COMMISSION DECISION

of 14 January 1998

on the application of Article 9 of Council Directive 96/67/EC to Düsseldorf Airport (Flughafen Düsseldorf GmbH)

(notified under document number C(1998) 71)

(Only the German text is authentic)

(Text with EEA relevance)

(98/388/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 96/67/EC of 15 October 1996 on access to the ground handling market at Community airports [1], and in particular Article 9(5) thereof,

After consulting the Advisory Committee established thereunder,

Whereas:

I. SCOPE OF THE EXEMPTION NOTIFIED BY GERMANY

A. The notification presented by the German authorities

(1) By letter received by the Commission on 17 October 1997, a summary of which was published in the *Official Journal of the European Communities* [2], the Government of the Federal Republic of Germany informed the Commission, in accordance with Article 9 of Directive 96/67/EC ('the Directive'), of its intention to grant Düsseldorf airport (Flughafen Düsseldorf GmbH) an exemption:

— to ban self-handling for the categories of services referred to in points 5.1, 5.2, 5.4 (except for transport of crew), 5.5 and 5.6 in the Annex to the Directive and self-handling as regards the physical handling of freight and mail, whether incoming, outgoing or being transferred, between the air terminal and the aircraft. This exemption, based on Article 9(1)(d) of the Directive, is granted for three years, starting on 1 January 1998 and ending on 31 December 2000,

— to limit to two the users self-handling for the categories of services referred to in points 6.1, 6.2 and 6.3 in the Annex to the Directive. This exemption, based on Article 9(1)(c) of the Directive, is granted for three years, starting on 1 January 1998 and ending on 31 December 2000,

— to reserve to Düsseldorf airport (Flughafen Düsseldorf GmbH) the monopoly for the provision to third parties of the categories of services referred to in points 5.1, 5.2, 5.4 (except for transport of crew), 5.5 and 5.6 in the Annex to the Directive and for freight and mail handling as regards the physical handling of freight and mail, whether incoming, outgoing or in transit, between the air terminal and the aircraft. This exemption, based on Article 9(1)(b) of the Directive, is granted for two years, starting on 1 January 1999 and ending on 31 December 2000,

— to limit to two suppliers the provision of handling services for third parties, for the categories set out in points 6.1, 6.2 and 6.3 of the Annex to the Directive. The exemption, on the basis of Article 9(1)(a) of the Directive, is granted for three years, starting on 1 January 1998 and ending on 31 December 2000.

B. Basis of the exemption

(2) The general rules for access to the ground handling services market are set out in Articles 6 and 7 of the Directive. These provisions clearly state the principle that most categories of ground handling services should be opened up to the maximum possible extent. However, because of the specific situation and role of an airport, particularly constraints of safety and security, but also space and capacity, which can arise in certain parts of most airports, the Directive does not impose total freedom but requires a minimum degree of opening-up of both self-handling and services to third parties for four categories of services located 'air-side', that is to say, in a particularly sensitive area of the airport. These categories concern ramp handling, baggage handling, fuel handling and certain freight and mail handling operations.

[1] OJ L 272, 25. 10. 1996, p. 36.
[2] OJ C 335, 6. 11. 1997, p. 6.

(3) The Directive has also taken account of the fact that, in certain very special cases, severe space and capacity problems may prevent the opening-up of the market to the degree provided for. In such cases, exemptions may be granted on a temporary basis to give the airports the time to overcome the constraints. Such exemptions can therefore be only exceptional in nature and are not intended to automatically give airports an additional transitional period to that already provided for in Article 1 of the Directive.

(4) An exemption can be granted only on the basis of specific space or capacity constraints. This is the basis on which Germany has granted the exemption described in paragraph 1, in accordance with Paragraph 3 of the German *Verordnung über Bodenabfertigungsdienste auf Flugplätzen und zur Änderung weiterer luftrechtlicher Vorschriften* transposing Directive 96/67/EC into national law.

C. **Current situation at Düsseldorf airport**

(5) At the time of the exemption decision, the market had been opened up to competition in passenger handling activities (point 2 of the Annex), flight operations and crew administration (point 9), ground transport (point 10), catering services (point 11), aircraft maintenance (point 8), fuel and oil handling (point 7) and certain ancillary operations relating to freight handling (point 4.1).

(6) Under the German regulation transposing the Directive (see paragraph 4), access has been opened up from 1 January 1998 for self-handling and will be opened up on 1 January 1999 for the provision for third parties on ground administration (point 2), mail services (point 4.2) and communication between the aircraft and the supplier (point 5.3).

(7) The exemption granted by the German authorities allows for some opening-up of access to cleaning and aircraft services; however, this is limited to two suppliers and two self-handling users.

However, the airport (Flughafen Düsseldorf GmbH) banned self-handling at the time of the decision and, with the exception of the loading and unloading of food and beverages (points 5.1, 5.2, 5.4, 5.5, 5.6), access to which has been opened up, will continue to provide 'airside' services under the exemption, and reserves the option of providing them alone.

II. **CONSTRAINTS REFERRED TO BY GERMANY**

A. **Introduction**

(8) The reasons given by Germany for the exemption decision relate principally to:

— the full use already being made of the space available at the airport,

— the numerous space and capacity problems which the airport has been suffering since the fire at the terminal on 11 April 1996,

— the increase in demand for space that would result from the opening-up of the market to the degree envisaged by the Directive.

(9) The exemption decision is based on the arguments and studies presented by Flughafen Düsseldorf:

— grounds for an exemption under Article 9 of Council Directive 96/67/EC on access to the ground handling market at Community airports — Flughafen Düsseldorf — September 1997;

— study by the Netherlands Airport Consultants BV (NACO): *Consequences of liberalising ground handling to permit several service providers* — 3 July 1997,

— Development Plan accompanying the application for exemption — Düsseldorf, September 1997.

B. **The structural space problems at the airport**

(10) According to the German authorities, the volume of traffic per hectare of available space at Düsseldorf airport is far in excess of other German airports. In 1994, the number of commercial aircraft movements has been limited to 91 000 during the six busiest months of the year. Since December 1997, 105 000 movements have been allowed under the rules of a noise quota system. During the second and third phase the number of movements will increase to 110 000 and 120 000 respectively. With an area of 613 hectares, the airport therefore records almost 300 movements or 24 700 passengers per hectare whereas for airports of similar size, such as Hamburg or Berlin-Tegel, the figures are only 14 500 and 17 500 passengers respectively.

(11) The German authorities also refer to capacity constraints. A limit has been imposed on the number of movements at Düsseldorf airport and the former maximum of 91 000 commercial movements in the six busiest months of the year was to be reached in 1995. Since then the airport has been

at saturation point. The maintenance of such a level in spite of the 1996 fire only aggravates the difficulties. After the disaster, the airport very quickly returned to its 1995 traffic levels. The system of noise quotas which will allow the number of annual movements to be increased from 105 000 over six months to 120 000 has started to operate in December 1997. This increase, which can easily be absorbed in terms of runway capacity, will allow more of the heavy demand from airlines to be met.

C. **The consequences of the fire**

(12) According to Germany, the situation deteriorated significantly as a result of the fire on 11 April 1996. The fire destroyed the central building and made all three Piers A, B and C inoperative. Pier C, including a part at the central building, was reopened in November 1996. The reconstruction works in the other areas are underway in line with established plans.

During the renovation and reconstruction work:

— several contact points can now be used only as remote positions. Moreover, the arrival of all passengers is concentrated on Pier C, which alone has a baggage reclaim system. This situation means that many more vehicles and gangways are needed for passengers, as well as parking areas for those vehicles and appliances,

— temporary buildings have had to be assembled. Temporary offices as well as two modules, east and west (modules D and F), have had to be constructed to handle the embarkation of passengers on a temporary basis. These modules are, however, completely congested at certain peak periods. They also reduce the space available for other purposes,

— three positions (50, 51 and 60) have had to be closed for the reconstruction of Pier B and storage of material,

— the storing of building materials makes the situation even worse,

— the increase in traffic on the paved aprons makes circulation very difficult along the whole length of the terminal, particularly because of the enclosure around Pier B which, while work is carried out on that Pier, will oblige the airport to divert traffic and will deprive it of a major junction at that point. According to the airport, the loss of space can be estimated at around 7 500 m^2.

(13) According to the airport authorities, the scale of the work will mean that the installations will resume operations only very gradually.

Pier C has been in operation again since November 1996. This Pier is of major importance since it is here that the baggage conveyors for passenger arrivals are located. In order to increase capacity, an extension to the south of the Pier will make it possible to install three more conveyors. This extension has been constructed at the cost of tarmac space, including certain equipment storage areas.

Pier A should be open in mid-1998. Slightly extended, it will then be able to hold four more gates. Until then, passengers arriving at gates at this Pier will have to be transported to Pier C in order to retrieve their baggage.

Pier B is likely to remain completely closed until 2001. Major modifications are needed, including an enlargement over its entire length, with new arrangements for separating Schengen and non-Schengen passengers and additional offices and rooms.

Two modules, D and E, to the east and west cope with the demand provisionally. According to the airport, however, these have little in the way of aprons and this makes ground transport times fairly long.

Under the overall reconstruction plan, the infrastructures will not be completely operative again until 2002. However, the space needed for opening up the ground handling market should, under the plan put forward, be available from the beginning of 2001.

D. **The consequences of opening up the market**

(14) The NACO study shows that there is currently a shortage of space of more than 10 000 m^2 because of the effects of the fire. In its analysis, NACO highlights a direct link between the arrival of new operators — service suppliers or users engaged in self handling — and the need for space. NACO's conclusions are based on the fact that the number of vehicles and volume of equipment depends on the requirements of each operator, and the need for space to store such equipment increases proportionately to the number of operators.

(15) The current shortage is now offset by renting hangers and using certain processing areas for parking equipment. With the arrival of a second operator, such a compensatory measure would no longer be possible, since the very short-term varia-

tion in the allocation of positions and consequently of the suppliers of services to the airlines will mean there can be no parking on these areas.

(16) According to the airport, the opening-up of the market would lead to the closure of extra positions, thus reducing the capacity of the airport when it is already experiencing difficulties in this area.

(17) In conclusion, according to the NACO study, the current 25,4 % shortage of space would rise to 30 % if a service supplier had 15 % of market share, 38 % if it had 40 % of the market and 37 % in the event of self-handling by the main carrier.

E. **Observations of the interested parties**

(18) Following the publication by the Commission of a summary of the notification from the German authorities and pursuant to Article 9(3) of the Directive, a number of airlines and associations of airlines have expressed doubts as to whether such an exemption is justified. However, their reasoning is based on a mere claim that there is sufficient space at the airport to receive new operators and that the management is unwilling to open up the market as quickly as possible. Although most of these airlines recognise the exceptional situation at this airport because of the fire, some of them refer to the fact that faced with the consequences of the fire the airport has shown a great capacity for adapting and could with an additional effort adapt very quickly to the conditions for opening up the market.

III. **EVALUATION OF THE EXEMPTION IN THE LIGHT OF DIRECTIVE 96/67/EC**

A. **Background**

(19) An exemption can be granted only on the basis of specific space or capacity constraints. These constraints must be sufficiently important to make it impossible to open up the market to the degree provided for in the Directive. Moreover, Article 9(2) of the Directive expressly lays down that the exemption granted must not unduly prejudice the aims of the Directive, give rise to distortions of competition or extend further than necessary. Finally, as the Court has already indicated in a number of cases, and in particular in its judgments of 20 April 1978 in Joined Cases 80-81/77, Commissionnaires réunis v. Receveur des Douanes [1] and of 25 June 1992 in Case C 116/91, British Gas [2], an exemption should not be interpreted in such a way as to extend its effects beyond what is necessary to achieve the intended protection of interests. The Commission must therefore make a strict examination of the exemption. On the basis of Article 9(1)(a) and (c), the Member State in question may therefore limit to a minimum of two the number of suppliers or self handling users for those categories of services to which access is completely free. It is on this basis that the exemption limits to two the number of suppliers and users authorised to carry out aircraft cleaning and service operations.

(20) However, by virtue of Article 9(1)(b) the Member State may also reserve the right to provide the services listed in Article 6(2) to a single supplier and/or, by virtue of Article 9(1)(d), ban self-handling or restrict it to a single user for the services referred to in Article 7(2). It is on the basis of these provisions that the exemption seeks to ban self-handling and to reserve to the airport the provision of some of the ramp handling services.

(21) However, Article 9(2) lays down that an exemption must:

— specify the category or categories of ground-handling services for which the exemption is granted and the specific constraints of available space or capacity which justify it,

— be accompanied by a plan of appropriate measures to overcome the constraints,

— not extend further than necessary, nor give rise to distortions of competition or unduly prejudice the aims of the Directive.

(22) Under Article 9(6), the exemptions granted under Article 9(1)(a), (c) and (d) may not exceed a duration of three years, subject to a possible extension, while those granted under Article 9(1)(b) may not exceed two years.

(23) In accordance with the procedure provided for in Article 9(3), (4) and (5), the Commission must examine the exemption granted by the Member State and approve that decision, oppose it or require the Member State to amend the extent of the exemption or restrict it to those parts of the airport where the alleged constraints have been proved to exist.

(24) The Commission must therefore verify whether it is impossible to open up the market to the degree provided for in the Directive, and must cover the following three points:

[1] [1978] ECR 927, 945.
[2] [1992] ECR I-4071, at point 12.

— the existence and extent of the space and capacity constraints alleged by the German authorities,

— the plan of appropriate solutions, which has to be acceptable from the point of view both of the measures to be taken by the airport and the timetable for their implementation. On this point, the Commission considers that the airport or Member State must commit itself even more rigorously to appropriate measures if the exemption limits access to the market. In the case of the exemption for Düsseldorf airport, this applies to the part which permits the maintenance of a complete monopoly for certain ramp-handling operations for which airport users have neither a choice between several suppliers nor the option of self-handling,

— conformity with the criteria referred to in Article 9(2) of the Directive.

In accordance with Article 9(4) of the Directive, the Commission has made a detailed analysis of the alleged space and capacity constraints, considering whether the decision taken is appropriate to those constraints and examined the measures to overcome them. In carrying out this task, it has received technical assistance from Alan Stratford and Associates.

B. **Space and capacity constraints**

(a) *Structural space problems at the airport*

(25) It is generally recognised that the presence of several operators requires more equipment than in the case of a monopoly and hence more space to park that equipment.

Whereas in a monopoly situation the need for equipment is geared to the volume of traffic at the airport's peak time, it is necessary in the case of several operators to take account of the peak time of each of the parties involved, which do not always coincide with that of the airport. Competition therefore entails greater requirements in terms of equipment and hence in terms of space to park such equipment. It could also, in certain circumstances, lead to problems of vehicle traffic on these parking areas.

However, to assert, as do Düsseldorf airport and the NACO study, that this space requirement is proportional to the equipment requirement is to overlook the fact that there is always a period during the day where the peak time of the various service suppliers coincides with the peak time of the airport — particularly at a congested airport, and that during that period there is less need for parking space because the equipment is in service. During quieter periods, particularly at night when equipment is used less, the free positions at the airport may in principle be used as temporary parking areas for equipment. However, it is true that in the specific case of Düsseldorf, many aircraft are parked overnight, thereby occupying all the positions. On the other hand, it should be remembered that the opening-up of the market will reduce the market share of the operator that has hitherto enjoyed a monopoly, thus reducing its equipment requirements and hence its need for space to park that equipment.

(26) Düsseldorf airport compares its situation with that of the main German airports. It is true that for an airport of this size it has a relatively high number of movements and passengers. However, a comparison made by taking account of the total area belonging to the airport and not the usable area, which excludes among other things protected woodland, is not conclusive. Similarly, a statutory restriction on the number of movements has no direct effect on the area available for ground-handling operations.

(27) Moreover, all the data indicating space problems relate to the period after the fire. They do not therefore point to any structural shortage of space beyond that attributable to the effects of the fire.

It is therefore necessary to limit the examination strictly to the current situation, in other words, to the temporary difficulties arising from the fire.

(b) *Consequences of the fire*

(28) The fire forced the airport to construct new modules for passenger departure but also to make major changes to the operation of the structures and passenger routing. Most of the positions, hitherto of easy access, can now be used only as remote points and passengers have to be taken to and from them by bus. Sixteen buses have had to be added to the existing fleet of 35, and 12 new stairways for aircraft were needed for passenger handling on the apron as well as additional equipment for the transportation of baggage. This significant increase in the number of vehicles, coupled with a lack of sufficient parking space for them, makes traffic difficult on the tarmac. Moreover, Pier C in which the baggage arrival system is located at present has to meet all the requirements of incoming passengers. Passenger departure is handled by means of two temporary modules at the east and west. During peak periods, these modules are congested and the configuration of the premises, including the embarkation gates, makes bus movements difficult. Traffic on the tarmac, which is already dense because of the large number of

remote points, and the fact that Pier C acts as the arrival hall for all passengers at the airport, will be even more difficult during the reconstruction of Pier B. During the reconstruction, between 1998 and 2001, the necessary isolation of this Pier will entail closure of the passage beneath the infrastructure and force all vehicles to go completely around the Pier. Finally, it should be remembered that this Pier alone possesses almost a third of the walkways connecting to the aircraft and that before the fire it handled almost half of all passengers.

During that period, part of the parking areas around Pier B will be occupied by building materials, thus reducing the space available at this location where a number of containers are currently sited.

The overnight parking of numerous aircraft at remote points opposite the freight terminal and the need to use the de-icing area during the winter period make it difficult to park equipment in those areas.

(29) However, the Commission noted that certain temporary constructions around Piers C and A, intended among other things for employees, could have been installed in less congested areas of the airport, thus freeing up some of the area around the terminal.

Moreover, traffic could be improved by reducing the number of vehicles on the tarmac. In addition, some of the parking areas for the cars used by airport staff around module D to the west could be switched to parking areas for equipment with airside access. It should, however, be conceded that these changes would only partly solve the problem of parking certain vehicles leaving untouched the crucial problem of congestion around aircraft and gates in terminals D and E for departures, and C where arrivals are concentrated.

(30) The Commission admits, then, that airside parking and traffic were made difficult by the effects of the fire in April 1996. The isolation of Pier B from the beginning of 1998 for reconstruction and extension work will only aggravate the problems at the central point of the airport for the duration of the major structural work. However, it should be pointed out that as work progresses and when the major structural work has been finished and only the interior work remains, towards the end of 1999, a sizeable area could be freed around Pier B and thus serve for parking groundhandling equipment.

The question, then, is whether these conditions make it impossible to open up the market to the degree required by the Directive.

(c) *Opening-up of the market*

(31) The airport refers to the prospect of an increase in air traffic at Düsseldorf. While it is true that such an increase in traffic may be expected, it will result from the airport's inclination and ability to meet demand. However, it should be pointed out first that flight quotas have been statutorily imposed on Düsseldorf — although the rules are due to be relaxed soon — and particularly that a policy decision by the authorities, such as a decision to increase capacity, cannot be presented as taking precedence over the application of national or Community regulations. This intention on the part of those drawing up the Directive is reflected in the temporary nature of the exemption and in the fact that no monopoly can be extended beyond two periods of a maximum of two years. It is for the Commission to determine whether space or capacity problems, and not hopes or decisions to develop capacity, make it impossible to open up the market to the degree provided for in the Directive.

(32) The current shortage of space to park equipment, estimated by NACO at more than 10 000 m^2, is compensated for at present by renting space in the hangars of certain airlines on the one hand, and by the space freed up by the closure of three positions on the other. It should be conceded that not only will the space needed to park equipment increase with the arrival of one or more new operators, but also that some of the possibilities of offsetting this will disappear from the beginning of 1998 and throughout the period of reconstruction of Pier B. This Pier will be totally isolated and part of the space now used as compensation will also have to be allocated to the extension of the Pier and the materials needed for that extension. The airport will then have to face up to both reduced space and increased demand.

(33) The opening-up of the market will result in an increased need for equipment which may be evaluated having regard to both the peak periods of the airport — since at that period all users are relatively busy — and the peak time of each user where this does not coincide with that of the airport. The Commission takes the view that there is no direct

relationship between an increase in the number of users and that in equipment requirements. Moreover, the equipment requirement at any given moment depends above all on the number of aircraft to be handled at that moment. However, it may be stated that the opening-up of the market will lead in any event to an increase in the volume of ramp-handling equipment.

(34) The exemption granted by the German authorities seeks to limit the number of ramp operators.

It concerns, first, aircraft cleaning and servicing, for which the number of suppliers and self-handling users would be limited to two. Access for two self-handling users and two suppliers is, however, guaranteed by the decision by Germany and a minimum choice is thus given to users, even though it cannot be enlarged during the conversion work. With the congestion at the airport it is not possible to open up fully the cleaning and aircraft services without increasing the difficulties inherent in the extra traffic and parking on the tarmac.

Moreover, the decision seeks to ban the entry of a user or supplier on the ramp handling market. The aircraft marshalling, moving, loading and unloading operations and the transport of passengers and baggage airside require a great deal of heavy equipment for which suitable manoeuvring and parking areas are needed.

(35) The scenarios put forward in connection with the arrival of a new operator must always be treated with caution. The NACO study takes a number of hypotheses for the development of the market. It appears from studies carried out both in preparation for the Directive and in the case of other exemptions that the contention that the new arrival could achieve a 40 % market share in the first few years is exaggerated. A market share of 15 % is much more realistic. In this case, and assuming for the time being that the number of movements is limited to 90 000 per year, a 15 % market share would make it possible to handle on average 37 movements per day, which corresponds to 18 flights per day. However, the viability of such a situation is completely dependent on the type of aircraft to be handled and the relevant timetables for such handling. The supply of services for small aircraft on that scale is not likely to be profitable. It would readily be profitable on large aircraft, but in this case much more equipment would also be needed. Similarly, handling two aircraft of the same type at the same time would compel the supplier to duplicate its equipment. For these reasons, the hypotheses have to be taken as mere examples; but it is difficult to use them for a basis for evaluating the exact requirements of each of these suppliers.

On the assumption of self-handling by LTU — a company based in Düsseldorf — and given that the company owns large jets and that the flight schedules show several flights of this type at short intervals, LTU would have to increase its equipment to meet its needs.

(36) In general terms, it may be supposed that the introduction of a new operator would entail increased space requirements, even in the best-case scenario, of around 3 500 m^2. This would not be practicable, given the existing shortage of more than 10 000 m^2 at the airport and the additional complications resulting from the closure of Pier B and the need to transport all passengers, whether arriving or departing, by bus.

C. **The restructuring plan**

(37) Under Article 9(2) of the Directive, any decision to grant an exemption must be accompanied by a plan of appropriate measures to overcome the alleged constraints.

The 'DUS 2000 Plus' project envisages the reconstruction and development of Düsseldorf airport for the years to come. This project, which is already under way, should allow the airport to meet both the needs of the airlines in terms of capacity — in so far as the new regulations allow any increase in that capacity — and the requirements of the Directive as to the opening-up of the market. The plan provided for in Article 9(2) of the Directive and aimed at overcoming the constraints is incorporated in the DUS 2000 Plus project.

The first phase of the work on the project is directly concerned with the possibilities of increasing the space available for groundhandling services.

(38) On completion of the reconstruction of Pier B, an increase of 2 000 m^2 of parking areas for ground handling equipment is planned around this Pier, thus increasing the area available there from 5 700 to 7 700 m^2. The plan sees the end of 2000 as the date for the completion of work on this Pier.

The space made available by the complete renovation of the terminal will free up the area occupied at present by temporary administrative offices opposite the old freight terminal, thus providing an area of 1 100 m^2 which will be used for parking groundhandling vehicles and equipment.

(39) The development plan also provides for an extension of the tarmac. This will take place first of all at the eastern extremity, at the beginning of 1999, with the primary aim of creating a de-icing area. Part of the area freed up, amounting to several hundred square metres, will be available for parking groundhandling equipment. However, outside the winter period, an area of more than 4 100 m^2 could then be available for storing equipment. A major extension is also planned in the second phase to the west. Half of the area freed will be used for new aircraft positions; the other half, estimated at 14 to 16 000 m^2, is to be used for storing groundhandling equipment. Work on this area should be completed by the end of 2000. The plan provides for additional available space laid aside for parking equipment of 21 to 23 000 m^2 by the beginning of 2001 (Table 2 of the development plan).

D. **Compliance with the criteria laid down in Article 9(2)**

(40) The German authorities do not refer explicitly to the question of whether their decision conforms to the criteria laid down in Article 9(2) of the Directive, including whether the measures taken are appropriate to the existing constraints. These measures concern, first, certain ramp handling operations such as the moving, loading and unloading of the aircraft as well as the airside transport of passengers and freight which require heavy and bulky equipment, and secondly the external and internal cleaning of the aircraft and aircraft services including the removal of snow and ice and de-icing, for which specialist equipment is required. As regards the external and internal cleaning of the aircraft, the airport has created no monopoly for itself but is taking account of the principles of the Directive by opening up the market to a minimum of two suppliers and two self-handling users. Given the present situation airside, the Commission considers that the space available would not at present allow the opening-up of the market to the degree provided for by the Directive, so that the decision of the German authorities is commensurate to the constraints. Similarly, the decision does not appear disproportionate as regards the services affected.

(41) As regards the duration of the exemption, however, the Commission believes an earlier opening-up of the market to be possible, on the following grounds.

The overall restructuring plan 'DUS 2000 Plus' attaches great importance to the modernisation of the airport and the development of its capacity.

However, the plan of measures presented, which is incorporated in this development plan, calls for a number of comments:

— no mention is made at this level of the completion of work in Pier A. This pier should be renovated by mid-1998 as was indicated in the documentation on the alleged constraints. It will then be possible for the embarkation rooms, gates and passenger walkways to the aircraft (for seven or eight aircraft positions) to be used once again, mainly by Deutsche Lufthansa and associated companies. This should lead to a significant reduction in the number of both staircases and buses for transporting passengers. At the same time, the temporary modules for embarkation would be relieved of these passengers. As a result, there will be less need for parking space and this area will be less congested. Finally, the work on this pier, which can in its present form accommodate one-third of the gate parking positions, should allow for additional positions with the space around those positions for handling services,

— as regards the duration of the exemption, the plan does not take account of the fact that once the structural work on Pier B has been completed, some of the space occupied by the construction materials can be freed up as work progresses, thus making it possible to reclaim at least part of the 7 500 m^2 taken out of service and to use it for parking handling equipment. Also, the road junction under Pier B is due to be reopened to traffic at that time. This would make it possible to bring forward the date of opening up the market to the time of completion of the external structural work, namely the beginning of the year 2000,

— although adaptation to the new rules established by the Directive is not forgotten, as a result of which sizeable areas for new suppliers should be created, the Commission nonetheless considers that the creation of such areas could easily be given higher priority in the schedule of work, in order to free more rapidly the space required for parking new groundhandling equipment.

The combination of these two facts (re-opening of Pier A and completion of the structural work on Pier B) and the possibilities of more efficient use of the tarmac lead the Commission to conclude that the measure proposed by Germany is scheduled for a longer term than is necessary and therefore contravenes the principle under point (iii) of the second subparagraph of Article 9(2) of the Directive.

IV. **CONCLUSION**

(42) Düsseldorf Airport does not have structural space and capacity problems such as to prevent the opening-up of the groundhandling market.

However, the fire in April 1996 severely disrupted the operation of the airport, and, the consequences in terms not only of requirements, equipment and organisation but also of available space do not at present admit of any other supplier for the categories of services referred to in the German decision granting exemption. In accordance with the terms of Article 9(2) of the Directive, Düsseldorf airport has undertaken in its plan to overcome the current constraints so as to release an additional area of more than 21 000 m^2 by the beginning of 2001 to allow the opening-up of the market to the degree provided for by the Directive. However, the timetable drawn up by the German authorities does not take account of the fact that some of the temporary equipment needed as a result of the fire, such as vehicles for transporting passengers airside and walkways, could be progressively withdrawn as the reconstruction work progresses, especially with the re-opening of the enlarged Pier A from mid-1998 and its positive implications for the airport in terms of space and traffic-flow.

Similarly, Germany has not shown that it is impossible to liberate part of the space around Pier B on completion of the structural work, nor that the scheduling of all the work at the airport would not allow the areas on the tarmac designated for parking aircraft and groundhandling equipment to be made available more quickly.

(43) The currency of the exemption should therefore be limited to the end of the structural work on Pier B, namely 1 January 2000,

HAS ADOPTED THIS DECISION:

Article 1

The exemptions granted to Düsseldorf airport (Flughafen Düsseldorf GmbH) under Article 9(1)(b) and (d) of Directive 96/67/EC, and notified to the Commission on 17 October 1997, are hereby approved on condition that Germany amends them so that they expire on 31 December 1999.

Article 2

Germany shall notify to the Commission the exemption decisions as amended pursuant to Article 1 before they enter into force.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 14 January 1998.

For the Commission
Neil KINNOCK
Member of the Commission