



Decision of the Minister of Infrastructure and Water Management, dated 30 April 2024, No. IENW/BSK-2024/69679, limiting the number of providers of ground handling services at Schiphol airport

The Minister of Infrastructure and Water Management,

Having regard to Article 5(2) of the Regeling grondafhandeling luchtvaartterreinen (Aerodrome Ground Handling Regulations);

DECISION:

Article 1

In this decision, the following definitions apply:

timetable period: the summer or winter season according to the classification used in air carriers' timetables as referred to in Article 2(d) of the European Community Regulation No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports (OJEC L 14);

ground handling services: the services listed in the Annex to Directive 96/67/EC of the Council of the European Union of 15 October 1996 on access to the ground handling market at Community airports (OJEC L 272/36) provided to a user at an aerodrome;

commercial traffic with passengers: air transport operations of airlines that allow individual bookings by passengers where this involves scheduled flights that are scheduled passenger flights or commercial flights carried out on a fixed route according to a published timetable, as opposed to unscheduled flights that are charter flights for passenger or commercial flights that are unscheduled in nature;

airport: Schiphol Airport;

Regulation: Aerodrome Ground Handling Regulations.

Article 2

1. The number of providers of ground handling services for passenger traffic at the airport is limited to three in each of the following categories of ground handling services:
 - a. baggage handling; and
 - b. apron handling, with the exception of:
 - 1°. guiding the aircraft on arrival and departure on the ground;
 - 2°. transporting passengers between the aircraft and the terminal; and
 - 3°. transportation, the loading and unloading of food and beverages from the aircraft.
2. The selection of the providers of the categories of ground handling services mentioned in the first paragraph shall be made after a tender by the airport operator in compliance with the provisions of Article 12 of the Regulations.
3. The airport operator shall establish the criteria for selecting the providers of the categories of ground handling services mentioned in the first paragraph after consulting with stakeholders, including, in any case, the consultative body of users and the providers of ground handling services at the airport.
4. The airport operator shall at least consider the quality of service and safety at the airport when establishing the criteria for selecting the providers of the categories of ground handling services mentioned in the first paragraph.
5. The airport operator shall ensure that the selection of providers of the categories of ground handling services mentioned in the first paragraph complies with the following conditions:
 - a. at least one of the providers is not directly or indirectly controlled by:
 - 1°. a user who, during the year preceding the entry into force of this decision, carried more than 25 per cent of the passengers or cargo registered at the airport or
 - 2°. a body which directly or indirectly controls, or is controlled by, a user as referred to under 1°; and
 - b. each user, regardless of the part of the airport allocated to it, shall have a choice between at least two providers for each category of ground handling services mentioned.



Article 3

Only the suppliers of ground handling services selected in accordance with Article 2(2) shall be authorised to provide the categories of ground handling services listed in Article 2(1) for commercial traffic with passengers at the airport.

Article 4

This decision shall enter into force with effect from the day after the issue of the Government Gazette in which it is placed, provided that the limitation established in accordance with Article 2(1) and Article 3 shall start to apply from the next timetable period to be counted from the moment six calendar months have elapsed after final award of contracts as a result of the tender referred to in Article 2(2).

This decision will be published in the Government Gazette along with the explanatory notes.

*The Minister of Infrastructure and Water Management,
M.G.J. Harbers*

Pursuant to the General Administrative Law Act, interested parties may submit a notice of objection against this decision within six weeks of the day on which it was published. The notice of objection should be addressed to the Minister of Infrastructure and Water Management, for the attention of Hoofddirectie Bestuurlijke en Juridische Zaken, Afdeling Algemeen Bestuurlijk-Juridische Zaken, P.O. Box 20901, 2500 EX Den Haag.

The notice of objection must be signed and contain at least:

- a. name and address of the objector;
- b. the date;
- c. a description of the decision against which the objection is lodged (date and number or reference);
- d. a statement of the grounds for disagreement with the decision;
- e. if possible, a copy of the decision against which the objection is directed.

Failure to comply with these requirements may result in inadmissibility of the objection.

An objection can only be submitted in writing, i.e. by regular mail and not by email.

Are you authorising someone to file an objection on your behalf? If so, please also enclose a copy of the authorisation. If submitting an objection on behalf of a legal entity, please enclose documents (original extract from the trade register and/or a copy of the legal entity's articles of association) proving that you are authorised to act on behalf of the legal entity.



EXPLANATORY NOTE

A. General part of the explanatory note

1. Introduction

Ground handling is an essential link within the aviation sector. The term ground handling includes things like loading and unloading baggage, refuelling, cleaning, catering and de-icing the aircraft. Without ground handling, aircraft cannot fly. Problems with ground handling can, therefore, have major consequences for air traffic and, hence, the accessibility of the Netherlands.

2. Decision for limitation

A relatively large number of ground handling companies operate at Schiphol compared to other European airports. These companies compete with each other for contracts with airlines. This has resulted in a situation where ground handling at Schiphol involves a high workload for staff, little attention to quality and crowding on and around the aprons and in the baggage basements. To contribute to improving the ground handling situation at Schiphol, the Minister of Infrastructure and Water Management (hereinafter 'IenW') decides to limit the number of ground handling service providers at Schiphol in the baggage handling and apron handling categories. The limitation to three providers in the baggage handling and apron handling categories has been elaborated in this proposal.

3. Main elements of the proposal

3.1 Reason

Worldwide, ground handling is a highly competitive sector with tight margins. In Europe, there is basically a free market for ground handling at major airports. In 2021, a new entrant brought the number of baggage handlers at Schiphol to six.

Contracts between a ground handling company and an airline are often part of so-called multi-station contracts, in which a contract is drawn up for several airports where Schiphol is then one of them, for example. Offering services at Schiphol is an important competitive parameter for some handling companies to compete for these multi-station contracts. This means that business results at Schiphol are not decisive for the choice to (continue to) offer services at Schiphol and constitute an exit threshold for parties. Given the size of potential demand, this exit threshold leads to more active market parties than is appropriate.

The large number of ground handling companies at Schiphol creates high competitive pressure between the companies in a relatively small market. These companies compete mainly on the lowest price. This can lead to less attention to service quality and staff remuneration, among other things. With relatively low wages, the companies also struggle to attract and retain staff.

Because airlines want to keep their aircraft grounded for as short a time as possible, the complex work in ground handling often takes place under time pressure. According to the Human Environment and Transport Inspectorate (hereinafter 'ILT') in the State of Schiphol 2022, this time pressure, when there is a staff shortage, leads to less compliance with the rules and thus increases the risk of incidents.

Since autumn 2021, IenW has been holding meetings on ground handling issues at Schiphol Airport. Those meetings initially focused on three actions: a sector CLA, additional rules from the airport and possibly limiting the number of handling companies. Schiphol, ground handling companies, Netherlands Trade Union Confederation (FNV) and airlines were represented at those meetings. At a meeting in September 2022, these parties agreed to initiate the process to analyse whether limiting the number of handling companies at Schiphol could help improve the situation. The ministry then commissioned KPMG to draw up an action plan to this end. Relevant parties were thereby surveyed and subsequently informed of the outcomes of the action plan. They were also included in the stakeholder analysis of the follow-up study by SEO Economic Research, the University of Antwerp, and To70 in the second quarter of 2023. This consortium was asked to carry out a study on whether, and if so to what extent, limiting the number of ground handling companies per category at Schiphol would contribute to improving the safety, quality, effectiveness and efficiency of ground handling at Schiphol. This follow-up study showed that limiting the number of ground handlers on the apron and in the baggage basement could lead to an improvement in the situation of the ground handling market at Schiphol.

3.2 Problem description

There are several problems in ground handling at Schiphol, particularly in the baggage basement and on the apron when handling baggage. They include:



- 1). Poor quality due to an inefficient market;
- 2). Persistent staff shortages;
- 3). Safety concerns and poor working conditions.

1). Due to the relatively large number of handling companies at Schiphol, there is a high degree of competition between them and high pressure to keep prices and wages low. Because the companies compete at low margins on a small market share, there is also little profit to be made. At the same time, there is an exit threshold for handlers, resulting in more active market players than necessary, given the size of potential demand. Researchers from SEO, the University of Antwerp and To70, therefore, argue that the ground handling market may not be operating efficiently and has characteristics of market failure, for example, due to the excessive number of providers relative to demand and the potential consequences of externalities - such as delays - on the market.

2). The summers of 2021 and 2022 were chaotic at Schiphol. Ground handling companies experienced staff shortages, which meant they were unable to handle flights on time. This caused delays, and some flights departed without baggage.

In spring 2022, a ground staff strike caused chaos, long queues, and the cancellation of over 100 flights. To offer higher wages, ground handlers would have to charge higher prices to airlines. However, partly because the contracts between these parties cannot be opened unilaterally and staff turnover in the sector is high (over 35.65% by 2022)¹, staff shortages persist for a long time. Several media reports have focused on the ongoing workload for staff and the concerns that staff shortages are causing among handling companies.

Although 2023 passed without too many problems on Schiphol's aprons, the causes of the issues in 2021 and 2022 were not structurally addressed. Therefore, a repetition of the problems of 2021 and 2022 is looming, and it is still necessary to intervene in Schiphol's ground handling market.

3). Ground handling company employees mainly work on the apron (also known as the aircraft stand) and in the airport's baggage basement. In its State of Schiphol for 2022, the ILT states that the high workload among ground staff ensures that more work processes are not carried out correctly or fully. This concerns processes at and around the aircraft stands. The increase in (the likelihood of) multiple minor violations contributes to ILT concerns about the safety situation. This is attributed to a shortage of personnel, lack of space, time pressure and insufficient training and experience.

Besides the ILT, the Netherlands Labour Inspectorate (hereinafter 'NLA') is also increasingly concerned about malpractices in ground handling at Schiphol. For example, violations have been identified in complying with working and rest times, and a final order under penalty was imposed on all six baggage handlers in September 2023 because, according to the NLA, companies are not taking sufficient measures to reduce the physical load on staff.

Although ground handling takes place at all airports in the Netherlands, the broad issues outlined above at Schiphol are such that measures are necessary. At Schiphol, all ground handling companies offering baggage and apron handling services face these problems to a greater or lesser extent. As a result, the problems also affect Schiphol as an airport operator, the customers of the handling companies, the airlines, and the customers of the airlines, the passengers.

The current policy involves the Ministry of IenW encouraging other organisations such as Schiphol, the ground handling companies and the trade union through meetings to improve working conditions at Schiphol (via a sector CLA), impose conditions on ground handling companies (via the so-called License to Operate) and improve safety (including by introducing equipment pooling). Recently, these 'flanking' measures did achieve results. For instance, a first sector CLA was concluded, the License to Operate was introduced and a pilot was launched with equipment pooling, whereby ground support equipment such as stairs can be used by several parties on a limited scale.

In early 2023, it became clear that the sector CLA concluded in 2022 was outdated due to inflation in the second half of 2022 and therefore no longer seemed adequate to attract sufficient staff. Attempts to accelerate wage agreements proved difficult as not all airline companies were willing to pay for them. Finally, a new negotiation result was reached between the union and handling companies in late 2023 with substantial improvements in wages through 2025. However, these wage agreements do not apply to KLM employees and those working in cargo handling.

The License to Operate was drafted by Schiphol with the involvement of handling companies and after consultation with airlines and can only be amended if handling companies agree. In October 2023, the parties agreed to a more stringent version of the License to Operate, effective 1 January 2024.

Regarding equipment pooling, the pilot phase, initiated earlier, was completed in August 2023 and has not been followed up for the time being. The improvements this could bring in terms of safety and sustainability, therefore, remain out of reach for the time being.

Implementing the above measures is currently partly still under development, but existing competitive pressures and the required stakeholder cooperation also mean that the measures have limited applicability.

3.3 Problem Approach

The European free ground handling market follows from Council Directive 96/67/EC of 15 October 1996 on

¹ Analysis of ground handling at Schiphol (2023) SEO, the University of Antwerp and To70.



access to the ground handling market at Community airports (hereinafter 'the Directive'). The starting point of the Directive is a free ground handling market at the largest airports within the EU to promote competition. In 1998, The Netherlands transposed the Directive into national legislation by means of the Aerodrome Ground Handling Regulations. (Hereinafter 'the Regulations').²

The Directive and the Regulations provide the framework of a free market within which parties can operate freely as long as they comply with the applicable rules. As indicated above, current policy focuses on encouraging market parties to enter into agreements and conditions (such as a sector CLA and License to Operate). However, the scope of this route is limited because it requires the cooperation of ground handling companies (and indirectly airlines). Creating room for wage increases usually requires raising the prices that ground handling companies charge for their services. As these prices are often fixed in long-term contracts, airlines have to also cooperate in this. Such cooperation is not always evident in a highly competitive market. The government currently has little leverage to bring about an improvement in the situation. The ILT's practical power to enforce directly in ground handling matters is still lacking for the time being, and EASA published an initial proposal for regulations (requirements) for ground handlers on 16 January 2024 (Ref. EASA Opinion No 01/2024 - Ground Handling Requirements). This is expected to come into force in 2027. Until then, the ILT is, in many cases, forced to address the airline or airport regarding their findings surrounding ground handling. The NLA's supervision focuses exclusively on labour compliance. For the Minister of IenW, the only promising avenues for achieving the intended goals are the possible measures under the Regulations.

The Minister of IenW wants to contribute to improving the ground handling situation at Schiphol. As indicated in the problem description, there are several problems in ground handling at Schiphol. With the limitation decision, the Minister aims to contribute to solving the inefficient functioning of the ground handling market, reducing staff shortages at ground handling companies, preventing aircraft handling from being delayed, improving the safe execution of work processes and improving the terms and conditions of employment of ground handling staff. Reducing competitive pressure is a necessary condition for this.

Both the Directive and the Regulation distinguish between self-handling and regular ground handling (also called 'third-party handling'). Self-handling refers to an airline providing ground handling services for its own aircraft, or those of a subsidiary. The regulations also distinguish between different categories of handling services, including baggage handling, apron handling, fuel and oil handling and cargo and mail handling (as regards the physical handling of cargo and mail between buildings at the airport and the aircraft). Both baggage, apron and cargo and mail handling take place on the apron and/or in the baggage basement and are therefore relevant to this mitigation. As there are currently no known problems with the loading and unloading of catering and fuel and oil delivery, no restriction is proposed for these at this time.

The Regulations provide some policy options for the Minister of IenW to intervene in the ground handling market. Article 3(2) of the Regulation, for instance, provides the Minister with the power to limit the number of self-handling companies at an airport. Application of Article 5(2) provides the power to limit the number of (regular or third-party) ground handling companies at an airport. In this regard, the regulations provide scope to distinguish between different categories of services (baggage handling, apron handling, fuel and oil delivery, and cargo and mail handling in terms of the physical handling of cargo and mail between buildings at the airport and the aircraft, both on arrival and departure and on through flights).

Based on Article 14(1,2) of the Regulation, the Minister may establish a mission statement or technical specifications that ground handling service providers must comply with (paragraph 1) or decide that ground handling service providers shall only be admitted if they meet requirements in the field of, amongst others, environmental protection and compliance with applicable legislation (paragraph 2).

Finally, under Article 15(1) of the Regulations, the Minister may prohibit a provider of ground handling services from providing its services. However, this can only be done at the request of the (operator of the) airport and when it has been established that the company is acting contrary to rules previously imposed by the Minister for the benefit of the proper functioning of the airport.

The policy option of limiting the number of handling companies based on Article 5(2) of the Regulations would create an intervention by the Minister in the ground handling market at Schiphol. Article 12 of the Regulations requires that the final providers of the limited handling services be selected through a European tender. In establishing the selection criteria, the operator should at least take into account the quality of services and security at the airport. Criteria requiring handlers to apply standard operating procedures, comply with emission requirements, use ergonomic handling equipment, and use electric Ground Support Equipment could also be included.

Application of the prescribed admission requirements in Article 14(2) may lead to a quality impulse that applies to all ground handling companies but will have no effect on the number of active handlers and, thus, the functioning of the ground handling market, which is nevertheless a major cause of the problems. With the current competitive pressure, issues such as excessive physical strain on staff could persist for years despite the fact that companies should have been complying with health and safety legislation all along. By reducing competitive pressure, companies are also expected to have less incentive to break the rules for the sake of a possible price advantage over a competitor.

Application of Article 15 (banning a specific handler) has not been considered in the current situation. This article mainly provides an enforcement tool for the situation where a specific handler structurally fails to comply with previously established measures for the proper functioning of the airport. However, such rules have not

² Government Gazette. 1998, 27



been established by the Minister and, moreover, the problems at Schiphol play out more broadly and not with a specific handler.

3.4 Justification for choice of instrument

Although at first glance the use of the powers under Article 14 of the Regulations offers promising options for steering the ground handling market at Schiphol from the Ministry, it is expected that it will not achieve the policy goals.

As indicated in the problem statement, Schiphol has a non-efficiently functioning market, resulting in a lack of quality, persistent staff shortages and concerns about apron safety and the physical strain on staff in the baggage basement and apron. Moreover, in recent years, handlers have shown that under current competitive pressures, they struggle to comply with regulations (such as health and safety legislation) and there are incentives to prefer competitive advantage over quality improvement. Therefore, to bring about an improvement, it is important to remove the disruptive incentives in the market by intervening in the number of companies.

Instructions in the form of job descriptions or technical specifications will not directly help solve the problems in the market or reduce staff shortages. Applying the prescribed authorisation requirements in Article 14(2) as a stand-alone measure is expected to add little value to achieving the policy goals as applicable environmental, labour, and aviation safety laws and regulations largely cover these requirements.

Application of the power under Article 3(2) of the Regulation to limit the number of self-handlers will have no effect on the current issues as there are currently no parties operating purely as self-handlers at Schiphol. In addition, the number of self-handlers cannot be limited to less than two. Researchers from SEO, the University of Antwerp and To70 also conclude that a limitation is unlikely to lead to a higher number of self-handlers.

In view of the above, the most appropriate means of achieving the policy objectives is to limit the number of ground handling companies based on Article 5(2) of the Regulations. Indeed, using this measure constitutes an intervention in the market that can simultaneously give new entrants a quality boost by setting stringent tendering requirements by the airport operator. In the new situation, both handling service providers currently active at Schiphol and new entrants can participate in the European tender. The objective is that with fewer market participants, a larger market share will accrue to each party. The new situation, therefore, allows the parties to achieve more economies of scale and/or scope.

In the research report prepared by SEO, the University of Antwerp, and To70, a scenario analysis compares different variants of policy instrument deployment. These scenarios take into account the tightening of existing measures with minor improvements on working conditions (CLA), conditions to parties (License to Operate) or safety (equipment pooling). At the same time, the researchers also see the shortcomings of these measures and the improvements on the various objectives are greater when a limitation of the number of companies is implemented in addition to these measures. In short, scenarios where limiting the number of companies is not part of the measures clearly score less well on the goals to be achieved.

4. Relationship to higher law

The ground handling market was liberalised on 1 January 2001. Ground handling service providers are, in principle, free to provide ground handling services at any airport in the Netherlands that is open to civil aviation and has an annual traffic volume of at least 2 million passenger movements or 50,000 tonnes of cargo. This principle is laid down in European Directive 96/67/EC³, which has been implemented in the Netherlands through the Aerodrome Ground Handling Regulations. The freedom the Netherlands has to set its own rules is limited to the scope provided by the Directive.

The Aerodrome Ground Handling Regulations empower the Minister of IenW to limit the number of ground handlers in the following categories to no less than two per category: (i) baggage handling, (ii) apron handling, (iii) fuel and oil delivery, or (iv) cargo and mail handling, in respect of the physical handling of cargo and mail between buildings at the airport and the aircraft, both on arrival and departure and during through flights (Article 5(2) of the Regulations).

5. Consequences (excluding financial risks)

Scientific analyses, interviews with stakeholders, and an international comparison were conducted to reach the conclusions in the report by SEO, the University of Antwerp, and To70. The results were translated into assumptions and expectations in the scenario where the number of ground handling companies at Schiphol would be limited. As these are assumptions and expectations of a future situation, and it is uncertain how the market will react to this, there is no certainty that the proposal will achieve all the desired effects. To increase this likelihood, the Ministry will remain involved with the follow-up process even after the limitation decision through periodic meetings with Schiphol. This is because the design of the tender and, in particular, the formulation of the selection criteria is very important for the effectiveness of the decision. The research by SEO, the University of Antwerp and To70 also shows that the best results in terms of improving the ground

³ European Directive 96/67/EC of 15 October 1996 on access to the ground handling market at Community airports (OJEU 1996, L 272).



handling situation will be achieved if limiting the number of ground handling companies is accompanied by strict tendering requirements, a tightening of the License to Operate and a further introduction of equipment pooling. The Minister depends on Schiphol to implement and monitor these measures. These aspects will also be discussed in the periodic consultations between the Ministry and the airport. Meanwhile, the parties have agreed to a more stringent version of the License to Operate. This will take effect from 1 January 2024. Limiting the number of companies is not expected to lead to job losses. As the restriction does not affect the number of flights and/or passengers, and thus the demand for handling services, the demand for staff will, at most, be distributed differently. Staff who lose their jobs because their employer is not selected should, in principle, be able to work for one of the parties that is selected. The Ministry requests Schiphol to include taking over staff in the tendering requirements. An obligation to take over staff can also be part of a CLA. The current sector CLA only obliges parties to 'inform the union' and 'participate in consultations' to secure maximum employment. On top of that, the current sector CLA does not apply to KLM ground handling staff. At this point, therefore, the union and employers still need to take the necessary steps. From the Ministry, this process will be supported as far as it fits within the responsibility of the central government.

6. Implementation

A reduction in the number of ground handling companies at Schiphol will lead to a situation where new companies have to be selected on the basis of a European tender. Article 12(3) of the Regulations requires the airport operator to carry out the selection unless the operator controls a company providing ground handling services. Schiphol, as airport operator, does not control a ground handling company and will, therefore, make the selection in consultation with users. It is also up to Schiphol to draw up the selection criteria and establish them after consultation with users and ground handling service providers to determine whether the selection will take place for the full period of up to seven years. This means all companies wishing to operate at Schiphol after the tender will have to prepare and submit a tender offer. It is possible that one or more new parties will enter the market at Schiphol after selection. To enter this market, they will have to negotiate contracts with airlines, obtain equipment and recruit staff. In addition, there will be companies that will have to focus on other activities or cease operations at Schiphol. Finally, one or more companies may still manage to maintain their position at Schiphol, possibly expanding their market share.

A transition period after the end of the tender is taken into account to ensure that parties have sufficient time for all these adjustments. A longer transition period is convenient for companies when resolving their obligations and taking on new ones. At the same time, the transitional period should also not be too long, as this will prolong the current issues and leave the exact settlement of the selection unclear for longer. As it is important to have a sufficiently long transition period, the limitation will only take effect after the tendering process has been completed, the final award of contracts has taken place, and a transition period of at least six months has been taken into account. Please see the regulatory burden section below for an elaboration of the expected implementation burden and regulatory burden of this decision.

7. Supervision and enforcement

Unlike other aviation domains, ground handling safety is not yet directly regulated by EASA. However, this is currently being worked on. EASA published a first proposed regulation (requirements) for ground handlers on 16 January 2024 (Ref. EASA Opinion No 01/2024 - Ground Handling Requirements). This is expected to come into force in 2027. Until then, the ILT is, in many cases, forced to address the airline or airport regarding their findings surrounding ground handling. The absence of such regulation means that the supervision of ground handling is the responsibility of the ground handler, the airline contracting the ground handler, and the airport, which allows the ground handler to be on its premise.

Should a situation arise where a ground handling service provider breaches Article 3 of this Decision, Article 11.15 of the Aviation Act empowers the Minister to impose an administrative order. In practice, this power will fall to the ILT.

The NLA enforces labour legislation at all companies in the Netherlands, including ground handling companies. Since the end of 2022, the NLA has intensified its supervision of ground handling at Schiphol. Limiting the number of ground handling companies is not expected to change anything in terms of supervision.

8. Financial implications

The limitation of the number of ground handling companies at Schiphol has no direct financial impact on government parties.

The limitation could lead to handling companies charging higher rates for handling aircraft at Schiphol because they have to meet higher quality requirements. These higher rates could then lead to higher costs for airlines, which could, in turn, pass these costs on to their customers, resulting in higher ticket prices. Should such a cost increase occur, it is seen as a logical consequence of the move to improve the situation.

For the handling companies operating at Schiphol after the tender, the expectation is that the financial position will improve compared to the current situation. Indeed, the objective is that with fewer market players, each party will accrue a larger share of the market. The new situation enables the parties to achieve more



economies of scale and/or scope.

9. Evaluation

The intention is to set up recurring meetings with Schiphol after the limitation decision is finalised to closely monitor the progress of the tender. However, monitoring and evaluating the limitation can only start once the new situation is in place, as only then can the limitation's effects be observed. Monitoring and evaluation will be further elaborated in the period between decision-making and the start of the new situation. This will include considering the situation in sectors exempted from the limitation and the extent to which alternative measures are needed there.

As the regulations stipulate that a new tender will have to be carried out at least every seven years, the Ministry, in consultation with Schiphol, will establish some evaluation criteria that will be monitored over the next seven years. It is also planned to commission an external study before making a decision on a possible next tender. Based on the monitoring and the results of the external study, it will then be possible to decide whether the restriction should remain in place or whether adjustments are needed.

10. Advice and consultation

From 15 September to 15 October, the proposed decision was made available as an internet consultation. This received 20 unique responses. Following these responses, the following changes were made to the final decision:

- The restriction applies only to handling flights with passengers falling under the definition of commercial traffic⁴. Using this definition, the scope of the limitation is narrowed and does not apply to the handling of cargo and freight aircraft or to the handling of General Aviation. The reasons for this choice are set out below for these points.
- Due to the adjustment mentioned above, the limitation does not apply to cargo handling (transport of cargo between warehouse and aircraft) and apron handling of cargo aircraft. This was chosen after cargo parties requested an exception for cargo handling in the consultation. These parties argue that cargo handling is fundamentally different from baggage handling and takes place at a separate location at Schiphol. Moreover, these parties have made a plausible case that limiting their operations could create extensive operational problems for cargo handling, including introducing additional transfer moments. The parties concerned are not informed that the issues that led to the limitation do not generally affect cargo handling. Therefore, other options will be explored and, if necessary, used to improve the working conditions and situation in cargo handling.
- By applying the limitation only to the handling of flights falling under commercial traffic, the handling of General Aviation (including private flights) is also not affected by the limitation. During the consultation phase, it became clear that without adjustments, the limitation would also affect the handling of private aircraft, while it was not intended to affect this process beforehand. As the problems from the problem definition do not occur here structurally, intervention in this process is therefore not necessary. Other processes that were not intended to be affected beforehand were passenger bus transport and aircraft parking assistance (marshalling). These operations, as well as catering and fuel supply, are not currently demonstrating any problems. Therefore, it has been explicitly stated for these processes that the limitation does not apply there.
- Given the importance of a transition period and postponing the start of the tender in time, it has been decided not to fix the moment the limitation takes effect but to link it to several conditions. This will allow the start date of the limitation to be determined once the award is final. The limitation will then take effect on the next start date of an IATA season after a transition period of at least six months has been observed. This adjustment is less rigid and gives more certainty about a reasonable transition period, even in case the process is delayed.
- The method of consultation on the selection criteria has been extended, ensuring that not only users but also ground handling service providers are consulted before the selection criteria are adopted.
- An explanation has been added on the takeover of staff.

The ILT has been asked to assess whether an Enforceability, Feasibility and Fraud Prevention (HUF) test is considered necessary. In response, the ILT has indicated that it does not consider a HUF test necessary. The authority of the ILT in the event of a possible violation of Article 3 of this decree could potentially be assessed at a later stage.

At the same time that the documents were sent out for Internet consultation, the draft documents were also submitted for a regulatory burden test to the Advisory Board for Regulatory Burden Assessment (hereinafter ATR). The board's opinions are discussed in the newly added section on Regulatory Burden.

⁴See the definition of commercial traffic in Article 1.1(n) of the Schiphol Airport Traffic Decree (Journal of State 2002, 593).



11. Regulatory Burden

The ATR issued its advice on 19 October 2023. The advice requested that the Ministry provide more insight into how the proposal's objective will be achieved and how Schiphol will avoid imposing too high compliance costs on businesses. Finally, it requested that the Ministry use scenarios or bandwidths to visualise the regulatory burden for the businesses concerned.

Usefulness and necessity

In its advice, the ATR already partially endorses the proposal's effectiveness by stating that it has already been substantiated that additional measures are necessary and that a limitation will improve the competitive position of handling companies vis-à-vis airlines. The question remains: how can we ensure that the handling companies use their increased rates to deliver better pay, safer working conditions, and reduced staff shortages?

First of all, it should be mentioned that with such an intervention in the market, there is always a certain degree of uncertainty as to the extent to which market players will react in the way that is envisaged. This uncertainty will never be entirely eliminated. The tender that follows the limitation is especially important to ensure as much as possible that market parties make the desired quality change.

This is because the tender enables Schiphol to impose requirements on handling companies. In addition to a requirement to comply with the existing sector CLA, these requirements will also include working conditions requirements. Companies wanting to become or remain active at Schiphol must meet these strict minimum requirements. Moreover, the tender also uses award criteria. This encourages parties to make extra efforts to be rated higher in the selection and thus have a greater chance of obtaining a licence. After the tender process, Schiphol will also start checking for compliance with these requirements. Therefore, the set of existing measures, strict minimum requirements, selection based on quality, and compliance monitoring provide a solid guarantee that market players will actually use the higher prices resulting from a limitation to improve the situation. As explained in Section 3.4, imposing requirements on companies without limitation is expected to be less effective.

Less burdensome alternatives

The objective of the limitation decision is to contribute to solving the problem and improving quality, safety, effectiveness and efficiency in ground handling at Schiphol. When requiring parties to meet higher requirements, it is inevitable that this will involve higher costs and more regulatory burden. The process includes some safeguards to prevent these costs from becoming unnecessarily high.

For example, the tender requirements are still presented to the parties concerned before they are adopted, and they can indicate if the proposed requirements are unreasonable or practically unfeasible. Thereby, based on that knowledge and experience at several airports in the EU, the parties concerned can make a good assessment of how the requirements compare with those at other airports.

Impact of regulatory burden

Although it is not possible to accurately portray the regulatory burden without established compliance requirements, an estimate of this proposal's regulatory burden using bandwidths is given below. Three groups of companies can be distinguished when determining the regulatory burden for the companies concerned: Schiphol as operator and tenderer, ground handling companies and airlines.

For Schiphol, the limitation decision will entail additional regulatory burden because of the tendering process and the supervision of compliance with the tendering requirements. Schiphol expects to deploy an average of 2.5 to 3.0 FTEs (€5,552 to €7,803 gross per month) structurally for this purpose. Converted into costs, this amounts to between €184,869.20 and €328,652.25 per year. As this work coincides with that of the existing team around the License to Operate, Schiphol believes the number of FTEs required will be lower. To determine the regulatory burden for ground handling companies, it is assumed that between three and ten companies are interested in securing a ground handling licence at Schiphol. Companies competing in the tender will incur costs for notification and entry to the tender portal, document review, submission of supporting documents, and tender management, among other things. The handling companies selected after the tender must demonstrate on an ongoing basis that they meet the tender requirements set. To this end, the companies must maintain and process data and report these to Schiphol on a monthly or quarterly basis. This entails ongoing regulatory burden costs.

A cost estimate can also be made for the handling companies for both the tendering process and the supply of data used for monitoring purposes. As these activities are less extensive than those for Schiphol, 1 FTE per company per year will be taken into account. However, to avoid underestimating this, the maximum amount for the highest scale from the salary scales of the sector CLA updated in March 2024, as published in the Government Gazette⁵, will be used. The costs for this FTE then come out at (€5,040.46 gross per month)

⁵ Government Gazette. 2024, no. 4286



€65,324.32 per year per company, with the number of companies in a tender year being higher than in the years between tenders.

For airlines, the limitation will not increase the regulatory burden. Indeed, negotiating and concluding contracts with handlers is a regular part of business for airlines.

The table below gives an overview of the expected additional regulatory burden per year if the limitation is introduced. The lower limit of the bandwidth is based on 2.5 FTE at Schiphol at the lowest salary indicated by Schiphol. For the handling companies, the lower limit is based on 1 maximum salaried FTE per company for three companies. For the scenario indicating the upper limit of the bandwidth, 3 FTE at Schiphol was assumed at the highest stated salary. In this scenario, for the handling companies, 1 maximum enrolled FTE per company was assumed for 10 companies. In both scenarios, there is no addition of regulatory burden for the airlines, so the costs there have been set to zero.

Table 1: Estimated increase in regulatory burden limitation

	Schiphol	Handling companies	Airlines
Lower limit bandwidth	€ 188,726.89	€ 195,972.96	€ 0
Upper limit bandwidth	€ 318,333.17	€ 653,243.20	€ 0

In conclusion, the increase in regulatory burden is limited to a few companies. Moreover, it is expected that these companies will also benefit from the advantages provided by the decision. The Ministry sees the increase in regulatory burden as a logical consequence of the desire to improve the situation and an acceptable consequence of the limitation.

12. Transitional law and entry into force

The limitation decision will enter into force after publication of the decision in the Government Gazette. However, Article 4 also stipulates that the limitation will not take effect until the award of contracts to the handling companies has been finalised and a transitional period of at least six months has been observed. This avoids delays in the tender procedure, which could result in insufficient time being left to ensure a reasonable transitional period for those concerned.

B. Article-by-article explanation

Article 1

For the definition of 'ground handling services', as in the Regulation, reference is made to the list of ground handling services contained in Directive 96/67/EC of 15 October 1996 on access to the ground handling market at Community airports.

The definition of 'commercial traffic with passengers' follows the existing definition of 'commercial traffic' in the Schiphol Airport Traffic Decree, albeit delineated to commercial traffic with passengers. The reason for this is that it does not limit the number of cargo flight handlers.

Article 2

The first paragraph contains the limitation of the number of ground handling service providers in the baggage handling and apron handling categories. The limitation in the apron handling category does not cover (i) the guiding of aircraft upon arrival and departure on the ground (also known as 'marshalling'), (ii) the transport of passengers between the aircraft and the terminal, and (iii) the transport, loading into and unloading from the aircraft of food and beverages.

No more than three providers can operate in each category. The limitation concerns only providers offering ground handling services to third parties. Users wishing to provide self-handling services are not limited in number.

The second paragraph provides that the airport operator shall both tender and select the suppliers of ground handling services in the limited categories of ground handling services. This is in line with Article 12(3)(a) of the Regulations. When carrying out the tendering and selection, the operator shall comply with the conditions of Article 12 of the Regulations. The conditions include the manner in which the tender is conducted and the airlines' involvement in the final selection.

The third paragraph ensures that ground handling companies and airlines are involved in defining the selection criteria.



According to the fourth paragraph, the operator must also consider the quality of service and safety at the airport when establishing the selection criteria.

The fifth paragraph ensures that the selection of providers complies with Article 5(3) of the Regulations. In brief, that article stipulates that if a restriction is applied, each user can choose from at least two ground handling providers, and at least one of these is not dependent on the airport operator or on a user who accounts for more than 25 per cent of passenger or cargo transport. Since the operator of Schiphol Airport does not itself provide ground handling services, it is sufficient here to include the limitations relating to users.

Article 3

Article 3 regulates that ground handling services restricted under Article 2(1) may only be provided by suppliers of ground handling services selected in accordance with Article 2(2).

Article 4

Article 4 regulates the entry into force. There is a transitional period of at least six calendar months between the final award of contracts following the tender and the effective date of the limitation. The effective date of the limitation shall coincide with the start of the IATA winter or summer season.

*The Minister of Infrastructure and Water Management,
M.G.J. Harbers*