


EFTA SURVEILLANCE AUTHORITY

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EFTA SURVEILLANCE AUTHORITY DECISION

of 21 November 2001

regarding temporary re-insurance of supplementary insurance cover in support of
airline companies for third-party damage due to acts of war and terrorism
(ICELAND)

THE EFTA SURVEILLANCE AUTHORITY,

HAVING REGARD TO the Agreement on the European Economic Area¹, in particular to Articles 61 to 63 thereof,

HAVING REGARD TO the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice², in particular Article 24 and Article 1 of Protocol 3 thereof,

HAVING REGARD TO the Procedural and Substantive Rules in the Field of State Aid³,

WHEREAS:

I. FACTS

Procedure

By letter from the Ministry of Finance, dated 15 October 2001, received and registered by the Authority on that same day (Doc. No. 01-8091-A), the Icelandic Government notified the Authority, pursuant to Article 1 (3) of Protocol 3 to the Surveillance and Court Agreement, of emergency measures taken with respect to airline companies in Iceland.

¹ Hereinafter referred to as the 'EEA Agreement'.

² Hereinafter referred to as the 'Surveillance and Court Agreement'.

³ Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the EFTA Surveillance Authority on 19 January 1994, published in OJ 1994 L 231, EEA Supplements 03.09.94 No. 32, last amended by the Authority's Decision No. 336/01/COL of 15 November 2001, not yet published.

Additional information was furnished by the Icelandic authorities by faxed letter dated 13 November 2001, received and registered by the Authority the same day (Doc. No. 01-9013-A), following requests from the Authority for information dated 31 October 2001 and 6 November 2001.

Description of the situation in the insurance market following the events of 11 September 2001 and detailed description of the aid measure

Introduction and general information

In the aftermath of the terrorist attacks in New York and Washington of 11 September 2001, insurance companies cancelled existing aviation insurance policies covering third-party damage connected to acts of war and terrorism (so-called “Extended Coverage Endorsement AVN52C”), while offering replacements, however with lower insurance cover ceilings (‘sub-limits’).

Given that previously existing insurance policies covering third-party damages due to acts of war and terrorism (‘war insurance’) expired at midnight on Monday, 24 September 2001 and were no longer offered by the commercial insurance market to an extent regarded as adequate by airline companies, the Icelandic Government decided, with a view to maintaining adequate insurance coverage, to offer a guarantee for risks arising from ‘war insurance’ policies exceeding the new sub-limits (hereinafter referred to as ‘supplementary insurance’).

This guarantee was provided by the Icelandic State, in accordance with the Interim Statute No 118/2001, in the form of 100% re-insurance for ‘war insurance’ policies issued by a commercial insurance company. This guarantee will have to be reported in the State Budget in accordance with the Government Financial Reporting Act No 88/1997.

The re-insurance was offered by the Icelandic State for a period of 30 days and expired on 24 October 2001 at midnight. By Parliamentary Decision of 18 October 2001, the Government was empowered to prolong the re-insurance for supplementary insurance cover until, at the latest, 31 December 2001. The prolongation measures taken by the Icelandic Government were subsequently notified to the Authority on 26 October 2001⁴.

⁴ These measures are subject to a separate case, registered under SAM 030.01.008.

Situation for Icelandic airline companies

Prior to the events of 11 September 2001, Icelandic air carriers had different levels of insurance cover, with only one airline company having an insurance coverage up to USD 1,050 million per damage incident, while most of the other Icelandic airline companies had insurance cover around USD 200 to 450 million. With the cancellation of previous insurance policies, commercial insurance companies offered airlines a replacement (so-called AVN52D), subject to the acceptance by the insured of the following conditions:

- Third-party bodily injury and property damage limited to US\$ 50 million or the applicable Policy limit whichever the lesser any one occurrence and in the annual aggregate.
- Payment of a special surcharge of US\$ 1.25 per passenger per flight departure.

Both the cancellation and the replacement of AVN52C by AVN52D took effect on 24 September 2001 before midnight (23:59 GMT).

Insurance cover for damage to passengers remained unaffected.

Agreements on loans and airplane leasing concluded by Icelandic air operators generally provide for the air operator concerned to be insured for a specific minimum amount against each individual third-party damage due to acts of war and terrorist attacks. Creditors of Icelandic air operators and owners of airplanes gave notice that it would constitute default of the loan and airplane leasing agreements in question should liability insurance no longer fulfil the stipulations of these agreements.

In the absence of sufficient insurance cover, all flights by Icelandic air operators to and from Iceland and abroad would have come to a standstill at midnight on 24 September 2001.

State intervention in order to maintain availability of 'war insurance'

Against this background and subject to the approval of the Icelandic Parliament, the Icelandic Government adopted on 23 September 2001 an Interim Statute, authorising the National Treasury to provide insurance or re-insurance for liability which may be incurred by Icelandic air operators towards a third party due to damages from the use of an aircraft resulting from actions of war and terrorism ("*Bráðabirgðalög nr. 118/2001*").

Furthermore, the Interim Statute clearly stipulates that the National Treasury's insurance shall be in the form of a supplementary insurance to, or re-insurance of supplementary insurance to, the liability insurance which air operators can purchase on the commercial insurance market and to the extent such liability insurance falls short of the minimum amount for third-party liability which the airlines in question have an obligation to take.

According to the provisions of the Interim Statute No 118/2001, the National Treasury is authorised to set a fee for the (re-)insurance it provides and shall have the right to terminate the (re-)insurance during its period of validity if the level of risk in air transport rises or if insurers begin to offer supplementary insurance.

In accordance with the terms of the Interim Statute No 118/2001, the Ministry of Finance, on behalf of the National Treasury, concluded on 24 September 2001 an agreement on re-insurance coverage with an Icelandic insurance company (Sjóvá-Almennar Ltd.) and the Nordic Aviation Insurance Group (hereinafter referred to as "NAIG").

According to the terms of the agreement, insurance policies to be provided by Sjóvá-Almennar Ltd. on behalf of the NAIG shall be limited to the maximum amounts of insurance, available before 24 September 2001, as laid down in the previous insurance policies (AVN52C) and reported to the Icelandic Civil Aviation Authority⁵. The terms and conditions of the insurance as contained in "AVN52C" form an integral part of the agreement.

No compensation will be paid from the supplementary insurance to be provided by Sjóvá-Almennar Ltd. on behalf of the NAIG until damage payments as provided for by the existing insurances covering damages due to acts of war and terrorism have reached USD 50 million, which is the sub-limit set under the AVN52D policies.

Subsequently, Sjóvá-Almennar Ltd., on behalf of the NAIG, offered aviation insurance policies to all airlines holding licences issued in Iceland in accordance with the Icelandic Civil Aviation Act of 1998⁶. These policies replace the insurance coverage that existed before, including the insurance sum and other conditions. The insurance policies offered by Sjóvá-Almennar Ltd. clearly stipulate that insurance is only provided for damages exceeding the ceilings set under the AVN52D policies. The policies were issued for a limited period of time, i.e. 30 days commencing at 23:59GMT on 24 September 2001.

⁵ An overview of limits set under the previous insurance policies was annexed to the agreement.

⁶ This act implements the provisions contained in the Act referred to in point 66b of Annex XIII to the EEA Agreement: EC Council Regulations 2407/92 on licensing of air carriers.

Sjóvá-Almennar Ltd. shall collect a premium for the primary insurance amounting to:

- USD 0.25 per passenger per flight for sums insured up to USD 700 million, in excess of USD 50 million, for each damage or total damages during the insurance period, and
- USD 0.50 per passenger per flight for sums insured up to USD 1050 million, in excess of USD 50 million, for each damage or total damages during the insurance period.

For third-party liability insurance for cargo aircraft, a premium amounting to 25% of the present insurance premium *pro rata temporis* shall be collected for primary insurance. Under the present insurance policy, which included both general liability and 'war insurance', 10% of premiums was, according to estimates provided by the Icelandic authorities, related to 'war insurance' cover. The rate of 25% corresponds to what, according to information submitted by the Icelandic authorities, was required by Sjóvá-Almennar Ltd.'s leading re-insurer in London as a general additional premium in respect of cargo aircraft insurance offered under AVN52D policies. This means that under insurance policies issued with effect from 24 September 2001 (i.e. AVN52D policy up to a ceiling of USD 50 million and supplementary 'war insurance' in excess of this sub-limit, with 100% re-insurance from the Icelandic State) companies will have to pay two premiums for cargo aircraft insurance amounting to 25% each of the previous insurance premium (i.e. 25% of previous liability premiums for insurance coverage up to USD 50 million, offered under AVN52D policies, plus 25% of previous liability premiums for the State-guaranteed supplementary 'war insurance' in excess of the sub-limit of USD 50 million).

The premiums were due at 25 October 2001.

Administration of the insurance scheme (Sjóvá-Almennar Ltd., on behalf of the NAIG, as primary insurer – State, as re-insurer)

As stated above, the Ministry of Finance, on behalf of the National Treasury, concluded on 24 September 2001 an agreement on re-insurance coverage with an insurance company (Sjóvá-Almennar Ltd.) and the NAIG. This agreement was concluded for the limited period from 24 September to 24 October 2001.

Sjóvá-Almennar Ltd. is a member company of NAIG and is underwriting aviation insurance business in Iceland on behalf of NAIG. NAIG was established as a co-insurance group between various member companies operating in the Nordic market, to enable member companies to get the necessary capacity to underwrite aviation risks. Sjóvá-Almennar Ltd. is the only Icelandic member of NAIG.

Sjóvá-Almennar Ltd. offers all types of aviation insurances, including war insurance. Sjóvá-Almennar Ltd. provided, before the events of 11 September 2001, insurance cover under the AVN52C policy and offered, after the cancellation of these policies with effect from 24 September before midnight, a replacement (AVN52D).

Under the terms of this agreement, the Ministry of Finance, on behalf of the National Treasury, guarantees as re-insurer full payment for any damage covered by the supplementary 'war insurance', which Sjóvá-Almennar Ltd. will issue on behalf of the NAIG. The Icelandic authorities have informed the Authority that the decision to act as re-insurer, rather than act as primary insurer was based on the fact that the Icelandic State did not have the necessary expertise knowledge in the aviation insurance business. It was, therefore, considered more suitable that Sjóvá-Almennar Ltd. would take care of the practical matters on behalf of the State. Even though Sjóvá-Almennar Ltd. offers 'war insurance' as primary insurer, the policies will be issued on a fronting basis⁷, which means that the risk is guaranteed 100% by the Icelandic State. Against this background, and from the point of view of the financial implications for the State, the re-insurance offered by the Icelandic State does not differ from the provision of direct insurance by the State.

The premium was to be collected at the end of the insurance period, i.e. 25 October 2001. Sjóvá-Almennar Ltd. on behalf of the NAIG is obliged to submit 85% of the gross premium income to the National Treasury as payment for the National Treasury's re-insurance. The remaining 15% will be split between Sjóvá-Almennar Ltd. and NAIG (12,5% for Sjóvá-Almennar Ltd. and the remaining 2,5% for NAIG). According to the Icelandic authorities, the 15% of gross premium income constitutes the normal fee for issuing insurance policies and covers administrative costs related to the provision of services to the State. As regards the rate set at 15%, the Icelandic authorities maintain that this was in line with what had been done in other Nordic countries. The Icelandic authorities further pointed out that Sjóvá-Almennar Ltd. bears considerable costs related to the collection of the premiums, providing information about the evolution of the market, relations with airline companies, etc. These costs are related to tasks the insurance company had to perform in addition to its activities related to the issuance of AVN52D policies. In addition, the Icelandic authorities refer to the fact that following the events of 11 September 2001, passengers per flight have decreased, which resulted in the premiums in question not having delivered much revenues.

⁷ "Fronting": practice, in reinsurance, of the ceding company retaining only a small portion [or in the present case, no portion] of a risk and ceding the remainder to a re-insurer.

II. APPRECIATION

State aid within the meaning of Article 61(1) of the EEA Agreement and procedural requirements pursuant to Article 1 (3) of Protocol 3 to the Surveillance and Court Agreement

By virtue of Article 61 (1) of the EEA Agreement, “*any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between the Contracting Parties, be incompatible with the functioning of this Agreement.*”

Aid to airline companies

Granted by the State or through State resources

Given that the Icelandic State provides 100% re-insurance for supplementary insurance cover offered to Icelandic air carriers, and thus guarantees fully for damages resulting from the supplementary insurance, State resources are involved⁸.

Advantage to certain undertakings

The provision of supplementary insurance cover (provided by Sjóvá-Almennar Ltd. on behalf of the NAIG, and based on a 100% guarantee given by the Icelandic State), confers an advantage on the air carriers as, in their absence, they would not have had sufficient insurance cover to operate.

The existence of an obligation to pay a premium does not take away the advantage which airline companies, benefiting from this supplementary insurance coverage, enjoy. In this respect, the Authority takes the view that the absence of insurance coverage offered by the market could be interpreted as premiums approaching infinity. Consequently, the price for such insurance could be regarded as being above whatever premium level set by the State.

In addition, the Authority observes that, as of the beginning of October 2001, private insurance companies started offering supplementary coverage for airline companies⁹. According to information contained in the EC Commission’s communication on the repercussions of the terrorist attacks on the airline industry and information in the press, such insurance would require airline companies to pay a surcharge on their existing insurance premiums corresponding to between USD 3.10 and USD 3.25 per

⁸ The guarantee provided by the Icelandic State will have to be reported in the State Budget, in accordance with the Government Financial Reporting Act No 88/1997.

⁹ According to information provided by the Icelandic Government, this would not seem to have been the case in Iceland.

passenger.¹⁰ The premium levied for the insurance offered by Sjóvá-Almennar Ltd., on behalf of the NAIG is clearly below that amount and is therefore considered to provide a financial advantage to the insured.

Distortion of competition and effect on trade

The measures in question allow air carriers established in Iceland to continue their business activities with full insurance coverage, which would otherwise not have been the case. The possibility to continue operations and thus generate income may place the beneficiaries of State insurance in a better position than companies established or operating elsewhere within the EEA. The measures thus strengthen the financial position of air carriers operating in a fully liberalised market¹¹, and hence distort or threaten to distort competition and affect trade between the Contracting Parties.

Conclusions

In light of the above considerations, the Authority concluded that the re-insurance provided by the Icelandic Government for ‘war insurance’ underwritten by Sjóvá-Almennar Ltd. on behalf of the NAIG, constitutes aid to the benefit of airline companies, within the meaning of Article 61 (1) of the EEA Agreement.

Possible aid to Sjóvá-Almennar Ltd. and the NAIG

As regards the payment of a commission amounting to 15% of premium income to the insurance companies, Sjóvá-Almennar Ltd. and the NAIG, the Authority has examined whether this payment offered the companies an advantage they would not have enjoyed in the normal course of business.

The Authority observes at the outset that even though the intervention from the Icelandic Government took the form of re-insurance for supplementary insurance issued by Sjóvá-Almennar Ltd. on behalf of the NAIG, it does not, from the point of view of the financial implications for the State, differ from the provision of direct insurance by the State. Since 85% of premium income related to these insurance policies is transferred to the Icelandic State as remuneration for the re-insurance it provides for the entirety of damages covered by the war insurance, the services provided by Sjóvá-Almennar Ltd. and the NAIG are in fact confined to the administration of war insurance, without assuming the risks related to it. Against this

¹⁰ COM (2001) 574 final, 10.10.2001, page 5, point 22; see also article in “European Voice”, 11-17 October 2001, p. 18.

¹¹ See “Third Package” of liberalisation measures in the aviation sector, Acts referred to in points 66b, 64a and 65 of Annex XIII to the EEA Agreement: EC Council Regulations 2407/92 on licensing of air carriers, 2408/92 on access for Community air carriers to intra-Community air routes and 2409/92 on fares and rates for air services.

background, the Authority has assessed the compatibility of the commission of 15% with the EEA Agreement based on the understanding that Sjóvá-Almennar Ltd. and the NAIG provide services to the Icelandic State as regards the administration of ‘war insurance’.

The Authority observes that the agreement was concluded between the Icelandic State and both insurance companies without the Icelandic authorities having carried out a tender according to the act referred to in Annex XVI, point 5b to the EEA Agreement (Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts). Even though the Authority does not have the information necessary to establish the contract value and therefore determine whether or not this Directive was applicable in the present case, it observes that, even assuming the Directive was applicable, the conclusion of the agreement with Sjóvá-Almennar Ltd. and the NAIG regarding the administration of the insurance scheme without a tender would seem to be covered by the exception clause in Article 11 (3)(d) of this Directive.

It results from this provision that for reasons of extreme urgency brought about by events unforeseeable by and not attributable to the contracting authorities in question, the Icelandic authorities were allowed to have recourse to the negotiated procedure without publication of a contract notice.

The cancellation and the only partial replacement of existing insurance cover by the commercial insurance market following the terrorist attacks in New York and Washington of 11 September 2001 required the adoption of immediate measures. Without the provision of 100% re-insurance and the designation of insurance companies to administer ‘war insurance’ not commercially available at that time, sufficient insurance cover would not have been available for Icelandic air operators. Therefore, the conclusion of an agreement between the Icelandic State and Sjóvá-Almennar Ltd. and the NAIG can be regarded as fulfilling the conditions of Article 11 (3)(d) of the above-mentioned Directive.

Given the extreme urgency of the matter, the Authority regards the commission, offered to Sjóvá-Almennar Ltd. and the NAIG in accordance with the terms and conditions laid down in the agreement concluded between these companies and the State, as remuneration for services rendered to the State.

As regards the amount of remuneration offered to Sjóvá-Almennar Ltd. and the NAIG, the Authority takes note of the explanations provided by the Icelandic authorities, as regards the additional costs related to the issuance of ‘war insurance’ and the reduced premium income due to a decrease in passenger figures. In addition, the Authority observes that the amount of 15% is in accordance with what was

granted by the Norwegian State to the insurance company administering the State-provided supplementary 'war insurance'.¹²

In light of the above, the Authority has concluded that the remuneration for services rendered by Sjóvá-Almennar Ltd. and the NAIG under the agreement concluded with the Icelandic State regarding the issuance of 'war insurance' policies could, under the current circumstances, be regarded as not containing aid. The Authority would, however like to stress that this assessment is only valid for the duration of the 'war insurance', as initially offered by the Icelandic State (i.e. until 24 October 2001) and does not prejudice the Authority's assessment of any measures the Icelandic Government intends to adopt regarding a possible continuation of the re-insurance scheme.

Compatibility of Aid Measures

Introductory remarks

In view of insurance problems encountered by their national airlines, EC Member States announced, from the end of the week of 17 September 2001, their intention of granting aid to airline companies. The EC Commission immediately referred the matter to the Ministers of Finance (ECOFIN) at their meeting of 22 September 2001 in order to have a co-ordinated approach. The ECOFIN ministers established a 'code of conduct', laying down certain criteria EC Member States must adhere to when providing supplementary insurance to airline companies not available on the commercial insurance market.

Governments were reminded that such measures should be limited to what was necessary to remedy the temporary insurance problems and must be notified to the Commission.

On 10 October 2001, the EC Commission adopted a Communication concerning "The repercussions of the terrorist attacks in the United States on the air transport industry"¹³, in which it explained, *inter alia*, its approach regarding State aid for airline companies related to temporary insurance problems.

Furthermore, on 16 October 2001, the EC Ministers of Transport adopted conclusions on aviation insurance issues, taking note of the Commission's communication and laying down certain criteria that EC Member States shall abide by with respect to a possible prolongation of State provided insurance/re-insurance.

¹² See Authority's decision of 30 October 2001, SAM 030.01.006, Dec. No. 315/01/COL, not yet published.

¹³ COM (2001) 574 final, 10.10.2001.

As the Authority announced in its press release dated 12 October 2001, aid measures notified to it will be assessed on the basis of the same criteria as applied by the EC Commission. In the meantime, the criteria have been applied by the EC Commission and the EFTA Surveillance Authority as regards emergency measures adopted in the UK and Norway, respectively.¹⁴

Assessment of the aid measure under Article 61 (2)(b) of the EEA Agreement

In its communication referred to above, the EC Commission stated that it “*is of the opinion that, given their unforeseeable nature, the number of victims and the impact on the world economy, the events of 11 September 2001 were exceptional occurrences within the meaning of Article 87 (2)(b) EC Treaty*”.

Correspondingly, aid aimed at remedying the termination of the existing insurance coverage regarding third-party damage due to acts of war and terrorism as a consequence of the events of 11 September 2001, will be assessed by the Authority under Article 61 (2)(b) of the EEA Agreement.

By virtue of Article 61 (2) (b) of the EEA Agreement, “*aid to make good the damage caused by natural disasters or exceptional occurrences*” shall be compatible with the functioning of this Agreement.

Such aid is deemed compatible with the functioning of the EEA Agreement, to the extent it merely re-establishes the pre-existing competitive position of undertakings affected by these exceptional occurrences. In order for the Authority to verify that the measures taken by the Icelandic Government do not go beyond what is necessary to re-establish the conditions under which airline companies and airports operated before the events of 11 September 2001, i.e. to maintain satisfactory insurance coverage, and that the measures are proportional with respect to this objective, the Authority has taken into account the criteria established by the ECOFIN Council as well as those laid down in the recent Commission Communication.

Chapter 5.2, point 37 of the Commission’s communication reads: “*On 22 September 2001 the ECOFIN Council discussed emergency measures Member States could take to help airlines meet the extra costs of insurance in the next few months under certain conditions. It concluded in particular that:*

- *support must be limited to addressing a failure in the commercial insurance market in order to ensure that third party cover for war and terrorism risks remains available;*

¹⁴ EC Commission decision of 24 October 2001, State aid case NN 90/2001 – UK and EFTA Surveillance Authority decision of 31 October 2001, State aid case SAM 030.01.006 – Norway.

- *governments must charge a reasonable premium which as far as possible reflects the risks covered by the schemes introduced, although this condition may be waived in the short term;*
- *the schemes will be introduced for one month while work will continue on finding a lasting solution and to encourage the industry to return to the market as soon as possible.”*

Under point 38 of the same communication, the Commission further explained that “[i]n taking the necessary decisions on the measures notified to it in the framework of the State aid rules, the Commission will take account of all pertinent circumstances and in particular whether the public intervention concerned:

- *applies uniformly without restriction to all companies in a given Member State;*
- *is limited to a period of one month;*
- *is exclusively intended to compensate for the extra cost of insurance resulting from the events of 11 September 2001 and in no way places the airlines in a more favourable situation than that prior to 11 September 2001.”*

Against this background, the Authority has examined whether the re-insurance provided by the Icelandic State as regards supplementary insurance for airline companies was directly linked to a failure of the commercial insurance market, does not place aid beneficiaries in a more favourable situation compared to the one existing before 24 September 2001, requires the insured to pay a reasonable premium, does not create discrimination among air carriers or airports, and is limited to 30 days.

Market failure

As described above, the commercial insurance market did not, at the time the Icelandic Government adopted the measures at issue, provide satisfactory insurance cover to airline companies. The Icelandic Government’s intervention was limited to the provision of re-insurance for ‘war insurance’ exceeding the sub-limits offered on the commercial insurance market, up to a ceiling regarded by airline companies as appropriate for operation of air transport services. Furthermore, the Authority notes that this supplementary insurance does not cover damages to aircraft or passengers, for which commercial insurers continue to offer cover.

The Authority has therefore concluded that the re-insurance scheme provided by the Icelandic Government for the insurance of airline companies addressed a failure in the commercial insurance market.

Aid limited to extra costs

The Authority has also verified that the aid measure, aimed at remedying a failure in the commercial insurance market, does not place air carriers in a more favourable position than before 24 September 2001.

In this respect, the Authority observed that re-insurance was provided by the Icelandic Government with respect to insurance policies underwritten by Sjóvá-Almennar Ltd., on behalf of the NAIG, which remained within the limits and subject to the terms and conditions contained in the previous insurance policies. Furthermore, the Authority points out that the emergency measures do not relieve airlines of costs under the replaced insurance policy, since they were obliged to pay an additional premium for the same insurance cover as before 24 September 2001.¹⁵

As regards the insurance cover offered for cargo aircraft, the Authority was satisfied that the total premiums paid under insurance policies issued after 24 September 2001 by far exceed the total premiums paid before 24 September 2001. Whereas premiums to be paid for 'war insurance' under previous insurance contracts amounted to approximately 10% of total insurance premiums (which covered both general liability and third-party damage due to acts of war and terrorism), operators now have to pay 25% of previous liability premiums for insurance coverage up to USD 50 million, offered under AVN52D policies, plus 25% of previous liability premiums for the State-guaranteed supplementary 'war insurance' in excess of the sub-limit of USD 50 million.

The Authority was therefore satisfied that the measures adopted by the Icelandic Government did not place air carriers in a better position than they enjoyed before 24 September 2001.

Premium

It follows from the Commission's communications as well as the 'code of conduct' established by the ECOFIN Council that Governments must charge, in principle, a reasonable premium which as far as possible reflects the risks covered by the scheme introduced.

The insurance policies offered by Sjóvá-Almennar Ltd., on behalf of the NAIG and re-insured by the Icelandic State sets a premium of either USD 0.25 or USD 0.50 per passenger, depending on the maximum coverage provided.

¹⁵ The premium set under State-guaranteed 'war insurance' policies issued by Sjóvá-Almennar Ltd is to be paid in addition to the premium paid under ACN52D policies available on the market.

In this respect, the Authority notes that, within the EEA, several Governments have waived the payment of such a premium for the first 30 days¹⁶, whereas the Icelandic Government requires the payment of such a premium. In this respect, the Authority observes that, based on these consultations, insurance premiums have been determined at identical levels in several EC Member States (e.g. in Denmark, Spain and the UK¹⁷). The Authority further observes that the level of premiums equals the level of premiums set in Norway for the initial period from 24 September 2001 until 24 October 2001, even though the ceiling is lower for Icelandic air carriers compared to the ceiling offered to Norwegian air carriers.¹⁸

As regards premiums for supplementary ‘war insurance’ offered for cargo aircraft, the Authority observes that premiums have increased significantly compared to the situation under the previous insurance contracts.

Against this background, the Authority concluded that the level of premiums charged by the Icelandic authorities as regards both passenger and cargo aircraft can be regarded as reasonable.

Uniform application

Insurance cover has been offered to all carriers with respect to aircraft licensed in Iceland on equal terms. Consequently, the re-insurance offered by the Icelandic State does not discriminate between air carriers with aircrafts licensed in Iceland.

Limited duration

The Authority notes that the supplementary insurance offered to air carriers is limited to 30 days. As regards the continued provision of re-insurance by the Icelandic State, the Authority takes note of the notification submitted by the Icelandic Government by letter of 26 October 2001.

¹⁶ See list of measures planned or taken by Member States to cover additional costs of insurance, annexed to the Commission’s Communication referred to above, COM (2001) 574 final, 10.10.2001.

¹⁷ It should, however, be mentioned that as regards the UK, this premium was waived for the first 30 days.

¹⁸ The supplementary insurance provided by the Norwegian State required premiums of USD 0.25 per passenger for sums insured up to USD 750 million and USD 0.50 per passenger for sums insured up to USD 1700 million, whereas ‘war insurance’ provided to Icelandic air carriers and guaranteed by the Icelandic State sets premium at the same levels but for lower ceilings, USD 700 and USD 1050, respectively.

Conclusions

In light of the above considerations, the Authority has concluded that the provision of re-insurance for temporary and supplementary insurance to airlines is directly linked to a failure of the commercial insurance market, does not place aid beneficiaries in a more favourable situation compared to the one existing before 24 September 2001, requires the insured to pay a reasonable premium, does not create discrimination among air carriers, and is limited to 30 days.

Consequently, the Authority has concluded that the aid measures are, by virtue of Article 61 (2)(b) of the EEA Agreement and in light of the criteria established by the EC Commission with respect to the application of Article 87 (2)(b) EC Treaty, compatible with the functioning of the EEA Agreement.

HAS ADOPTED THIS DECISION:

The Authority has decided not to raise objections to the provision by the Icelandic Government of re-insurance for supplementary insurance regarding third-party damage due to acts of war and terrorism in support of Icelandic airline companies.

Done at Brussels, 21 November 2001

For the EFTA Surveillance Authority

Knut Almestad
President

Hannes Hafstein
College Member