

Airport Competition

Small airports vs. big airports
A view from Munich, Germany

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Michael Tegethoff, WALA Conference, Bologna, 20 January 2017



Munich Airport: Bavaria's gateway to the world. A global hub

[1/2]

Since it was relocated in 1992, Munich Airport has been one of Europe's busiest airports in terms of passengers, number two in Germany, and amongst the top ranked airports world-wide. Today, Munich Airport is a major hub of international significance with **42.2 million PAX** [2016]. Other 2016 figures [provisional]:



Number 2
in Germany



Number 9
in Europe



Number 36
worldwide



97
airlines



70
countries

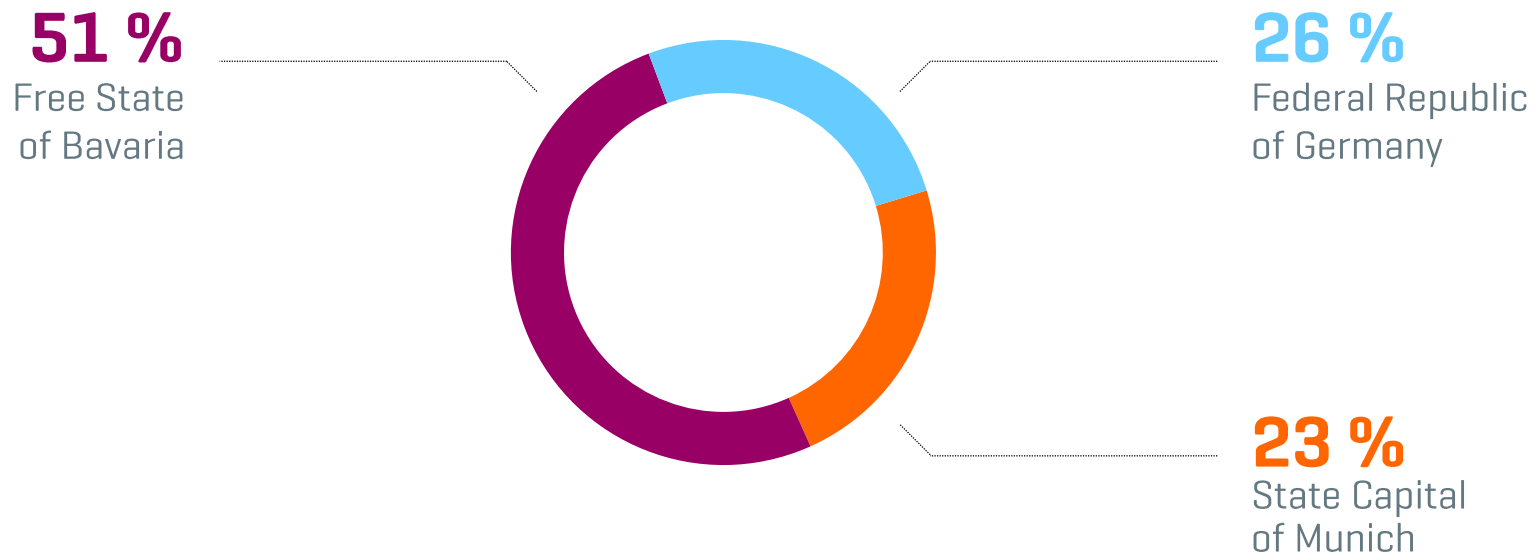


247
destinations

Munich Airport: The shareholders

[2/2]

The shareholders of Flughafen München GmbH (FMG) are the Free State of Bavaria with a 51 percent stake, the Federal Republic of Germany (26 percent) and the state capital of Munich (23 percent).



Overview

What we will look at today:

1. Competition between airports
2. The playing field – business models and legal framework
3. Regulation of airport charges
4. Regulation of slots allocation
5. EU State aid law
6. Conclusion

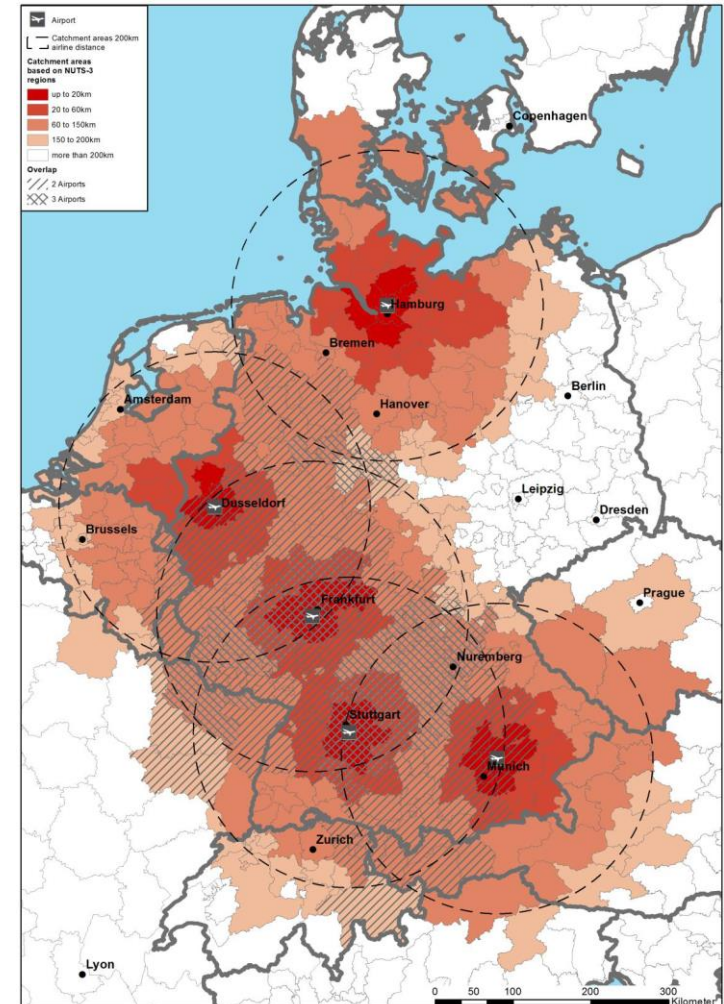
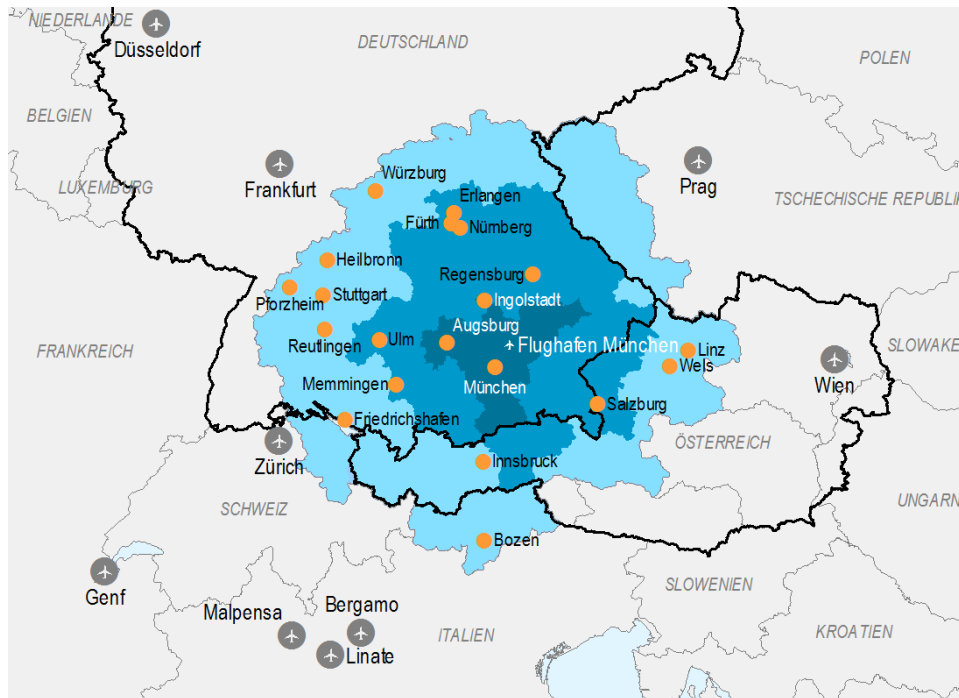


1. Competition between airports

[1/2]

Approaching the subject: Where can we find competition on a legal level?

- There have been no [known] lawsuits between airport operators in Germany.
- Nevertheless and undisputably, there is competition between airports. Let us have a look at some catchment areas.



Source: Heil, Geographic Market Definition in the German Airport Sector: Analyzing Five Major Airports http://www.wiwi-frankfurt.de/wp-content/uploads/2015/12/Eugen_Heil-web.pdf



Approaching the subject: How do airports compete with each other?

There is a plethora of factors influencing competition between airports in real life. The most important airport customer groups are **airlines** and **passengers**. How can airports attract them?

Hard location factors may include:

- **Airline's point of view**
 - Airport charges
 - Availability of slots
 - Airport infrastructure
 - Minimum connecting time [see appendix]
 - Connectivity
 - Overall costs
- **Passenger's point of view**
 - Proximity
 - Intermodal transport links
 - Minimum connecting time
 - Costs

Soft location factors may include:

- **Airline's point of view**
 - Attractiveness of target region regarding
 - Tourism
 - Significant industries
 - Qualification of workforce
 - Ease of doing business
- **Passenger's point of view**
 - Shops, restaurants, leisure facilities
 - Convenience
 - Overall attractiveness

Historical development

- The provision of vital infrastructure financed from public funds budget has **traditionally** been a **core task of any state** or country.
- In so far, the funding of e.g. traffic infrastructure was a predecessor of what is today known as "**services of general economic interest**" [SGEI].
- Airports in their current size evolved partially from publicly funded airports [e.g. state capitals' airports; former military airports].
- Nowadays **public shareholders** are still holding shares in **all major** international civil **airports** in Germany and most EU Member States.
- However, the definition of the term of **SGEI** as used by the European Commission **nowadays is more narrow** [cf. C-280/00 *Altmark*; see also Commission Decision 2012/21/EU on public service compensation].



2. The playing field – business models and legal framework

[2/3]

Case law of the European Court of Justice (ECJ) applying EC competition law to airports:

- **Aéroports de Paris** [T-128/98]:
“The **provision of airport facilities to airlines** and various service providers by a public corporation, **in return for a fee** at a rate freely fixed by the latter, and the management of those facilities **are economic activities.**”
- **Halle/Leipzig** [T-455/08]:
“Airport management is an economic activity. The construction of the infrastructure necessary for this activity will allow the airport manager to increase its capacity and its economic activity of operation. **The construction of a runway is inseparable from its operation and must be classified as an economic activity.**”



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- ✚ The classification of airport operation and management in EU competition law changed with the economic and political environment.

The nature of the market players' business models today:

Airlines

- Mobile assets, very flexible
- Make money "only when planes are in the air"



Airports

- Immobile assets
 - High ratio of fixed costs for prefinancing of infrastructure, capital costs, and depreciation
 - Earnings depend on airlines and PAX
 - Cannot adjust size to demand ["24/7" obligation from operator licence]
 - Germany: Major airports cannot close down due to the federal air traffic masterplan
- ↪ The airports' cost structure makes losing passengers to competing airports very expensive.

3. Regulation of airport charges

[1/3]

Directive 2009/12/EC on airport charges

- Scope:
 - Airports > 5 million PAX/year
 - Airports with highest passenger volume per EU Member State
- ↳ Applicable to MUC?
 - 42.2 million PAX [2016] ✓
- ↳ Applicable to small airports?
 - [-]
- We do not stop here: airport competition – big vs. small – may also ask for specific regulation affecting only one of the groups.

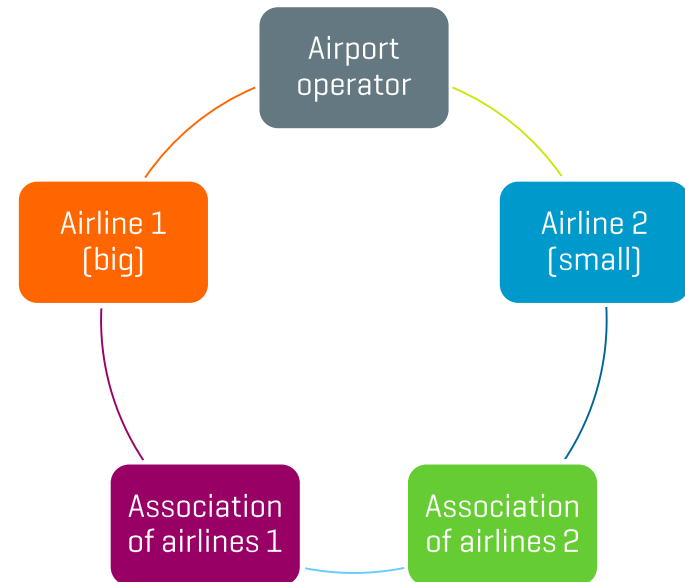


3. Regulation of airport charges

[2/3]

Directive 2009/12/EC on airport charges

- **Procedure:** consultation between airport and airlines at least once a year
- Market players are encouraged to find mutually acceptable solution
- Member States must set up independent supervisory authority that must approve of result
- Approved charges are published and included in contracts with airlines



Germany: Courts can adjust airport charges in users' contracts (§ 315 German Civil Code) for reasons of equity.

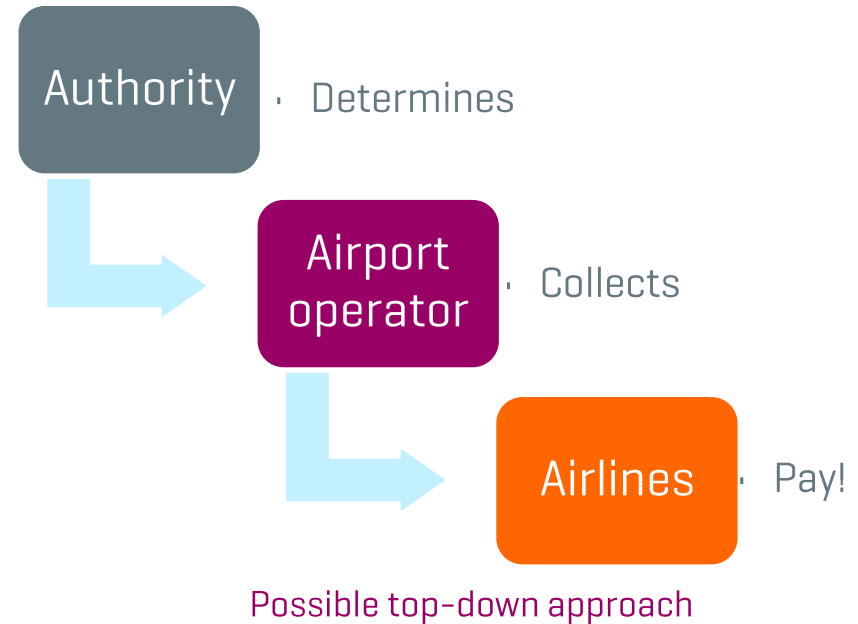
3. Regulation of airport charges

[3/3]

Directive 2009/12/EC on airport charges

Criticism/for consideration:

- **Airlines:** no transparency!
 - ↳ What is "transparency"?
 - Organisational clarity?
 - Description of overall costs?
 - Description of current utilization rate?
 - Description of capacity?
- **Airlines:** airports demand excessive return on investments!
- **Airports:** trade and business secrets must be protected!
- **Top-down approach:** appoint regulatory authority with pricing process and price determination?
- Consultation procedure might be **preferable** after all?



4. Regulation of slots allocation

[1/3]

Regulation [EEC] 95/93

- Major European airports have **no available slots** to satisfy demand by airlines.
- Airports as owners, providers and producers of air traffic infrastructure have **no proprietary rights**, i.e. no ownership rights regarding the rights of use with respect to the runways.
- **Regulation [EEC] 95/93**
 - Follows IATA guidelines
 - Each Member State appoints **airport coordinator**
 - Coordinator must act in a neutral, **non-discriminatory** and transparent manner



Congestion at Changi airport, © Simon_sees, licensed under <https://creativecommons.org/licenses/by/2.0/legalcode>, no changes made

4. Regulation of slots allocation

[2/3]

Regulation [EEC] 95/93

- **Scope**
 - Community airport
 - MUC: ✓
 - Small airports: ✓
- **Classification**
 - **Coordinated airport**
 - Permanent capacity constraints
 - Germany: 7 airports
 - MUC: ✓
 - Small airports: [-]
 - **Schedules facilitated airport**
 - Potential for congestion at some periods
 - Germany: 9 airports
 - Medium-sized airports [+/-]
 - Small airports [+/-]
 - FMM [-]



4. Regulation of slots allocation

[3/3]

Regulation (EEC) 95/93

- For consideration:
 - Commission proposal for reform [COM(2011) 827 final]
 - Induce the most economic airline behaviour
 - Grant express permission to trade slots
 - Cost efficient
 - Landscape-planning and environment friendly
 - Enabling improved crisis management
 - Auctions considered, could be conducted by coordinator or airports themselves [not part of proposal]



But: Airlines see no point in reform, want to maintain status quo and, in particular, 80/20 rule

Airports, industry associations are more open to reform

Right to information for competitors derived from Art. 108 para. 3 cl. 3 TFEU
[TFEU = Treaty on the Functioning of the European Union, Lisbon Treaty]

Article 107 TFEU

1. Save as otherwise provided in the Treaties, any aid granted by a Member State 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 Member States, be incompatible with the internal market. [...]

Article 108 TFEU

[...]

3. The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the internal market having regard to Article 107, it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.

5. EU State aid law

[2/4]

Right to information for competitors derived from Art. 108 para. 3 cl. 3 TFEU
[TFEU = Treaty on the Functioning of the European Union, Lisbon Treaty]

- Scope of art. 107 TFEU: “Any aid granted through State resources”
 - MUC: ✓
 - FMM: ✓
- Guidelines on State aid to airports and airlines [2014/C 99/03]
 - Operating aid: transitional period depending on size of airport
 - Phase-out within 10 years



5. EU State aid law

[3/4]

Right to information for competitors derived from Art. 108 para. 3 cl. 3 TFEU
(TFEU = Treaty on the Functioning of the European Union, Lisbon Treaty)

The facts of the case (*simplified*):

- Operator of Lübeck airport [state-owned] charged Ryanair reduced rates compared to those published in the table of airport charges, granted marketing allowance.
- Air Berlin sued the operator for information as to the exact amounts.
- A longer than a decade dispute ensued involving:
 - European Court of Justice [by reference for a preliminary ruling, 2014-04-04, C-27/13]
 - Higher Regional Court of Schleswig [2015-04-08, 6 U 54/06]



Right to information for competitors derived from Art. 108 para. 3 cl. 3 TFEU

The decision of the ECJ [*simplified*]:

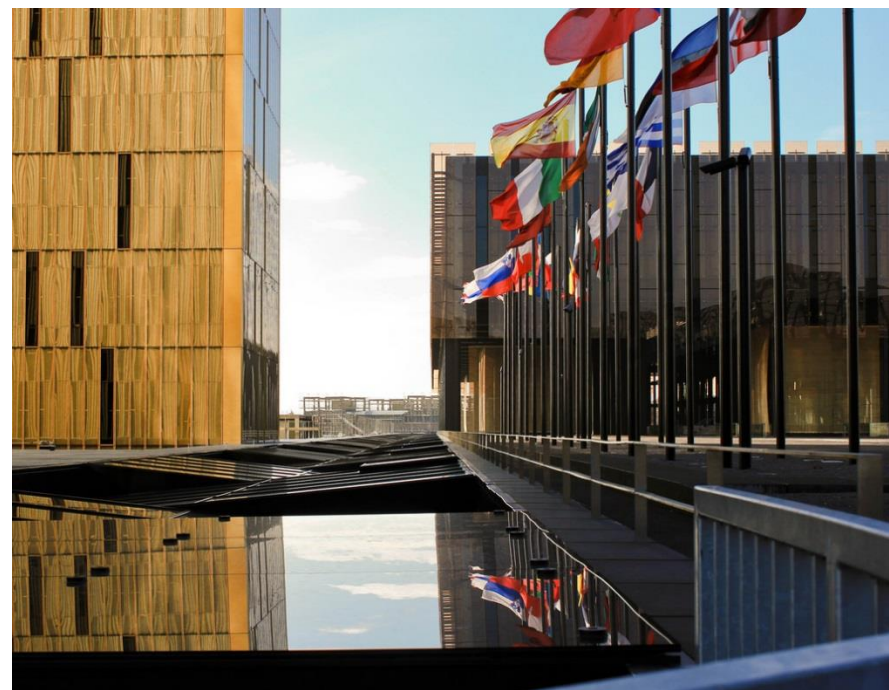
- The principle of effectiveness of EU law requires that the third sentence of art. 108 para. 3 TFEU be given direct effect in the law of the Member States, i.e. Germany in this case.

This caused the German court to make the following derivations:

- The owner may require the disturber to remove the interference.

↪ I.e. the claimant, who is in a competitive relationship, can demand repayment from the defendant. However, not to herself but only to the grantor of the State aid.

↪ Any repayment claim goes even further than an information right in terms of legal consequences. However, before a repayment claim can be made successfully, the amount must be known. Thus, the right to information is included in the repayment claim [*de maiore ad minus* consideration]



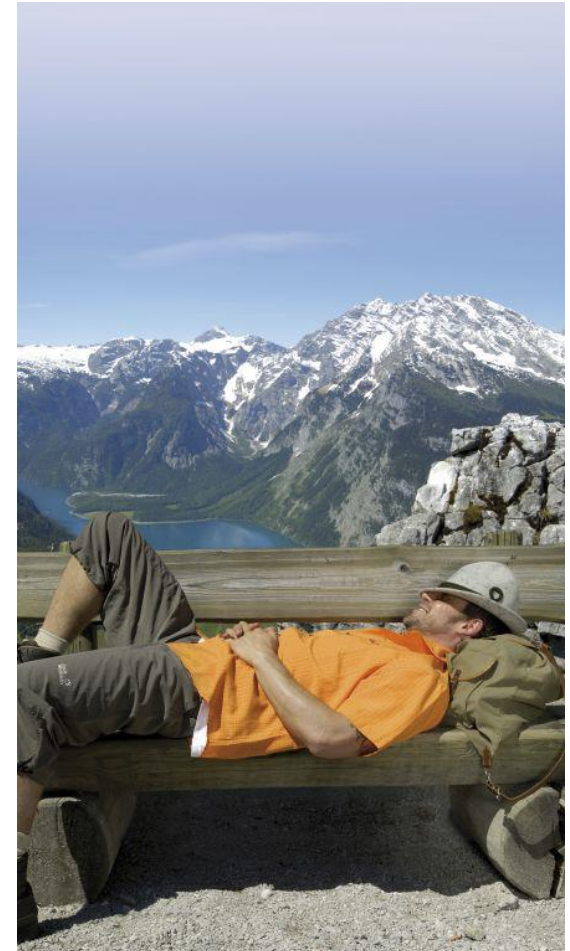
European Court of Justice, © Katarina Dzurekova, licensed under <https://creativecommons.org/licenses/by/2.0/legalcode>, no changes made

Question: Is this private enforcement as intended by the European legislator?

6. Conclusion

A big European airport (such as Munich Airport) must always comply with EU State aid law. This is the only regulated area that also affects small airports.

- In addition, big airports may **not** decide:
 - **If** airport charges are applied
 - **How** airport charges are applied
 - **What airlines** it accepts as customers, and
 - **When** they can take off and land.
- While outside the scope of this short presentation, the airport cannot even decide under what conditions it sources required goods and services since it is bound by the **rules applicable to sectorial monopolies (public procurement)** as provided for by the German Competition Act.
- In summary, big airports are heavily regulated in areas crucial for fair competition. Competition law is **not** the problem of small airports.
- We live in an [almost] perfect world!?



Thank you



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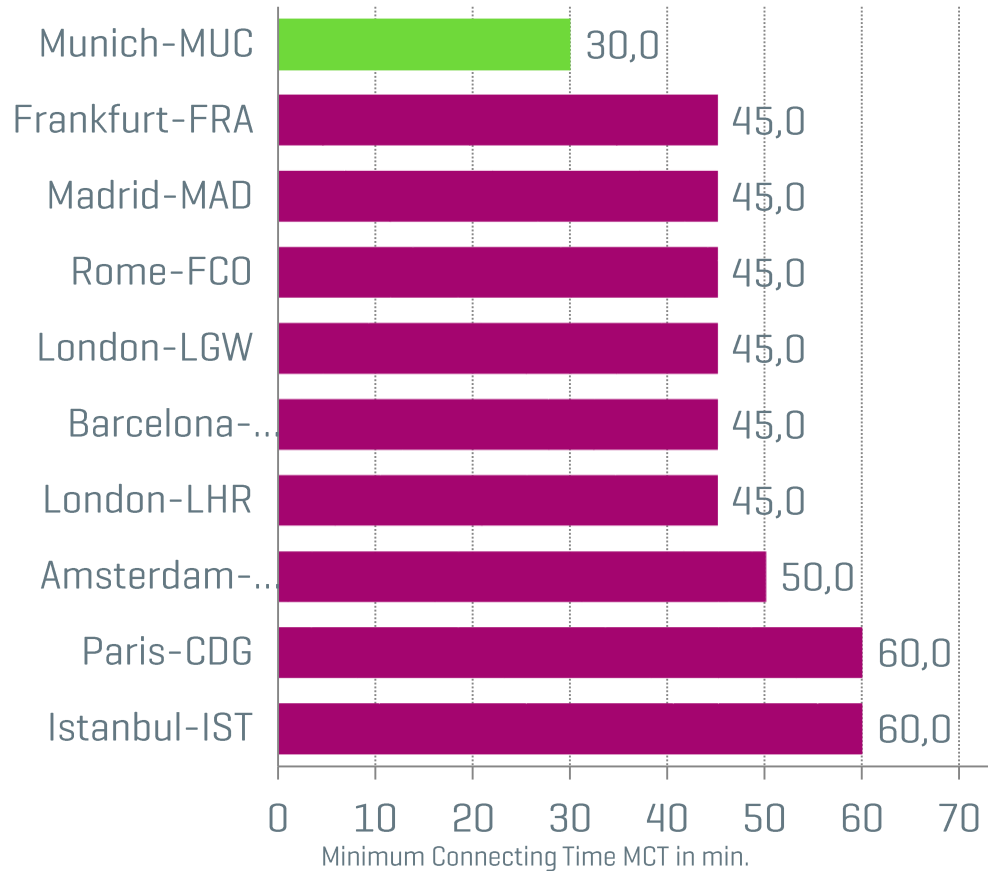
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Appendix: Minimum Connecting Time as a location factor

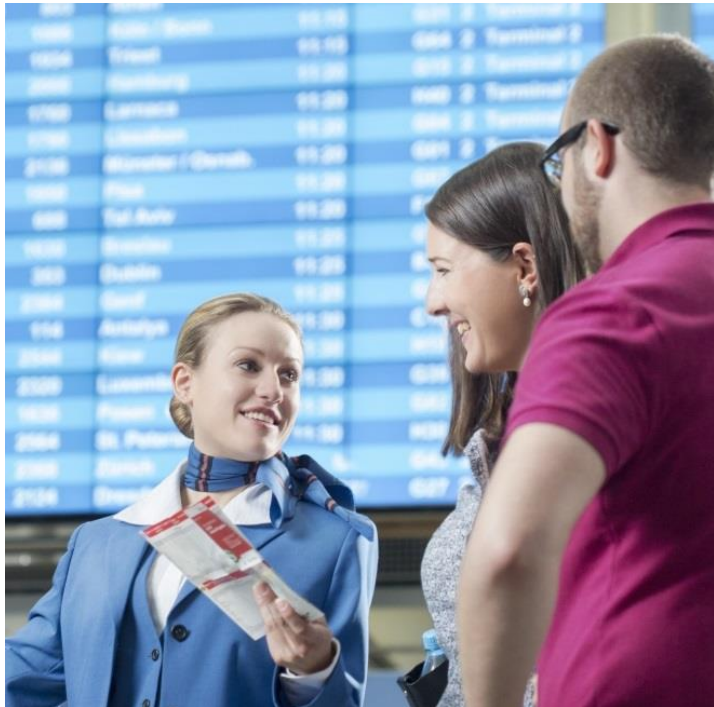
A clear and efficient design of facilities, processes and systems allows passengers to experience the best transfer product worldwide.



Source: OAG travel planner, April 2015; shortest MCT (international to international)

Appendix: Munich Airport Good. Better. Excellent

Munich is Europe's first 5-star airport. Passengers have voted it Europe's best airport (in the World Airport Awards) for the ninth time.



Europe's first 5-star airport



**Europe's best airport and
third-best in the world**



Best employer
in the transportation and logistics sector

Appendix: Munich Airport

Colorful diversity

Munich Airport Group provides a broad portfolio of services via its **12 subsidiaries**.

In addition to its core business at the airport in Munich, the Group also offers consultancy and management services all over the world.



- Check-in, baggage and aircraft handling
- Surveillance and security services
- Airfreight handling
- Maneuvering and de-icing of aircraft
- Passenger and information services
- Hotels and catering establishments
- Retail stores
- Company medical service and operation of the AirportClinic M
- Facility management; and so much more

Appendix: Munich Airport Employer, trainer, cosmopolitan

35,000 people are employed on the Munich Airport campus, making it the largest employer in the region. The airport, which has been named a top employer, offers a wide range of interesting jobs with excellent future prospects.



8,900

Munich Airport Group* employees



14

different vocations in which the Group offers training



50

different nationalities within the Group



* including trainees, but excluding workers in marginal employment, temporary workers, and interns