

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

Report of the WS1 – Market Access – Ownership and Control

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Recommendations to the European Commission and EU/EEA Member States

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### 1 INTRODUCTION

- 1.1 The COVID-19 pandemic is having a severe impact on European airlines, which are requiring immediate liquidity from different sources (government / third countries and shareholders). Further airline consolidation, mergers and changes in ownership are likely to occur as the industry responds to the current crisis.
- 1.2 The current definition of Community Air Carrier EC regulation 1008/2008, September 2008 limits air carriers to additional funding from third countries if the controlling interest exceeds 49%. The definition also limits the consolidation process among airlines that do not hold an EU license, at a time when airline mergers may be the most viable option to guarantee operations and flight connectivity.

### 2 PROBLEM DEFINITION

- 2.1 The Regulation EC 1008/2008 on common rules for the operation of air services in the community sets out the licensing requirements for air carriers, the right of Community air carriers to operate intra-community air services and the pricing of intra community air services.
- 2.2 The Regulation includes several articles that are prohibitive and limit the flexibility of the air carrier to change its ownership model and the regulatory control applied by the issuing state. The specific articles are as follows:
  - Article 4 Conditions for granting an operating licence (f) - determines that operating licenses shall only be granted if the Member State(s) own more than 50% of the undertaking and effectively control it. The only exception to this rule is if an agreement with a third country to which the Community is a party, differs;
  - Article 5 Financial Conditions for granting an operating licence 1 (a) and (2) – specifies that the air carrier can meet at any time its actual and potential obligations established under realistic assumptions, for a period of 24 months from the start of operations. The air carrier is required to submit a business plan for the first three years of operation;
  - Article 8 Validity of an operating licence 3 (b) – specifies that an operating licence shall be resubmitted for approval if the air carrier has ceased its operations for more than six months.

### 3 PROPOSED SOLUTION

- 3.1 EU to introduce amendments to Articles 4, 5 and 8 to reflect the changes in market conditions as a result of the COVID-19 pandemic. This would provide airlines the flexibility to change ownership and introduce investment by third countries, not be penalised by the licencing authority to comply with a business plan submitted pre-COVID. Therefore, the validity of an airline licence should be maintained beyond a six-month period should the pandemic require operations to be grounded for a longer period.

#### **4 EXPECTED OUTCOME**

- 4.1 The relaxation of restrictions on ownership and control of airlines is required to support the aviation industry through the recovery of this pandemic. Increasing the ownership by third countries by more than 49% will allow airlines to make use of both state aid funding and / or access to investment from third countries. This will avoid the potential of unfair competition between European airlines, maximise connectivity and maintain a balance across the air transport network.
- 4.2 The timing and re-introduction of airline flying programmes are subject to the measures being taken by member states on border and country restrictions. The timing on the lifting of these restrictions will dictate future business plans and the duration that some fleets are grounded.

#### **5 CONCLUSION**

- 5.1 The effects of the COVID-19 pandemic on the aviation industry are expected to be long lasting. Recovery is likely to be slow with different countries having different rates growth. European airports and airlines will need the maximum possible flexibility to gain access to investment and operate within their licence conditions.

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<sup>i</sup> EU Regulation No 1008/2008

Commission Notice – Interpretative guidelines on Regulation EC 1008/2008 Rules on Ownership and Control of EU air carriers.