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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
Agenda Item 5.2: Elements for consideration with regard to ICAO policy

THE EUROPEAN REGULATORY FRAMEWORK

(Presented by the European Commission)

INFORMATION PAPER

SUMMARY

The European Single Market has created a frontier-free area within which the free movement of persons, goods, services and capital must be guaranteed. In terms of air transport and airports, this has resulted in the following:
- rules ensuring the advent of new competitors, including in airports where limited capacity or environmental constraints preclude full freedom of access for air carriers,
- the opening-up to competition of related groundhandling services.
With regard to the provision of facilities and services for which airports have sole responsibility, there is also a legislative proposal to tighten up and make compulsory at European level the principles of non-discrimination, cost-relatedness and transparency laid down in the ICAO *Council Statement on Charges for Airports and Air Navigation Services* (doc 9082/5).

1. How the liberalisation of Community air transport affects airport policy

1.1 Air transport within the European Union was liberalised over a period of ten years in the form of "packages". The process was completed on 31 March 1997 with the lifting of the final restrictions on cabotage under the third package.

1.2 The third package entered into force on 1 January 1993. It comprises three Regulations whose provisions are directly applicable in the Member State of the European Union: Regulation No 2407/92 on

licensing of air carriers; Regulation No 2408/92 on access for Community air carriers to intra-Community air routes; Regulation No 2409/92 on fares and rates for air services. Of these, only Regulation No 2408/92 has implications for airport policy.

1.3 Regulation No 2408/92 lays down the general principle of free access for Community air carriers to all intra-Community air routes, including domestic routes within Member States. However, there are exceptions to this general principle in the form of measures restricting traffic rights. The restrictive measures provided for in Articles 8(1) and (2) and 9 of the Regulation are liable to have a direct impact on airport economics.

1.4 Article 8(1) allows Member States to regulate the distribution of traffic between airports within an airport system. Such regulation must be without discrimination as to the nationality or identity of the Community air carriers using the airports concerned. It must also observe the principles of transparency and proportionality. At present, there are regulations governing the distribution of traffic rights in the airport systems of Berlin, Paris and Milan.

1.5 Freedom of access may also be restricted by making the exercise of traffic rights subject to published Community, national, regional or local operational rules relating to safety, protection of the environment and the allocation of slots (Article 8(2)). The rules on slots are those laid down by Regulation No 95/93 of 18 January 1993. As for safety and the environment, rules may, for instance, place limits on aircraft noise, introduce curfew measures or restrict the total number of available slots.

1.6 Member States may also impose conditions on, limit or refuse the exercise of traffic rights when serious congestion and/or environmental problems exist (Article 9). Such measures must observe the principle of proportionality, must not discriminate on the basis of the nationality or identity of the air carriers and must not unduly affect competition between them. They may not last longer than three years.

1.7 Since 1994, the geographical area covered by the third package has embraced the entire European Economic Area, including Norway and Iceland. The agreement the European Union has reached with Switzerland in the air sector also incorporates much of the package. The same applies to the agreements the Union will be concluding with the Central and East European countries (CEEC). There are no plans to modify these Regulations at present.

2. **Opening up the groundhandling market**

2.1 Air transport can only be truly and fully liberalised if the related groundhandling activities market is opened up. Such activities are not essential to airports in their task of handling aircraft and passengers, and many airports do not provide such services themselves.

2.2 Given the commercial nature of these activities, the Council of the European Union adopted a Directive on 15 October 1996[1] whose long-term purpose is to end all instances of monopolies or duopolies in the Community's main airports by:

[1] OJEC L 272, 25.10.1996, p.36.

- opening up entirely the market in provision of groundhandling services to third parties and recognising the right of air carriers to self-handle in respect of most activities,

- guaranteeing at least some choice for client companies when the State decides to limit the number of operators for certain ramp activities where constraints of safety, security, capacity or space do not allow the market to be fully opened up.

2.3 Where the market cannot be opened up fully, suppliers of services and carriers wishing to self-handle will be selected on the basis of transparent and non-discriminatory criteria ensuring that carriers have a genuine choice of groundhandling service supplier.

3. The principles of airport charging

3.1 As part of their mission of handling and servicing aircraft and passengers, airports levy charges in return for providing facilities and supplying services. These charges are not subject to market rules but are set within the framework of a natural monopoly in a particular geographical area. Though generally subject to control, the charging system often appears both complex and unclear.

3.2 In 1997 the European Commission adopted a proposal for a directive[2] to make compulsory at Union level the basic principles laid down by ICAO, notably in its Council Statement on Charges for Airports and Air Navigation Services (doc. 9082/5), concerning:

- non-discrimination on grounds of flight origin, unless justified by a difference in the cost of the services and facilities provided,

- the relationship between the costs actually incurred by the airport and the charges levied. This relationship is viewed globally, to ensure that the level of charges covers the total cost of the facilities and services the airport provides, including indirect costs arising from the presence of aircraft at and in the vicinity of the airport. Similarly, efficient management and flexible charging call for gradual inclusion of the cost of infrastructure and facilities yet to be built or completed, though such pre-financing would apply only where an official decision has been taken to undertake the work,

- transparency throughout the process, regarding both the way charges are calculated and the level they are set at. This means introducing consultation procedures between airports and airport users, along with a genuine right of appeal where charges are set at an unfair level.

3.3 Liberalisation of the aviation sector has gradually highlighted the need to ensure that airports operate rationally. Airport structure has evolved considerably in recent decades, tending towards greater private partnership. At the same time, the airport's mission as a provider of facilities has been enhanced by many other activities, so that all these operations are now being managed increasingly as a business, geared towards efficiency with the objective of optimum management of infrastructure and resources. Given the special situation of airports, this can only be achieved within a framework which ensures equal treatment for all users while allowing airports, notably through a system of planning and regulation of charges, the option of adapting the use of their charging systems to the requirements of good management.

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[2] COM(97) 154 final, OJ C 257, 22.8.1997, p.2.