

## ACI EUROPE WORKING PAPER – “OFF THE GROUND”

Report of the WS PA3 – Legal – Ground Handling

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Recommendations to European Commission EU/EEA Member States

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### 1 INTRODUCTION

- 1.1 The risk of one or more Ground Handling (GH) suppliers going bankrupt is real & urgent at several airports. It is not evident that the activities of a failing provider will be taken over by another supplier (let alone an airline...).
- 1.2 The provisions in the GH Directive (96/76/EC) do not provide the appropriate framework to mitigate the risk that GH services are no longer available at airports under the current circumstances.

### 2 PROBLEM DEFINITION

- 2.1 Limit the risks for the business & operational continuity of airports – also to enable recovery.

### 3 PROPOSED SOLUTION

- 3.1 The following ACI EUROPE proposals are already to a large extent (but not fully) reflected in a legislative proposal from the EC to amend Regulation (EC) 1008/2008 published on 28 April 2020 (the “**EC Proposal**”) – but further changes are needed as specified below:
- 3.2 The duration of **existing licenses** may need to be prolonged beyond the maximum period of 7 years for which suppliers are selected (in derogation of article 11(1)(d) of the Directive).
- 3.3 The EC Proposal provides for the prolongation of licenses which expire before the end of 2020, until 31 December 2021 (with a possible prolongation by delegated act, adopted in an emergency procedure). ACI EUROPE reiterates that a prolongation should apply for licenses ending until 31 December 2022 and provide for a minimum prolongation of 1 year and a maximum of 3 years, in view of the deep impact of the crisis on aviation and the expected recovery may take several years.
- 3.4 Where a GH supplier ceases its activity before the end of the license period, airports may grant a **temporary license** without a selection procedure. The duration of the temporary license should cover the gap until more stable solutions can be found in terms of a normal selection procedure. The EC Proposal provides for the granting of a temporary license for six months or until 31 December 2020, whichever is longer ((with a possible prolongation by delegated act, adopted in an emergency procedure). ACI EUROPE urgently calls for a longer duration, as a temporary license for six months will discourage GH suppliers to offer their services and the optional prolongation does not provide the stability for a business plan.
- 3.5 Airports are not obliged to provide GH services under the Directive. If none of the above solutions can be implemented and the airport decides to step in as last resort provider **financial & operational flexibility** is required. Consequently, a derogation is needed from the obligation to keep separate accounts (article 4 of the Directive).

- 3.6 The airport should be allowed to sub-contract the operations to an independent GH provider (in derogation of article 11(2) of the Directive which requires that the GH provider is controlled by the airport or controls the airport). This would be a temporary solution until a normal selection procedure can be organised. The EC Proposal does not contain a legal provision to enable airports to sub-contract GH services to an independent GH supplier. But the explanatory notes acknowledge that, as a result of the crisis, GH services may no longer be profitable and some managing bodies may need to procure such services (without stipulating whether this can be done from an independent GH supplier). The EC recalls that in such circumstances, Directive 2014/35/EU applies (i.e. the award of the contract is subject to public procurement rules). ACI EUROPE believes it is necessary to eliminate any ambiguity in the interpretation of the Directive, both regarding the sub-contracting as well as the application of public procurement rules in that case.
- 3.7 In the current circumstances, it may be difficult to replace a GH supplier that ceases operations as a result of the COVID-19 crisis. The business & operational continuity of the airport may be best served by maintaining the existing GH supplier, who has the necessary equipment & trained staff in place. But ultimately the preferred outcome will depend on the specific situation at the airport; a combination of these measures may be suitable.
- 3.8 In the recovery phase, airports may strengthen the operational & business continuity of GH services with more involvement in the provision & management of GH equipment under the remit of 'centralised infrastructure' or 'pooling' for more legal ease. A wider interpretation of 'Centralised Infrastructure' may allow airports to provide rolling material (i.e. standard equipment at each ramp). This would also enable investments in sustainability & innovation that GH suppliers cannot make themselves. Airports should also encourage the pooling of GH equipment, which is not provided for in the Directive. These measures will reduce entry barriers for GH suppliers and stimulate responses to tenders.
- 3.9 Airports that have recently reached the threshold in the GH Directive of 2 million passengers per year, should be granted a delay to open the market. These airports should be allowed to calculate traffic over a period of 3 years – with a derogation from article 1 of the Directive.
- 3.10 The smallest airports – below 1 million passengers per year – are most vulnerable as they will have a single GH supplier. Airport operators require flexibility to create 'lots' in a joint tender for the provision of GH services at several airports with different passenger volumes to ensure the financial viability of the license, also based on a new provision in the Directive.

## **4 EXPECTED OUTCOME**

- 4.1 Temporary & flexible derogations of the Directive that help to ensure operational & business continuity – as well as enable a recovery after the crisis.