecompetition.htm*

JT03357975

Complete document available on OLIS in its original format

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

English - Or. English

CASE PRESENTATION – ABUSE OF DOMINANCE OF TIMISOARA AIRPORT

1. Introduction

1. Romanian Competition Council (hereinafter RCC) opened, acting on a complaint, an investigation concerning a possible abuse of dominant position of Societatea Națională Aeroportul Internațional Timișoara “Traian Vuia” SA (hereinafter the Airport). Timișoara Airport is the main regional airport in the south-west region of Romania. The Airport provides services of access to the airport infrastructure and different ground handling services, being a monopolist for certain ground handling services.

2. RCC investigation

2. The complaint was formulated by SC Carpatair SA (hereinafter Carpatair), an airline that provided services of air transport of passengers on several destinations within the EU. At the time of the complaint Carpatair was using the Timișoara Airport as a hub.

3. The first relevant market was defined as being the market of the provision of airport infrastructure services. Concerning the geographic market, the catchement area for Timișoara Airport was defined as having a radius of 100 km around the Airport or 1 hour driving time.

4. The second relevant product market was defined as the market for the provision of ground handling services by the Airport, which is divided as follows:

- the provision of ground administration and supervision services;
- the provision of passenger handling services;
- the provision of baggage handling services;
- the provision of cargo handling services;
- the provision of ramp handling services;
- the provision of aircraft services.

5. An alternative definition of the respective relevant market was taken into consideration, namely the market for ground handling services comprising the ramp, passengers and baggage handling services. However, during the investigation Timișoara airport decided to offer commitments in order to alleviate RCC's competition concerns. The commitments offered by the Airport covered all the ground handling services it is authorized to provide. Therefore such an alternative market definition would have no relevance for the commitments procedure.

6. The geographic market for the provision of services of ground handling was defined as being represented by the Timișoara Airport.

7. The opening of the investigation was based on evidence concerning several practices of the Airports, practices liable to represent possible infringements of the relevant provisions of art. 6 paragraph (1) *Competition Law* and of Article 102 of the *Treaty on the Functioning of the European Union (TFEU)*:

- discriminatory conditions concerning the access to the airport infrastructure services, granted by the Airport, through various Aeronautical Information Publications (hereinafter AIP),
- the excessive increase of the level of the passenger transfer charge;
- discriminatory conditions for the provision of ground handling services, granted by the Airport through ground handling agreements.

8. After the opening of the investigation Carpatair requested RCC to grant, by decision, interim measures. This request was rejected by the RCC Plenum by the decision 87/2012. After the rejection of Carpatair's request of interim measures, the Airport informed the RCC about its intention to propose commitments. The RCC Plenum decided that it was appropriate to initiate discussions regarding possible commitments in this case.

9. The analysis of the Airport's 1st proposal of commitments led to the conclusion that it was necessary for this proposal to be reformulated. The RCC market tested the Airport's new commitment proposals between 22nd of October - 12nd of November 2013.

3. The practices being investigated

3.1 Discriminatory conditions concerning the access to the airport infrastructure services, granted by the Airport, through various Aeronautical Information Publications (hereinafter AIP)

10. RCC took into consideration the provisions of several AIP's concerning the reductions granted for different airport charges. According to the provisions of the AIP producing effects at the time of the opening of the investigation (AIP 2011) the Airport granted reductions on the landing charges based on the criterion of embarked passengers/month. The maximum level of the granted discount was 73% from the sum that was to be paid as landing charges. Wizz Air airlines obtained reductions for the majority of airport charges (landing, lighting, parking, ground handling, external passenger embarkment).

11. Wizz Air was the only airline capable of embarking each month on Timișoara Airport a number of passengers big enough to obtain the maximum level of discount - 73%. The other airlines from Timișoara Airport obtained smaller levels of discounts for the payment of the different airport charges.

12. The criterion used by the Airport to grant reductions for the payment of the airport charges was not considered to be objective and non-discriminatory. Through the application of this criterion Wizz Air obtained reductions for the majority of the airport charges, including the landing, lighting and parking charges. But the landing, lighting and parking charges are charges paid by the airlines for the use of the airport infrastructure by the airplanes. Therefore, the reductions for the landing, lighting and parking charges had to take into account the economies of scale and/or the volume of activity the Airport realized when it supplied these services.

13. The criterion of embarked passengers/month was deemed to be relevant concerning the granting of reductions for the payment of different charges that have to be paid by the airlines for use of airport infrastructure services by the passengers (internal and external embarkment, security and transit/transfer charges).

14. If put into practice, the criterion of embarked passengers/month might lead to the situation in which an airline that achieves a certain number of landings/year at Timișoara Airport obtains a reduced level of discount in comparison with an airline that achieves the same number of landings/year, but transports a bigger number of passengers. In practice, this leads to a situation in which dissimilar conditions (different prices) are applied to equivalent transactions (the same number of landings/year).

15. Because the price paid by the airlines for the use of Timișoara Airport infrastructure has an effect on the level of the prices charged by the airlines to the consumers, the payment of reduced airport charges (the effect of the reductions granted by the Airport) leads to a competitive advantage for the airlines obtaining these reductions, while the airlines that do not obtain these reductions are placed at a competitive disadvantage.

16. Additionally, the RCC took into account the provisions of another AIP that did not produce effects at the time of the opening of the investigation. This AIP provided for reductions of the landing charges based on the criterion of the number of landings of the previous year. This AIP introduced a new category of discounts for aircraft over 70 tons maximum takeover weight (hereinafter MTOW). This time the reduction was granted for all the airport charges and not only for the landing charges.

17. When put into practice, the MTOW criterion for the granting of reductions for airport charges led to the situation in which the vast majority of the airlines operating from Timișoara Airport (with the exception of Wizz Air¹) were not in position to obtain the maximum amount of discount - 85%. The main reason is represented by the fact that these airlines used for the vast majority of their flights from Timișoara Airport airplanes whose MTOW was inferior to the 70 tons threshold. As a consequence, these airlines could only obtain reductions for the landing charges, while Wizz Air was in position to obtain reductions for all the airport charges.

18. Additionally, if the criterion of MTOW is put into practice, this may lead to a situation in which an airline achieving a certain number of landings/year at Timișoara Airport obtains a reduced level of discount for the landing charges in comparison with an airline that achieves the same number of landings/year, but uses airplanes whose MTOW exceed 70 tons and embarks a certain number of passengers.

19. Because the level of the landing charges is reflected in the price of the airplane tickets charged to the consumers, the discrimination concerning the landing charge may cause a competitive disadvantage to certain airlines that do not meet the conditions concerning the MTOW and the number of embarked passengers.

20. The practices of the Airport of granting reductions for the payment of different airport charges according to criteria that cannot be considered objective and discriminatory were considered to represent *applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage*, a practice sanctioned by the provisions of article 6, paragraph 1, letter c) of the *Romanian Competition law*.

¹ The MTOW for the Airbus A320-200 airplanes used by Wizz Air is 71.500 kilogrammes.

3.2 *The excessive increase of the level of the passenger transfer charge*

21. An AIP that entered into effect on 23rd of August 2012 (AIP 2012) provided for a level of the passenger transfer charge of 5 Euro/passenger. In the same time the Airport informed all the airlines operating from Timișoara Airport that it intended to raise the level of this charge to 6 Euro/passenger. Compared to the level of the passenger transfer charge at the moment of the complaint- 1,83 Euro/passenger - the new levels of the passenger transfer charge represented increases of 173 and 227%. Therefore, these new levels represented a very important and sudden increase.

22. The Airport did not provide any justification concerning a possible increase in the level of cost incurred by the Airport for the provision of passenger transfer charge in order to justify an increase of this magnitude of the level of this charge.

23. RCC took into consideration the fact that Carpatair had been using Timișoara Airport as a hub beginning with the year 2000, this hub servicing a fleet of 12 airplanes belonging to Carpatair. 90% of the scheduled flights of Carpatair were done through this airport and 70-75% of the passengers of this airline were transfer passengers.

24. The information available to RCC showed that the nearest airport to Timișoara - Arad Airport- did not have the necessary infrastructure in order to allow Carpatair to use it as a hub. The runway system of Arad Airport did not allow Carpatair to operate the number of airplane movements/hour it needed. The parking space for the airplanes was considered to be insufficient for Carpatair operations. The space for the provision of baggage handling services was very small and it did not allow the necessary improvements that had to be made for the Carpatair operations.

25. Taking into account these circumstances, it was determined that it was possible for Carpatair to be in a position of economic dependence towards the Airport. The very important increase of the transfer passenger charge in the absence of any justification concerning an increase in the cost incurred by Airport for the provision of this service was considered to represent *a possible measure of exploitation of the state of dependency of an undertaking by an undertaking in dominant position*, a practice sanctioned by article 6, paragraph 1, letter f) of the *Romanian Competition Law*.

3.3 *Discriminatory conditions for the provision of ground handling services, granted by the Airport through ground handling agreements*

26. RCC analysed the provisions of the ground handling agreements concluded by the Airport with airlines providing services of air transport of passengers from Timișoara Airport.

27. RCC reached the conclusion that only Wizz Air benefited from a discount scheme that provided reductions for the ground handling charges. The maximum level of the reductions was 73%. These reductions were granted by the Airport according to the criterion of embarked passengers/month. Wizz Air was the only airline operating from Timișoara Airport that obtained reductions for the ground handling charges. This mere fact represented a discrimination towards the airlines that were not granted reductions for the provision of these services.

28. Additionally, the reductions were granted according to a criteria that cannot be considered as being objective and non-discriminatory. Taking into account the number of embarked passengers only Wizz Air was in position to obtain the maximum level of discount for the handling services.

29. This criterion leads to a situation in which similar transactions (the same quantity of services provided for airplanes of the same type belonging to different airlines) are charged differently, according to the number of embarked passengers. Even if, for example, the Airport had provided handling services for A 320 planes (the same type used by Wizz Air) belonging to Carpatair, only Wizz Air was granted reductions for these services.

30. Since the price paid by the airlines for the use of the services of ground handling provided by Timișoara Airport has an effect on the level of the prices charged by the airlines to the consumers, the payment of reduced ground handling charges (the effect of granting reductions by the Airport) leads to a competitive advantage for the airlines that obtain these reductions, while the airlines that do not obtain these reductions are placed at a competitive disadvantage.

31. These practices of the Airport might represent applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage, a practice sanctioned by the provisions of article 6, paragraph 1, letter c) of the Romanian Competition law.

32. Additionally, the fact that the Airport granted reductions only to one airline, even if it was providing services of the same nature to other airlines, might represent an infringement of the provisions of article 6, paragraph 1, letter c) of the *Romanian Competition law*.

4. The Airport's commitments proposal

4.1 *Commitments offered concerning the airport charges and the reductions granted to the airlines for the airport charges*

33. The main commitments assumed by the Airport concerning the airport charges and the reductions granted to the airlines for the airport charges are the following:

- to apply to the airlines, in a non-discriminatory manner, the airport charges and the conditions associated to these charges, including the reductions, according to the provisions of reductions grids published in the AIP and on the Airport webpage;
- any reduction system has to be based on objective, relevant, non-discriminatory and transparent criteria;
- any volume based reduction system for the airport charges shall be justified by the increase in economic efficiency it brings to the Airport, through the volume of activity generated by the airlines meeting various reduction thresholds and/or through the economies of scale achieved by the Airport from the increase of the quantity of services sold and from the better use of its production capacity;
- in order to determine and apply a volume based reduction system the Airport will take into consideration its legitimate interest to obtain a global increase of its activity volume, increase which can be attributed to: (i) an increase in the number of passengers or (ii) an increase in the number of airplane operations;
- when the Airport grants reductions for the landing charge, it will grant these reductions according to the criterion of number of movements of airplanes. The Airport shall specify, in the grid, in a clear manner, the timeframe for which the number of airplane movements will be taken into consideration. The Airport will use other criteria only if these criteria are provided by the relevant legislation;

- when the Airport grants reductions for the passenger service charge, it will grant these reductions according to the criterion of the aggregate number of embarked and disembarked passengers on Timișoara Airport. The Airport shall specify, in the grid, in a clear manner, the timeframe for which the number of passengers embarked/disembarked on Timișoara Airport will be taken into consideration. The Airport will use other criteria only if these criteria are provided for by the relevant legislation.

4.2 *Commitments offered concerning the level of passenger transfer/transit charge*

34. Airport committed itself to base any increase of the level of passenger transfer/transit charge on objective economic parameters that have an influence over the level of passenger transfer/transit charge such as:

- increases of the fixed cost per unit (increases of wage expenditures, increases of the utilities prices, increases of the equipment prices);
- increases in the level of direct and indirect taxes;
- increases in the level of regulatory costs;
- increases in the level of expenditure determined either by changes in the quality of the services as a result of legal requirements or either by market demand;
- cost increases generated by the increase of the quality of services and by the increase of the level of services provided by the Airport;
- a decrease of the profit margin below the levels capable of ensuring a sound financial situation for the Airport, financial situation that enables the Airport to self-finance.

4.3 *Commitments offered concerning the charges for ground handling services*

35. With regard to the reductions for the ground handling charges, the main obligation assumed by the Airport are:

- to apply the reduction grids to all the airlines, in a non-discriminatory manner, regardless of the identity of the airline, according to the provisions of the reductions grids published on the Airport webpage;
- to grant reductions according to the criterion of number of ground handling operations performed for the same type of airplane. The Airport will specify in a clear manner, within the reduction grids, the timeframe for which the number of ground handling operations will be taken into consideration;
- to publish the reduction grids on the undertaking's webpage, to show the criterion based on which the reductions are granted, the level of the reductions, the volume thresholds the airlines need to achieve in order to obtain the reductions as well as the validity period of the reduction grids;
- once the reduction grids become effective, it will not be possible to modify them through contracts, addenda, annexes or any other kind of contracts closed between the Airport and any of the airlines;

- to grant reductions for the ground handling charges based on economic efficiency reasons that the Airport achieves through (i) the volume of ground handling services generated by the airlines meeting various reduction thresholds and/or (ii) the economies of scale achieved by the Airport from the increase of the quantity of ground handling services sold and from the better use of its production capacity

36. The proposed commitments are still under analysis and RCC has not reached a final decision concerning the commitments.