COMMISSION DECISION

of 30 October 1998

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

(notified under document number C(1998) 3338)

(Only the German text is authentic)

(Text with EEA relevance)

(98/632/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 groundhandling market at Community airports [1], and in particular Article 9(5) thereof,

Having regard to the request for approval of the decision of the German authorities of 30 July 1998 and after consultation of those authorities,

After consulting the Advisory Committee,

Whereas:

I. SCOPE OF THE EXEMPTION NOTIFIED BY THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY

1. The notification presented by the German authorities

By letter of 30 July 1998, received by the Commission on 3 August 1998, the German authorities notified a request to approve the decision of the Government of the Federal Republic of Germany of 23 July 1998 to grant to Hamburg airport (Flughafen Hamburg GmbH) an exemption to:

— limit self-handling to a single user, and

— reserve for Hamburg Airport (Flughafen Hamburg GmbH) the provision of services to third parties,

for the categories of service listed under point 5.4 of the Annex to the Directive. This exemption is granted, on the basis of Article 9(1)(d) and (b) of the Directive, until 31 December 2000.

The notification specifies that in the event of no user asking to be self-handling, a service provider will be admitted, but only for a limited number of operations.

Pursuant to Article 9(3) of the Directive, the Commission published an extract from the said notification in the *Official Journal of the European Communities* [2] and invited interested parties to submit comments.

In accordance with Article 9(5) of the Directive, the German Government was consulted by the Commission on the Commission's draft evaluation on 24 September 1998. The German authorities responded to this consultation with written comments dated 1 October 1998.

Basis of the exemption

The general rules for access to the groundhandling services market are set out in Articles 6 and 7 of the Directive. These provisions clearly state the principle that most categories of groundhandling services should be opened up to the maximum possible extent. For an airport with a volume of traffic like that of Hamburg the Directive provides for recognition of the right to self-handle as from 1 January 1998 and opens up the handling market to third parties as from 1 January 1999. However, because of the specific situation and role of an airport, and in particular 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 degreee of opening up of both self-handling and services to third parties for four categories of services located air-side, i.e. in a particularly sensitive area of the airport. These categories concern ramp handling, baggage handling, fuel handling and certain freight and mail handling operations.

Council Directive 96/67/EC also takes account of the fact that, in certain very special cases, severe space and capacity problems 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. These exemptions can therefore be only exceptional in nature and are not intended to automatically give airports an extra transitional period in addition to that already provided for in Article 1 of the Directive.

[1] OJ L 272, 25. 10. 1996, p. 36.

[2] OJ C 267, 26. 8. 1998.

An exemption can be granted only on the basis of specific space or capacity constraints. This is the basis on which the German authorities have granted the above-mentioned exemption in accordance with Article 3 of the German *'Verordnung über Bodenabfertigungsdienste auf Flugplätzen und zur Änderung weiterer luftrechtlicher Vorschriften'* transposing Directive 96/67/EC into national law.

2. **Situation regarding handling at Hamburg airport**

2.1. *Presentation of the airport*

Hamburg Airport is 64 % owned by the *Land* of Hamburg, 26 % by the Federal State and 10 % by the *Land* of Schleswig-Holstein. The situation of the airport so close to the city poses may environmental problems, and the immediate proximity of residential areas and motorway infrastructure rules out any extension of the airport beyond its current limits. Between 1990 and 1997, the number of movements increased by 12,5 % and the number of passengers by 27,7 %. With 9 million passengers in 1997, 5 % up on the previous year, the aiport will have to find a solution to its expansion problems. It currently has 42 parking positions, 11 of which are gate positions. Almost all of these positions are occupied during the night. Modifications which the airport is proposing to make in order to cope with the increase in its traffic within its own limits (the construction of a new Terminal 2 and the extension of an area for handling) were the subject of a plan which was approved on 26 May 1998 and could therefore be implemented without further formality. However, as has been the case with previous modifications, those measures are currently being challenged by local residents, and no definitive schedule has yet been agreed for the work on the new terminal. The only work in progress is on the site of the future tarmac (Vorfeld 2).

2.2. *Groundhandling services at the airport*

On the date of decision of the German authorities, most groundhandling services were open to competition, the services being provided either by independent providers or by carriers serving both themselves and third parties.

The notification relates to point 5.4, i.e. the loading and unloading of the aircraft and the transport of crew, passengers and baggage between the aircraft and the terminal, and sets out, for such operations, to prohibit self-handling and to reserve the provision of services to third parties solely to the airport.

Other services, namely baggage, freight and mail handling (points 3 and 4 of the Annex to the Directive) and certain air-side operations (points 5.1 and 5.2) should be open, in conformity with the provisions of the Directive, as from 1 January 1999. Self-handling, which is recognised by the Directive from 1 January 1998, has not been requested by any carrier since that date.

Handling services employ around 700 staff at the airport, around 200 of whom work for sub-contractors. Some of the operations covered by the notification, such as pusher tugs or the transport of passengers, are carried out by subsidiaries of the airport.

II. **CONSTRAINTS REFERRED TO BY THE GERMAN AUTHORITIES**

The file presented in support of the German authorities' notification stated that the airport has already taken measures to deal with the overcrowding created by increased traffic by optimising equipment parking space and creating around 1 500 m^2. An extra 2 750 m^2 has also been found at buildings level. The use of shuttles with greater capacities has allowed their number to be reduced from 20 to 14, and the number of baggage trolleys to be reduced to 100.

Functional areas serve as storage for containers and palettes which have greatly increased in number since 1995, in parallel with the growth in the number of aircraft adapted for containers.

These measures have made it possible to cope with the space problems for the time being. The file also states, however, that the number of movements rose from 2 500 to 2 750 per week during the same period, with the attendant increase in the amount of groundhandling equipment.

Referring in particular to the study commissioned by the airport and carried out in 1996 by the Fraunhofer Institut für Materialfluss und Logistik, *'Kapazitive und räumliche Situation auf dem Flughafen Hamburg bezüglich der vorfeldseitigen Abfertigung'*, the German authorities take the view that the space available would accommodate a user who is self-handling but would not permit the market to be opened to any greater extent, in particular regarding providers of services for third parties. They go on to state that if no users were to be interested in self-handling at Hamburg, the available space could be allocated to an operator providing a limited number of services to third parties, the space not being sufficient to permit the full range of operations covered by the notification to be carried out.

According to the German authorities, the main constraint is the lack of space for parking groundhandling equipment; the premises necessary for the personnel of new operators, on the other hand, posed no particular problem.

The Fraunhofer study was based on an area of 19 869 m^2 being available for groundhandling; this area would be slightly reduced in the coming years as a result of the closure of three aircraft positions during the construction work on the new terminal (19 056 m^2). Moreover, in the

current situation with the airport as the sole provider, and on the basis of 2 750 movements per week, the space requirement was 19 799 m². Consequently, as things now stood, almost all the available space would be occupied and a space shortfall would become apparent during the construction work.

The arrival of each additional operator would require an extra 2 230 m² of space, to which would have to be added 600 m² for the transfer of baggage on their trolleys.

However, the German authorities took the view that there were various ways of meeting at least a part of the new requirements. Firstly, by freeing around 400 m² currently used to store old groundhandling equipment which was no longer used. This area could become available in the very short term. Secondly, by finding ways of parking equipment around the noses of aircraft for positions 21 to 23 which are used 'nose in', this already being the practice at gate positions 10 to 20, even though frontloading certain aircraft can sometimes pose problems. The same use of space around aircraft could be made for positions 31 to 42, which were soon to become gate positions. Finally, the airport should take into account the loss of some of its own market share as a consequence of opening to competition. According to the German authorities, the airport should be able to accept one self-handling user. In their decision of 23 July 1998, however, the estimate that the amount of freed space would not be sufficient to allow all the services mentioned in point 5.4 of the Annex to the Directive to be provided to third parties, and that the provision of such services should thus be reserved for the airport.

III. POSITIONS OF THE INTERESTED PARTIES

The various interested parties have been asked to comment on the publication of the notification from the German authorities in accordance with Article 9(3) of the Directive.

After stating that self-handling did not necessarily require additional space for equipment, or premises for personnel, as this need was based on traffic and not on the number of operators, the airlines and airline associations that expressed their opinions took the view that a more rational use of the space for groundhandling and a reduction in the equipment currently used by monopoly provider should make it possible to find space for the equipment of new operators. These measures, together with the removal of old equipment, especially containers no longer used, should make up for a large part of the shortfall of available space. Certain airlines felt that the need for baggage transport was dependent on traffic and not on the number of operators, and that the short distance between aircraft and terminal made additional equipment unnecessary. These airlines also stress the importance of real opening-up of the market and the need, where there are problems of space, to give priority to the arrival of a service provider that can provide services to third parties which are not limited to a single airline.

IV. EVALUATION OF THE EXEMPTION IN THE LIGHT OF THE PROVISIONS OF DIRECTIVE 96/67/EC

1. The rules in force concerning ground handling

1.1. *The scope for limiting access to the market*

Council Directive 96/67/EC provides for the market to be opened up to different extents as a function of the way groundhandling services are provided (self-handling or service suppliers) and the level of traffic at the airport. With annual traffic of almost 9 million passengers in 1997, Hamburg airport must, in accordance with Annex 5 to the *'Verordnung über Bodenabfertigungsdienste auf Flugplätzen und zur Änderung weiterer luftrechtlicher Vorschriften'* ([3]) of 10 December 1997 transposing the Directive into national law, open up the market for groundhandling services for third parties to two users from 1 January 1998.

The general rules governing self-handling and the provision to third parties of the categories of service listed in the German authorities' notification are set out in Articles 6(2) and 7(2) of the Directive. Those rules have been incorporated into the provisions of Article 3(2) of the German regulations transposing the Directive. Under the terms of these various articles a Member State may restrict self-handling to a minimum of two providers or self-handling users.

However, where specific space or available-capacity constraints, arising in particular from the rate of utilisation or of space occupation, make it impossible to admit a new service provider and/or to authorise self-handling to the extent provided for by the Directive, the Member State concerned may, on the basis of Article 9(1)(b) and/or 9(1)(d), restrict that right to a single provider and/or prohibit self-handling or limit it to a single user.

However, under Article 9(2) any such exemption must:

— specify the category or categories of groundhandling services for which the exemption is granted and the specific contraints of available space or capacity which justify it,

— be accompanied by a plan of appropriate measures to overcome the contraints.

([3]) *Bundesgesetzblatt 1997 Teil 1 Nr. 82, 16. 12. 1997; 2885.*

Moreover, pursuant to Article 9(2), it must not:

— unduly prejudice the aims of the Directive,

— give rise to distortions of competition,

— extend further than necessary.

As the Commission pointed out in its Decisions of 14 January 1998 on Frankfurt and Dusseldorf airports ([4]), the main aim of the Directive is to liberalise groundhandling services. The restrictions imposed on third parties are restrictions on the freedom of such parties to provide such services. By analogy with the State measures restricting the freedom to provide services ([5]), the measures likely to exclude or prohibit the activities of service providers or, in the present instance, those of users wishing to self-handle, even if they apply without distinction both to national service providers or users and to those in other Member States, must be justified by overriding public-interest requirements and not by economic factors and must, moreover, be in proportion to the aims pursued.

1.2. *Procedure*

The German authorities have undertaken to make the entry into force of the exemption decision subject to the Commissions's decision.

As stated in its two decisions on the airports at Frankfurt and Dusseldorf ([6]), the Commission must focus its examination on:

— the existence and scope of the constraints justifying the exemption and the inability to provide openings to the extent provided for by the Directive; only space and/or capacity constraints may be taken into account,

— the plan of appropriate measures intended to overcome those constrainsts; that plan must be credible and unconditional and include a timetable for the implementation of those measures,

— conformity with the principles of compliance with the aims of the Directive, absence of distortions of competition, and the extent of the measure, as referred to in Article 9(2) of the Directive.

The aim of granting an exemption is not to give the airport a further adaptation period in addition to that already granted by Article 1 of the Directive. It must permit the airport to overcome the specific constraints which it may encounter when the market is opened up. Any exemption must therefore be examined in the light of the specific constraints put forward in justification of the impossibility of opening up the market within the time allowed. In addition, in accordance with the case law of the Court of Justice of the European Communities, any exception must be interpreted strictly and the scope of any exemption must be determined on the basis of the purpose of the measure in question ([7]).

It is in the light of these considerations that this exemption has to be examined.

In accordance with Article 9(4) of the Directive, the Commission has made a detailed analysis of the alleged space and capacity constraints, whether the decision taken is appropriate to those constraints, and the measures put forward to overcome them. Its examination was based on the dossier provided by the German authorities, its visit to Hamburg airport after the notification by the German authorities and, finally, the technical assessment made at its request by Symonds Travers Morgan.

2. **Space constraints referred to by the German authorities**

With almost 9 million passengers in 1997, Hamburg airport is an important regional hub which accomodates 85 airlines serving 124 destinations. Situated very close to the city of Hamburg and surrounded by residential buildings, the airport cannot easily expand beyond its current boundaries. Internal development and optimum use of space will be required to cope with the increase in traffic. In order to achieve this, the airport plans to develop its capacity by rebuilding Terminal 2 and creating 11 additional aircraft positions — this number being increased to 14 in the second phase of work. Although the work is currently well advanced, the spaces have not yet been officially designated as aircraft positions.

At present, the tarmac has 42 parking positions, 32 of which are for category C aircraft. The majority of these positions are occupied during the night. The dossier provided by the German authorities states that the lack of space for parking handling equipment is particularly due to the large number of aircraft parked overnight.

2.1. *The space available*

During their visit made after the notification by the German authorities, the experts appointed by the Commission noted that the space around the noses of aircraft parked 'nose in' was not fully utilised. The airport authorities explained that the proximity of the traffic lane prevented equipment being parked there for safety reasons. This argument is unsatisfactory as the space in question is used for parking in many international airports in the same situation, and even at certain positions at Hamburg airport itself. Clear demarcation of

([4]) Commission Decisions 98/387/EC and 98/388/EC of 14 January 1998, OJ No I, 173, 18. 6. 1998, p. 32.

([5]) Judgments of 25 July 1991, Médiawet, [1991] ECR p. 4007 and C-76/90, Säger: Dennemeyer, [1991] ECR, p. 4221.

([6]) See point 3 below.

([7]) See in particular the Judgment in case C116/91 *British Gas* [1992] ECR I-4071, point 12.

the spaces for parking equipment and an inspection by the supervisor, as is the practice at other airports, would solve any problems. Some airports use concrete or plastic blocks to protect the traffic lane. The standards and practices recommended by the International Civil Aviation Organisation (ICAO) — and in particular Annex 14 to the Convention on international civil aviation — which form the basis for national recommendations on aircraft positions, provide for the provision of marked spaces as safety areas but also for parking equipment, for different types of aircraft. It does not therefore seem impossible to use the space in question. According to the report requested by the Commission, and depending on the type of aircraft to be received, an area 20m by 6m can be freed on either side of the nose of the aircraft. This area of twice 120 m^2 per position means that over 2 100 m^2 could be used for equipment just on the 9 positions along the service road in front of the freight section.

The use of a large number of parking positions during the night does indeed make for intensive use of the tarmac and a certain amount of congestion early in the morning. Nevertheless, as stated by the German authorities, the period of congestion which occurs when the aircraft parked overnight are departing is relatively short, as most of the aircraft leave first thing in the morning (which makes the congestion worse). At that time, the handling equipment used to prepare aircraft for departure is also in full use in the area in question. Using the area around the aircraft positions for parking equipment, some of which was used the night before when the aircraft arrived, consequently poses no problem during the night.

The dossier attached to the decision of the German authorities also highlights the need for 20 000 m^2 of space to park equipment for around 230 flights per day. The number of flights handled is 29 % more than at Stuttgart airport, for example, which handles 180 flights a day. The amount of additional space required is estimated as being 60 % greater. Even taking into account the fact that larger aircraft need larger equipment which in turn requires more space, and that the type of equipment may have different characteristics, the difference still seems excessive. In the figures, the difference is explained by the 50 % coefficient between the static area of the equipment (floor surface occupied by the equipment) and its dynamic area (static area + area required to move the equipment): this coefficient is only 37 % in the study carried out by the Fraunhofer Institute in the context of the exemption granted to Cologne/Bonn airport. Once again, even though a certain difference can be explained according to whether the material is parked in line or regrouped in square spaces, which mean that more space is required to move the equipment, the difference is still too great.

The dossier attached to the decision also refers to a slight reduction in the available space (around 800 m^2) during the work on Terminal 2 because of the closure of three positions. The plan of works ([8]), however, indicates the closure of the aircraft positions and a diversion of the traffic lane around them, but it does not show any space for parking material at the nose-end of the positions. This loss of space is not therefore justified.

The derogation is for the reservation for Hamburg airport only of all forms of handling for the activities listed under point 5.4 of the Annex to the Directive, i.e. for loading and unloading the aircraft and transporting passengers, crew and baggage between the aircraft and the terminal. One of the arguments used as a basis for the derogation relates to problems experienced when transporting baggage and loading it in the baggage distribution room.

The baggage distribution room is very small and extremely congested at certain peak times.

The distribution system comprises a sorting system with automatic chutes down onto the trolleys for different destinations. Inside the baggage distribution building, the number of trolleys required is dependent on the number of flights to be handled at any given moment, and not on the number of operators. Strict control of trolley flow and of the number of trolleys allowed into the area, accepting only the number of trolleys required, would avoid congesting the baggage distribution room. Baggage is managed in this way at airports already open to competition, as the airport administration and supervision can impose the observance of certain rules on all operators in order to ensure that the system operates smoothly. It has not therefore been shown that it is impossible to allow other operators into the baggage sorting building. It should nevertheless be recognised that an increase in the number of operators can complicate the management of trolley movements where waiting space would be too restricted.

The problem is therefore linked to the general lack of space at the airport.

([8]) Annex 5 to the dossier provided by the German authorities.

The decision of the German authorities includes the possibility of freeing sufficient space to accommodate another operator. Improving the use of the existing space and freeing space used for old equipment would provide an additional area in the southern part of the airport. This area would not be sufficient to accommodate a third operator, however, whether as a service provider or a self-handling user.

2.2. *The choice of the German authorities*

In their decision of 23 July 1998, the German authorities expressed a preference for a self-handling user rather than a provider of handling services to third parties because of the lower space requirements of a user. They also said that where there were no requests from users for self-handling a service-provider would be admitted, but for limited operations due to the lack of space.

In the light of these points and given the fact that no user has requested self-handling since that possibility was recognised by the Directive as from 1 January 1998 and the opening of the market to a provider will enable the latter to provide services for all users at the airport, it is worth looking at whether opening-up to a provider is impossible, as the German authorities allege.

The volume of traffic handled by the user at the airport, whether passengers or freight, and in decreasing order, is one of the objective criteria for selecting users who could be authorised to self-handle if they are limited in number.

If Lufthansa, the main airline at the airport, were to opt for this right to self-handling for its own fleet and the fleet of the carriers in its group, in accordance with the Directive, there would be a major impact on space requirements owing to the number of flights involved. The amount of additional equipment required can be estimated by examining the flight timetable.

Account must be taken of the fact that, in general terms, operator proliferation causes an increase in total equipment requirements since each operator then has to cater for its own peaks, wich do not necessarily coincide with those of the airport, as in the case of a single operator. On the other hand, the monopoly operator needs less equipment due to the loss of some of his customers.

Given the estimate made by the German authorities of an extra 2 300 m^2 needed per additional operator and self-handling operations by the main user, Lufthansa, the number of flights at the airport and the timetable of those flights would mean that the latter's needs amount to almost 45 % of equipment, currently used by the monopoly operator. In its capacity as a sole service provider, the airport uses an area of almost 22 000 m^2. Lufthansa would thus need around 9 000 m^2. The effect on the needs of the monopoly operator, given the flight timetable, can be estimated at a reduction of close to 24 %, i.e. 4 800 m^2. The additional space needed due to the arrival of Lufthansa would thus be around 4 200 m^2, i.e. 21 %.

An analysis of the data in the event of the arrival of a provider of services for third parties indicates that the largest number of aircraft that can be serviced without impacting on the peaks of the airport as the provider of groundhandling services is put at 10 % of traffic. Handling additional flights would mean a lesser need of equipment, and hence space, on the part of the monopoly operator.

The total space need would be around 10 %. Even taking an additional 15 % as the figure, the greater need for space is less than in the case of a user self-handling. Should this provider also receive clientele from Lufthansa, requirements would be less because of the effect on the needs of the current monopoly operator.

The German authorities have not therefore demonstrated that the arrival of a service provider is impossible.

3. **Measures planned**

In accordance with the provisions of Article 9(2) of the Directive, the German authorities must present a schedule of appropriate measures designed to overcome the constraints cited.

The plan to expand the airport provides for the demolition in 1998 and rebuilding of Terminal 2, which should be open by the beginning of 2001. This work will accompany the construction of a new tarmac ('Vorfeld 2') [9] which should make for 11 aircraft positions initially, in 2001, and 14 subsequently. This tarmac will be linked to the terminal area by a new road.

This work should free a total area of 46 000 m^2, 13 000 m^2 of which would be reserved for groundhandling.

However, these projects are encountering legal and administrative problems and there is still some uncertainty as to when work on terminal 2 will commence and be completed and as regards the number of aircraft positions on the 'Vorfeld 2' tarmac.

[9] Ausbaustufe Vorfeld 2 (Tarmac 2 extension) — Plan 16/12/96, Annex 7.

However, Article 9 of the Directive requires the planned measures to surmount the constraints encountered to be credible and irrevocable. Given the uncertainty surrounding the projects submitted, therefore, the Commission cannot consider them to be planned measures as defined by Article 9 of the Directive.

That said, the dossier presented shows that in any event the airport undertakes to free the space needed to open up the market to the degree provided for by the Directive and the German regulation transposing it by the end of the period mentioned in the exemption by organising, in particular, the areas needed to park the groundhandling equipment on the 'Vorfeld 2' tarmac, whether or not it has received the requisite licenses for use as aircraft positions. The Commission therefore takes the view that such undertakings amount to planned measures to overcome the constraints referred to and encountered within the meaning of Article 9(2) of the Directive.

4. **Compliance with the criteria of Article 9(2) of the Directive**

Under Article 9(2) 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.'

As regards the aims of the Directive as mentioned in (i), the very title of the Directive explains that the aim is access to the market. The point of the Directive implies, however, that this access should be real. The fifth recital states that 'the opening-up of access to the groundhandling market should help reduce the operating costs of airlines and improve the quality of service provided to airport users'. Opening-up in theory, without actually happening in fact, as has been the case for self-handling since 1 January this year, would thus detract from the aims of the Directive. In contrast, opening-up which also helps to improve the services provided to, and the prices paid by, many users, as referred to in the fifth recital, will help to achieve the aims of the Directive by introducing competition between providers.

Subparagraph (iii) stipulates that an exemption must not extend further than necessary. The exemption granted by the German authorities excludes all providers of services to third parties up to 31 December 2000, even though the German authorities have themselves stated that a provider would be admitted where there are no requests from users for self-handling. Since the exemption provides for the admission of a provider only in the event of no requests for self-handling, this could be until the end of the period set for the exemption. The very wording of the exemption thus indicates that it extends further than is necessary.

As regards the duration of the restriction on a second operator over and above the airport, whether this operator be a provider or self-handling user, the exemption covers the period of the work at the airport and concerns loading, unloading and the transport of passengers, crew and baggage. The current problems of space at the airport affecting the parking of groundhandling equipment until completion of the work justify the proportionality of the measure in terms of its duration and scope.

The Commission finds that an exemption which, in the absence of any actual self-handling, excludes the arrival of any new provider of groundhandling services after 1 January 1999, the date set by the Directive for the opening-up of this market, does not meet the conditions of Article 9(2).

V. CONCLUSION

The limited space available at Hamburg airport means that only one new operator can be admitted for the operations referred to in point 5.4 of the Annex to the Directive.

Since:

— the German authorities have not shown that it is impossible to admit the arrival of a provider instead of a user, and as

— no user has requested self-handling at Hamburg airport since such a possibility has existed,

and in order:

— not to unduly prejudice the aims of the Directive, and

— to ensure that the exemption does not extend further than necessary,

the German authorities must, insofar as no user begins self-handling, in any of the space available at Hamburg airport, by 31 December 1998, allow the arrival of a provider of services to third parties as from 1 January 1999 and consequently prohibit self-handling as from that date and up to 31 December 2000,

HAS ADOPTED THIS DECISION:

Article 1

The decision to grant an exemption to Hamburg airport, as notified to the Commission on 3 August 1998, is hereby approved by the Commission provided that the Federal Republic of Germany amends it as follows:

For the activities referred to in point 5.4 of the Annex to the Directive:

— limiting self-handling to a single user and reserving the provision of services to third parties for Hamburg airport on condition that a user begins self-handling, using the space available, before 31 December 1998 and that the German authorities have notified the Commission beforehand;

— prohibiting self-handling as from 1 January 1999 where the German authorities have not notified the Commission by that date that a user has begun self-handling operations in the space available by 31 December 1998.

The exemption is granted until 31 December 2000.

Article 2

The Federal Republic of Germany shall notify the Commission of the exemption decision amended in accordance with Article 1, before it enters into force.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 30 October 1998.

For the Commission

Neil KINNOCK

Member of the Commission