II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COMMISSION

COMMISSION DECISION

of 2 July 2008

on State aid C 18/07 (ex N 874/06) which Germany is planning to implement for DHL

(notified under document number C(2008) 3178)

(Only the German text is authentic)

(Text with EEA relevance)

(2008/878/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to those provisions [1],

Whereas:

1. PROCEDURE

(1) By letter dated 21 December 2006, Germany notified the Commission of training aid for DHL.

(2) By letter dated 27 June 2007, the Commission informed Germany that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid for DHL. The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* [2]. Germany submitted its comments by letter dated 26 September 2007.

(3) The Commission called on interested parties to submit their comments. DHL and UPS Germany submitted their comments by letters dated 15 October and 26 October 2007 respectively. The observations of the third parties were submitted to Germany for comment by letters dated 16 November and 20 November 2007. Germany replied by letter dated 14 December 2007. The Commission requested additional information by e-mails of 12 February and 5 June 2008, to which Germany replied by letters dated 14 February, 31 March and 17 June 2008.

2. DESCRIPTION OF THE PROJECT

2.1. The beneficiary

(4) DHL is one of the largest express parcel operators, with a worldwide turnover of EUR 18,2 billion in 2005. It is wholly owned by Deutsche Post AG.

(5) DHL has built a new air logistics centre for delivery and airfreight in Leipzig-Halle, Germany, which was expected to become operational by the end of October 2007. The entire investment costs of this project amounted to EUR 250 million. In April 2004 DHL was granted some EUR 70 million in regional investment aid, which was approved by the Commission as State aid N 608/2003 with a maximum aid intensity of 28 %.

[1] OJ C 213, 12.9.2007, p. 28.

[2] See footnote 1.

(6) The delivery and airfreight centre is operated by the two beneficiary companies, DHL Hub Leipzig GmbH (DHL Hub) and European Air Transport Leipzig GmbH (DHL EAT), which are wholly owned by Deutsche Post AG through other subsidiaries. DHL Hub will provide ground handling services for the airfreight operation, whereas DHL EAT will be responsible for inspections of the DHL air fleet.

(7) Both DHL Hub and DHL EAT are located in an area assisted under Article 87(3)(a) of the EC Treaty.

2.2. **The training project**

(8) DHL provides all ground handling services as well as the pre-flight and ramp checks for arriving and departing aircraft at the logistics centre. For this purpose, the company plans gradually to employ around 1 500 people and to provide them with appropriate training. However, the notified aid relates only to training measures for 485 employees.

(9) Germany notified a direct grant for the training measures from the Free State of Saxony (50 %) and the *Land* of Saxony-Anhalt (50 %) amounting to EUR 7 753 307.

(10) The training which DHL is planning will be provided by DHL Hub (320 persons) and by DHL EAT (165 persons) ([3]).

2.2.1. *DHL Hub*

(11) The training to be provided by DHL Hub is mainly general training intended to provide workers with the knowledge and ability to perform specific activities. It consists of theoretical training and practical on-the-job training. The training at DHL Hub relates to the following more detailed job descriptions for 320 employees:

Table 1

Job description	Number of employees	Tasks
Ramp Agent II	210	Loading and unloading of aircraft
Security Agent	110	Checks on individuals and freight
Managers (operations)	(110) (*)	Middle management tasks; personnel management and planning; leadership

(*) DHL will provide additional management training for 110 employees who have already participated in other training courses, i.e. Ramp Agent II, Security Agent or Technician/Mechanic.

([3]) For further details of the training project, see the decision initiating the procedure.

(a) ***Ramp Agents II***

(12) The main activities of Ramp Agents are the loading and unloading of aircraft on the basis of a strict schedule. They also have to be able to manage the ground service equipment, to pass on flight documentation, to draw up reports and to communicate with pilots and the airport authorities.

(13) The training of Ramp Agents comprises 19 courses plus practical on-the-job training for a total of 77 days, of which 47 days are for on-the-job training. The training is for workers with previous unrelated training. The theoretical training is to be provided before the hub becomes operational. The training includes one course, 'Unit load device build up', which is considered to be specific training as it deals with the building up of specific containers used only by DHL. The general training courses also concern:

(a) general security training such as fire protection, cargo door operation, first aid, hazardous goods recognition and ramp safety;

(b) general technical training leading to the award of licences for activities such as apron driving, ground service equipment and forklift driving;

(c) other general technical training such as aircraft towing, aircraft de-icing and airside supervision;

(d) some general training such as environment management (ISO/DIN Standard 14001) or quality management and processes (ISO/DIN Standard 9001).

(14) National and European legislation do not, in principle, set a minimum number of employees or provide for specific training requirements or licences for the activity of Ramp Agent II. However, Germany indicated that five of the planned courses (including fire protection, first aid, dangerous goods recognition and ramp safety) are compulsory under the existing rules for all employees ([4]) and that additional courses, including

([4]) Personnel in direct contact with freight must, under the law, hold an accredited certificate for handling freight; all personnel employed in the non-public area of the airport must attend security training; personnel in contact with the aircraft must attend cargo door operation training; in addition, depending on the specific activity, the personnel must have qualifications for operating machines and vehicles.

relevant on-the-job training, must be attended by a minimum number of persons (around 70), i.e. cargo door operation and the general training for which licences are required. These persons could then transfer their knowledge to their colleagues at short instruction sessions.

(15) Germany indicated that subcontracting was another possibility and provided a cost analysis.

(b) ***Security Agents***

(16) The activity of Security Agent involves carrying out checks on individuals and freight with the aim of preventing any disruption of operations. The training of Security Agents involves only general training:

(a) general security training such as fire protection, first aid and hazardous goods recognition;

(b) general technical security training required by law for security agents such as danger of terrorism, access security, control and searches, security of luggage and freight, weapons and secure areas;

(c) other general technical training involving the award of licences, such as apron driving;

(d) other general technical security training in fields such as law, the science of weapons and explosives, basics of control and reading of X-rays;

(e) some general training such as quality management and processes (ISO/DIN standard 9001).

(17) The training measures are consistent with the relevant national and European legislation. DHL plans to provide all Security Agents with comprehensive training regarding safety aspects which will, however, in the absence of the State aid, be restricted to the minimum, i.e. general technical security training. Moreover, the other general technical security training will again be provided for a limited number of employees who will then pass on their knowledge to the other employees.

(18) Here too, Germany presented subcontracting as an alternative solution the costs of which would be some [(15-30 %)] (*) lower than DHL's personnel costs.

(c) ***Middle management training***

(19) The training of operations middle management is intended for personnel at the logistics centre. The Commission is given to understand that they will undergo the above training before acquiring more in-depth knowledge of the areas they are supposed to manage. They will also be trained in subjects such as labour law, basic communications, human resource management and conflict management, languages and team building.

2.2.2. *DHL EAT*

(20) The tasks performed by DHL EAT concern essentially aircraft maintenance before an aircraft is released to service, and the training provided relates to the following job descriptions for 165 employees:

Table 2

Job description	Number of employees	Tasks
Maintenance mechanic authorising release CAT A	97	Simple scheduled maintenance or simple defect rectification before release to service
Maintenance technician – mechanic authorising release CAT B 1	68	Maintenance including airframe structure, power plant and electrical systems before release to service

2.3. **Eligible training costs and planned aid**

(21) In the notification Germany provided an overview of eligible costs which was reproduced in the decision initiating the procedure. The total eligible costs were EUR [(10-15)] million for the training project and EUR 7 753 000 for the planned training aid.

3. **DECISION TO INITIATE THE FORMAL INVESTIGATION PROCEDURE**

(22) The formal investigation procedure was initiated because the Commission had doubts as to whether the training aid was compatible with the common market.

(*) Confidential information.

(23) The Commission doubted in particular whether the aid was actually necessary for the implementation of the training project. It noted that training aid can be regarded as being compatible with the common market pursuant to Article 87(3)(c) of the EC Treaty only where it is not directly required for the operational l activities of the beneficiary. In this respect the Commission made reference to its previous decision-making practice ([5]). It had reason to assume that the beneficiary would need to provide, at least up to a certain extent, similar training to its employees even in the absence of aid.

(24) First, it was clear that DHL had invested massively in the logistics centre and wanted it to become operational. Germany confirmed that the workers in Belgium were, in principle, unwilling to move to Germany. Therefore DHL had to recruit new workers before it could start operations.

(25) Second, it seemed that, in order to operate the logistics centre, the workforce required an amount of largely technical training in the following areas:

(a) **Transmission of company-specific knowledge required for the operation of the business**, i.e. knowledge about specific, tailor-made freight systems of DHL.

(b) **Acquisition of certain qualifications required by law for the operation of the business.** In other words, a certain number of workers need to be acquainted with security concerns. This is required by law and needs some formal certification. This follows from the fact that the services provided by DHL intrinsically involve considerable safety and security risks.

(c) **Provision of general technical training directly required to operate the logistics centre.** This involves courses such as the Ramp Agent II training for aircraft towing, aircraft de-icing, apron driving, forklift driving and ramp safety.

(d) **Provision of on-the-job training required for the smooth operation of the hub.** Trainees will be acquainted with the work processes, something which is particularly important for airfreight operations as the loading of airplanes has to follow a strict timetable, since a single mistake can cause huge delays.

(e) **Provision of other general knowledge** not covered by points (b) to (d).

(26) Third, the Commission doubted whether DHL would be able to attract in sufficient numbers on the local or European labour market workers who had the above mentioned skills.

(27) Fourth, the Commission had doubts whether the hiring of skilled workers would be an adequate alternative to in-house training. It assumed that at least the specific training and the security training have to be provided by DHL in any event as the former cannot be provided by outside trainers and as DHL must show that its security training is adequate.

(28) Fifth, the Commission had doubts whether DHL would be able to dispense with some of the courses in the training package, in particular as regards Ramp Agent II, for which it was planned, as indicated in the notification, that even workers already in possession of a licence should undergo the entire training again. Moreover, it was doubtful whether only a limited number of people could be trained as this might adversely affect the smooth operation of services. In fact, DHL had intentionally already recruited the entire personnel with a view to being trained so that it did not make much sense to abandon the planned training and pay employees who were not engaged in any activity.

(29) Sixth, the Commission was not sure about DHL's assertion that, in the absence of aid, various services would be contracted out so as to avoid the planned training given that, on the one hand, even then some training under points (a), (b) and (d) would also be necessary and, on the other, the specific aim of DHL's entire investment in Leipzig-Halle is to provide all services related to express parcel delivery using its own personnel and, as the Commission understood from the meeting with the German authorities, even to offer these services to competitors operating at the same airport.

(30) However, the Commission had, with one exception, no doubt that the training costs had, in principle, been calculated correctly. The only misgivings expressed by the Commission concerned the observation that a large part of the training was to be on-the-job training, with the result that the training might have to be deducted from trainee costs as productive hours.

([5]) See Commission Decision 2007/612/EC of 4 April 2007, *General Motors Belgium in Antwerp* (OJ L 243, 18.9.2007, p. 71) and Commission Decision 2006/938/EC of 4 July 2006, *Ford Genk* (OJ L 366, 21.12.2006, p. 32).

4. **COMMENTS FROM GERMANY**

(31) Germany argues that the notified training aid fulfils all of the criteria laid down in Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid [6]. Germany first supplied sufficient information to show that no productive hours are involved in the on-the-job training.

(32) Second, Germany disputes the Commission's right to apply the necessity criterion in the present case as this would be in breach of the principle of non-discrimination. This new approach does not have a legal basis and is not in line with the relevant EC legislation or Commission decision-making practice.

(33) Germany argues that recital 11 to Regulation (EC) No 68/2001 specifies the three criteria which need to be assessed when determining whether aid is limited to the minimum necessary: the type of training provided, the size of the enterprise and its geographical location. These three criteria make it possible to determine whether the aid measures have an incentive effect and are proportional. According to the Framework on training aid [7], it is only in the case of specific training measures for large undertakings outside areas assisted under Article 87(3)(a) or (c) of the EC Treaty that the incentive effect is not presumed to exist. Since more than 80 % of the notified training project consists of general training measures and involves an undertaking in an area assisted under Article 87(3)(a), the training aid has an incentive effect. Also, since the notified aid does not exceed the maximum aid intensities, the positive effects of the assisted training measures are proportional to the distortion of competition, thereby fulfilling the proportionality criterion.

(34) Third, Germany underlines the fact that the Commission is required to apply the compatibility criteria specified in recital 32 also for projects not caught by the notification requirement. It argues that different compatibility criteria should not be applied to aid exempted from notification or to aid which exceeds the EUR 1 million threshold and should therefore be notified; projects which need to be notified must not be assessed in a more restrictive manner than projects exempted from notification. Therefore, training aid is compatible with the common market if it fulfils all the conditions set out in Regulation (EC) No 68/2001. Germany claims that this interpretation has been borne out by the Commission in its long-standing decision-making practice, e.g. in the *Volvo Gent* case [8]. It expressly states that the Commission should also bear in mind the fact that the DHL training project fulfils the criteria laid down in the *Webasto* decision [9].

(35) Fourth, the application of different assessment criteria contravenes the principles of legal certainty and equality of treatment.

(36) Fifth, Germany argues that the Commission decisions in the *Ford Genk* and *GM Antwerp* cases do not constitute suitable precedents since the facts of the cases were different from those of the present case. Whereas in the first two cases training aid was envisaged for the introduction of a new model and for the continued employment of personnel, the training aid for DHL is to be used for training newly recruited employees to operate a newly built logistics centre. The DHL project also differs from the other two cases in the following respects: general training makes up more than 80 % of the project; the undertaking is based in an area assisted under Article 87(3)(a) of the EC Treaty; DHL intends to create new jobs at the logistics centre; and, unlike the car sector, the air transport sector does not suffer from overcapacity but is expanding rapidly.

(37) Lastly, Germany provides additional information as regards the matters raised in the decision initiating the procedure. It explains that the relevant legal provisions lay down minimum standards for the level of training. However, they do not set a minimum number of qualified personnel which the undertaking has to recruit. On the other hand, Germany indicates how many employees are necessary for the logistics centre to start operating and concludes that the training measures for the additional employees go beyond what is necessary from an operational point of view. According to a study provided by Germany and drawn up by an external training consultant, DHL could successfully start operating in Leipzig-Halle with a smaller number of trained employees than envisaged in the notified training project.

[6] OJ L 10, 13.1.2001, p. 20.
[7] OJ C 343, 11.11.1998, p. 10.
[8] Commission Decision of 11 March 2008 on State aid C 35/07, *Volvo Cars Gent* (not yet published).
[9] Commission Decision of 16 May 2006 on State aid N 635/05, *Webasto Portugal* (OJ C 306, 15.12.2006, p. 12).

5. COMMENTS FROM INTERESTED PARTIES

(38) Comments were also submitted by the beneficiary, DHL, which, like Germany, argues that the Commission diverges in its compatibility assessment from its general decision-making practice in earlier cases. In its view, the notified aid fulfils all the criteria set out in Regulation (EC) No 68/2001. The Commission's approach violates the principles of legal certainty and equality of treatment, which prohibit treatment different from that of previous training aid decisions where the necessity issue was not assessed in detail. Further, the *Ford Genk* and *GM Antwerp* decisions do not reflect general decision-making practice because the circumstances of these cases are different and cannot be applied by analogy to the case of DHL Leipzig. Instead, DHL invokes the criteria set out by the Commission in its decision of June 2006 approving training aid for *Webasto* and according to which the DHL training project must also be compatible with the common market. Finally, DHL reiterates that differential treatment of the notified training project leads to inadmissible discrimination against it.

(39) DHL also provides additional information on the issues raised in the Commission decision to initiate the procedure. First, the relevant provisions of national, European and international legislation determine only the content of training and qualifications for the handling of freight and aircraft but do not specify a minimum number of employees. Second, the training measures planned not only fulfil the existing legal requirements but go beyond what is mandatory. Therefore, for all the measures exceeding the legal requirements alternative scenarios could be envisaged (e.g. outsourcing and subcontracting). However, since these alternative scenarios are only possible variants, DHL did not commission a detailed cost analysis which would include the costs for the mandatory and/or minimum training needed in any event and indicate the extra costs of subcontracting and/or recruiting skilled employees. DHL does not have any information on the degree of training normally provided in the sector.

(40) UPS, a competitor of DHL, submitted comments supporting the Commission's position. First, it explains that the recruitment of new employees for DHL Hub and DHL EAT entails in any event certain training and instruction measures that should be carried out. Thus, the training measures are, to a certain extent, necessary and would need to be carried out by the undertaking even in the absence of aid.

(41) Second, according to UPS, DHL is required under the relevant national and European legislation to provide a minimum amount of training for its employees, e.g. regulated agents. Regulation (EC) No 2320/2002 of the European Parliament and of the Council of 16 December 2002 establishing common rules in the field of civil aviation security [10] provides that regulated agents must be designated, approved and listed by the appropriate authority, here the Federal Aviation Authority. To this end, the Authority adopted guidelines and published a model training course (*Musterlehrplan*) which lay down the mandatory training measures to be provided. As regards the employees of DHL EAT, the mandatory training measures are spelt out in Commission Regulation (EC) No 2042/2003 of 20 November 2003 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks [11]. Third, since DHL has received regional aid for job creation, it is not to be assumed that DHL would dispense with the training measures and recruit fewer people, and instead would subcontract or outsource.

6. ASSESSMENT OF THE AID

6.1. Existence of State aid

(42) The Commission considers that the measure constitutes State aid within the meaning of Article 87(1) of the EC Treaty that has been made available in the form of a grant financed by state resources. The measure is selective as it is limited to DHL. The selective grant threatens to distort competition by favouring DHL over other competitors not receiving aid. Finally, the market for express parcel delivery, on which DHL is a major player, is characterised by intensive trade between Member States.

(43) Germany requests approval of the aid on the basis of Commission Regulation (EC) No 68/2001.

(44) According to Article 5 of that Regulation, where the amount of aid granted to one enterprise for a single training project exceeds EUR 1 million, the aid is not exempted from the notification requirement pursuant to Article 88(3) of the EC Treaty. The Commission notes that the proposed aid in this case amounts to EUR 7 753 307 and is to be paid to one enterprise and that the training measures constitute a single project. It considers that the notification requirement therefore applies to the proposed aid and that it has been complied with by Germany.

[10] OJ L 355, 30.12.2002, p. 1.
[11] OJ L 315, 28.11.2003, p. 1.

(45) Recital 16 to Regulation (EC) No 68/2001 reiterates the rationale of Article 5 and explains that such aid cannot be exempted: 'It is appropriate that large amounts of aid remain subject to an individual assessment by the Commission before they are put into effect.'

(46) Therefore, when assessing individual training aid which does not qualify for the exemption laid down in Regulation (EC) No 68/2001, the Commission must, in line with its previous decisions ([12]), make an individual assessment ([13]) on the basis of Article 87(3)(c) of the EC Treaty before approving implementation of the aid. For this individual assessment, it must, by analogy, base itself on the fundamental principles laid down in Regulation (EC) No 68/2001. This entails in particular verification of compliance with the formal exemption criteria laid down in Article 4 of that Regulation and of whether the aid is necessary as an incentive for the beneficiary to undertake the training activities.

6.2. **Compatibility with the common market**

(47) In the decision initiating the procedure the Commission assessed compliance of the notified project with the exemption criteria laid down in Article 4 of Regulation (EC) No 68/2001.

(48) First, it is to be noted that the indicated aid intensity does not exceed the ceilings laid down in Article 4(2) and (3) of Regulation (EC) No 68/2001, namely 35 % for specific training (35 % of […] = [(approximately 5-25 %)]) and 60 % for general training (60 % of […] = [(approximately 75-95 %)]). Germany may raise the ceilings of 25 % and 50 % by 10 percentage points given that the project is located in an area assisted under Article 87(3)(a) of the EC Treaty.

(49) Second, the measure's eligible costs comply with Article 4(7) of Regulation (EC) No 68/2001. The investigation confirmed that the trainees' eligible personnel costs were clearly limited to the total amount of the other eligible costs. Germany furnished proof that, although a large part of the training is on-the-job training, no productive hours are involved.

6.3. **Necessity of the aid**

(50) The main argument in the decision initiating the procedure was that a training measure can be found compatible with the common market pursuant to Article 87(3)(c) of the EC Treaty only when it is not directly required for the operational activities of the beneficiary. The Commission noted that the necessity of the aid is a general compatibility criterion and concluded that, where the aid does not lead to more measures being undertaken than would be the case with market forces alone, the aid cannot be expected to have positive effects offsetting the distortion of trade and cannot, therefore, be authorised. If the company would have undertaken the assisted measures in any event, and notably in the absence of aid, the training aid in question cannot be assumed to '*promote*' economic development within the meaning of Article 87(3)(c) of the EC Treaty and, in accordance with recital 10 to Regulation (EC) No 68/2001, to help correct the market imperfection that results in enterprises generally underinvesting in the training of their workers ([14]). This is without prejudice to aid exempted from the notification requirement under Regulation (EC) No 68/2001 where it is assumed *prima facie* that such aid serves to promote economic development.

(51) The fact that the Commission is assessing whether an incentive effect exists and rejects the presence of such an effect where training is required by law is, in Germany's view, a novel approach that is not consistent with the EC rules, arbitrarily deviates from existing decision-making practice and prevents the granting of training aid for regional policy purposes. The Commission cannot accept these arguments for the reasons stated below.

([12]) See Commission decisions in *Ford Genk, General Motors Belgium, Auto-Europa Portugal* and *Volvo Cars Gent*.

([13]) This follows also from recital 16 to Regulation (EC) No 68/2001.

([14]) In the context of training aid, recital 10 to Regulation (EC) No 68/2001 states that 'Training usually has positive external effects for society as a whole since it increases the pool of skilled workers from which other firms may draw, improves the competitiveness of Community industry and plays an important role in employment strategy. In view of the fact that enterprises in the Community generally underinvest in the training of their workers, State aid might help to correct this market imperfection and therefore can be considered under certain conditions to be compatible with the common market and therefore exempted from prior notification.' Recital 11 adds that it must be 'ensure(d) that State aid is limited to the minimum necessary to obtain the Community objective which market forces alone would not make possible […]'.

(52) First, it should be recalled that training aid is assessed under Regulation (EC) No 68/2001, which states in recital 4 that it is 'without prejudice to the possibility for Member States to notify training aid. Such notifications will be assessed by the Commission *in particular* in the light of the criteria set out in this Regulation, or in accordance with the applicable Community guidelines and frameworks, if such guidelines and frameworks exist.'

(53) Moreover, it is reiterated in recital 16 that 'It is appropriate that large amounts of aid remain subject to an individual assessment by the Commission before they are put into effect. Accordingly, aid exceeding a fixed amount, which should be set at EUR 1 million, is *excluded from the exemption provided for in this Regulation* and remains subject to the requirements of Article 88(3) of the Treaty.'

(54) Finally, it is stipulated in recital 4 that 'The framework on training aid should be abolished from the date of entry into force of this Regulation, since its contents are replaced by this Regulation.'

(55) As the planned aid exceeds EUR 1 million, there is no doubt that it must be notified and approved by the Commission. Moreover, it is clear that such aid must, in principle, comply with the exemption criteria laid down in Article 4 of Regulation (EC) No 68/2001.

(56) However, Germany questions whether the Commission is also empowered to scrutinise whether the aid has an incentive effect. The Commission is of the opinion that the concept of State aid and in particular the criterion of the necessity of aid entail the existence of an incentive effect of the aid for the beneficiary. It cannot serve the common interest if the State supports measures (including training measures) that a beneficiary would undertake in any event. The Commission's recent decisions have specifically included an assessment of the incentive effect for training measures (*Ford Genk, GM Antwerp*), in line with Regulation (EC) No 68/2001, the State Aid Action Plan and Court rulings on the conditions for finding aid to be compatible with the common market.

(57) In order to underline its position, Germany claims, first, that compatibility with the common market needs to be assessed in the light of the criteria laid down in the Regulation and, in this connection, cites recital 4 to Regulation (EC) No 68/2001 to the effect that the aid will 'be assessed by the Commission in particular in the light of the criteria set out in this Regulation'. Germany disregards the fact that the words 'in particular' mean precisely that the individual assessment is not limited to the aid assessment provided for in Regulation (EC) No 68/2001. Since recital 16 clearly indicates that such aid remains subject to an individual assessment, there can be no doubt that this assessment is not confined to the criteria laid down in the aforementioned Regulation and must be carried out directly on the basis of Article 87 of the EC Treaty.

(58) Second, Germany argues that Regulation (EC) No 68/2001 should be interpreted in the light of the 1998 Framework on training aid, which was the predecessor of that Regulation and laid down the criteria for assessing the existence of an incentive effect in the case of substantial aid. In particular, it states that the Framework indicated that an incentive effect was to be assumed in the case of training taking place in an area assisted under Article 87(3)(a) or (c). However, the Commission cannot accept this argument as recital 4 to Regulation (EC) No 68/2001 leaves no doubt that the Framework on training aid was abolished on the date of entry into force of the Regulation. The intention of the Commission – and the effect of the Regulation – was to replace the Framework with the Regulation. On the one hand, this is apparent from other language versions where recital 4 to Regulation (EC) No 68/2001 makes it clear that the Framework is 'abolished' since its contents are 'replaced'. On the other hand, this is clearly stated in previous Commission decisions ([15]). What is more, the Regulation did not take over the Framework's legal presumption of the existence of an incentive effect but instead deliberately stipulated in more general terms that, under certain conditions, training aid can be found to be compatible with the common market ([16]). However, if an enterprise would have undertaken the assisted measures in any event, and notably in the absence of aid, the aid cannot be considered to have an incentive effect.

(59) Third, Germany and in particular the beneficiary argue that an additional assessment of the necessity of the aid based on Article 87(3)(c) of the EC Treaty would mean that Regulation (EC) No 68/2001 would, in its entirety, be in breach of this provision of the Treaty. It is clearly assumed here that the necessity of the aid is not being assessed. The Commission cannot accept this argument either since it obviously disregards the fact that the necessity criterion is also assumed to be met in the case of aid not exceeding EUR 1 million that fulfils the criteria laid down in that Regulation.

([15]) See, for example, Commission Decision 2001/698/EC of 18 July 2001, *Sabena* (OJ L 249, 19.9.2001, p. 21), where recital 28 states that: '… the Framework has been superseded by Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid'.

([16]) Recital 50 provides more detail on the observations made in Regulation (EC) No 68/2001 regarding the incentive effect.

(60) Fourth, Germany asserts that the Commission is deviating from its practice in previous cases where it did not assess the existence of an incentive effect. This is correct. However, the Commission has indicated that it changed its practice on the basis of the refined economic approach. This change took place in the in-depth assessment of the *Ford Genk* and *GM Antwerp* aid cases and was explicitly acknowledged there. Nevertheless, Germany indicates that the Commission's practice lacks coherence since, after initiating the formal investigation procedure in the *Ford Genk* case, it took a decision in at least two cases, namely *BMW Austria* (Case N 304/2005) ([17]) and *Webasto* (Case N 653/2005), without undertaking a corresponding assessment or on the basis of another assessment. However, the Commission notes that these decisions were taken without an in-depth assessment and before completion of the first of the two in-depth assessments mentioned above, in which the Commission refined its approach. It is not disputed that the Commission can refine and change its approach if there are sufficient reasons to do so. This was the case with *Ford Genk* and *GM Antwerp* but not with earlier aid decisions. Hence the Commission could, prior to the final decision of *Ford Genk*, still rely on its previous decision-making practice.

(61) Fifth, Germany and the beneficiary challenge the argument that the Commission can rely on the *Ford Genk* and *GM Antwerp* decisions because the facts of these cases differ from those in the DHL case. Instead, the Commission should have relied on the *Webasto* decision. It can certainly not be argued that the aid for DHL should be treated differently because it does not concern, like the other two cases, the automotive sector. The decision in *Webasto*, on which Germany and the beneficiary base themselves, concerns the automotive sector. The only difference might be that the first two cases concern existing installations while DHL and *Webasto* concern new installations. Nevertheless, while it is not disputed that in the first two cases any support for measures that would have been undertaken in any event is operating aid, the Commission fails to see why no operating aid is involved in training measures in a new installation that would have been undertaken in any event. Here too, the company receives support for measures it would have to undertake in any event.

(62) What is more, training measures in the case of a new installation that would have been undertaken in any event cannot be justified either by considerations underlying the granting of regional aid as regional disadvantages should be offset by regional investment aid and not by training aid. In this connection, Germany claims that the prospect of receiving State aid for necessary and comprehensive training measures played a crucial role in the final relocation decision taken by DHL. However, the Commission maintains that it is usual in the European Union for undertakings to take decisions in an attempt to reduce costs and increase profitability. Undertakings considering a relocation of their production often consider several competing sites in different Member States. The decision on location is ultimately influenced not only by expected operating costs (including training costs for newly recruited, often unskilled employees) and other economic advantages or disadvantages (e.g. local rules on operating schedules) but also, to a certain extent, by the possibility of receiving government support (i.e. regional aid). The Commission cannot accept Germany's argument since, unlike regional investment aid, the objective of training aid is not to influence the choice of location but to offset the underinvestment in training in the Community. Lower skill levels in an assisted area are a regional problem which is to be resolved by regional investment aid.

(63) On the basis of the information provided, the Commission comes to the conclusion that DHL would need to provide much of the training for its employees in any event, i.e. even in the absence of aid. This follows from two main observations which are elaborated on below: first, training for employees is necessary in order to be able to start operating the logistics centre and, second, the training measures are, to a large extent, required by law.

(a) ***Training required for operation of the new installation***

(64) As regards the necessity of training, the relocation of DHL to Leipzig-Halle, Germany, is similar in its effects to the establishment of a new undertaking in that DHL must employ new workers in order to start operations. Its operational needs can apparently be met in three ways: it could employ new workers who would need training; it could recruit skilled employees; or it could, in the absence of skilled employees, subcontract certain services.

([17]) OJ C 87, 11.4.2006, p. 4.

(65) For one thing, Germany has not provided any additional information to allay the Commission's doubts as to whether DHL would be able to recruit a sufficiently trained workforce for its new location. Rather, it has confirmed that workers from Brussels, DHL's existing location, are basically unwilling to move to Germany. Moreover, DHL has not provided any proof that it would be able to attract skilled workers from the local or European labour market in sufficient numbers to satisfy its business needs. Apparently no such appropriately skilled workers exist on the local market and it seems quite difficult to find such workers on the European market for air transport services.

(66) For another, Germany has not convincingly reinforced DHL's argument to the effect that, without the aid, several services would be subcontracted to local firms, with the result that the planned training measures could be dispensed with. Nor has it provided any proof of the availability of such service providers at Leipzig airport. Given that, first, even with subcontracting, some training measures would still be necessary and, second, the entire investment by DHL in Leipzig-Halle is intended precisely to provide all the services related to express parcel delivery using its own personnel and even to offer these services to competitors operating at the same airport, the Commission comes to the conclusion that subcontracting does not fit into the business plan and would involve additional costs.

(67) Germany also argues that, since DHL will be creating new jobs in an area assisted under Article 87(3) of the EC Treaty, the aid is not simply operating aid as in the Belgian car cases, but aid for a new installation for which no trained workers are available. The Commission has to reject this argument as DHL would have had to undertake the training measures for the new operation elsewhere than in Brussels in any event and irrespective of the new location.

(b) ***Training required by law***

(68) According to the information at the Commission's disposal, most of the training measures are mandatory under national and European legislation. Given the specific nature of the services provided by DHL, which involve a considerable risk for safety and security, there are several minimum standards and safety requirements under national or European legislation for the handling of freight and the checks and technical inspections of aircraft.

DHL EAT mechanics and technicians

(69) This is the case with training measures relating to pre-flight and ramp checks to be carried out by DHL EAT mechanics and technicians. According to Regulation (EC) No 2042/2003, the personnel involved in aircraft maintenance must be licensed to issue release certificates. The conditions for obtaining such a licence are set out in the above mentioned Regulation and relate to the scope and content of the corresponding training measures.

(70) The planned training measures comply with the mandatory requirements mentioned above and concern two vocational categories: Line Maintenance Certifying Mechanic (CAT A) and Maintenance Certifying Technician/Mechanic (CAT B1). The training for both careers consists of the following modules:

(a) English courses, including technical English;

(b) Basic technical knowledge, such as electrics, electronics and aerodynamics;

(c) Practical implementation of the basic technical knowledge acquired;

(d) Further training for CAT B1.

(71) All DHL EAT training measures are followed by on-the-job training days, which significantly outnumber the working days devoted to theoretical training.

(72) Germany is aware that, without the adequately skilled and licensed personnel, DHL cannot operate its business. As the entire training programme is required by Regulation (EC) No 68/2001, the German authorities accept that DHL may not dispense with any of the training measures. However, they claim that, in the absence of aid, DHL would not provide any training at all but instead would recruit licensed employees from competitors or would have recourse to subcontracting.

(73) According to the cost analysis provided by Germany, subcontracting costs are lower than the personnel costs, including training (about [(5-20 %)] for CAT A and about [(10-30 %)] for CAT B1). However, Germany did not provide any evidence of the existence or availability of appropriate service providers.

(74) As regards the recruitment of skilled workers from competitors, Germany did not provide any proof of the availability of trained and qualified personnel on the European labour market who would be willing to move to Leipzig-Halle. It itself has acknowledged that the European labour market for air transport services is experiencing a shortage of trained and qualified mechanics and technicians.

(75) Further, Germany has provided a cost analysis for the English language courses planned for the DHL EAT mechanics and technicians. It argues that these are general measures and additional to mandatory training. Therefore, for these courses it calculated eligible costs amounting to EUR [(0,5-1)] million. However, the Commission notes, first, that the courses concern technical English. Second, it observes that the technical checks on aircraft are standardised throughout Europe, so that DHL EAT mechanics and technicians must have a command of technical English. The Commission also understands that these technical English courses are part of the standardised, mandatory training programme. It takes the view therefore that DHL would, in any event, have to provide courses in technical English, even in the absence of aid.

(76) The Commission accordingly concludes that the training measures mentioned above are both mandatory and necessary for the successful operation of DHL EAT and would be undertaken by the company in any event, even in the absence of aid. Consequently, it considers that the training costs for DHL EAT mechanics and technicians do not constitute eligible costs.

Ramp Agents II

(77) Ramp Agents II perform the following activities: managing the ground service equipment; loading and unloading aircraft; passing on flight documentation; drafting reports; and communicating with pilots and the airport authorities. The notified project envisages the training of 210 Ramp Agents II and eligible costs are put at EUR [(2-3)] million.

(78) Under German law, in order to be allowed to work on the airport apron, Ramp Agents II must have been trained in the handling of ground service equipment (*Arbeitsschutzgesetz*) and in security (BGV C 10 FBO) and must be licensed to operate apron vehicles (BGG 925 – *Ausbildung und Beauftragung der Fahrer von Flurförderzeugen*). They must also be trained in the handling of hazardous goods and be aware of the potential associated risks (*Gefahrstoffeverordnung*). Finally, they must undergo dangerous goods training, in conformity with the provisions of the IATA Dangerous Goods Regulation.

(79) It will be seen from recitals 77 and 78 that the training courses provided for in the notified project are, to a large extent, mandatory aircraft towing and pushback; aircraft de-icing (basic course); aircraft de-icing (refresher course); apron driver licence; airside supervision; fire protection instruction; cargo door operation; first aid; forklift certificate; IATA PK 7/8; ground service equipment; ramp safety; safety instruction; and security awareness. The ULD build-up course is a specific training measure designed for the handling of DHL containers.

(80) The only courses that are not mandatory are G25/41 occupational health checks (4 out of a total of 240 training hours), DIN EN 9001:2000 quality and processes and DIN EN 14001 environmental management and organisational structure (8 out of a total of 240 training hours). However, since Germany has emphasised that DHL intends itself to provide all hub-related services and even to offer them to competitors operating at Leipzig-Halle airport and since it has not established that, in the absence of aid, DHL would not provide these training courses, the courses apparently form part of the training package necessary for DHL employees to successfully start operating the airfreight centre, which, alongside Hong Kong (China) and Wilmington (USA), is DHL's main worldwide hub. In particular, the course on occupational health appears to be indispensable since it teaches staff to identify any employees who might represent a risk for their working environment, as the smooth operation of DHL depends on the prevention and elimination of any unforeseen delays. According to the information provided, Ramp Agents II attending such training will also be able to check the general professional aptitudes of future employees. In line with its assessment

framework in recital 25, the Commission concludes that, although the training is not required by law, it is necessary for the smooth operation of the hub and so would be provided in any event by DHL. The training course on quality standards, although not itself mandatory, has been imposed on DHL branches by the general management of Deutsche Post. DHL has announced that the entire workforce of DHL would receive specific training with a view to obtaining the DIN EN 9001 certificate ([18]). Moreover, it has indicated that the DIN EN 14001 standard is to be introduced as from July 2008 ([19]). Therefore the training measures that are the subject of the present decision are clearly required to meet the standards imposed by the company's business strategy and so would, in any event, have been implemented in the absence of aid. Moreover, since DHL subsidiaries advertise the fact that they operate to the highest standards as evidenced by the relevant DIN certificates, DHL, as a leading service provider, can include these costs in its pricing strategy. Accordingly, the Commission considers that DHL would have provided the above training measures even in the absence of aid.

(81) In view of this, the Commission concludes that, while some of the training measures for Ramp Agents II are mandatory, others form part of the company's quality strategy, with the result that, without exception, they are all necessary for the successful operation of the airfreight centre and would be undertaken by the company in any event, even in the absence of aid. The Commission considers therefore that the training costs for Ramp Agents II do not constitute eligible costs.

Security Agents

(82) The relevant legislation in this area is Regulation (EC) No 2320/2002. Sections 8 and 9 of the German air safety law (*Luftsicherheitsgesetz*) require the airport operator and airfreight operators to train their security personnel and any other employees.

([18]) http://www.dpwn.de/dpwn?skin=hi&check=yes&lang=de_DE&xmlFile=2000910

([19]) http://www.dpwn.de/dpwn%3Ftab%3D1 %26skin%3Dhi%26check%3Dyes%26lang%3Dde_DE%26xmlFile%3D2008898

(83) To a large extent, the training courses for Security Agents planned by DHL correspond as regards both content and number of hours to the training measures provided for in the national legislation (*Musterlehrplan für Luftsicherheitskontrollkäfte für Personal- und Warenkontrollen*) implementing Regulation (EC) No 2320/2002. The training module IATA PK 7/8 is also mandatory under the IATA Dangerous Goods Regulation (IATA *Gefahrgutvorschriften*), which was transposed into German legislation by NfL II-36/05. In addition, the first aid and fire protection courses are mandatory under the German law on safety at work (*Arbeitsschutzgesetz*).

(84) Only the training courses for the apron driver licence and quality management (8 out of a total of more than 300 training hours in both cases) seem to be additional, i.e. are not required by law. Since, however, Germany emphasised that DHL wished to provide all hub-related services itself and did not demonstrate that, in the absence of aid, DHL would not provide these courses, the Commission considers that they form part of the overall training package. Also, the DIN EN 9001:2000 and DIN EN 14001 courses envisaged for Security Agents are part of Deutsche Post's usual business practice and hence indispensable for all DHL employees (see recital 80). Similarly, the apron driver licence course appears to be indispensable for Security Agents since they need to have access at all times to the airport taxiway and apron. It would not make sense for the smooth operation of the hub to be endangered because a Security Agent did not have access to the apron (as explained in recital 90 et seq., the training can be restricted to a given number of employees). As indicated in the assessment framework in recital 25, the Commission concludes that, although the training is not required by law, it is necessary for the smooth operation of the hub and would, therefore, be undertaken in any event by DHL. Accordingly, the Commission notes that these two training courses would remain unaffected even in the absence of aid.

(85) Given the mandatory nature of the training courses for Security Agents referred to in recitals 83 and 84, the Commission cannot accept Germany's argument that DHL could employ only a minimum number of qualified personnel who would then train the other employees on the job. It is the Commission's understanding, on the basis of the information provided, that all Security Agents must complete the courses.

(86) In view of the above, the Commission concludes that the training costs for Security Agents do not constitute eligible costs.

Operations management

(87) It is only as regards operations management that the Commission reaches a different conclusion. The training for this category of employees consists of English courses, basic labour law, communication, presentation techniques, human resources management, basic coaching, conflict management, team building, interviewing of applicants and corporate behaviour. The notified project envisages the training of 110 operations managers, with the eligible costs amounting to EUR [(1-2)] million. Middle managers are supposed to be recruited from among the employees who have completed the other training (i.e. Ramp Agents II and Security Agents).

(88) This management training follows on from that other training and does not seem indispensable to the smooth operation of the airfreight centre. It constitutes a promotion opportunity for DHL's existing employees with a view to developing their personal and social (soft) skills. The training measures are also general measures necessary in sectors besides the aviation sector and conferring skills that can be easily used in other undertakings, while also contributing to improving the working environment and interpersonal relations within the undertaking.

(89) In view of the observations made in recitals 87 and 88, the Commission concludes that the operations management training is not required by law and goes beyond what is necessary for the smooth operation of the DHL airfreight centre in Leipzig-Halle. Therefore, the costs of these training measures are eligible for training aid.

(c) ***Scope of the necessary training***

(90) According to the cost study provided by Germany (see recital 37), 134 **Ramp Agents II** would ensure the successful operation of the hub. By replacing in a six-person ground team the two Ramp Agents II acting as drivers with two Ramp Agents I, the legal requirements and operational needs would still be met. Germany claims that, as a result, the additional 76 Ramp Agents II would not need to be trained by DHL and would not be trained in the absence of training aid. The eligible costs for these additional 76 Ramp Agents II amount to EUR [(0,5-1,5)] million for general training measures and to EUR [(0,01-0,03)] million for specific training measures.

(91) However, if DHL did replace the Ramp Agents II acting as drivers with Ramp Agents I, the latter would also need to be trained to a certain extent, in particular as regards the handling of ground service equipment (especially apron driving, airside supervision, forklift driving, ramp safety, fire protection instruction, first aid, etc.). According to Germany, the training costs for these additional Ramp Agents I amount to EUR [(0,1-0,5)] million for general training measures and to EUR [(0,01-0,03)] million for specific training measures.

(92) In the Commission's view, the training costs which DHL would in any event have to cover for the additional Ramp Agent I training need to be deducted, with the eligible costs for the training of the additional 76 Ramp Agents II amounting to EUR [(0,4-1,0) million]. Since only these training measures go beyond the minimum necessary, which would in any event need to be covered by DHL, the Commission concludes that only this amount is eligible for aid.

(93) As regards **Security Agents**, Germany also explains that the DHL airfreight centre could operate smoothly with only 70 instead of 110 employees, as notified initially. The difference of 40 employees could be easily offset by increased camera surveillance without security at the airfreight centre being impaired. The corresponding study adds up the absolute minimum number of persons needed to operate the security checks on individuals and freight and multiplies it by the number of shifts. The calculations also take into account the total number of working days in a week and any extra personnel needed to cover cases of holidays or illness, in order to ensure uninterrupted operation. The study concludes that eligible costs of EUR [(0,05-0,2)] million would be incurred for this additional training.

(94) However, Germany also explains that DHL envisages employing 110 Security Agents because, as a worldwide undertaking with a high reputation, it needs to avoid any security-related incidents. Such incidents could have an impact on the quality of the delivery services and could cause severe delays and adversely affect relations with its clients. Hence, in order not to endanger the smooth operation of the delivery services, DHL has deliberately opted for 'oversecuring' (*Übersicherung*) the hub. Consequently, the Commission cannot accept Germany's argument that the hub could successfully operate with 70 Security Agents instead of 110. In line with its assessment framework in recital 25, the Commission concludes that, although the training is not required by law, it is necessary for the smooth operation of the hub and would therefore be undertaken in any event by DHL.

(95) Accordingly, it can be concluded that all the training measures aimed at providing the 110 Security Agents with the skills necessary for the start-up of activities and successful operation of the airfreight centre would have been undertaken in any event. Consequently, the Commission considers that these costs are not eligible for training aid.

Table 3

Job description	Notified number	Mandatory training	Additional training
Ramp Agent II	210	134	76
Security Agent	110	110	0
Managers (operations)	110	0	110
Maintenance mechanicauthorising release CAT A	97	97	0
Maintenance technician – mechanic authorising release CAT B 1	68	68	0

(96) On the basis of the cost analysis provided by Germany, the Commission calculated the training costs for the additional training measures as follows ([20]):

Table 4

(EUR)

Category of expenditure	Ramp Agent II (*)	Middle Managers	Total
Trainer (theory and practice)	[…]	[…]	
Administrative costs	[…]	[…]	
Travel costs	[…] (**)	[…]	
Total costs: trainers	[…]	[…]	[…]
Personnel costs: trainees	[…]	[…]	[…] (only partly eligible)
Total eligible costs: […]			
Maximum aid intensity: 60 %			
Aid: 1 578 109			

(*) The amounts in the table are shown after deduction of the training costs for Ramp Agents I. These costs would be incurred in any event, i.e. also in the alternative scenario presented by Germany (replacement of a certain number of Ramp Agents II with less comprehensively trained Ramp Agents I).

(**) On the basis of the information provided by Germany, the travel costs shown do not take into consideration the travel costs incurred for specific training and amounting to EUR […], which would be eligible for aid. It is the Commission's understanding that the German authorities have decided not to grant any aid in this respect.

([20]) The additional training includes, to a large extent, general measures; only the training for Ramp Agents II includes specific measures costing EUR […]. However, the training for Ramp Agents I, who — in the absence of aid — would replace the better-trained agents, also includes specific measures costing EUR […], so that the two amounts cancel each other out.

(d) ***Calculation of the admissible amount of aid***

(97) The notified measure (with EUR [(10-15)] million in notified eligible costs) includes costs of EUR [(8-12)] million which would have to be covered by DHL in any event, even in the absence of training aid. This part of the notified aid does not lead to additional training measures but covers the company's normal operating expenditure, thereby reducing costs normally borne by the undertaking. Accordingly, the aid cannot be approved.

(98) The remaining measures represent eligible costs of EUR [(2-3)] million. This corresponds to an aid amount of EUR 1 578 109. Only this part of the aid complies with the criteria for determining compatibility with the common market.

7. **CONCLUSION**

(99) The Commission concludes that the notified aid for DHL Leipzig relates, on the one hand, to costs amounting to EUR [(8-12)] million which have to be covered by DHL in any event, i.e. even in the absence of aid, and, on the other hand, to costs of EUR 2 630 182 for training measures which go beyond what is required by law or is necessary for operational reasons.

(100) Consequently, the Commission considers that the part of the notified aid which is not necessary for implementation of the training measures in question does not lead to additional training but covers normal operating expenditure of the company, thereby reducing costs normally borne by it. In its view, the aid would therefore, distort competition and affect trading conditions to an extent contrary to the common interest. Accordingly, the aid cannot be justified on the basis of Article 87(3)(c) of the EC Treaty. Since none of the other exemptions laid down in Article 87(2) and (3) of the EC Treaty can be applied either, the aid of EUR 6 175 198 does not comply with the criteria for determining compatibility with the common market.

(101) The remaining measures notified and representing eligible costs of EUR [(2-3)] million, for which aid of EUR 1 578 109 is planned, comply with the criteria for determining compatibility with the common market pursuant to Article 87(3)(c) of the EC Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Germany is planning to implement for DHL is incompatible with the common market to the extent of EUR 6 175 198.

The rest of the State aid, amounting to EUR 1 578 109, which Germany is planning to implement for DHL is compatible with the common market pursuant to Article 87 of the EC Treaty.

Article 2

Germany shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 2 July 2008.

For the Commission

Neelie KROES

Member of the Commission