

CONFERENCE ON THE ECONOMICS OF AIRPORTS AND AIR NAVIGATION SERVICES

(Montreal, 19 - 28 June 2000)

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

AIRPORT REGULATION

(Presented by Airports Council International)

SUMMARY

Most airports are already effectively regulated by trade and competition laws, by contractual agreements with airlines, and by effective general pressure from large and well-organized airlines. Indeed, most airport operators have a much stronger incentive to encourage air traffic and improve their facilities than to overcharge users and risk discouraging traffic. Airport regulation should therefore 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. All regulatory systems should endeavour to preserve sufficient freedom and incentives for airport managers to operate their businesses effectively to serve the travelling public and the community.

1. The rationale for regulation

1.1 In rare instances, airports are seen as monopolies which may have considerable power which could be applied to the detriment of airlines, passengers and the public interest. In such circumstances there may be pressure to regulate airports. In practice, ACI believes there are few cases where strict regulation is required, since the power of airports is countered by the considerable political power of airlines and the existence of various legal and contractual mechanisms involving airports.

1.2 Regulation imposes costs, leads to bureaucracy and reduces management flexibility and creativity. Therefore, before any controls are imposed, States should ascertain that they are not unnecessarily burdensome. Government regulatory control may be considered in three instances:

- a) where airports have a high degree of market power. This will only be the case where airline and passenger demand is strong and there is no significant competition from other airports or other modes of transport;
- b) where there is evidence from current or previous conduct that airports will in fact take advantage of their market power if not regulated. Relevant evidence should demonstrate either systematic implementation of excessive charges, unreasonable discrimination, or predatory pricing. If none of these forms of conduct has been demonstrated, regulation is unnecessary, and indeed, would represent a potentially expensive waste of resources for the State, the airport operator and the user community; and
- c) where airport users are not already protected by other general legislation. In Europe, for instance, domestic and European Union competition law already provides protection against any abuse by an airport of a dominant position. Similar forms of protection exist in the U.S.

2. Recommendations

2.1 States should consider whether sufficient general consumer legislation and contractual obligations already exist before introducing further specific controls on airports. In doing so, they should note that unlike the many small and powerless customers of most monopoly utilities, airlines are large, well-organized, politically powerful in their own right, and capable of making full use of all the channels of redress open to them.

2.2 Where it is concluded that additional specific regulation of airports is required, care should be taken to ensure that the form of regulation is not excessively bureaucratic and costly. It is also important that regulation does not result in airport charges being driven down to the point where needed airport investment is restricted. Finally, the regulatory framework should be designed so as to ensure that airport managers are still left with effective commercial incentives to maximize performance.

2.3 Since airport regulatory systems are already in place in a number of States, this experience should provide useful guidance to States initiating new systems. As with any regulatory framework, full and thorough consultations by the regulator with the airport operator are essential at the earliest phase of the legislative process.

2.4 If regulation is required, it should be no more onerous than necessary to ensure that:

- a) it genuinely protects consumers;
- b) it provides the right incentives to airport operators to pursue efficiency gains, including allowing them to retain a significant share of these gains over the long run;
- c) it provides airports with the right incentives to invest in infrastructure, to meet customer needs with direct and observable benefits to airport consumers;
- d) it allows for external changes to an airport's cost base to be included. This would include, for example, costs relating to environmental protection and enhanced security;
- e) it provides for the maintenance and enhancement of levels of service;

- f) it confines regulation only to those activities where the specific airport has a monopoly and excludes activities where the airport operates in competition with other enterprises.

3. Action by the Conference

3.1 The Conference is invited 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. 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 believes that effective airport regulation should be based on the principles outlined in para. 2.4 above. Moreover, full and frank discussions between the regulator and airport operators in advance of the promulgation of the regulatory guidelines can lead to a practical and meaningful legal framework.

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