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INTERNATIONAL CIVIL AVIATION ORGANIZATION

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ICAO/LACAC Capacity Building Workshop on Air Transport Economic Regulation and Oversight

Economic Oversight of Airports and ANSPs

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Economic Regulatory Framework Section

ICAO

Objectives of the Session

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- Meaning of Economic Oversight

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- Objectives of Economic Oversight

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- ICAO's Policies on Economic Oversight

4

- Different Forms of Economic Oversight

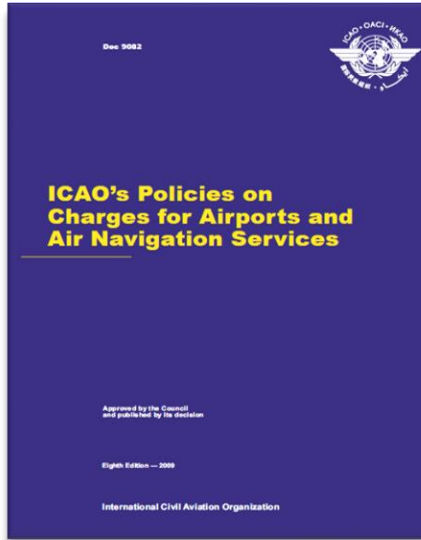
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- Implementation of Economic Oversight



ICAO's Policies and Guidance on Economic Oversight

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Doc 9082



Doc 9562



Doc 9161

- Doc 9082 – ICAO's Policies on Charges for Airports and Air Navigation Services
- Doc 9562 – Airport Economics Manual
- Doc 9161 – Manual on Air Navigation Services Economics

❖ State is ultimately responsible for safety, security and, in view of the potential abuse of dominant position by airports and ANSPs, **economic oversight** of their operations

Objectives of Economic Oversight

Definition of Economic Oversight

“The function by which a State supervises commercial and operational practices of an airport or ANSP.”



In performing its economic oversight function, a State should ensure that service providers consult with users and that appropriate performance management systems are in place.

Objectives of Economic Oversight

ICAO's policies in Doc 9082 set out the objectives reflecting areas of potential need for appropriate economic oversight

- ➔ Minimize the risk of **anti-competitive practices or abuse any dominant position**
- ➔ Ensure **non-discrimination and transparency** in the application of charges
- ➔ Ascertain that investments in capacity meet current and future demand in a **cost-effective manner**
- ➔ Protect the **interests of passengers and other end-users**



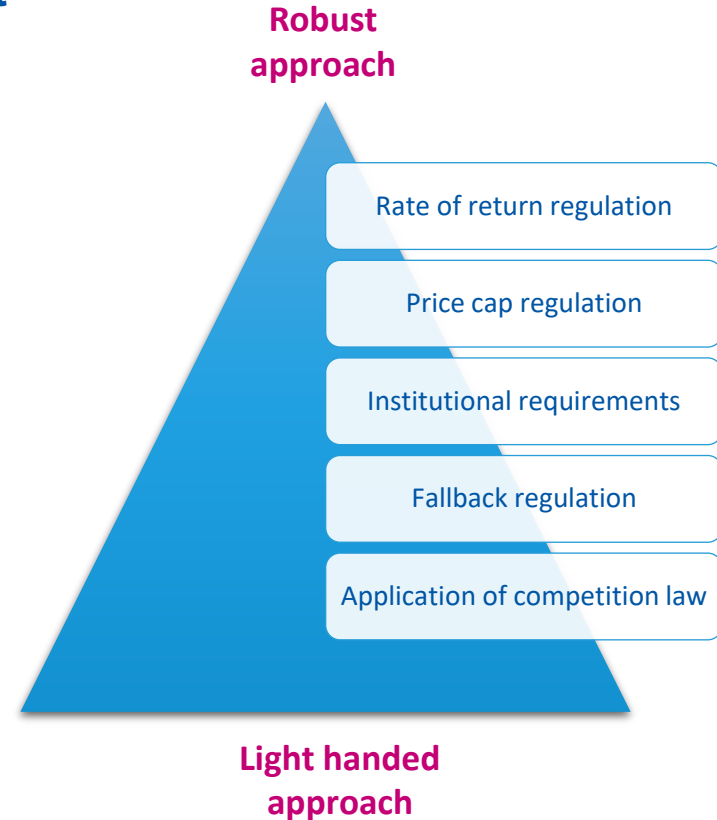
Economic oversight works best when **clear objectives and incentives are given to airports/ANSPs** so that they can provide services in the most cost-effective manner and with an appropriate level of quality.

Forms of Economic Oversight

Possible Forms of Economic Oversight

Economic oversight may take several different forms from a **light-handed** approach to a **more robust approach**:

- **Application of competition law**
- **Fallback regulation**
- **Institutional requirements**
- **Price cap regulation**
- **Rate of return regulation**



Application of competition law

Application of competition law

- The concept of competition law refers to Laws (including regulations and policies) which foster or maintain competition in marketplace by prohibiting anti-competitive practices
- The process of applying competition law normally consists of:
 - Responding to complaints
 - Monitoring market behaviours
 - Prosecuting offenders
 - Adjudicating liability
 - Imposing sanctions upon parties adjudged to have violated the law
- These actions have deterrent effect on anti-competitive behaviours

Fallback Regulation

Fallback regulation (Market Regulation)

- Fallback regulation is based on making explicit “threat” of a more robust form of economic oversight if a company does not ensure that its behaviour stays within “acceptable” bounds
- Light-handed approach: to mitigate a potential risk of abusing dominant position without incurring the regulatory costs and distortions
- Potential difficulty: by defining the commercial boundaries in details the State might risk creating precisely the regulatory distortions that it seeks to avoid.



Institutional Requirements

Institutional Requirements

- Interests of all stakeholders could be best served if users were sufficiently well informed through a constructive engagement of airports and users.
- Enhance transparency and the flow of information, thereby transmitting the right signals and responses between airports and users.

Institutional Requirements (Light-handed types)

Institutional Requirements (Light-handed types)

- Mandatory consultation between airports and users
 - *If a meaningful consultation process is well established, it could eliminate or reduce the need for a robust form of economic oversight*
- Implementation of a performance management system
- Establishment of corporate governance including stakeholder membership of the Board of Directors, which is a means of promoting the adequate flow of economic information between the airport and its users.

Institutional Requirements (More robust types)

Institutional Requirements (More robust types)

- Joint ownership, or mixed enterprise, as a means of ensuring information flow, consultation and consensus in the establishment of airport charges and development plans;
 - *However: potential anti-competitive issues involved regarding airline competition and barriers to entry where joint ownership means airlines have a large say in investment plans and in the management of the airport*
- Not-for-profit financial status: remove the profit incentive relieves stimulus to abuse its dominant position.
 - *However: profit motive protects the public against the risk of an airport failing to generate sufficient surplus revenues to sustain and modernize its facilities on a timely basis.*

Price cap Regulation

Price cap regulation (incentive-based regulation)

- **Incentive mechanism:**
- *A maximum chargeable rate applicable for a specific period, normally by using the retail/consumer price index minus (or plus) an incentive target (an “x” factor).*
 - $\text{CPI} - X$ or $\text{CPI} + X$
 - **Target exceeded:** the airport may keep any over-recoveries.
 - **Target not met:** the airport would not be allowed to increase charges to compensate for the under-recovery and would have to find the means to balance its accounts during the regulated period.
- The airport has **incentive to improve its efficiency and reduce its costs.**

Rate of Return Regulation (Cost of service regulation)

Rate of Return Regulation

- To address the **issue of excessive profits** in enterprises with the **characteristics of monopoly**.
- Obtain **approval for the level of charges and investments**, the objective being to limit the airport's rate of return on capital at the level prevailing in a competitive market.

Implementation of Economic Oversight

Appropriate form of economic oversight must be considered:



When there is a disagreement between the parties



Where strong market positions create the potential for overcharging



Where there is increased potential for discriminatory behaviour against specific users

Selecting Appropriate Form of Economic Oversight

In selecting the appropriate form of economic oversight:

- States should first consider the **scope and degree of competition**
- Where **competition or the threat** of it is sufficiently strong, the **application of competition law** is likely to be adequate
- Robust approach when competition and competition law would be insufficient
- Assess potential **costs and benefits** related to the form of economic oversight
- In some situation the **combinations of two or more of the forms** may yield best form of economic oversight

Degree of competition

Nation legal, institutional and governance frameworks

Roles, rights and responsibilities of the different parties involved

Costs related to specific oversight forms

Operation and administration of economic oversight is not cost-free



Operation and administration of economic oversight is not cost-free



Cost associated may increase as the approach taken by a State moves from a light-handed to a more robust form



Searching the spectrum of options for protecting public interests at an acceptable level and at a minimum regulatory cost

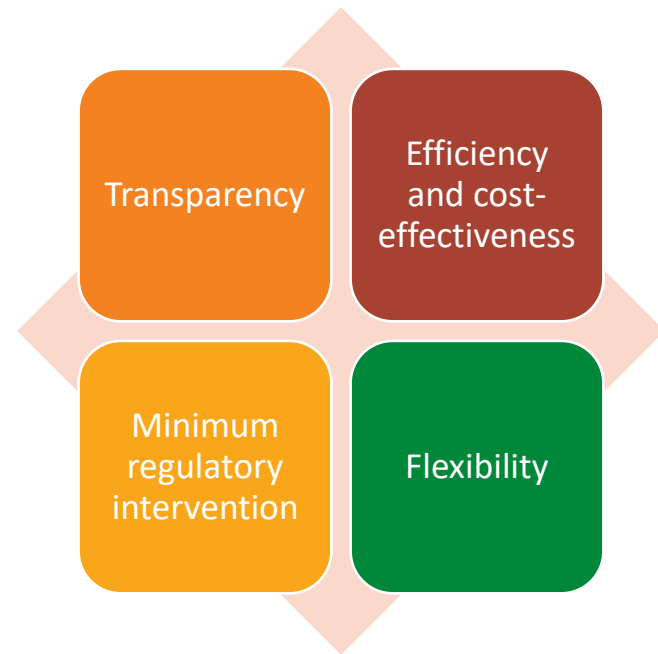


Best practices for Economic Oversight

Economic oversight should consider:

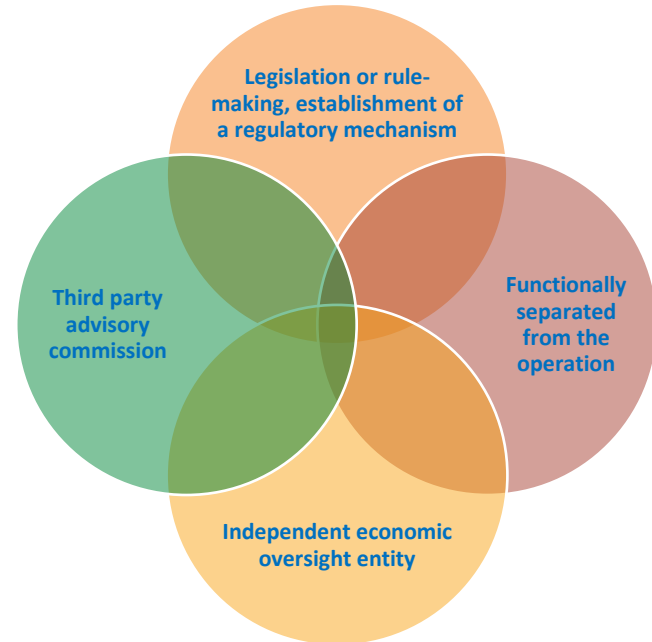
- **Transparency**
- **Efficiency and cost-effectiveness**
- keeping regulatory **interventions at minimum** and as required
- Ensure a certain **degree of flexibility**

Costs benefits analysis related to the particular form of economic oversight.



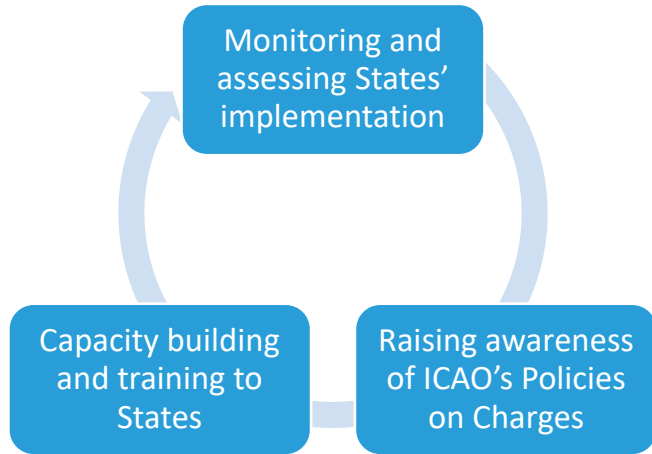
Implementation of Economic Oversight

- Economic oversight can be performed through legislation or rule-making, establishment of a regulatory mechanism, etc.
- Economic oversight should be functionally separated from the operation and provision of airport/ANS services
- States may wish to establish an independent economic oversight entity with the responsibility of reviewing and sanctioning any action on pricing, investments and service quality
- A State can also use a third party advisory commission as a less formal tool to help perform its economic oversight function



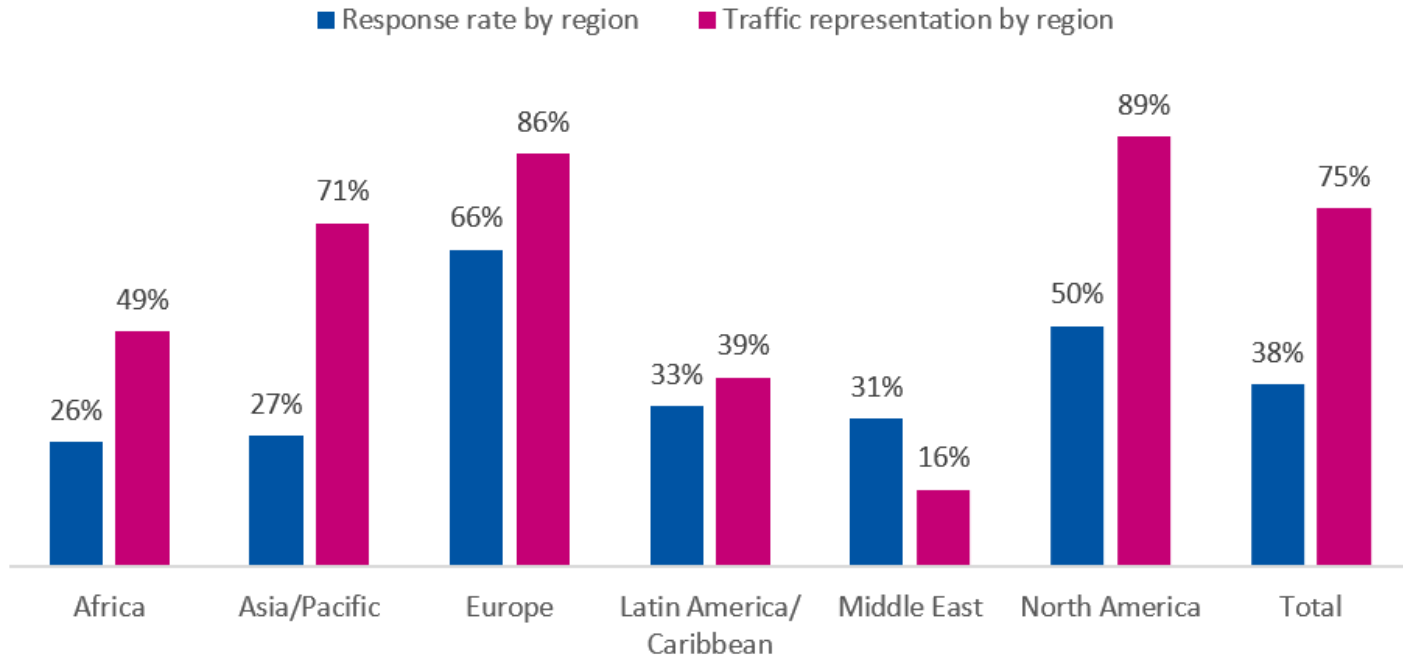
ICAO Survey on States' Implementation of Economic Oversight

Enhancing the implementation of ICAO's policies on charges

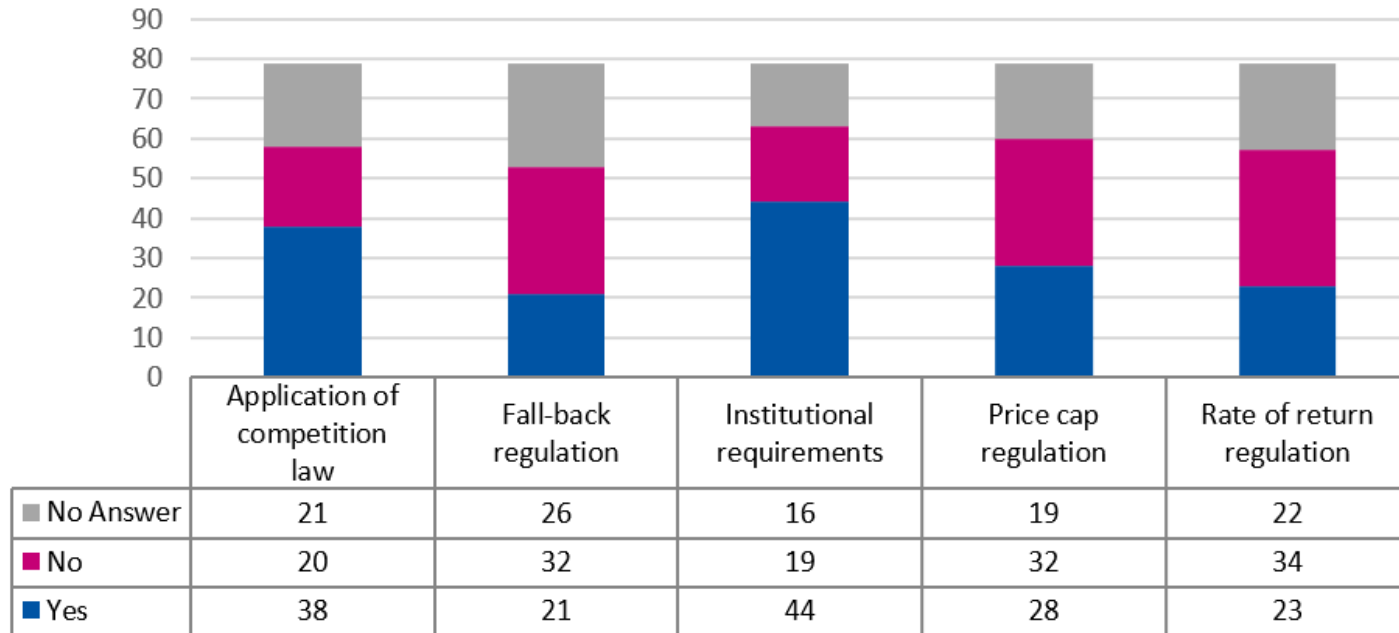


- ❑ **Surveys on status of implementation of ICAO's policies on charges done in 2020.**
- ❑ **Of 79 States and territories that responded (covering 75% of aircraft departures in 2019)**
- ❑ **Survey scope:**
 - ❑ awareness of ICAO's policies on charges for airports and air navigation services;
 - ❑ national rules and legislations on charges for airports and air navigation services;
 - ❑ implementation of ICAO's policies on charges;
 - ❑ **forms of economic oversight on airports and air navigation services providers (ANSPs) adopted by States; and**
 - ❑ any other comments and/or suggestions for improving the implementation of ICAO policies on charges.

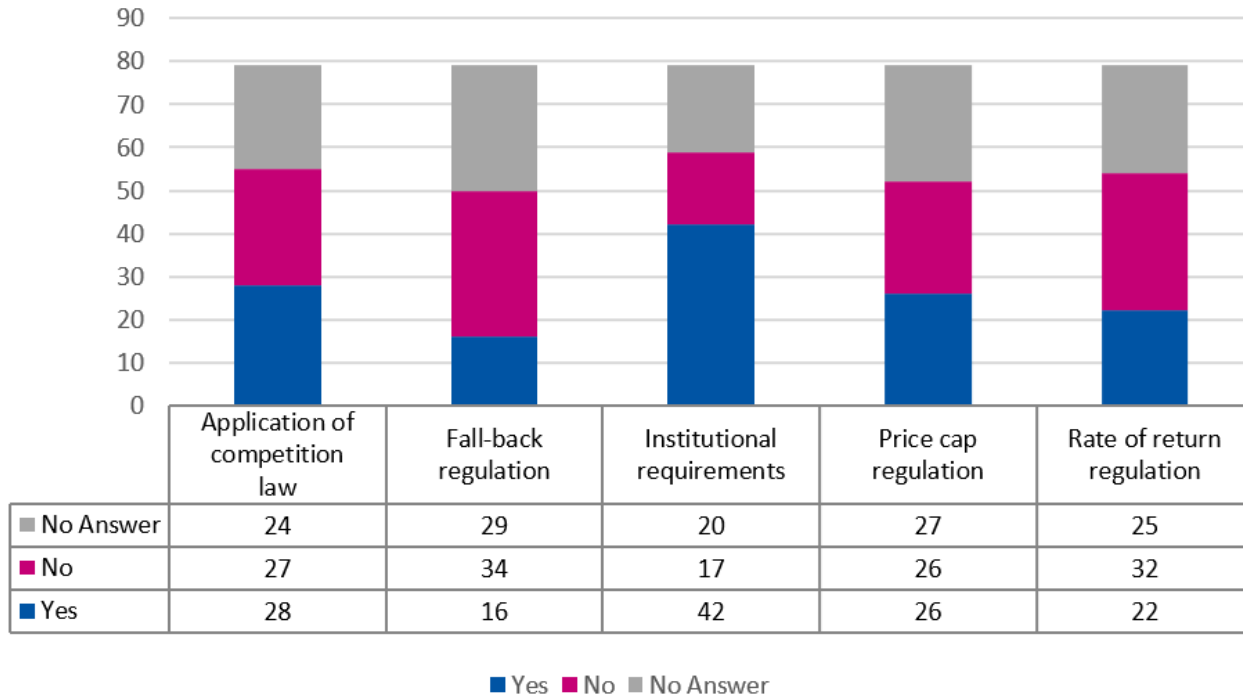
Survey response rate and traffic representation



Form of economic oversight adopted for airports



Form of economic oversight adopted for ANSPs



Other survey findings

1

- Some States highlighted that since the airports and ANSPs are administered by the State, their **commercial and operational activities** are supervised in conjunction with economic oversight

2

- Some States have a **hybrid model of economic oversight** such as “fall-back regulation” plus “price-cap regulation”, while only apply competition law to smaller airports

3

- In certain States, **economic oversight** is conducted by other government agencies instead of civil aviation authorities

4

- Some States indicated that their original scheme of airport charges is set based on **cost with a reasonable rate of return as agreed with the airlines**, and any proposed changes are consulted with users

5

- Some States also stressed the **need and importance for providing more explanation and training** on different forms of economic oversight to civil aviation authorities

Summary



Economic oversight works best when clear objectives and incentives are given to airports/ANSPs



Operation and administration of economic oversight is not cost-free



Searching the spectrum of options for protecting public interests at an acceptable level and at a minimum regulatory cost



Definition of economic oversight



Objectives of economic oversight



Different forms of economic oversight



Selecting form of economic oversight



Best practices for implementing economic oversight

Challenges of Implementing Economic Oversight

- Some states do not have autonomous entities running their airports
- Inadequate capability of some States especially with the complexities of private sector investments, operations and management.
- Knowledge and ability to determine the right regulatory approach (light handed to robust/high handed approaches)

ICAO's Policies and Guidance Materials



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Questions?





Thank You!