

**CONFERENCE ON THE ECONOMICS OF AIRPORTS AND  
AIR NAVIGATION SERVICES**

(Montreal, 19 - 28 June 2000)

**DRAFT REPORT ON AGENDA ITEM 4**

## **Agenda Item 4: Determinants of the economic regulation of airports and air navigation services**

### **DISPUTE RESOLUTION**

#### **4.1 Documentation**

**Secretariat** (WP/12) pointed to the rapid growth in financial and organizational autonomy in the provision of airports and air navigation services, which could increase disputes between users and providers, particularly regarding charges. The paper suggested that ICAO policy be amplified and strengthened, with emphasis to be placed on guidance aimed at preempting disputes rather than dispute resolution.

**Switzerland** (WP/46) described the methods applied in Switzerland in the process of modifications of charges for airports and air navigation services and underlined the importance of user consultations.

**IATA** (WP/26) expressed concern that the privatization of airports and air navigation services could lead to increases in the cost base for charging purposes and thus to higher charges. It also pointed to the need for proper consultation and transparency and for independent economic oversight for the commercialization of airport and air navigation services, together with a neutral dispute settlement mechanism.

Listed for reference purposes under this item for later substantive consideration was a working paper presented by the United Kingdom (WP/91) addressed under item 5.2.

#### **4.2 Discussion**

4.2.1 Some delegates considered that the suggestion in WP/12 for inclusion in the Council Statements in Doc 9082 of a requirement for autonomous entities to follow all relevant ICAO policies and practices as a condition of establishment and operation was too strong and that it should be more permissive in tone. The Conference agreed that the text be amended to reflect the mandatory nature of the obligations of States under the Chicago Convention but the less than mandatory nature of other ICAO's recommended policies and practices.

4.2.2 There was widespread endorsement of the need identified in WP/12 for the functional provision of a neutral party at the local level to preempt and resolve disputes before they enter the international arena. The Conference agreed that the concept of such a "first resort" mechanism for dealing with complaints should be included in the Council Statements in Doc 9082 and as guidance in the *Airport Economics Manual* (Doc 9562) and the *Air Navigation Services Economics Manual* (Doc 9161) respectively.

4.2.3 To give effect to its conclusions, the Conference agreed to the following recommendations:

**RECOMMENDATION 4/1****THE CONFERENCE**

RECOMMENDS that ICAO include in the Council Statements in Doc 9082 advice to the effect that where an autonomous body or entity is established, whether by a government or private interests, to operate an airport(s) and/or air navigation services, the State should stipulate as a condition for its approval of the new body or entity that it observe all obligations of the State specified in the Convention on International Civil Aviation. The observance by autonomous bodies or entities of other ICAO policies and practices, such as those contained in Doc 9082, may also be required, as necessary, by States.

**RECOMMENDATION 4/2****THE CONFERENCE**

RECOMMENDS that the concept of a “first resort” mechanism for dealing with complaints be included in the Council Statements in Doc 9082 and other guidance material, as appropriate.

**INTERESTS OF GENERAL AVIATION****4.3 Documentation**

**International Council of Aircraft Owner and Pilot Association (IAOPA)** (WP/62) stated that air navigation services systems are basically designed for air carriers and that since general aviation and aerial work activities are marginal users of these systems; IAOPA felt that charges for air navigation services should reflect this and proposed an amendment accordingly to the Council Statements in Doc 9082.

**International Business Aviation Council (IBAC)** (WP/36) referred to the special characteristics of business aviation and suggested that ICAO undertake a study of the measures which can be taken to ensure that business aviation can establish, maintain and preferably expand its access to airports. IBAC (WP/37) also invited the Conference to recognise that business aviation is a marginal user of air navigation services, and to encourage the development of a sound and equitable financial relationship between providers of air navigation services and business aviation users reflecting this marginal use.

Listed for reference purposes under this item for later substantive consideration were working papers presented by IAOPA WP/63 addressed under item 5.2 and WP/61 addressed under item 5.2.1.

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#### 4.4 Discussion

4.4.1 The proposal in WP/62 for a change to the Council Statements in Doc 9082 was not endorsed. It was questioned whether there were any significant differences between general aviation and other users for provision of air navigation services or runway occupancy at airports. The view was expressed that users should be charged for services received and it was at the discretion of States to decide to subsidise certain user groups.

4.4.2 The Conference agreed that a study concerning business aviation's access to airports, as suggested in WP/36 should be undertaken, subject to the availability of resources.

4.4.3 In the light of its discussions, the Conference adopted the following recommendation:

#### **RECOMMENDATION 4/3**

##### THE CONFERENCE

RECOMMENDS that ICAO undertake a study of the measures which can be taken to ensure that business aviation can establish, maintain and preferably expand its access to airports.

#### **ECONOMIC REGULATION**

#### 4.5 Documentation

**Secretariat** (WP/9) dealt with economic regulation in the provision of airports and air navigation services and analyzed the results of a survey of States as to their practices in this area. The paper also addressed what purposes economic regulation should serve and discussed the functioning of a regulatory mechanism. Bearing in mind the fundamental changes in the organizational form under which the majority of international airports and air navigation services are provided, the Secretariat suggested additional guidance be provided by ICAO in the area of economic regulation of airports and air navigation services, to be included in the Council Statements in Doc 9082 as well as in appropriate ICAO Manuals or other documents. The paper also invited the Conference to consider whether any additional role or guidance should be taken on by ICAO in the field of economic regulation in the provision of airports and air navigation services.

**Australia** (WP/59) described the management of aviation infrastructure in Australia, aspects of related regulatory arrangements and future plans for air navigation services.

**Malaysia** (WP/92) submitted that airport costs have continued to rise, possibly because of expansion of infrastructure, and that the costs of non-aviation development projects should not be charged to aviation users. The paper invited the Conference to urge States to monitor and regulate the airport fee structure accordingly.

**New Zealand** (WP/109) commented on the application of general competition laws to airports and air navigation services and invited the Conference to endorse the use of general competition law as the basis of the regulation of these services, with sector-specific measures being used to support it.

**United States** (WP/41) referred to the developments occurring in airport ownership and operation under various forms, and proposed that the Conference agree that States retain appropriate oversight of airports to ensure safety and security of operations, promotion of competition, and fair access to users at rates and charges consistent with current ICAO guidance contained in the Council Statements in Doc 9082 and the *Airport Economics Manual*.

**EUROCONTROL** (WP/88) discussed the principles of economic regulation of air navigation service provision and suggested the addition of text to the Council Statements in Doc 9082 to reflect the application of economic regulation in cases where States entrust air navigation services to a service provider which adopts a commercial approach to the setting of charges. EUROCONTROL also suggested certain objectives for any system of economic regulation.

**European Civil Aviation Conference (ECAC) States** (WP/69) proposed a new text to be added to the Council Statement on airport charges in Doc 9082 to introduce principles of best commercial practice. ECAC States (WP/70) also suggested the inclusion in the Council Statements in Doc 9082 of text on regulation of airport charges where there is a risk that an airport or airport system may exploit significant market power to the disadvantage of airport users.

**European Commission** (WP/74) cited current development trends in the airport industry and emphasised the need for charging regulation and fair and efficient charging. The Commission (WP/76) also provided information on the European regulatory framework and the effect of the European Single Market.

**International Labour Organization (ILO)** (WP/95) suggested that the Conference recommends to ICAO member States to meet their obligations under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up; and to promote tripartite consultations and continuous social dialogue in the process of restructuring of airports and air navigation services.

**Airports Council International (ACI)** (WP/51) stated that airport regulation should only be necessary where the airport has considerable market power and where national and international consumer and trade laws are not sufficient to protect airlines and passengers. ACI invited the Conference to agree that regulation of airports should not be required in cases where abuses of market power do not exist, or where national or supra-national competition law already provide adequate protection for airlines and other airport users; and where regulation is deemed necessary, it should be structured so as not to create disincentives for needed investment or be unnecessarily bureaucratic and costly for the airport operator. ACI

(WP/49) also cited the need for airport operators to have the flexibility to adopt ownership and management structures which permit the highest levels of service.

**International Air Transport Association (IATA)** (WPs 27 and 28) pointed out that economic regulation can be an effective tool in improving the efficiency of airports and air navigation services and in countering potential abuse in setting charges, and proposed that ICAO guidance material appropriately include guidance for such regulation.

**International Transport Workers Federation (ITF)** (WP/34) suggested that the governments of ICAO member States should examine the effects of privatization and restructuring in airport services, retain government responsibilities for economic regulation and ensure that safety and security standards are not jeopardized. ITF (WP/35) also called on ICAO to examine effects on safety and efficiency of corporatisation and privatization, guarantee that governments set and enforce highest standards, ensure safety and security standards are not jeopardized, strengthen and introduce licensing requirements, establish minimum training standards for ATC staff and introduce licensing arrangements for ANS providers.

Listed for reference purposes under this item for later substantive consideration were working papers presented by the Secretariat (WPs 15 and 19), ACI (WPs 52 and 55) and IATA (WP/81) all addressed under agenda item 5.2.

#### 4.6 Discussion

4.6.1 On the broad issue of regulatory oversight the Conference accepted the view that States retain appropriate oversight of airports to ensure safety and security of operations, promotion of competition and fair access to users at rates and charges consistent with current ICAO guidance in the Council Statements in Doc 9082. The Conference noted that economic regulation can be an effective tool in cost efficiency of improving airports and air navigation services and in countering potential abuse.

4.6.2 The Conference considered a suggestion in WP/9 that States may wish to establish an independent regulatory authority for the economic regulation of airports and air navigation services. It was recognized that the context for this suggestion was situations where autonomous service providers are established or where monopolistic services exist; it may not be necessary where generic competition law, for example, was already being applied to autonomous or commercialized service providers.

4.6.3 A number of comments were made about the purpose of the regulatory oversight being contemplated for an independent authority as well the particular objectives that might underpin that authority. It was felt that the purpose of the regulatory oversight should be wider than the “financial practices” indicated in WP/9. As regards the objectives the Conference agreed that the list in WP/9 could, along with others discussed at the Conference, serve as the basis for an illustrative set of principles that could be incorporated in ICAO guidance.

4.6.4 While agreeing to this additional guidance the Conference nevertheless recognized that States would choose their own regulatory regimes and mechanisms according to their particular needs and

circumstances. The view was expressed that in choosing to establish an independent authority States might give consideration to the costs of regulation and the need for regulatory simplicity.

4.6.5 Turning to proposals in WP/69 to incorporate in ICAO guidance some principles of best commercial practice, the Conference accepted those in the form of an optional list for use by States, when considered to be appropriate.

4.6.6 The Conference noted the views of the ILO in WP/95 that governments meet their obligations under the ILO Declaration on Fundamental Principles and Rights at Work and that consultations be promoted in the process of restructuring airports and air navigation services. The Conference agreed that the ITF's elements regarding the concerns of employees, listed in WPs 34 and 35, might be taken into account and could be a positive contribution in the restructuring of airports and air navigation services.

4.6.7 With regard to the question in WP/9 of extending ICAO's role and guidance pursuant to Article 15 in the case of airspace over the high seas the Conference did not feel prepared to address that issue at the present juncture.

4.6.8 To give effect to its conclusions on the Conference agreed to the following recommendations:

#### **RECOMMENDATION 4/4**

##### **THE CONFERENCE**

RECOMMENDS that ICAO include in the Council Statements in Doc 9082 and other relevant guidance material, as appropriate, guidelines on the establishment of an independent regulatory body and mechanism. The purpose of the regulatory body would be to oversee specified economic commercial and financial practices, and its objectives could be drawn or adapted from, but need not be limited to, the following:

- a) ensure there is no overcharging or other anti-competitive or monopolistic practices;
- b) ensure non-discrimination in the application of charges;
- c) ensure transparency as well as the availability and presentation of all financial data required to determine the basis for charges;
- d) assess and encourage efficiency and efficacy in the operation of providers;
- e) establish and review standards, quality and level of services provided;
- f) monitor and encourage investments to meet future demand; and
- g) ensure user views are adequately taken into account.

#### **RECOMMENDATION 4/5**

## THE CONFERENCE

RECOMMENDS that ICAO include in the Council Statements in Doc 9082 and other relevant guidance material, as appropriate, guidance on principles of best commercial practice for airports in order to promote transparency, efficiency and cost effectiveness in the provision of an appropriate quality of services and facilities. Such guidance could cover, inter alia:

- a) quality and timeliness of services;
- b) assessment of investment proposals;
- c) consultation process;
- d) accounting practices and transparency;
- e) subsidization;
- f) development plans; and
- g) treatment of users.

## GROUND HANDLING

### 4.7 Documentation

**Secretariat** (WP/10) presented information on regulatory practices concerning ground handling at airports and identified existing ICAO policy guidance on this subject. The Conference was invited to consider whether the policy guidance with respect to ground handling in the Council Statements in Doc 9082, which addresses ground handling in connection with the importance to airports of revenues from concessions, is adequate.

### 4.8 Discussion

4.8.1 Some concerns were expressed concerning the possible inclusion of ground handling in the GATS Annex on Air Transport Services, as indicated in WP/10, in view of the need to take into account potential safety aspects, a study of which was under way in ICAO.

4.8.2 There were no substantive proposals to develop new ICAO policy guidance on ground handling and a suggestion for inclusion of guidance to the effect that general aviation should be allowed to undertake its own ground handling, did not attract support. In these circumstances, the Conference agreed that the guidance on ground handling in Doc 9082 is adequate, but that it would be useful to include a cross-reference to the relevant ICAO document (Doc 9587) containing a model clause on ground handling for optional application in air services agreements.



## CAPACITY MANAGEMENT

### 4.9 Documentation

**Secretariat** (WP/11) presented the results of a survey of States' practices for managing capacity constraints at their airports and in their airspace, based on a pre-Conference questionnaire. The survey indicated that congestion had become a worldwide problem and that, while there was some potential for increasing capacity and improving its utilization, economic instruments for capacity management would become increasingly important, with implications in the international arena. The paper also presented a recently completed *Study on the Allocation of Flight Departure and Arrival Slots at International Airports* (Appendix B to WP/11), for review by the Conference prior to its issue as an ICAO Circular. More specifically, the Conference was invited to consider the need for regulatory improvements suggested in the study, particularly as regards the independence of slot coordinators, and also to consider whether there was a need for any other ICAO guidance regarding capacity management at airports or for airspace.

**ACI** (WP/56) called on the Conference to take note of the essential role of airport operators in any slot allocation system. ACI also called on States to consult airport operators on the framing of any legal constraints on slot allocation and to recognise that airport operators should be able to set local rules, as well as to participate in the allocation process.

**IACA** (WP/96) presented its views on the Secretariat study on slot allocation.

### 4.10 Discussion

4.10.1 Many delegates underlined the importance of the challenge posed by capacity constraints and expressed appreciation for the information provided in the Secretariat's paper, particularly the study on slot allocation.

4.10.2 The Conference considered the need for ICAO guidance, focussing on the regulatory improvements recommended in the slot allocation study.

4.10.3 There was general agreement that any slot allocation process should be fair, non-discriminatory and transparent, and that it should take into account the interests of all stakeholders. The majority of delegates supported the concept of independent slot coordinators (whether in the form of a person or an appointed body). The Conference agreed that there was scope for ICAO to develop guidance material on the procedural aspects of slot allocation.

4.10.4 A number of delegates advised against a suggestion that priority might be given to long-haul flights when allocating slots given the wide variety of circumstances surrounding slot allocation. A similar view was also expressed with regard to giving priority to international operations or to air carriers from developing countries. While such criteria could have merit in some situations, they were not generally applicable. More

generally, the Conference agreed that it would be inappropriate for ICAO to become involved in the setting of priorities for slot allocation, since different States or regions may have different priorities and it was unlikely that a consensus would emerge. At the same time, it was noted that slot allocation could raise issues regarding denial of market access, discrimination, the principle for “fair and equal” opportunity, and consistency with Article 15 of the Convention on International Civil Aviation.

4.10.5 While the value of slot allocation mechanisms was widely recognized, concerns were expressed regarding the commercial trading of slots because of possible adverse effects on competition and because of unresolved legal issues.

4.10.6 To give effect to its discussion on capacity management, the Conference adopted the following recommendation:

#### **RECOMMENDATION 4/6**

##### **THE CONFERENCE**

##### **RECOMMENDS**

- a) that States whose airports are subject to slot coordination consider the need to ensure the independence of the slot coordinators in order to achieve a balance between the interests of the various parties concerned; and
- b) that ICAO
  - 1) undertake further work on developing guidance on procedural aspects of slot allocation, taking into account fairness, equity and non-discrimination consistent with Article 15 of the Chicago Convention, and including possible mechanisms for dispute resolution; and
  - 2) continue to monitor developments in capacity management of airports, capacity management of airspace and their inter-relationship.

—END—