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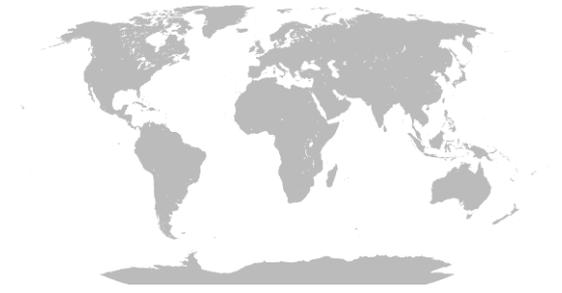


Good regulatory practices and Air transport regulatory competitiveness

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Agenda



- Scene setting:
 - No Country Left Behind
 - ICAO's work on Good Regulatory Practices
- Practical Application:
 - Principle example 1: Consultation & Transparency
 - Principle example 2: Evaluation & Assessment
- Introducing Regulatory Competitiveness:
 - Policy example: Consumer Protection

Setting Scene

No Country Left Behind and ICAO's Good Regulatory Practices



- The *No Country Left Behind (NCLB)* initiative highlights ICAO's efforts to assist States in implementing ICAO Standards and Recommended Practices (SARPs).
- The primary objective of NCLB initiative is to help ensure that SARP implementation is better harmonized globally so that all States have access to the significant socio-economic benefits of safe and reliable air transport.
- It was in the context of the principle of *NCLB* that the ICAO reviewed the “smart regulation” approach advocated by the IATA and adopted by the ICAO 39th Assembly, to come up with “*Good Regulatory Practices*”.

Good Regulatory Practice

- The *Good Regulatory Practices* are designed to improve policy making and the regulatory process, reduce unnecessary burdens on consumers and businesses, and bring about better and more cost-effective outcomes
- The *Good Regulatory Practices*, as contained in the third edition of *ICAO's Doc 9626 - Manual on the Regulation of International Air Transport*, are categorized into two sets of principles:
 - policy design principles; and
 - regulatory process principles.



Doc 9626

What are Good Regulatory Practices?

- A policy-making support tool based on 10 key principles covering **Process & Policy Design**

Process level: Regulations should	Policy-design level: Regulations should
Address a clearly identified need	Be consistent and coherent
Be supported by an impact assessment	Be proportional
Be developed by transparent decision-making	Be targeted at risk
Be informed by stakeholder consultation	Be fair and non-distortive
Be subject to regular review	Be clearly drafted and provide legal certainty

- The principles are universal tool based on best practices;
- They are for good rule-making;
- Not an end in itself. The objective is to help deliver better outcomes

Good Regulatory Practice

Consultation & Transparency
and
Evaluation & Assessment

Stakeholder Consultation

- Regulation should serve the public interest and be informed by the legitimate needs of those interested in and affected by it.
- Stakeholder participation in the legislative and regulatory process can help governments understand stakeholders' needs and ensure their feedback is considered when preparing new policies.
- Stakeholder consultations help governments' decision-making as they increase the information available to them.
- Consultation should be done at the earliest stages of the policy development process and if possible at various stages so that it helps governments collect data and the results can be used effectively.

Consultation: International Practice

European Commission

- Consultation at various stages of policy cycle – “roadmaps”
- Mandatory, internet-based public consultation minimum of 12 weeks for all legislative initiatives with RIA
- Results (responses) published and displayed on websites

Canada

- Required for all proposed legislation
- Live video broadcasts of Parliamentary proceedings

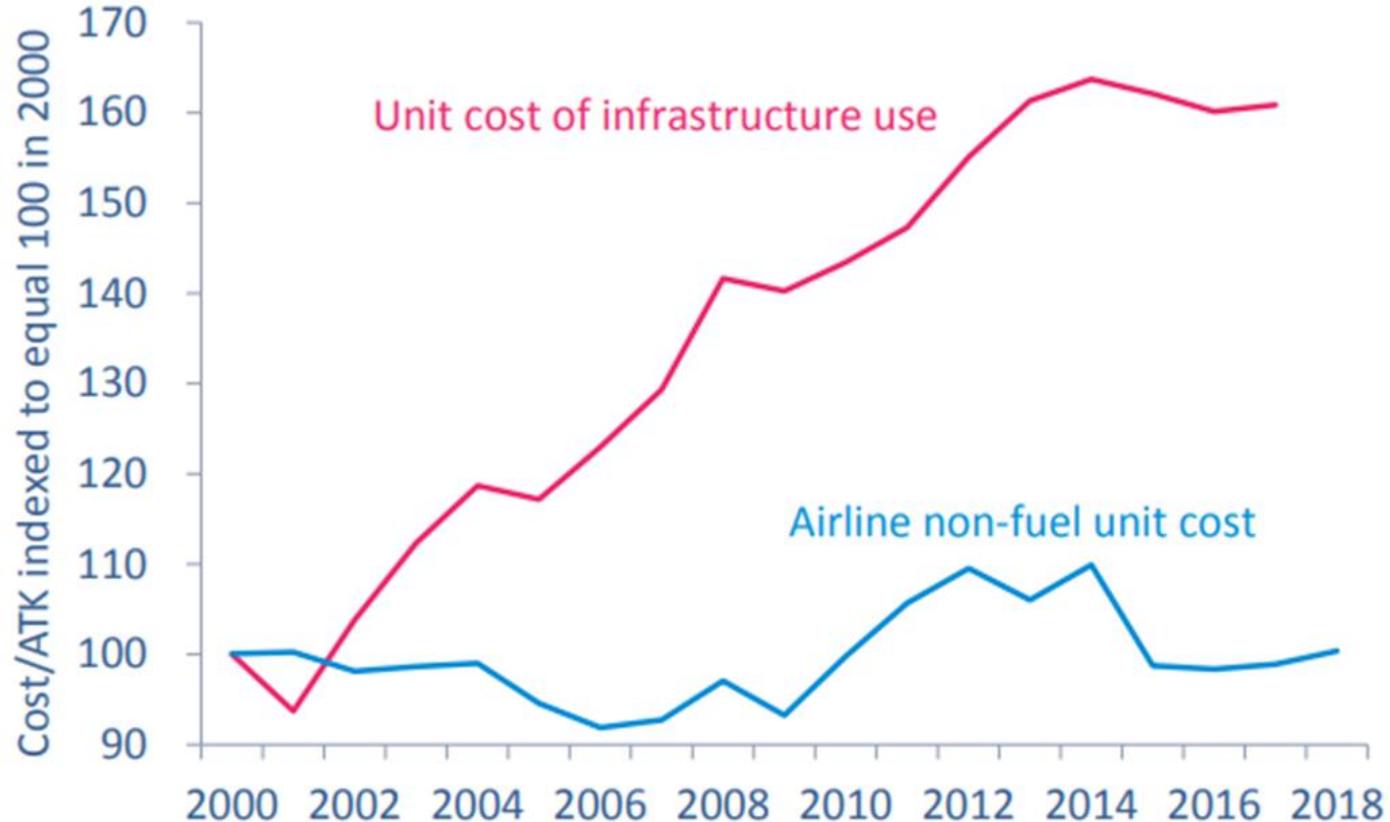
United Kingdom, Australia, New Zealand

- Required for all primary legislation
- Draft legislation must be circulated to the public (via internet) with RIAs

United States

- All draft bills approved by Committee in either chamber is usually published online

Policy Example: Infrastructure Costs



Source: IATA Economics using data from ACI (aeronautical revenues), ICAO (en-route charges) and Eurocotrol

Lack of consultation can lead to poor outcomes

Consultation

- Closed consultation
- Lack of consultation on infrastructure development planning or service quality

Transparency

- Limited, reactive and minimalist
- Key documents only available in local language

Cost-relatedness

- Excessive airport profit margins
- Prefinancing of investments, cross-subsidization

Non-Discrimination

- Implicit or explicit discrimination between carriers

Economic regulation

- Lack of independent economic regulation

Regulatory Impact Analysis (RIA)

- A tool used to examine and measure the likely benefits, costs and effects of government policies
- An analytical framework for decision making:
 - Clear identification of the underlying policy problem and specific options for addressing that problem;
 - Organizes and consolidates a menu of options for decisions at early stages of policy development;
 - Provides an objective and transparent basis and criteria for decision making

Impact Assessment: International Practice

United States: Congressional Budget Office (CBO) required to conduct formal costs estimate for all bills approved by either chamber

European Commission: Impact analysis for all laws with significant impacts on economic, social or environmental outcomes

Australia: Office of Best Practice Regulation requires impact analysis for legislation with significant impacts on businesses or the economy

United Kingdom: Required when legislation impacts the private sector, public services or civil society

New Zealand: Required for all primary legislation

Good Regulatory Practice

Regulatory Competitiveness
and
Consumer Protection Policy Example

Regulatory Environment shapes Competitiveness

What is Economic Competitiveness?

- ▶ World Economic Forum
- ▶ Productivity => Growth => Prosperity

What is Aviation Regulatory Competitiveness?

- ▶ Air Connectivity – virtual bridge between cities => social/economic benefits
- ▶ Regulatory Competitiveness – regulations/policies => optimal connectivity

Aviation Regulatory Competitiveness pillars

CONNECTIVITY	OPEN BORDERS	CARGO
Connectivity per \$Bn GDP Propensity to fly Number of airlines	Visa Requirements Air Passenger Information Automated Border Control	Trade Facilitation Index E-freight Index
SUPPLY CHAIN COMPETITIVENESS	INFRASTRUCTURE	SMARTER REGULATIONS
Cost Competitiveness Airport Charges ATM Charges Fuel Charges	Available runway capacity Available terminal capacity Capacity management	Liberalisation of BASA Consumer Protection Governance International Treaties

Montreal Convention 1999: A global instrument



Attempts at Harmonization: ICAO Principles

- Drafted by ATRP May 2014; endorsed by ICAO Council June 2015; upheld at ICAO Assembly in 2016
- Key elements:
 - Consistency with MC99
 - Principle of proportionality
 - Balance of market forces and consumer protection
 - Recognition of multi-stakeholder mechanisms
 - Pre-eminence of safety and security
 - Complaint handling procedures
 - Price and operational transparency
 - PRMs and pre-notification



The situation today: 65+ regimes and counting...



 Formal regime  Informal regime  Regime undefined

Very different regulatory approaches



Prescriptive; formal,
mandated regulation

Less prescriptive;
defers to contract of
carriage, MC 99

Comparing on a common basis

**SMARTER
REGULATIONS**

6.2 Consumer Protection

**0-to10 score option for the
indicator**

2.2.1 Consistency

Are laws consistent with MC99?

Score options and scores:

Fully consistent: 2; Partly consistent: 1; Not Consistent: 0;

2.2.2 Extraterritoriality

Is there extraterritorial application of national laws?

Score options and scores: Present: 0; Not Present: 2

2.2.3 Excessive Compensation

Do excessive compensation limits apply in a country?

Score options and score: Present: 0; Not Present: 2

2.2.4 Burden

Do national regulations have excessive scope e.g .treatment of mass disruption in a country?

Score options and score: Present: 0; Not Present: 2

Consumer Protection Indicator	Consistency	Extraterritoriality	Excessive Compensation	Scope	Total	INDICATOR SCORE
Argentina	2	2	2	2	8	10
Australia	2	2	2	2	8	10
Austria	1	0	0	0	1	1.25
Belgium	1	0	0	0	1	1.25
Brazil	1	2	2	0	5	6.25
...

$$\text{Country indicator score} = 10 \times \left(\frac{\text{country index data}}{\text{maximum index score}} \right)$$

Questions for discussion

- What have been your experiences with Good Regulatory Practices?
- Do you have any best practice examples that we could look to replicate elsewhere?
- Where have you faced challenges with implementation?
- What more can ICAO and IATA do to help?